

# **Children's Hearings Redesign**

## **Public Consultation on Policy Proposals**

**July 2024**

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## **Ministerial Foreword**

Scotland's unique children's hearings system offers legal protections to children and young people who are in need or at risk, and who require its support.

For nearly 60 years, one of the key strengths of the children's hearings system has been its ability to evolve and adapt roles, practices and functions - to better meet the needs of children and their families - while adhering to its established founding principles. As the system approaches a further period of change, we must underline our gratitude to the volunteers and professionals who continue to offer so much time, dedication and care to the children referred to hearings. We also need those partners to stay the course as we decide the best course of action for children's hearings all the way through the redesign process, and for the stages beyond.

This is a chance to consider how the system can again adapt, to continue to meet babies', infants', children's and young people's needs for the years to 2030 and beyond; and to be bold and positive in doing so. It will be essential to build on the work done over recent years by the organisations most closely involved in leading and supporting system improvement.

The adaptations and refinements we make to the children's hearings system must be chosen with care, and be informed by consultation and solid evidence. In addition, change must be introduced at the right pace, with respect to wider policy and legislative commitments. We want to ensure that the organisations and individuals working within the system have the capacity and confidence required to give of their very best to children and families.

Following a 20-month review of the children's hearings system, *Hearings for Children: The report of the Hearings System Working Group* was published on 25 May 2023. It set out a broad range package of recommendations. The work was led by Sheriff David Mackie alongside members of the Hearings System Working Group (HSWG): officers from the Promise Scotland, the Scottish Children's Reporter Administration (SCRA) and Children's Hearings Scotland (CHS). Scottish Government officials were group observers.

Scottish Ministers are grateful to those behind *Hearings for Children*: the young people, families and professionals who gave so generously of their time, their views and their expertise. This allowed the report to reflect both their lived reality of the current system, and their hopes for the future. It is clear that the Kilbrandon principles, on which the children's hearings system has been based since its inception, remain vital to Scotland's approach to the welfare and care of children who may need compulsory care to keep them safe. That gives a solid platform on which to build positive change. As indicated in the Government response to *Hearings for Children*, published in December 2023, this work represents an improvement agenda, not a recovery operation. It is with that in mind that we seek the views of children, families and those that work with them on the proposals in this paper.

### **Natalie Don MSP**

Minister for Children, Young People and Keeping the Promise

## 1. Consultation Process

### 1.1 Responding to this consultation

The consultation will run for 13 weeks, and Scottish Government are inviting responses to this consultation by 28 October 2024.

In order to respond to this consultation, please use the Scottish Government's consultation hub Citizen Space, which you can access online [here](#).

The Scottish Government appreciate this is a detailed consultation and you may not be able to complete it in one sitting. You can save and return to your responses while the consultation is still open. There is no requirement to complete every question in the consultation. You can fill in the full consultation or you can respond to the particular questions or sections you have an interest in. However, please ensure that consultation responses are submitted before the closing date above.

If you are unable to respond using our consultation hub, please complete the Respondent Information Form and send your responses to consultation questions to Children's Hearings Redesign Team, Victoria Quay, Edinburgh, EH6 6QQ.

In addition, an Easy Read version of the consultation and questions will be made available imminently. Further supporting materials including a conversation guide for professionals working with children and young people and associated materials are being produced and will also be available soon. Scottish Government are also happy to engage with children and young people directly – please contact [childrenshearingsconsultation@gov.scot](mailto:childrenshearingsconsultation@gov.scot)

This formal public consultation is not the only means by which the Scottish Government will seek views on the proposals and related issues. Many of these matters are subject to ongoing and in-depth engagement with partners and stakeholders, while others have already been subject to primary legislation or other public consultation in preceding years. Throughout the period of this consultation, engagement work with key partners and stakeholders will continue. The Scottish Government will be providing input to existing groups and meetings. If it would be helpful to engage with you or your organisation in a specific arrangement, please get in touch at [childrenshearingsconsultation@gov.scot](mailto:childrenshearingsconsultation@gov.scot)

In addition to this consultation, there are a number of public consultations and engagements on issues related to Keeping the Promise planned over the next twelve months, including: "Moving On" into Adulthood; the definition of "family" and "care experience"; and the future of foster care. Some connected engagement with the care experienced community will take place to consider issues across the four consultations.

## 1.2 Handling your response

If you respond using the consultation hub, you will be directed to the 'About You' page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, the Scottish Government will regard it as confidential, and will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document. To find out how the Scottish Government handle your personal data, please see our privacy policy: <https://www.gov.scot/privacy>

## 1.3 Next steps in the process

Where respondents have given permission for their response to be made public, and after the Scottish Government have checked that they do not contain material that cannot be published (e.g. potentially defamatory material), responses will be made available to the public at <http://consult.gov.scot>. If you use the consultation hub to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence. Responses will be published where the Scottish Government have been given permission to do so. An analysis report will also be made available in winter 2024.

## 1.4 Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to <http://consult.gov.scot>.

## 1.5 Scottish Government consultation process

Consultation is an essential part of the policymaking process. It gives the Scottish Government the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our recent consultations online: <http://consult.gov.scot> each consultation details the issues under consideration, as well as a way for you to give the Scottish Government your views, either online, by email or by post.

Responses will be analysed and used as part of the decision-making process, along with a range of other available information and evidence. The Scottish Government will publish a report of this analysis. Depending on the nature of the consultation exercise, the responses received may:

- indicate the need for policy development or review.
- inform the development of a particular policy.
- help decisions to be made between alternative policy proposals.
- be used in developing new legislation.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

## 2. About this Consultation

This consultation is part of a series of steps to ensure that Scotland's children's hearings system can be redesigned to build on its strengths so that it can deliver the best possible experience to the children and families in need of its support. It focusses on areas which may require changes to the law.

The policy aims of this consultation paper, and of the proposals it contains, are:

- To ensure that the children's hearings system meets the needs, and respects the rights, of all the children and families it serves.
- To ensure that the processes of the children's hearings system support children and families to properly participate and engage - with the referred child always at the centre.
- To minimise the obligations and expectations on children and families to prepare for, and to attend proceedings - while preserving essential rights and participation protections.
- To support the children's hearings system to become more inquisitorial and to minimise the application of adversarial proceedings, without diminishing the significance of the process.
- To ensure that the children's hearings system and the professionals operating within it have the capacity to deliver what each child needs.
- To ensure each child continues to be treated in a way that is trauma-informed and accounts for their age and stage of development.
- To make other technical and procedural alterations where it is necessary, appropriate or beneficial to ensure processes and procedures work more effectively.

To deliver these aims and those of the wider programme of children's hearings redesign, the Scottish Government is committed to working effectively with others. This will entail collaboration with a range of organisations, partners and communities in a number of different ways. This consultation is only one part of the wider children's hearings redesign initiative.

*The Promise* (2020)<sup>1</sup> expressed how to take forward the findings of Scotland's Independent Care Review which aimed to improve outcomes for Scotland's most vulnerable children, particularly those who come into contact with the care system. Subsequently, the Scottish Government committed to keeping the Promise by 2030.

The Promise Plan 2021-24 required that by 2024 the children's hearings system will have gone through a redesign process, rethinking the underpinning structures, processes and legislation.

The first step in this process was the publication of the independent, Promise Scotland commissioned, *Hearings for Children*<sup>2</sup> report in May 2023.

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<sup>1</sup> [The-Promise.pdf \(carereview.scot\)](#)

<sup>2</sup> [hearings-for-children-the-redesign-report.pdf \(thepromise.scot\)](#)



Further details of the engagement and evidence that underpinned this report can be found in the dedicated section of the Promise Scotland website<sup>3</sup>.

The vision and ambition of the Hearings for Children report broadly aligns with the policy trajectory and longer-term aspirations of the Scottish Government. Policy teams across the Scottish Government undertook several stages of analysis of the report across summer and autumn 2023. They also worked with statutory delivery partners in the children's hearings system – learning from those responsible for the system's day to day running. That work confirmed that many Hearings for Children recommendations had in some way been anticipated, or work had begun to make progress on certain issues, in the way envisioned by the report. Practice changes were being delivered or planned, and other improvement programmes were already underway, all of which would help deliver the aims of the report and the overall intentions of system redesign.

The Scottish Government's work with partners also identified that there was capacity for further change, and it has now drawn on partners' professional expertise to identify those Hearings for Children recommendations that can be driven forward by practitioners, managers and other leaders - without the need for new law or Government action. However, many of the issues considered by the Hearings for Children report and then supported by the Scottish Government response, cannot progress without changes to primary legislation or without significant changes to existing systems or structures, roles and responsibilities.

This consultation follows directly from the Scottish Government's December 2023 response<sup>4</sup> to the recommendations of the independent Hearings for Children report. It covers potential legislative reforms flowing from the recommendations which have been reflected on, adapted and updated following the Scottish Government response. It seeks views and feedback on policy proposals to redesign aspects of the children's hearings system, that could be introduced to the Scottish Parliament within a potential Bill. The Government's future legislative programme will be set out in the Programme for Government.

The sequence of any changes to the hearings system must be planned with care, involving all key parties, to ensure that children and families continue to be supported and system professionals are able to operate safely and with confidence. This includes making sure that development of the substantive legislative proposals to underpin the redesigned system are concluded before the updated supporting administrative functions, guidance, codes of practice and training are defined and developed.

Scotland's Getting it Right for Every Child (GIRFEC)<sup>5</sup> policy recognises all under 18 as children, as does the United Nations Convention on the Rights of the Child (UNCRC), unless under the law applicable to the child, majority is attained earlier<sup>6</sup>.

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<sup>3</sup> Redesign Report - [Redesign Report \(thepromise.scot\)](https://thepromise.scot)

<sup>4</sup> Hearings for Children report: response - [Hearings for Children report: response - gov.scot \(www.gov.scot\)](https://www.gov.scot)

<sup>5</sup> Getting it right for every child (GIRFEC) - [GIRFEC - gov.scot \(www.gov.scot\)](https://www.gov.scot)

<sup>6</sup> United Nations Convention on the Rights of the Child (UNCRC) - [The United Nations Convention on the Rights of the Child](https://www.unicef.org/uncrc)

To aid readability and to simplify this document, the terms ‘child’ or ‘children’ in this consultation document therefore refer to under 18, unless otherwise stated. ‘Young people’ is typically used to refer to those aged 18-25 years, in-keeping with wider legislation and policy developments<sup>7</sup>.

### 3. Introduction

The children’s hearings system is Scotland’s system offering legal protections to children who are in need or at risk, and who require its support. Limiting compulsory measures of care only to those children for whom that is required, and only for as long as compulsory intervention is needed, remain fundamental principles.

The system’s creation dates back to the landmark Kilbrandon Report<sup>8</sup> of 1964, furthering Scotland’s welfare-based approach to children’s care and youth justice. This ‘social education’ approach proceeds from an acceptance that the care, protection and support needs of children – and any risks these children may face, or parts of their behaviour may present to others – must be addressed in the context of each child’s whole life circumstances, whether that child themselves offends, or is offended against.

The Social Work (Scotland) Act 1968 first brought into law the children’s hearings system, with further legislation bringing subsequent improvements and developments, including the Children (Scotland) Act 1995 (‘the 1995 Act’), the Children’s Hearings (Scotland) Act 2011 (‘the 2011 Act’), the Children (Scotland) Act 2020 and the recent Children (Care and Justice) (Scotland) Act 2024.

Reducing the number of children subject to compulsory measures of care demands the wider provision of preventative and appropriate, high quality, accessible early help and support. This is underpinned by the following core components:

- A legislative framework for assessment of wellbeing with SHANARRI (Safe, Healthy, Achieving, Nurtured, Active, Respected, Responsible, and Included), underpinned by guidance. This provides shared principles and values across agencies and services and is central to Getting It Right for Every Child (GIRFEC).<sup>9</sup>
- GIRFEC provides a consistent, co-ordinated way for everyone who works with children, young people and their parents to identify and meet wellbeing and developmental needs. Upholding children’s rights is crucial to improving wellbeing and meeting our commitments to Keep The Promise and reduce child poverty. This is why the United Nations Convention on the Rights of the Child (UNCRC) has been incorporated into Scots law via the [United Nations Convention on the Rights of the Child \(Incorporation\) \(Scotland\) Act 2024](#) ([legislation.gov.uk](#)).

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<sup>7</sup> For example, [Children and Young People \(Scotland\) Act 2014 \(legislation.gov.uk\)](#) and [Sentencing of young people guideline \(scottishsentencingcouncil.org.uk\)](#)

<sup>8</sup> The KILBRANDON Report - [gov.scot \(www.gov.scot\)](#)

<sup>9</sup> GIRFEC Statutory Guidance - [GIRFEC Statutory Guidance assessment](#)

These components offer a strong basis for the multi-agency work that the Scottish Government is undertaking with our partners to improve wellbeing; to embed children's rights; and better support families.

Scottish Ministers acknowledge the immense, highly skilled and unique contribution made by social workers to support individuals and families across Scotland. Ministers are aware of current workforce and workload pressures and are clear that a strong and well supported social work profession is key to delivering the aims set out in The Promise and the Hearings for Children report. Action does need to be taken to address these pressures - that is why the Scottish Government is already working to support and invest in the workforce. Developing a strategic approach to these challenges will ensure that the impacts on the workforces supporting children and families are a key factor in considering the development and delivery of legislative, policy and reform initiatives.

'Best Start, Bright Futures', the second delivery plan for tackling child poverty, sets out how the Scottish Government will work to deliver on Scotland's national mission to tackle child poverty. It is not solely a plan for the Scottish Government, but a plan for all of Scotland, recognising the contribution all parts of society must make to deliver the change needed for children and families. Our work to tackle child poverty is strongly aligned with our commitment to the outcomes of the Independent Care Review. 'The Promise' recognised that if Scotland is to become the best place in the world to grow up, Scotland needs its public services to work for, and with children, young people, and their families. The Scottish Government will look to identify areas of activity where poverty and care experience overlap and explore opportunities to connect policy ambitions. This will include making links with relevant elements of future plans to redesign the children's hearings system.

The Scottish Government agree with the Hearings for Children report that there must be concerted and coordinated leadership, oversight, investment, and prioritisation of the provision of appropriate, high quality, accessible, early help and support for children and their families. Transforming the delivery of Scotland's public services in a way which delivers services that support individual circumstances is what Whole Family Wellbeing Funding<sup>10</sup> is all about. This will help Scotland to keep the Promise because it will ultimately support families to thrive by reducing the need for more intensive support when things have gone wrong. The funding will focus on the system changes required to shift investment towards early intervention and prevention activities, to ensure families can access support before they reach crisis point.

The Scottish Government have heard concerns from service leaders, practitioners and representative bodies about sequencing, capacity and overburdening. But the Scottish Government have also heard a real enthusiasm for the children's hearings system's principles and potential. There is broad commitment to sustaining its ongoing success.

In developing plans for the redesign of the children's hearings system, the capacity of those working within it and the landscape of other policy and practice change will

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<sup>10</sup> <https://www.gov.scot/policies/qirfec/whole-family-wellbeing-funding/>

be central considerations alongside the core desire to do our best by children and their families, and to make necessary changes as soon as possible.

To deliver the accepted non-legislative recommendations for change, a Children's Hearings Redesign Board ("the Board") has been established.

The Board is jointly chaired by the Scottish Government and the Convention of Scottish Local Authorities (COSLA) and includes membership from the senior leadership of key statutory partners responsible for the delivery of the children's hearings system.

This means one member each from the Scottish Children's Reporter Administration (SCRA), Children's Hearings Scotland (CHS) and Social Work Scotland (SWS). This tightly focused membership of statutory and key partners is designed to ensure direct accountability and appropriate pace in delivery and change. The Board will maintain close links with the wider strategic community of the Children's Hearings Improvement Partnership (CHIP), as well as commissioning members, and groups of members, from that partnership to deliver on identified relevant workstreams and priorities.

The Redesign Board will oversee delivery of change to the children's hearings system, ensuring that any changes made are underpinned by clear and compelling evidence - with demonstrable benefits to children and their families. Central to the effective operation of the Board will be core principles of collaboration, co-operation, inclusion, respect and transparency. As well as their own organisations, the Board members will be accountable to Scottish Ministers and COSLA leaders and will provide progress updates to other connected strategic boards and groups, including care experienced young people.

Building on the successful and trusting partnerships created and nurtured by Sheriff David Mackie, the Board will work with children and young people to identify ways for them to enrich its work and add value to the process of reform and redesign. This is a critical feature of the programme of redesign but needs to happen on terms best suited to the young people. They will be supported to introduce ideas, raise concerns and hold others to account for the work that is taking place.

The Scottish Government also recognise the need to consider the experiences of babies and infants and will seek input from expert practitioners and relevant bodies to ensure that the youngest children's needs inform the work on redesign.

The provisions of the Children Care and Justice (Scotland) Act 2024, and the reforms they will introduce, will be commenced in phases, likely between summer 2024 and early 2026. The purposes of the 2024 Act will be supported by a redesigned children's hearings system over the medium term. But the 2024 Act provisions have been designed not to rely on prior delivery of that redesigned system, given that sufficient time is now required to consider and consult on the outcome of the Scottish Government's response to the Hearings for Children report.

In light of responses to this consultation, the Scottish Government will consider what changes to the law will be required to enable and support redesign of the children's hearings system. Subject to decisions taken following analysis of consultation

responses, the Scottish Government anticipate any legislative change needed as a result would be included in a Bill introduced and considered towards the end of this Parliamentary term. Any Bill introduced would then be for Parliament to consider. Subject to Parliament's approval of such a Bill, the Scottish Government anticipate it would be implemented in the period from 2026 to 2030 and beyond.

#### **4. The Principles of a Redesigned Children's Hearings System**

##### **4.1 Background**

"The overarching principles of the Kilbrandon Report which have run through the legislation that developed the Children's Hearings System remain as relevant today as in 1964 when it was first published. These principles have been found to be in accordance with European and international law relating to the rights of children and their families, when considering the provisions of the ECHR as enacted in the Human Rights Act 1998 and UNCRC, ratified by the UK in 1991."

Hearings for Children report – May 2023

The principles of the Kilbrandon Report are well established and continue to be the right ones to underpin a redesigned children's hearings system. The Scottish Government have no plans to change this fundamental approach.

However, the Hearings for Children report asked that:

"an overarching principle in primary legislation or procedural rules and a shared set of national standards for the workforce should be made that explicitly describes the children's hearings system as inquisitorial.

"This will foster an inquisitorial approach and culture within the children's hearings system and ensure there is a clear understanding across the entire system of what this means."

The adoption of an explicitly inquisitorial approach was central to the deliberations of the Hearings System Working Group and reflected their finding that the children's hearings system was seen as "adversarial". Adversarial legal proceedings involve two opposing sides, usually represented by lawyers, presenting their cases to an impartial judge, judges or jury. The nature and significance of the decisions being made within the setting of a children's hearing mean that it can be an emotive and sensitive process for all participants, including for professionals.

Difficult, high stakes conversations that can be characterised by discomfort, challenge sometimes feeling accusatory towards professionals, a sense of undermining and exposure among a number of contributors, along with feelings running high, can all combine to an experience that feels fraught with hostility and jeopardy.

While their governing legislation does not explicitly require the adoption of an "adversarial" approach, some tribunals by their nature will be more adversarial, e.g. Employment Tribunals, which predominately hear disputes between competing

claims. Others, such as Mental Health or Special Educational Needs and Disability Tribunals, tend to function more as an inquisitorial hearing, as they are tasked with obtaining facts to determine the best outcome for an individual.

While the governing legislation for the Mental Health Tribunal for Scotland, for example, does not require an “inquisitorial” approach, it sets out overarching principles for discharging certain functions (see section 1 of the Mental Health (Care and Treatment) (Scotland) Act 2003). These principles both drive the intended nature and character of the tribunal as inquisitorial, but also keep the person intended to be central to proceedings at their core. The Scottish Government will consider whether, to achieve the aim of making children’s hearings more inquisitorial, statutory principles such as these could be appropriately adapted for application in a redesigned children’s hearings system.

It is arguable that - at different phases - it will remain legitimate for the redesigned children’s hearings system to comprise features of both adversarial and inquisitorial approaches. The Scottish Government note the remarks of Lord Hope about the ‘genius of this reform’ [the inception of the hearings system] being a clear separation of substantive decision-making about the need for compulsory supervision from establishing matters of fact (Sloan v B, 1991 SLT 530 at p. 548))

The Scottish Government consider that it will be difficult to devise a rights-respecting process that is not in some respects adversarial - at least during the phases of the process that are concerned with the acceptance or establishment of facts justifying potential compulsory state intervention in children’s and families’ lives.

That said, when it comes to the identification of the necessary measures, if any, of support and supervision, it would be desirable to emphasise an inquisitorial approach.

By that, the Scottish Government intend for the forward-looking aspects of children’s hearings’ discussions and decisions to be optimistic, respectful, enquiring, problem-solving and collaborative - to the fullest extent possible.

‘Hearings for Children’ report stated (p207): ‘The Hearing itself should have the characteristic of an inquiry into the needs of the child or young person.... This inquiry should seek to ensure both the views of the child and their family are sought and considered, and that they are able to actively participate in discussions and contribute to decision-making processes in ways that are appropriate to them. Children and families should feel included in the decision-making process and gain a sense of working alongside the Panel to make strong and competent choices and decisions in the best interests of the child.’

The Scottish Government believes that many of the proposals being progressed and considered as part of the process of redesign will lead to a more inquisitorial approach in any event, thereby improving the experience of a children’s hearing for children and other participants.

However, the Scottish Government recognise that a legislative acknowledgement of overarching principles may emphasise and clarify the intended approach. In considering this, the Scottish Government must be cognisant of any unintended consequences for proceedings that legitimately differ in their approach, or could unintentionally interfere with the independence of hearings themselves or the judiciary.

In 2016 the Children’s Hearings Improvement Partnership (CHIP) published *Our Vision and Values for the Children’s Hearings System*.<sup>11</sup> The cover of the document contains a quote from a young person – “*a children’s hearing should be a conversation not a confrontation*”. Much of this document remains relevant and the Children’s Hearings Redesign Board are revisiting it as part of their ongoing work.

## 4.2 Proposal

Views are invited on the principles that should underpin a redesigned children’s hearings system and whether it is necessary for these to be enshrined in legislation.

### Questions:

- What principles should underpin a redesigned children’s hearings system and why?
- What would be the advantages and disadvantages of enshrining overarching principles in legislation?

## 5. Before a Children’s Hearing

This section of the consultation paper considers measures relating to the processes before a children’s hearing, including the use of certain forms of language, who can attend a hearing, and how the Scottish Government can support system actors to improve levels of participation and engagement with children.

### 5.1 Statutory Referral Criteria

In Chapter 3, the Hearings for Children report recommended that “*Changes to the statutory referral criteria and to updating and modernising the language of ‘protection, guidance, treatment or control’ in section 60(2) of the 2011 Act must be considered.*” The report goes on to state that “*referral processes should be underpinned by the key principles of rights-based proportionality, consistency, and timeliness*”.

Section 60 of the 2011 Act states:

#### **60 Local authority's duty to provide information to Principal Reporter**

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<sup>11</sup> [CHIP-Vision-and-Values-July-2016.pdf \(usercontent.one\)](#)



(1) If a local authority considers that it is likely that subsection (2) applies in relation to a child in its area, it must make all necessary inquiries into the child's circumstances.

(2) This subsection applies where the local authority considers—  
(a) that the child is in need of protection, guidance, treatment or control, and  
(b) that it might be necessary for a compulsory supervision order to be made in relation to the child.

(3) Where subsection (2) applies in relation to a child the local authority must give any information that it has about the child to the Principal Reporter.

The Hearings for Children report highlights the terms “treatment” and “control” as being in need of modernisation and recommended that the legal implications of removing this language should be explored. The report proposed that the referral criteria could be amended to:

- (a) The child or young person is in need of safety, protection, care, **guidance** or **support** (Clearly specify which is needed); and
- (b) Compulsory intervention is likely to be needed (With clear rationale why necessary); and
- (c) Only refer if proportionate and timely to do so (With clear rationale why now)

The language used in the children's hearings system, and in connected systems, professions and disciplines can have a profound effect on children and young people.

The Scottish Government is supportive of the ongoing work to promote the common use of accessible and sensitive language across the children's hearings system.<sup>12</sup> The Scottish Government's ambition is that everyone within the redesigned children's hearings system is able to recognise the power of language, and this must extend, appropriately, to the language used in the legislation which governs the system. However, the Scottish Government have concerns that these proposed changes could have significant consequences across practice, case law and legislation, so it would be wrong to drive through change without a strong evidence base to indicate that particular changes are necessary. The Scottish Government are therefore interested in respondents' views on whether the existing criteria need to be updated in the way suggested by the report, and why.

### Questions:

- What elements of language in the existing referral criteria need to be updated, if any?
  - 'control'?
  - 'treatment'?
  - other?

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<sup>12</sup> [Language Leaders | Children's Hearings Improvement Partnership \(chip-partnership.co.uk\)](http://chip-partnership.co.uk)



- Do you support the proposed referral criteria from the Hearings for Children report?
- What are the advantages or disadvantages of the proposed draft referral criteria?
- Do you have any other comments about potential changes to the referral criteria?
- Do you support the proposal to change the applicable referral test that compulsory supervision ‘might be necessary’ to it being ‘likely to be needed’?

## 5.2 Before the Hearing – Relevant Persons

Chapter 8 of the Hearings for Children report makes the following recommendation:

“The preparation phase prior to a Hearing taking place must give particular consideration to the information held by the people who know the child best, including those working closely alongside them, and foster, kinship and adoptive parents. These people must be able to participate appropriately and share their views. Legislative or policy changes may be needed to the definition of ‘relevant person’ status to facilitate these changes.”

The term “relevant person” is well-established in legislation and policy. Being, or becoming, a relevant person confers certain rights and obligations on an individual. Relevant persons enjoy significant rights in relation to children’s hearings, including rights to appeal, review determinations, and receive detailed papers relating to proceedings.

When an individual is automatically classed as a relevant person, there are no means to remove that status from them, other than via a court order having removed their Parental Responsibilities and Parental Rights (PRRs).<sup>13</sup>

Under the Children’s Hearings (Scotland) Act 2011, and its subordinate legislation<sup>14</sup>, the legislation does not include a definition of ‘parent’, but the following people are considered to be “automatic” relevant persons:

- Any parent, whether or not they have PRRs (unless their PRRs have been removed by the court)
- Any other person who has obtained PRRs.

This definition means that a biological parent qualifies as a relevant person, regardless of the level of their involvement in the child’s life. The Scottish

<sup>13</sup> [Children \(Scotland\) Act 1995 \(legislation.gov.uk\)](http://legislation.gov.uk)

<sup>14</sup> Section 200 of the 2011 Act and [Article 3 of the Children’s Hearings \(Scotland\) Act 2011 \(Review of Contact Directions and Definition of Relevant Person\) Order 2013](#) sets out who are automatically considered Relevant Persons. Respondents should be aware that there is a judgement pending in a Judicial Review which will consider whether the parameters defining “automatic” Relevant Persons in the 2013 Order are compatible with ECHR rights. Revisions to these parameters may therefore be required and will be addressed as part of the outcomes of this consultation.

Government would welcome respondents' views on this existing definition, and whether it would be appropriate for a hearing to have the power to remove automatic relevant person status where the involvement of an individual in hearings proceedings may not be compatible with the rights of the child or others.

There are mechanisms to allow the hearing or Sheriff to consider whether other people should be deemed relevant persons. A pre-hearing panel can be convened to consider whether to deem an individual to be a relevant person if it considers that the individual has (or has recently had) a significant involvement in the upbringing of the child<sup>15</sup>. "Deemed" relevant persons can have their relevant person status removed in situations where their relationship with the child no longer meets the deeming criteria.

The Scottish Government recognises that, under the current legislation, there are no means for an individual to be deemed a relevant person prior to a pre-hearing panel taking place. The Scottish Government understands there may be justification for introducing a process for individuals to be deemed relevant persons at an earlier stage to ensure they are able to participate fully in the preparation phase before a hearing. The Scottish Government is interested in views regarding whether changes are required to enable more effective gathering of information prior to a hearing and to support proper opportunities to participate.

It is the Scottish Government's view that, in practice, the preparation for a hearing, and the provision of information to a hearing, can and should involve appropriate consultation with the people who know the child best. This should happen at the relevant time either before a referral is made, or during the preparation for a hearing. This activity should, in the main, be undertaken by the local authority, with the children's reporter making additional inquiries where it is necessary.

This is provided for in current legislation and practice, but respondents' views are invited on where and how the current arrangements could be improved. In particular, the Scottish Government is interested in whether respondents feel it is necessary to legislate for the participation and engagement of a broader range of people in the preparation for a hearing. The Scottish Government would particularly be interested in views on whether there would be advantages in creating an additional class of person with certain rights to provide their views at an early stage, and to participate appropriately as the case proceeds.

### **Questions:**

- What are the advantages and disadvantages of the current definition of "relevant person"?
- Should the legislation include a definition of "parent" and if so, what should it be?"

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<sup>15</sup> Section 81(3) [Children's Hearings \(Scotland\) Act 2011 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

- Do you have any views on whether it would be appropriate for a hearing to have the power to remove relevant person status from any relevant person in certain circumstances and if so, please explain?
- What are the advantages and disadvantages of an earlier process for deeming other people to be relevant persons?
- What changes could be made to legislation to enable more effective gathering of information prior to a hearing and to support proper opportunities to participate for other people in the child's life?
- What are the advantages and disadvantages of the creation of an additional class of person whose views and participation are essential to the business of the hearing, but do not require the full rights and obligations of a relevant person?

### 5.3 Participation and Attendance

Each child's view on how they participate in their hearing must be a significant feature of a redesigned system. Article 12 of the UNCRC is clear that a child who is capable of forming his or her own views has the right to express those views freely in all matters affecting them, and their views must be given due weight in accordance with the age and maturity of the child.

Within the current children's hearings system, there are multiple ways for children and young people to appropriately participate – according to their age, stage and preferences.<sup>16</sup> Enabling children to have a clear choice of how to participate in their hearing, unencumbered by administrative barriers, is in keeping with broader trauma-informed practice, and the Scottish Government is supportive of this in principle.

The Hearings for Children report recommends that:

“The existing obligation for a child to attend must be removed and replaced with a presumption that a child will attend their Hearing, with some limitations. There must be no presumption that babies and infants will attend their Hearing.”

Section 73 of the 2011 Act sets out the obligation for a child to attend their hearing, and the circumstances in which a child can be excused from their hearing. Further provisions on the child's duty to attend court proceedings are laid out in sections 103 and 112 of that Act. There is no provision to proceed in the absence of a child if they have not been, or cannot be, excused under the criteria in section 73.

Should the obligation to attend be completely removed, this could have concerning rights implications, for example where an offence ground is under consideration. However, the Scottish Government acknowledges that there is support for greater flexibility in this regard. System partners and stakeholders have reflected positively

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<sup>16</sup> [Your Rights - SCRA](#)

on the impacts of, and learning from, the emergency arrangements for children's hearings introduced by the Coronavirus (Scotland) Act 2020, which removed the obligation for children to physically attend their hearing. Anecdotally, the Scottish Government understand that this flexibility was well received by children and young people, and their families.

#### Questions:

- Do you agree with the recommendation to remove the child's obligation to attend their hearing, to be replaced with a presumption that the child will attend?
  - If yes, what limitations would need to be applied to this presumption?
- Does the hearing need a power to overrule the child's preference not to attend their hearing in certain circumstances?
- What steps could be taken to support the child's participation and protect their rights, if they choose not to attend their hearing?
- Should a child still be obliged to attend hearings held in consequence of offence referrals, or in consequence of the 2011 Act section 67(m) 'conduct' ground?

#### 5.4 Voices of very young children

Where the hearing relates to babies and infants who are too young to express a preference regarding their participation, the Hearings for Children report recommends:

“The voices and experiences of babies and infants must be captured and shared with the [hearing].”

#### Question:

- Do you agree that particular arrangements should be made to capture and share the voices and experiences of very young children in a redesigned children's hearings system?
  - If so, what should those arrangements be?

#### 5.5 The offer of advocacy to the child

It is important that, in advance of a hearing, children and young people of all ages are involved in the consideration of how they can appropriately give their views. Where necessary, this should involve the support of a children's advocacy worker, and the Hearings for Children report also recommends “*there should be an immediate offer of advocacy at the point of referral to the Reporter for all children*” and “*the offer of advocacy should be repeated to children and to their families at different stages of the process.*”

The current section 122 of the 2011 Act states that the chairing member of a hearing must inform the child of the availability of children's advocacy services. In practice, the offer of advocacy does happen before the children's hearing.

### **Questions:**

- Should the focus and wording of section 122 of the 2011 Act be reformed to reflect an earlier, more agile and flexible approach to the offer of advocacy to the child?
- How should the rights and the views of children and young people of all ages, including very young children, be better represented in the children's hearings decision making?
- Should there be a statutory obligation to support the sharing of information to advocacy workers, and other people who can help children and families to understand their rights?

### **5.6 Amplifying children's voices throughout the process**

Existing legislative requirements mean that a hearing, pre-hearing panel, or Sheriff must ensure the child has the opportunity to express their views, in a manner they prefer, and decisionmakers then must have regard to those views. It is also a requirement that anyone providing any document to a hearing under the terms of the legislation, must include any views given to them by the child. The chairing member of a hearing must also ask the child if their views are accurately reflected in the documents provided to the hearing.

However, it should be seen as the responsibility of all those involved with the child to capture their views, and to support methods of preparation for, and participation in, the various stages of the children's hearings system - appropriate to the child's age and stage. If the child is not going to attend their hearing, there should be a recorded process which assesses what has been done to support their participation in other ways, and to get their views, in a way that also makes clear recommendations on what more needs to happen before a hearing is convened.

The Scottish Government considers that there may be value in the creation of a statutory process, undertaken by the children's reporter, which:

- Records what has been done up to the point of referral to gather the child's views, including confirming that they have been offered advocacy.
- Applies a "best interests" test regarding appropriate participation prior to a hearing being arranged. This would account for the child's views on how they wish to attend/participate, their age and stage of development, and the nature of the matters due to be considered by the hearing.
- Makes any necessary further arrangements to gather the child's views and support their ongoing participation. This would include additional offers of advocacy and bespoke and enhanced forms of participation depending on the age and stage of the child, or any other needs they may have.

The Scottish Government is therefore interested in the views of respondents on how changes to participation might operate in practice, to ensure children's rights and best interests are upheld, and their views and wishes reflected to decisionmakers.

**Question:**

- Do you support the creation of a statutory process, undertaken by the children's reporter, to record the capturing of children's views and participation preferences?

### 5.7 Before the Hearing – Provision of Papers

Chapter 8 of the Hearings for Children report includes discussion of the issues around the provision of information for hearings to children, families and panel members. It also describes the support given to those that may be seriously affected by reading deeply sensitive or repercussive material about their personal and family lives, especially where that happens without the right support, reassurance or explanation.

The current 2013 Rules of Procedure<sup>17</sup> require that the child, each relevant person and any appointed safeguarder must receive certain papers as soon as practicable, and no later than 7 days before the hearing. Other reports, such as those produced by the safeguarder and the local authority are required to be provided no later than 3 days before the date of the hearing. The Hearings for Children report suggests that these timescales might not be sufficient to allow children and families to be adequately supported to understand and emotionally address the contents in a way that would help them to prepare properly for their hearing.

“There should be full consideration of the time a child and ‘relevant person’ is given to read and understand the information that they have received. ....Th[ere] may not be enough time for a social worker, family support worker or advocacy worker to sit down with a child and family and help them to understand and process the information, however the balance between introducing drift and delay into the system and this being provided should be considered.”

Hearings for Children report, Chapter 8

SCRA advise that actual usual practice is for papers to be provided to children and families well in advance of the minimum legal requirement of 3 days. Altering the time frames as set out in the current 2013 Rules of Procedure could have implications for the professionals involved in their production and could introduce delay.

Any proposed change would need to balance the need to ensure that paperwork continues to be produced to the standard required, that the material remains relevant and current for discussions and decisions at the subsequent hearing, and that any

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<sup>17</sup> [The Children's Hearings \(Scotland\) Act 2011 \(Rules of Procedure in Children's Hearings\) Rules 2013 \(legislation.gov.uk\)](http://www.legislation.gov.uk)

new timeframes reflect the imperative to ensure that the best interests of children are served.

Chapter 8 of the Hearings for Children report considers a range of issues relating to the way in which information is currently provided. Non-legislative issues relating to the provision of information will be considered by the Children's Hearings Redesign Board rather than this consultation.

Chapter 8 also discusses the implications for panel members of timeframes for the provision of papers to them:

“There are few children and families that engage with Children's Hearings that have not experienced some degree of complexity and trauma in their lives. The papers received by the [panel members] can be substantial and include weighty reports by social workers, psychologists, parenting, and other assessment relating to health or education. Currently, Panel Members will commonly have only a few days, at most, to appraise themselves of these complexities ahead of a Hearing taking place. The Group has heard that sometimes the [hearing] does not have time to assess all of the information. In a redesigned Children's Hearings System all reports must be shared with plenty of time for Panel Members to review them.”

Hearings for Children report, Chapter 8

#### **Questions:**

- Should the timeframes for the provision of papers in advance of a children's hearing to the child and relevant persons as set out in the 2013 Rules of Procedure be altered?
- Should the timeframes for the provision of papers to children's panel members as set out in the 2013 Rules of Procedure be altered?

## **6. Grounds for Referral and Associated Processes**

'Hearings for Children' recommended that: The drafting of grounds and the Statement of Facts should be reframed to take a rights-based approach to help families to better understand why grounds are being established and recognise themselves in the drafting.

Discussion and analysis around grounds of referral are set out in two sections:

- Grounds of referral: concept and language and
- Grounds of referral: processes.

Each section aims to pursue improvement to the children's hearings system in terms of experiences, fairness, efficiency and expediency, and is in response to recommendations identified as numbers 5.1.1, 5.1.3 and 5.1.4. in the Scottish Government response to Hearings for Children.

In this consultation, the phrase “grounds of referral” refers to the headline legal reasons expressing welfare concerns about a child and represent the legal

justification for potential compulsory intervention. In statutory terms, grounds of referral are currently contained in [s67\(2\)](#) of the 2011 Act.

There are currently seventeen grounds. The “statement of grounds” denotes the document prepared by the children’s reporter under section 89(2) of the 2011 Act, where they determine that a ground(s) of referral applies, and the child requires compulsory measures of supervision. The statement of grounds sets out the statutory ground(s) that best relate(s) to the primary presenting welfare concern, and this is accompanied with averments of fact to support the ground(s).

If, as Hearings for Children suggests, the language of grounds of referral should be better understood by children and families so that they might “*better ...recognise themselves in the drafting*”<sup>18</sup>, then the processes for putting grounds to families and for having grounds established must reflect that.

### 6.1 Grounds of referral: concept and language

The Hearings for Children report states: *The drafting of grounds and the Statement of Facts should be reframed to take a rights-based approach to help families to better understand why grounds are being established and recognise themselves in the drafting.*

The children’s reporter will remain the “gatekeeper” to the system considering legal compulsory measures, while recognising the importance of working collaboratively alongside other professionals – linking where necessary to prior inter-related children’s services’ processes. The decision as to whether to impose compulsory measures of care will continue to rest, subject to rights of appeal, with a children’s hearing.<sup>19</sup>

The Scottish Government proposes to retain grounds of referral (to continue to be drafted within statements of grounds by the children’s reporter) as the means for introducing welfare concerns about children and young people to a children’s hearing.

The *status quo* will be retained with the statement of grounds acting as “the principal legal basis for decision making by a children’s hearing”<sup>20</sup>, while allowing the hearing to have regard to all information which is relevant to its decision-making around compulsory measures of care<sup>21</sup>.

The Scottish Government seeks respondents’ views on proposals – extrapolated from the Hearings for Children analysis - meaning that the statutory non-offence grounds could change from those currently listed in s67(2) of the Children’s Hearings (Scotland) Act 2011- to grounds that are aligned to the statutory wellbeing indicators (safe, healthy, achieving, nurtured, active, respected, responsible and included)<sup>22</sup>.

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<sup>18</sup> Recommendation 5.1.1, HfC Report

<sup>19</sup> Under Section 109 of the Children’s Hearings (Scotland) Act 2011, a Sheriff has power to make an ICSSO

<sup>20</sup> Principal Reporter’s Practice Direction 7, paragraph 2.1

<sup>21</sup> *C.f. JLM v Scottish Children’s Reporter Administration* 2019 SC 600

<sup>22</sup> See s96(2) Children and Young People (Scotland) Act 2014



The intended benefits of that change would be to:

- maximise engagement with children and families by improving their understanding of the grounds - by using positive rather than negative language, wherever possible and appropriate.
- provide continuity of language and meaning for children and families and professionals alike - before, during and after a children's hearing and link to "other inter-related processes and meetings in their lives"<sup>23</sup>.
- link children's hearings' language and concepts to those familiar to the children's services workforce in inter-related processes, particularly around wellbeing assessment<sup>24</sup> and the statutory wellbeing indicators.
- reinforce the concept that the children's hearings system seeks to minimise the use of technical language wherever possible.

The statements of grounds drafted under a redesigned scheme may have some potential to offer a more positive experience for children and families.

The remainder of the statement of grounds could demonstrate how the underpinning SHANARRI indicators are not being met for the child in the absence of compulsory support and supervision.

At the stage of drafting grounds, in many cases families have already become unable or unwilling to accept the need for change. However, that situation should not be made worse by grounds that can be difficult for families to understand, or that can be perceived as accusatory.

For example, where the welfare concern is one of the child experiencing a lack of parental care, the current prescribed ground, under s67(2)(a) of the 2011 Act, which states, "*the child is likely to suffer unnecessarily, or the health or development of the child is likely to be seriously impaired, due to a lack of parental care*" could be replaced with a new ground akin to "*the child is entitled to be cared for in a safe and nurturing environment*".

There would have to be a way to connect the grounds of referral with the supporting concerns. That would necessarily use language with a negative connotation, for example - "The child has not been and/or is unlikely to be cared for in such an environment because: ...", followed by statements of fact, containing sufficient specification. If a new ground of referral were to state - simply and clearly - the standard to which the family should be adhering, and gives them and their lead professional/team around the child a goal to work towards, then that may improve both experiences and understanding.

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<sup>23</sup> C.f. recommendation 7.4, HfC Report

<sup>24</sup> See s23A Children (Scotland) Act 1995

In introducing new 'wellbeing expectations' grounds of referral in this way, there is a risk that some important welfare concerns might not be capable of being captured with the right degree of specificity.

The Scottish Government's ambition is for children's welfare and justice to be delivered in a responsive manner that maximises the potential for children and families to understand significant statements put to them, and to support them to participate fully in the processes affecting them.

The Scottish Government would be interested in respondents' views on the following questions:

- Do you consider the current scheme of stating the grounds of referral sufficiently promotes the understanding of children and families as to why they are in the children's hearings system?
- Do you agree that there should be changes to the current approach to grounds of referral?
- Do you agree with the proposal to set grounds positively as a range of wellbeing-orientated entitlements, before clarifying how the child's experience or conduct falls short of expectations - to the point that compulsory care is needed?
- If a new scheme of grounds based on unmet expectations around wellbeing indicators were to be introduced, are any safeguards needed (statutory or operational)?

## 6.2 Grounds of referral: processes

Hearings for Children recommended at 5.1 that the "process of establishing grounds must change" and specifically:

"5.1.3 Grounds must be established in a separate process before a child and their family attend a Children's Hearing. There must be no more Grounds Hearings.

"5.1.4 A more relational way of working to agree grounds and confirm the Statement of Facts should be encouraged, where the Reporter exercises professional judgement to determine when children and families might be able to discuss grounds."

The Scottish Government has therefore given close consideration to the processes by which children and their families enter the children's hearings system, and how those processes impact them. If the language of grounds of referral is to be better understood by children and families with an aim they might "*better ...recognise themselves in the drafting*", then the processes for putting statements of grounds to children and families; allowing them to meaningfully contest aspects of the statements of grounds; and for having grounds determined must all reflect that aim.

Over the following three sections, the Scottish Government is proposing a new approach covering the journey from initial referral (to the children's reporter) to the legal grounds being accepted or established. For ease of reference, a high-level flow chart and more detailed flow chart seek to explain potential redesigned processes around the children's reporter's investigation into grounds for referral and the consequent finding of facts, where required.

### 6.3 Engagement between the children's reporter and children and families

The Scottish Government has accepted recommendation 4.3.1 of the Hearings for Children report: "Once a referral has been received, the Reporter must work more closely alongside children and families, where possible. This should include: Ensuring the voices, views and experiences of children and their families are routinely part of the Reporter's investigation (and there must be consideration of a statutory duty on the Reporter to seek the views of the child and family if they wish to share them)."

Currently, the children's reporter writes to children (of sufficient age and maturity) - and families - at the initial stage of the investigation. The reporter then invites them to express their views on the referral, share any information or discuss any queries.

SCRA's website also contains information on how children and families can engage with the children's reporter. Response rates from children and families to the current approach are low.

The Scottish Government considers that further improvements to engagement between the children's reporter with children and families are primarily practice-based issues that can, at least in part, be addressed by SCRA. A programme of continual practice improvement, commencing with a review of current arrangements and efforts by the children's reporter to engage with children and families, is being considered.

Section 27 ("views of the child") of the 2011 Act obliges a children's hearing, pre-hearing panel or sheriff to give the child an opportunity to express views and thereafter to have regard to those views before making a decision about the child. Section 27 does not apply to children's reporters. Currently SCRA are operating a project to consider the implications of UNCRC Article 12 (a child's right to participation in decisions which concern them), applying their review work across the whole current role of the Reporter. This project will consider the children's reporter's approach to seeking views and information from children and families, along with how they can better gather and use views consistently and proportionately.

The programme of activity is capable of being developed within SCRA, but with visibility into that activity for the Children's Hearings Redesign Programme Board.

In light of Article 12 being incorporated into Scots law under the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Government has not yet identified any significant potential added value by introducing a statutory duty – over what is already in place or being planned – to strengthen engagement between the children's reporter and children and families.

However, views are sought below on whether new legislative expectations may assist by confirming the central importance of these issues to a successful redesign of the system.

#### 6.4 Children's views within Reporter investigation and decision making – a post-referral discussion?

One means of giving effect to the Hearings for Children recommendation around “consideration of a statutory duty on the children’s reporter to seek the views of the child and family if they wish to share them” would be to statutorily oblige the children’s reporter to offer a post-referral discussion with the child and family. This could be convened at any point during the investigative stage of the children’s reporter process, prior to any decision being taken.

Where the children’s reporter decides upon receipt of the referral or during the investigation process that compulsory measures are not required, they should act in accordance with the ‘minimum intervention’ principle and end their investigation. This reflects the Principal Reporter’s current practice direction that “*investigation[s] should be proportionate*” and “*case actions and decisions should be based on relevant, reliable information and objectively justifiable*”<sup>25</sup>. There would be no statutory requirement on the children’s reporter to offer a *post-referral* discussion for cases where the children’s reporter’s decision is not to arrange a children’s hearing.

If proceeding with a *post-referral* discussion, the children’s reporter would be present and the child and family may, if they wish, be accompanied by their representatives, including solicitor and advocacy worker where applicable.

The purpose of this *post-referral* discussion would be to allow:

- the children’s reporter to explain directly to the child and family the content of the referral, and welfare concerns behind it along with the purpose of any potential compulsory measures of care to address those concerns.
- the child to give their views directly to the reporter on the referral and have direct opportunity to inform the reporter’s decision-making.
- the children’s reporter to further assess whether compulsory measures of care may be necessary before making a final decision on whether to refer the child to a children’s hearing.
- the children’s reporter to assess whether the child and family are likely to accept any subsequent grounds of referral and plan accordingly.

The Scottish Government would welcome respondents’ views on the suggestion for a *post-referral* discussion:

- Do you support the introduction of the offer of a *post-referral* discussion between the children’s reporter and the child and family?
- Who else, if anyone, should attend a *post-referral* discussion?

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<sup>25</sup> Paragraph 3.3, Principal Reporter’s Practice Direction 1

## 6.5 Establishing Grounds of Referral

The Hearings for Children report proposes a bold new approach to the establishment of grounds. It recommends:

“Grounds must be established in a separate process before a child and their family attend a Children’s Hearing. There must be no more Grounds Hearings.”<sup>26</sup>

Currently, the children’s reporter, having decided that a section 67 ground(s) applies in relation to the child and that compulsory measures of care are necessary, must arrange a children’s hearing (a “grounds hearing”). The children’s reporter prepares a statement of grounds for the grounds hearing, and the child and relevant persons are obliged to attend.

At the outset of a grounds hearing, the chairing member must explain the statement of grounds (alleged facts and relevance to statutory grounds for referral) to the child and relevant persons, and to ask whether each element of the statement of grounds is accepted. This process can be a disproportionate use of volunteer panel member time, where their principal role is to make substantive decisions in the best interests of the child.

The Hearings for Children report and the Scottish Government recognise that, in order to safeguard the rights of the child and relevant persons, there must be a process whereby a recognised decision maker considers whether the grounds of referral have been established.

Views are invited on a proposal that grounds hearings be replaced with ‘**fact finding hearings**’ to be presided over by a new, **legally qualified member** operating within the environment of the children’s hearings system (the “legal member”). A fuller description of the potential role and function of the **legal member**, and the purpose of the **fact finding hearings** is outlined below.

### **The Legal Member**

The Scottish Government invites views on the proposal that the role in determining grounds for referral currently performed by a sheriff be reformed, with the sheriff’s current functions and powers being assigned to a new role - the ‘legal member.’ The legally qualified legal member would operate in the existing children’s hearings centres but would not be a children’s panel member.

The Scottish Government considers this proposal has the potential to proportionately fulfil the intent of the recommendations and narrative in Hearings for Children which proposed specialist Sheriffs<sup>27</sup> by providing for a specialist decision maker (of fact and interim decisions) while also minimising the exposure of children and families to the court environment.

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<sup>26</sup> Recommendation 5.1.3, Hearings for Children

<sup>27</sup> Recommendation 2.3, [Hearings for Children](#)

The Scottish Government does **not** propose that the legal member replaces the decision-making role of the children's hearing relating to dispositive decisions around the child's welfare, but rather replaces the roles currently carried out by:

- grounds hearings (relating to procedural and *interim* decisions) and
- Sheriffs in determining statements of grounds.

If their introduction is supported, it is proposed that the 'legal member' may receive written and oral evidence with similar powers with which the Sheriff currently operates, and would then determine whether there should be findings made in relation to the statement of grounds.

Rules of procedure would need to be developed to support flexibility in the proceedings – making them adaptable to each child's particular circumstances (including age and stage of development). These proceedings should be handled as fairly, expeditiously and efficiently as possible, having regard to the age and stage of each child. The legal member, when determining statements of grounds could be given statutory powers (within new rules of procedure) to direct matters, including:

- any issues on which they require evidence.
- the nature of the evidence.
- the way in which the evidence is to be presented; and
- the exclusion of any evidence which is irrelevant or unnecessary.

If this approach were to be adopted, it is envisaged the legal member would operate the fact-finding function from children's hearings centres - with parties, representatives, witnesses and all others required for the proceedings of proof also attending, or participating to an appropriate extent remotely in accordance with rules of procedure.

The Scottish Government considers that where a legal member makes a determination relating to grounds of referral, there would still be a right of appeal to court, adopting similar procedures to existing arrangements.

The proposed legal members would be legally qualified, competency-based and fee-paid, consistent with legal members of other Scottish tribunals. They would be provided with induction and ongoing education on their functions and would be subject to rigorous performance monitoring.

These proposals have potential to make the redesigned children's hearings system less dependent on competing demands within sheriff courts, and also better able to explore ways of identifying and eliminating sources of delay in establishing grounds. The proposals could also bring the realisation of the concept of continuity of decision-maker (expressed at recommendation 11.22<sup>28</sup>) within the direct control of the appropriate and discrete mechanisms integral to the redesigned children's hearings system, and potentially relieving the courts system of the burden of this demand.

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<sup>28</sup> "Wherever possible, there must be a consistent Sheriff in the grounds and appeal processes."

The Scottish Government seeks respondents' views on the following questions:

- What would be the advantages and disadvantages of passing the fact-finding function from sheriffs to a new cohort of legal members within the redesigned children's hearings system?
- Do you consider that this proposal fulfils the intention of the recommendation from the Hearings for Children report that there should be a consistent specialist sheriff throughout the process?
- Do you have any views on the proposed retention of the appeal arrangements - appeals going from legal member to Sheriff - within a redesigned children's hearings system?
- Other than a legal member or sheriff is there another person or body who could:
  - present the statement of grounds to the child and family and receive responses?
  - make *interim* orders?

### **Fact Finding Hearings**

Once the children's reporter decides that compulsory measures of care are necessary, the children's reporter would prepare a statement of grounds and refer it to a fact finding hearing. This would be attended by the child (subject to other possible reforms around the obligation to attend) and relevant persons (who may attend with the support of their advocacy workers and/or representatives). At that fact finding hearing, the legal member would explain the grounds of referral to the child and family and seek to elicit their responses.

In the event that the legal member is satisfied i) that the child understands and accepts the statement of grounds **and ii)** that the grounds are also accepted by the relevant persons, the legal member would require the children's reporter to arrange a children's hearing.

Currently where a statement of grounds is *not* understood and/or accepted, the children's reporter, at the direction of the children's hearing, applies to the Sheriff, who determines contested or non-understood elements of statements of grounds<sup>29</sup>. While children's court callings are held in private, and courts do make special arrangements to adapt the environment for children and families, court will always be an anxious and difficult experience for many children and families.

Under the proposed approach, if a statement of grounds is not understood and/or accepted by the child or relevant persons, the legal member could then defer the fact finding hearing if necessary. This would allow them to consider evidence relevant to

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<sup>29</sup> See sections 93(2)(a) and 94(2)(a), [Children's Hearings \(Scotland\) Act 2011](#)

the statement of grounds, similar to a sheriff's current approach, while minimising the need for children and families to attend court.

The existing functions of the grounds hearing relating to *interim* decisions (including the making of an *interim* compulsory supervision order, medical examination order and *interim* variation of a compulsory supervision order) would transfer to the legal member, to be made as necessary at a fact finding hearing.

The Scottish Government seeks respondents' views on the following questions:

- What would be the advantages and disadvantages to replacing grounds hearings with a fact finding hearing where the process would be undertaken by a single 'legal member'?
- Is it proportionate and necessary for there to be a fact finding hearing in every case?

## 6.6 Babies, infants, very young children and the grounds of referral

The Hearings for Children report recommended that "there must be no requirement for young children to agree with the grounds for referral. When all relevant persons agree the grounds and Statement of Facts, this must be sufficient to consider the grounds as agreed, with no need for additional proof proceedings."<sup>ii</sup>

Under current legislation, where a child would not be capable of understanding or responding to the grounds (for example because the child is an infant), and the children's hearing does not discharge the referral, a Sheriff must determine the grounds of referral on behalf of the child<sup>30</sup>. Where the grounds are accepted by the relevant person(s) before determination, a Sheriff may make a determination in a case without a hearing, in accordance with section 106 of the Act.

Where a child is very young it may be clear that they would not be capable of understanding, or they have not understood, the explanation of the grounds. In these cases, where the grounds are agreed by all relevant persons, the requirement to involve a Sheriff can create a strain on capacity, and unnecessarily extend timescales.

The Scottish Government acknowledges the need to take a pragmatic and age-appropriate approach to young children, their important additional needs, and their capacity to understand proceedings.

Conversely, there may be a need to safeguard the child's interests by leaving it to a decision maker (be that a sheriff or legal member) to decide on the right subsequent procedure, having regard to all the circumstances of the case, including whether any grounds of referral have been accepted by relevant persons. This allows each child's unique needs and circumstances to be considered, and the appropriate course of action to be determined.

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<sup>(30)</sup> Section 94 of the [2011 Act](#). This also applies where a child has not understood the explanation in relation to a ground of referral.



The Scottish Government is interested in respondents' views on whether any additional safeguards would be needed for very young children in a redesigned grounds process.

**Questions:**

- In order to safeguard the interests of very young children, should the legal member or sheriff have discretion to convene a fact finding hearing, even if all relevant persons accept the statement of grounds?
- Do you have any other views about how the youngest children should be supported in this part of the process to establish grounds of referral?

#### 6.7 Statutory time limits in establishing grounds of referral

The Scottish Government does not propose introducing statutory time limits on establishing grounds (*c.f.* recommendation 5.4.1<sup>31</sup>) because it is arguable that the proposals set out in this consultation, alongside wider non-statutory action, will combine to expedite processes around grounds of referral.

However, the Scottish Government is interested in respondents' views around introducing a procedural rule whereby if the grounds of referral have not been established by a specified time, that situation should trigger a review by the decision maker (be that a sheriff or legal member).

**Questions:**

- A period of three months has been suggested as a time limit for triggering a review where an application to determine grounds of referral has not been dealt with.
- Do you support a defined time period for triggering a review of the progress of the case?
  - If you support defining a time period, but not the suggested three months, should another time period be considered? Please explain why?

#### 6.8 Potential involvement of safeguarder in grounds establishment proceedings

The Hearings for Children report puts forward the view that enabling the involvement of a safeguarder earlier in the redesigned process would be beneficial to some children and to decision makers. The report then states '*Where there is added value in their involvement [at a subsequent children's hearing], this should be considered however should not be presumed.*'

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<sup>31</sup> "The benefit of a statutory three month set time limit for the determination of grounds, with scope for this to be extended in extreme circumstances, at the discretion of the Sheriff."

The Scottish Government seeks respondents' views on the potential involvement of safeguarders during and beyond grounds establishment in redesigned children's hearings proceedings.

### Questions:

- Do you agree that there should be earlier consideration of the appointment of a safeguarder in a redesigned system?
- Should the proposed legal member have discretion to appoint a safeguarder to assist them with establishing the grounds of referral?
- Do you support the suggestion that a safeguarder's early appointment to a child (before grounds have been established) should be presumed to end once grounds have been established?

## 7. Role of the Children's Reporter

In this section of the consultation, Scottish Government use the term 'children's reporter.' This refers to the Principal Reporter and anyone employed by the Scottish Children's Reporter Administration exercising their functions, as delegated in accordance with the 2011 Act.

If you would find it helpful to see flow diagrams setting out the referral processes described in sections 6 and 7 of this consultation paper please email [childrenshearingsconsultation@gov.scot](mailto:childrenshearingsconsultation@gov.scot).

### 7.1 Enhancing the role of the children's reporter

Discussion around enhancing the role of the children's reporter is set out in the following sections:

- Pre-birth activity by the children's reporter.
- Pre-referral involvement of the children's reporter.
- children's reporter's relationship with the child's plan.
- children's reporter's right to convene a new hearing without bringing fresh grounds.
- Re-referrals to the children's reporter within certain timescales.

### 7.2 Pre-birth activity by the children's reporter

The Scottish Government have conditionally accepted the terms of recommendation 3.6.1 within the Hearings for Children report, and seeks respondents' views on the following recommendation: *"When it is considered that compulsory measures may be required immediately upon a child's birth, the Reporter must be engaged in multi-agency processes and decision making and must be empowered to undertake an investigation and prepare draft grounds for referral before a baby is born."*

The Scottish Government recognise the important benefits of pre-birth planning by health and social service professionals, and of adhering to the well-established

concept of effective early intervention approaches. It is important for local services to plan interventions in an inclusive manner with expectant parents, at as early a stage as possible. Health and social services often work collaboratively to identify pregnancies where there are significant potential child welfare risks and concerns, and to develop child plans which include support for the expectant parents in developing parental skills for the benefit of the entire family unit, not least the wellbeing of the child if/when subsequently born.

Engagement with specialist pre-birth support services is undertaken by families on a voluntary basis. There is no current involvement for the children's hearings system before a child is born. A children's reporter currently has no role in a child's case until a referral is received by them. Referrals to the children's reporter can only be made after a child's birth, as this is the point at which the child becomes a legal person who can be the subject of a referral. The Scottish Government understand that agencies working with expectant parents consider they are not permitted to share information with the children's reporter ahead of a child's birth on this basis.

Similarly, it is not currently possible to apply for a Child Protection Order until after a child is born. There are no proposals from the Scottish Government in this consultation, or contained within the Hearings for Children recommendations, to change that position.

In terms of the specific recommendation highlighted above, the Scottish Government considers there are both benefits and risks in involving the children's reporter prior to a child's birth.

Where compulsory interventions are anticipated immediately or shortly after a child's birth, if professionals working with expectant parents were empowered to share information with the children's reporter, that may support efficient and expeditious children's reporter investigation and decision making at the point when the child is born.

However, the Scottish Government is alert to the risk that obliging professionals to consider sharing information with the children's reporter ahead of a child's birth could risk damaging trust in an already delicate relationship between some expectant parents and professionals (including social workers, family nurses and health visitors). This may hinder or prevent work in developing child plans intended to support expectant parents in developing parental skills for the benefit of the child after their birth.

In these circumstances, it is also possible that the involvement of the children's reporter may unintendedly place additional stress on the expectant parents which could be detrimental in particular to the health of the expectant mother and unborn child.

The Scottish Government is carefully considering the potential implications of this proposal, including from all the relevant rights holders' perspectives, and it intends to engage with the Information Commissioner's Office directly on the connected data protection issues. To further inform the Scottish Government's considerations,

respondents' views are sought on proposals for expanding the children's reporter's role to pre-birth situations. In particular:

**Questions:**

- How could a redesigned children's hearings system better protect babies shortly after their birth?
- What can be done to improve interagency pre-birth preparatory work?

### 7.3 Pre-referral involvement of the children's reporter

The Scottish Government have accepted the following recommendation (3.5) of the Hearings for Children report:

“The role of the Reporter prior to a referral being made to the children's hearings system must be enhanced. The engagement of the Reporter must routinely be considered during other child protection and care and support meetings and discussions, and there must be a consistent approach to partnership working between agencies and the children's hearings system.”

The children's hearings system is a rights-based system which necessarily involves clear delineation between the roles of the children's reporter and agencies who regularly refer to them. That delineation of roles must be tempered with the need for effective collaborative working to promote the wellbeing of each child. The children's reporter is currently able to achieve that latter ambition as a matter of practice in a pre-referral discussion by:

- a. engaging with a potential referrer about a case, noting that the children's reporter can neither prevent nor require a referral; nor can the children's reporter give any undertaking or expectation about what specific action will be taken if a referral is actually made.
- b. attending and observing a child protection case conference (although not acting as a member of the case conference) which can consider whether to refer the child to the children's reporter among other matters.
- c. sharing information about the child with agencies who have responsibilities for the child, in a way that is compliant with data protection requirements. This may extend to social work, health and education professionals who are involved in child protection proceedings relating to the child. The purpose of sharing the information is to assist the person or persons to whom it is disclosed to decide on whether to refer the child to the children's reporter.
- d. in certain limited situations, using information received during a pre-referral discussion to form the basis for the children's reporter's consideration that “it appears the child might be in need of protection, guidance, treatment or control” (see section 66(1)(b) of the 2011 Act), triggering the consequent decision on whether to convene a children's hearing.

Revision in 2023 of the “National Guidance for Child Protection in Scotland 2021” brought new prominence to the role, and potential contribution, of the children’s reporter. This new guidance revision reiterates conditions when early referral to the reporter might be needed, adding that referral to the children’s reporter should be considered at all stages of the child protection process, and decisions to either refer or not refer need to be recorded.

The Children’s Hearings Improvement Partnership has also [developed guidance](#) for making referrals to the children’s reporter. The guidance is available to referring agencies “during other child protection and care and support meetings and discussions”. It is expected that this guidance may be reviewed further by the Children’s Hearings Redesign Board.

Any move to enhance or expand the role of the children’s reporter prior to referral must not complicate experiences, or cause confusion or duplication between the roles of the various professionals involved in supporting the child. In such sensitive and critical systems, there must be justifiable trust for, and between, the professionals and decision makers in each of the separate processes, along with clear understanding of, and respect for, their roles.

The Redesign Board is well placed to a review the existing guidance and protocols, to consider any need for revised and fresh guidance and protocols so as to achieve a “consistent approach to partnership working between agencies” as recommended by Hearings for Children.

#### **Questions:**

- Do you agree that non-statutory action (practice improvements and guidance updates) is sufficient to deliver an enhanced pre-referral role for the children’s reporter in a redesigned hearings system?

#### **7.4 Children’s reporter’s ability to call a review hearing**

The Scottish Government have given further consideration to recommendation 12.8 of the Hearings for Children report:

*“The Reporter should be given the discretion to call for a Review Hearing without the need for new grounds to be investigated and established, where appropriate.”*

A “review hearing” is held to review an existing compulsory supervision order (CSO). A range of circumstances exist in which a review hearing must be arranged (see section 137(1) of the 2011 Act).

Currently, when the children’s reporter considers that a ground under section 67 of the 2011 Act applies and that it is necessary to make a CSO, the ground must be accepted or established before any CSO is made and implemented. In the case of a child who is already subject to a CSO, a new ground for referral must also be accepted or established before review of the existing CSO can proceed on that basis.

It is important to consider how a child's rights would be protected if a children's reporter had absolute discretion to call for a CSO review hearing on the basis of new facts which had neither been accepted nor established. It is important to bear in mind that the children's hearing, in reviewing a CSO, has the option of introducing new measures of care which potentially carry more restriction on the freedoms of a child.

The Scottish Government accordingly consider it appropriate that the children's reporter may only review a CSO in light of new welfare concerns after any new ground of referral is accepted or established. This can be contested by the child and family under the scrutiny of a sheriff (or, if adopted, a 'legal member') in respect of the factual element – and considered by the review hearing from a welfare perspective. A statement of grounds (containing grounds of referral) is the principal basis for decision-making by a children's hearing.

Should a CSO require to be varied for reasons unconnected with newly emerging or newly identified child welfare concerns (for example, issues with engagement or implementation), a review hearing can be arranged where the local authority (in certain circumstances), child, relevant person, or other person who has a statutory right to do so, requires it. In the case of a child or other person requiring a review, the review can currently only take place after three months of the CSO having been made, continued or varied.

The Scottish Government wishes to consult on whether the current three-month period within which a CSO cannot be reviewed - at the request of a child, relevant person or other entitled person - should be abolished or shortened.

There is concern that a genuine need for review may arise within the three-month period. Therefore, it is arguable that a child, relevant person and/or entitled person should have the right to make representations to a hearing without waiting for up to three months. This particularly applies in respect of very young children, where three months can represent a significant period in relation to their own whole life to date.

The Scottish Government seek respondents' views on the following issues associated with any potential change:

- Do you think it would be appropriate for the children's reporter to be able to initiate a review hearing before the expiry of the relevant period?
- Do you think the statutory three-month period should be revised so that individuals who are entitled to request a review of a child's CSO can do so within a shorter time period?

#### 7.5 Re-referrals to the children's reporter within a given timeframe – a trigger for other action?

The Scottish Government has explored recommendation 4.4.4 of the Hearings for Children report: 'The following measures should be considered with a view to reducing the number of 'repeat referrals' and increasing coordination between the children's hearings system and the other parts of the 'care system': **4.4.4** Re-referrals of children to the Reporter within a specific timeframe should be considered

as part of a continuation of the previous concern, rather than new circumstances, and wherever possible should be considered by the same Reporter.”

The Scottish Government agrees with the concept of the children’s reporter developing a cumulative understanding of a family’s challenges, strengths and circumstances. The Scottish Government also supports minimising both intersecting referral activity and the number of children’s hearings proceedings.

There is also support at the level of principle for the same children’s reporter (along with some continuity in children’s hearings’ personnel) looking again at a supervised child’s case when new information becomes available.

However, a child’s circumstances can be fluid, as can their views and wishes.

This proposal could have impacts on children’s rights, where ‘re-referrals’ prompted by fresh concerns risk being inappropriately linked to established previous concerns about a child, without that child or their family being able to contest the new alleged facts.

Permitting re-referrals may be appropriate as a means of reducing the number of repeat referrals in respect of children already subject to supervision within the children’s hearings system. Fresh action may reflect ongoing or escalating difficulties which continue to meet or exceed the statutory threshold for referral to a hearing. Under the principles of GIRFEC’s National Practice model, planning support for a child or young person is a dynamic and evolving process of assessment, analysis, action and review. Any forward course of action should continue to reflect this.

### **Questions:**

- Do you consider that a child being re-referred to the children’s reporter within a certain timeframe should result in that ‘re-referral’ being treated as a continuation of the pre-existing referral?
  - If yes, what would be an appropriate timeframe from the original referral for re-referrals to be treated in this way?

## **8. The Children’s Panel and Children’s Hearings**

Scottish Ministers did not accept the [Hearings for Children](#) recommendation which specifically sought to introduce a full-time, salaried chairperson alongside two paid panel members for each children’s hearing.

The national children’s panel is the largest legal tribunal in Scotland. Ministers took the view that the particular structure of this recommendation would have had broad and unsupportable consequences, including a significant and unsustainable funding requirement. There were also significant implications for the workforce resource demands both within, and beyond, the children’s hearings system.

However, the Scottish Government is supportive of investing in additional capacity for the decision-making function within a redesigned children's hearings system. This includes exploring further whether changes could or should be made to the make-up of the national children's panel and to the composition of particular types of hearings proceedings – to promote more capacity, continuity and confidence. Potential changes could include:

- whether the entire panel should be remunerated in some form, or that should be confined to certain categories,
- whether the current number of panel members is appropriate for all types of hearings proceedings and ancillary decision making,
- whether the panel should include specialist hearings members to make decisions in certain types of children's cases or
- whether individual, specially recruited and qualified, panel members should be given authority to make decisions - in a one or two member forum - which are currently the preserve of a full children's hearing of three panel members.

Under the 2011 Act, the National Convener is an independent position, and they have the authority to appoint members to the children's panel.<sup>32</sup>The consideration of potential changes in this area would therefore, in addition to a number of other factors, be predicated on full and further consultation with CHS, the National Convener, and the current children's panel community.

Scotland's children's hearings system is distinct from other tribunals in its use of volunteer members for legally binding decision-making. While volunteerism is not expressly stated in legislation, the custom and practice is well-established and has served Scotland's children well for over 5 decades. The Scottish Government notes that accompanying policy documents for the Children's Hearings (Scotland) Act 2011 state that members of the children's panel should be, as they had been since the systems' inception, volunteers: 'The existing children's panels will be replaced by a single national Children's Panel, comprising volunteers from local communities who will continue to be recruited and sit as panel members for hearings in their local communities.'

Children's Hearings Scotland will, through the area support teams, work closely with local authorities to provide support to ensure that all children's hearings make nationally consistent and high quality decisions in relation to children and young people.'

The Scottish Government recognises the value of local people making decisions about children who live in their own area, and the vast array of experience and expertise brought to the system by volunteer panel members offering extraordinary time, skill and energy to the children and families from their own community who may need help and support.

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<sup>32</sup> Section 12 of the [2011 Act](#) enshrines the independence of the National Convener; section 12 is subject to section 10(e) of the 2011 Act which provides that the Scottish Ministers may, by order, specify the manner in which, or period within which, any function conferred on the National Convener by virtue of this Act is to be carried out. The Scottish Ministers may also, by order, confer, remove, or transfer functions in respect of the National Convener.



The Scottish Government has deep respect for the track record and outstanding public service of volunteer children's panel members. A careful combination of supports and understandings have been constructed over the years, and that has been essential to the unbroken success and delivery record of the current children's panel construction. Real care has to be exercised in the discussion of further reforms in this area.

However, it is also recognised that the legal decisions taken by panel members have grown more complex, and the environment more contentious and litigious over the years. It is arguable that the current wholesale reliance on lay members may be asking too much of an unpaid volunteer community.

As previously noted, the National Convener is independent of Government and all others in discharging his functions and has the authority to appoint members to the children's panel. For further background about the appointment of members to the national Children's Panel, please see sections 4 and schedule 2 of the 2011 Act.

The Scottish Government have been collaborating with the National Convener and CHS officers to develop and assess a range of potential future roles within a reconfigured children's panel. Scottish Ministers are inclined to the view that any potential new investment in developing and sustaining new children's panel roles should be understood as an agenda of 'reinforcement' rather than wholesale 'replacement', but respondents' views are sought on these issues.

## 8.1 A redesigned children's panel

The Scottish Government recognises that the make-up of the children's panel overall, and the long-standing use of volunteers in these key roles, are emotive issues. Any discussion on the future of the panel should not be considered adverse commentary on the extraordinary contribution of volunteers through the decades. However, it is right, in light of the Hearings for Children report and its recommendations, to consider whether the volunteer mode – alone - is the most appropriate approach, especially as the cases that fall to children's hearings trends towards greater complexity and requires additional stability and sustainability.

The ultimate viability of each configuration, and combination of configurations, is contingent on the outcome of discussions and decisions on the future role(s) of chairs, panel members and children's reporter / SCRA staff, as well as whether new demands will be made of the tribunal members.

By way of illustration, the current system demand (and the anticipated demand flowing from commencement of the Children (Care and Justice) (Scotland) Act 2024) has been applied to a range of potential modifications to the current 'single class of lay unpaid panel member' model. Some of the potential reconfigured children's panel roles, and the appropriate roles that they might play in deciding cases in a redesigned system, are reproduced below.

- 1 Paid Chair and 2 Paid Panel Members (only for complex cases<sup>33</sup>) - other cases decided by volunteers.
- 1 Paid Chair, 1 Paid Specialist Panel Member, and 1 Volunteer Panel Member – for certain cases
- 1 Paid Chair and 2 Paid Specialist Panel Members
- 1 Volunteer Chair and 2 Paid Specialist Panel Members
- 1 Paid Chair and 2 Volunteer Panel Members
- 1 Paid Chair and 1 Paid Panel Member
- 1 Volunteer Chair and 1 Volunteer Panel Member – for certain cases

The Scottish Government invites initial views from respondents on these potential approaches, and intends to engage in deeper dialogue with the National Convener, children’s panel members and system partners in the months beyond this consultation – once analysis has been completed and firmer forward policy positions have been adopted in respect of the issues covered in this consultation.

**Questions:**

- Do you believe the children’s panel element of the children’s hearings system should retain the unpaid lay volunteer model in whole or in part?
- Would you support some measure of payment for panel members, over and above the current system of expenses, in return for the introduction of new and updated expectations?
- Do you have any views on the introduction of new roles into the children’s panel –
  - Paid Chair.
  - Paid specialist Panel Member – possibly including care-experience.
  - Paid Panel Member.
  - Volunteer Panel Member.
- Recognising that payment of panel members/chairing members would represent a significant new national investment in decision making, do you have views on priority resourcing for other parts of the system?

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<sup>33</sup> SCRA currently apply a Red Amber Green assessment to likely case complexity in support of scheduling and time management. This could be built upon with the National Convener to assist with appropriate rota compilation and case allocation in a redesigned system.

- Each children’s hearing currently consists of 3 panel members, with one chairing:
  - Does every decision taken by a children’s hearing need to be taken by three children’s panel members in a redesigned system?
  - Should all panel members, on completion of appropriate training, still be required to chair hearings in a redesigned system?
  - Would you support some children’s panel members being paid for ‘specialist’ knowledge, while others’ involvement remains voluntary? E.g. a specialist panel member may have a particular qualification or expertise in childhood development, ACEs, or be a professional with prior experience of working with children in some other capacity.
  - Would you support the remuneration of a cohort of care-experienced panel members?

## 8.2 The Chair of the children’s hearing

The Hearings for Children report links the establishment of a full-time chairing member to a number of connected recommendations.

These additional recommendations have been accepted in principle but must be subject to broader consideration given that the redesigned roles of chair and panel members have yet to be confirmed, and will be subject to further work following this consultation.

The following recommendations and associated discussion are considered appropriate for grouping together:

## 8.3 Engagement with the Chairing member before the Children’s Hearing

The Hearings for Children report asks that: In advance of a hearing taking place, the child or young person and their family should be offered an opportunity to meet the Chair outwith the formal setting of a hearing. Consideration should be given to the production of a note of the meeting shared, with the permission of the child and their family with everyone who has a right to receive information relating to the children’s hearing by the Chair.

This proposal potentially could foster a more relaxed, informal atmosphere for the child to meet the chairing member of the hearing, reducing uncertainty about the hearing room, the panel members and process.

The Scottish Government considers that many of the desired benefits could be achieved without the need for a full-time salaried chair, and there is much to recommend in the mainstream of existing good practice. However, careful consideration needs to be given to whether what is actually required is a dedicated further meeting, or just a more informal opportunity for the Chair and panel members

to greet the child and family and introduce themselves just before the hearing on the given day.

Clear boundaries would need to be set around any introductory meeting to ensure there was no discussion of the substance or focus of the pending children's hearing. Discussions of that type would then have to form part of the formal record, thereby removing the benefits sought under a more informal approach.

The Scottish Government would instead support more informal measures – for example, through practice guidance – which would allow a chairing member to make introductions, offer any appropriate reassurance and explain to the referred child and family what will happen next (should it be appropriate to the particular circumstances of the case)

### **Questions:**

- Should the chairing member of the hearing meet the referred child, their family or representatives to welcome them to the centre and offer any appropriate explanations and reassurances before the actual children's hearing?
- If an additional orientation / reassurance meeting is held in the hearings centre with the chairing member, would you support this being an informal meeting?

### **8.4 Children's hearings decision making in a redesigned children's hearings system**

Hearings for Children proposed that 'the final decision will be a majority decision. If there is a dissenting view from a Panel Member, the Chair must reflect that in the written decision.'

The current decision-making approach already operates by majority. That is, regardless of the view of the chairing member, where two children's panel members take a decision then that majority holds sway and becomes the applicable decision. Any dissenting, or minority, decision is noted in the Decisions and Reasons document.

However, should the make-up of the children's hearing, and the roles of children's panel members within that, change in a redesigned children's hearings system, how the decision-making model operates may also need to be reviewed.

The Scottish Government would welcome respondents' views on whether the majority decision approach should be maintained, or whether in light of potential changes to the decision-making model, consideration should be given to alternative approaches.

The Hearings for Children report states: "At the end of the information gathering and discussion part of the Hearing there should be consideration of a short break to enable the Panel[sic] to retire and reflect on the information they have received and to confer on their decision."

“This break will also allow the child, their family, and other important people in their lives to reflect on what has been discussed, and to decompress and have some time away from the intensity of the Hearing.”

The Scottish Government is supportive of changes to practice which would allow a period of adjournment and reflection for decisions to be taken away from the hearing room, before being relayed to the child, family and representatives.

Currently, children’s hearings are expected to deliver their Decisions & Reasons verbally without recourse to an adjournment. Introducing a brief period of recess to consider and outline the decision of the children’s hearing - which could then be delivered by the chairing member - may assist in greater clarity of decision-making. It would avoid the need for three successive decisions and reasons to be narrated as currently takes place, potentially thereby minimising the repetition of traumatic material.

**Questions:**

- Do you support the proposal that the children’s hearing should have a brief period of recess/adjournment before reaching their decision and sharing it with those present?
- Do you agree that the majority decision-making approach should be maintained, in respect of the relevant redesigned three member hearings?
- Should the children’s hearing be asked to reach a unanimous decision during adjournment, in order to minimise repetition and potential retraumatisation?
- If a majority decision approach remains, would you agree that any dissenting decision should be noted and explained?

**8.5 Decision-making and specificity of measures in a Compulsory Supervision Order (CSO)**

The Scottish Government has heard, in response to a previous consultation on policy proposals for the recent Children (Care and Justice) (Scotland) Act, that it would be desirable to introduce more clarity and specificity in CSO decisions, particularly those placing children away from home with kinship or foster carers, or in recognised regulated childcare institutional settings like residential schools.

Such a move would be to assist children to challenge interventions and restrictions that had not been explicitly authorised by a Sheriff or hearing. This engages questions of restriction up to the level of restraint.

**Questions:**

- Do you agree that it is desirable or necessary to introduce clearer authorisation for particular interventions with children, or particular interferences with their liberty, on the face of measures included in an Interim Compulsory Supervision Order or Compulsory Supervision?

- If so, do you agree that a ‘maximum authorised intervention’ is an appropriate means of delivering that clarity to children and to professionals?

## 8.6 Timely notification of children’s hearings decisions

Hearings for Children recommended: *‘The Chair must provide the decision within a reasonable time limit.’*

The decision of the children’s hearing is currently communicated to the child and family immediately within the hearing room, with the written decision transmitted by SCRA on behalf of the children’s hearing within 5 working days per Rule 88 of [the Children’s Hearings \(Scotland\) Act 2011 \(Rules of Procedure in Children’s Hearings\) Rules 2013](#). Rule 88 also prescribes the information that is to be transmitted, and identifies the classes of person entitled to receive that information. The Scottish Government seeks respondents’ views on the current approach.

### Questions:

- Is the current time frames for written confirmation of the decision by the children’s hearing (5 working days) still appropriate?
- Should certain children’s decisions (e.g for an ICSO) have accelerated notification timeframes, relative to the urgency of the decision?

## 8.7 Continuity of Panel members in children’s cases

Hearings for Children considered the issue for continuity of panel and chairing members, envisioning continuity for each case where possible. *“As far as possible the Chair must be the same Chair each time a child and their family attend a Hearing. This should also apply to Panel Members where possible and desirable.”*

Of relevance here is Rule 3 of the [Children’s Hearings \(Scotland\) Act 2011 \(Rules of Procedure in Children’s Hearings\) Rules 2013](#), which states that:

**3.—** (1) Where a children’s hearing is held in relation to a child, by virtue of the Act or any other enactment, the children’s hearing may request that the National Convener select, where practicable, one of the members of that children’s hearing to be a member of the next children’s hearing to be arranged in relation to that child.

The issue of consistency, or continuity, of panel members for the referred child is a challenging and complex area from both rights and resourcing perspectives.

However, it is broadly agreed that a greater degree of continuity (that is, one or more of the same panel members sitting on the same child’s hearings) can be desirable and can improve the experience for the child.

The Practice & Procedure manual published by CHS cites the ‘Better Hearings’ research by SCRA as evidence for this position.

This research cited the views of children, young people and practitioners within the system. It found broad consensus that a greater understanding of a child's life and circumstance will lead to more informed decisions by panel members, as well as reducing the need for a child to either tell, or hear, their story on multiple occasions with different children's panel members.

Judicial consistency has been promoted in family law court processes both in Scotland and other jurisdictions to ensure cases continue to progress and minimise drift and delay. It is perhaps likely that children's panel member continuity would follow this pattern and improve children's experience, especially in particularly complex cases.

However, the children's panel – and each children's hearing - needs to remain an independent and impartial tribunal. Different individual children's panel members being involved in different cases goes towards supporting the impartial consideration of the individual child's case facts and circumstances. Excessive use of continuity may undermine the necessary objectivity of individual children's panel members and may not necessarily be in the best interests of every child.

The recommendation to have the same chair for each child's successive hearing is complex, particularly where the system doesn't currently support a full-time chair approach. While the Scottish Government is generally supportive of moving towards a presumption of continuity, modelling for continuity and consistency is deeply complex. The Scottish Government would welcome views on wholesale continuity where practicable, including a position where, perhaps, only one panel member is consistent across each case.

### **Questions:**

- Should consistency or continuity of chairing members be the default position for each child's hearing?
- Would you support one single children's panel member's consistent involvement as an alternative approach?

### **8.8 Substantive vs Procedural decisions**

The Scottish Government is supportive of the position adopted by Hearings for Children in regard to consideration of the types of decisions which do and don't require a full children's hearing: "In a redesigned children's hearings system there must be a separation between procedural decisions relating to the hearing itself and the decisions made by the hearing. There should be an assessment to understand which procedural decisions a Chair can take without the need to convene a full Panel [sic] in advance of a hearing. This should include scrutiny of whether anything needs to change in legislation or procedural rules to better facilitate decision-making and eliminate structural drift and delay in the system."

Currently, each children's panel member is assigned a number of 'sessions' per month (around two, on average), one session in the morning and one in an afternoon

in busier areas. Each hearings session will contain up to three separate cases, fewer if the children's reporter considers that an individual case is more complex and will have to take longer than the allocated slot.

Following analysis of the recommendations in the Hearings for Children report, the Scottish Government believes there may be scope to change which decisions require a full children's hearing of three children's panel members, in line with established expectations and with the 2011 Act.

It may be considered appropriate, subject to further full legal analysis, that some procedural decisions could be taken by an individual children's panel member (usually the assigned chairing member), or potentially a 'legal member' before the grounds are determined – see section 6.

This would free up capacity for other children's panel members to engage in substantive decision making, so that allotted sessions could be used more appropriately for substantive discussions and decisions in the best interests of a child - as opposed to procedural matters at which the child or their family may not be present.

This would also allow for increased capacity of the total panel member community, reducing the number needed by removing a significant number of hearings from the allotted sessions.

Examples of where 'procedural' decisions could be taken, and where there is no requirement for the referred child to be in attendance include:

- Pre-hearing panels covering:
  - Deem or un-deem a relevant person, subject to the existing routes of appeal.
  - Excusal of child or relevant person from attending.
  - Attendance by electronic means.
- Advice hearings.
- Review of a Child Protection Order.

### **Questions:**

- Should children's panel members or chairing members, for certain procedural decisions, be able to take decisions without recourse to a full three member children's hearing?
- Are there other areas you would consider appropriate for a single-member decision making approach?
- Would you propose additional safeguards to accompany these proceedings and decisions?

### **During a Children's Hearing**

#### 8.9 The Powers of the Chair during a Children's Hearing



The Hearings for Children report made several recommendations relating to the powers of the chairing member of a children's hearing. Particular emphasis is placed on those attending the children's hearing, and how the Rules of Procedure, along with training provided by the National Convener and the relevant CHS practice guidance should enable the chair to robustly and effectively manage attendance and participation. The relevant recommendation states:

“The existing Rules governing a Children's Hearing must be sufficiently robust to ensure that the Chair is able to manage the dynamics and conduct of an inquisitorial approach to a Children's Hearing. This includes determining who is present at each stage of a Children's Hearing, whilst effectively balancing rights of attendance and participation, and having the flexibility to change the speaking order and arrangements and the authority to ask contributors to the meeting to leave the room after they have spoken, if that is in the best interests of the child.”

The report made it clear that this includes recognising the potentially challenging relationships between attendees which may affect participation, even when there are no outward signs of violence and disruption.

There are existing powers to manage attendance at a children's hearing, including the exclusion of relevant persons, in both the 2011 Act and the 2013 Rules of Procedure. The chairing member also has a responsibility under section 78(4) of the 2011 Act to keep the number of people in attendance to a minimum.

However, the Scottish Government acknowledges that these are highly complex issues, and there could be benefits to creating a set of clearly stated statutory powers to enable more robust management of hearings. The Scottish Government also agrees that empowering the chairing member to take difficult decisions on participation and attendance could help minimise hostility and promote inquisitorialism - by making these decisions clearer and backed by potential future primary legislation.

#### **Questions:**

- Would it be beneficial for the chairing member to have a robust and clearly stated set of powers to manage how and when people attend and participate in the different phases of a children's hearing?
- Are the existing powers of the chairing member and of the hearing sufficient to protect the rights of all involved?
- What enhancements could be made to the existing powers of the chairing member and the hearing to promote inquisitorial approaches?

#### **8.10 Recording of Children's Hearings**

The Hearings for Children report considered the potential benefits of recording children's hearings. The development of that recommendation included consultation

with children and young people. Their views on this issue were reflected in the report and were broadly in favour of recording hearings. The report concluded by recommending that:

“There should be a full examination of the potential benefits and consequences of recording hearings. This should include a full assessment of the impact this would have on the rights of children and their families.”

The Scottish Government has committed to exploring this further as part of the broader consideration of the practice and procedure in a redesigned hearings system.

The Scottish Government takes careful note of the views put forward by children and young people and captured in the Hearings for Children report. The Scottish Government recognises that there are both benefits and drawbacks to recording hearings.

Respondents’ views are therefore sought about whether hearings, in full or in part, should in principle be recorded. Comments and suggestions are also invited about the benefits and risks of video, audio or written recordings.

#### **Questions:**

- In your view, should children’s hearings be routinely recorded?
  - If yes - which method of recording should be routinely used?
    - Written
    - Audio
    - Video
    - Other – write in.
  - What are the main benefits and risks of this method of recording hearings?
  - If no, what are your most significant concerns about recording hearings?
- If only the decision element of a children’s hearing were to be recorded, would this change your view?

#### **8.11 Child friendly summaries of decisions**

The Hearings for Children report asked that: *a summary of the decision made by the Hearing in plain language and in a format appropriate to the age and stage of the child must be shared alongside the full decision. There must be consideration given to whether this would also be appropriate for family members.*

The Scottish Government is generally supportive of this proposal but recognises that it may have resource implications and impose a requirement for the chairing member or other suitably qualified person to oversee any ‘translation’ to a child-friendly document - to ensure consistency with a legally binding decision.

This recommendation links to wider considerations about the role of the chairing member and other children’s panel members within children’s hearings, and improvements to the reporting and delivery of decisions. It is also linked to future decisions about the child’s attendance at their hearing and considerations of their ability to participate. If processes for the production of child-friendly summaries of decisions are to be developed, this must be considered and progressed alongside other relevant changes.

“While a fully reasoned decision will assist in improving openness and transparency and to inform appeals, this might be inappropriate for, and inaccessible to, children—especially very young children, and children with a learning disability. A summary of the decision in plain language in a format appropriate to the age and stage of the child should therefore be prepared and issued alongside the full decision. Similar accommodations may support family members with learning disabilities to, for example, understand the written decision more easily.”

Hearings for Children report

### Questions:

- Should there be a statutory requirement for the production of age and stage appropriate summaries of Children’s Hearing decisions?
- Should the specific needs of other family members – especially other children - be taken into account when decisions and reasons are being prepared and issued?

### 8.12 Family Group Decision Making (FGDM) and Restorative Justice

The Hearings for Children report considered that Family Group Decision Making (FGDM) and restorative justice processes should be pursued where appropriate, prior to a referral to the children’s reporter, and potentially after a reporter referral. The report recommended that: *“[Hearings] must be empowered to create space for restorative justice and FGDM processes to take place, by deferring hearings for a sufficient time.”*

The operation of FGDM and restorative justice services, and how they may appropriately interact with children’s hearings, require careful consideration.

The Scottish Government does have concerns about the potential impact of deferring children’s hearings – especially when the intention is to minimise the number of those hearings to the point that only those that are absolutely essential still remain - in order to pursue these other processes.

When a child is referred to a children’s hearing, it has been determined by the children’s reporter that they are likely in need of compulsory measures to address concerns about their welfare. Other routes of support, such as FGDM or restorative justice, may have already been considered, or they may still be thought to be helpful – but that should not delay a children’s hearing making a decision, or the implementation of essential support to the child through a CSO. The Scottish

Government is therefore interested in views on how these processes might appropriately interact with a redesigned children's hearings system.

### Questions:

- Is it appropriate for children's hearings to defer their decision in order for Family Group Decision Making or restorative justice processes to be offered, or to take place?
- What other ways could consideration of these processes feature in the redesigned hearings system?

## 9. After a Children's Hearing

### 9.1 After the Hearing – the length of interim orders

Under section 86 of the 2011 Act, an interim compulsory supervision order has effect for the "relevant period" as defined in section 86(3). That is, if the order does not cease to have effect sooner, the cut-off is 22 days beginning with the order being made, or in the case of an extended order, 22 days beginning with the order having been extended.

Under the emergency Coronavirus (Scotland) Act 2020, the period for which an interim CSO could apply was temporarily extended to 44 days. This was essential for the continued safe operation of the children's hearings system during the pandemic, and its introduction was only justifiable with reference to that emergency. However, the learning and feedback from the use of an extended time limit is instructive here, and it was broadly positive. Approximately 77% of all Interim Orders made from 7 April 2020 to 8 September 2021 made use of this extended time limit.<sup>34</sup> It was applied flexibly but proportionately, and limits were only extended as much as they needed to be in the best interests of the child. This offers an important contribution to the evidence base for redesign.

The Hearings for Children report recommended in Chapter 5 that "... *there should be full exploration of the making of interim orders for a specified time that is bespoke to a child's needs.*" The report states that "*It may be helpful to consider retaining the limit as a default, with a discretion to extend the time period to suit the circumstances of the child and to meet the child's best interests.*"

The Scottish Government agrees that trust should be placed in decision makers to implement interim compulsory supervision orders for the appropriate time in the best interests of the child, taking into account appropriate and necessary considerations of ECHR rights and rights of appeal.

The Scottish Government is therefore interested in respondents' views on how positive changes can be made with respect to the duration of interim orders, while safeguarding the rights of children and families.

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<sup>34</sup> [Report-9-Coronavirus-Supplementary-Data-Report-CHS-SCRA-FINAL.pdf \(usercontent.one\)](#)

## Questions:

- What are the advantages and disadvantages of increasing the statutory 22-day time limit for the duration of interim compulsory supervision orders (ICSOs)?
- Do you feel that there should be more flexibility in the duration of these interim orders?
- If so, in what circumstances and what maximum duration do you consider appropriate?
- Could ICSO reviews be undertaken by lone children's panel members? (See Chapter 8)

### 9.2 After the Hearing – the concept of a child's exit plan

“The HSWG understands the concerns raised by children, families and care experienced adults with experience of the Children's Hearings System that, at present, there is not a clear understanding about what needs to happen to 'exit' the system. As a result, children can remain subject to legal orders for long periods of time, sometimes longer than is necessary. All children and families and implementation authorities should understand what is expected of them and what needs to happen to 'exit' the Children's Hearings System.”

“The concept of a child's 'exit plan' out of the Children's Hearings System, with clear targets and timescales, should be developed and tested in local areas.”

Hearings for Children report, Chapter 11

The Scottish Government's response to the Hearings for Children report indicated support for the concept of an 'exit' plan to connect any compulsory measures with voluntary support for a child or young person.

Where a GIRFEC child's plan is already in place, an exit plan could be incorporated into this plan to ensure that, where possible, there is one document which sets out the expectations from the hearing placed on the child or young person, their family and the implementation authority.

The Scottish Government notes that the policy-based GIRFEC plan is entirely voluntary, while the exit plan would link to compulsory measures. So, while the creation of a statutory “exit plan” could be explored, further consideration would be required around what that would contain and how that would link with a GIRFEC plan (where one exists) and the potential range of other statutory plans that could exist for a child. As outlined above, key aspects of this proposal could be explored in practice and policy rather than on a legislative basis, in line with the GIRFEC child's plan constituting a non-statutory plan. However, the Scottish Government would welcome

respondents' views on proposals for a child's exit plan from the children's hearings system and the appropriate underpinning for this.

### Questions:

- Do you support the proposal to create a child's exit plan from the children's hearings system?
  - what elements should be included in any child's exit plan?

### 9.3 System Redesign Overall

- Do you have any other suggestions where you consider that new legislation is needed to deliver a successfully redesigned children's hearings system?

### 9.4 Secure accommodation timescales for review

The Hearings for Children report states: The timescales for children living in Secure Care must be reviewed to ensure that they are appropriate and in their best interests. There must be no expectation or understanding that children should be living for long periods of time in Secure Care, but rather the presumption should be that it is a temporary measure.

### 9.5 Background

Secure accommodation is the most intensive and restrictive form of childcare available in Scotland, whereby children up to age 18 are placed in a locked setting, and receive high intensity, trauma-informed care, support and education. This normally occurs through involvement of the children's hearings system or the criminal justice system, due to a level of concern around the risks, or actual significant harm, which parts of a child's behaviour pose to themselves and/or others.

The use of secure accommodation should only happen in exceptional circumstances, where it is the only means by which a child and/or others can be kept safe. Depriving a child of their liberty is one of the most serious interferences a state can impose on a child's rights, and this must be absolutely necessary and proportionate in all cases.

There are currently 78 secure places available in centres run by four secure accommodation services in Scotland - Rossie Secure Accommodation Services; Good Shepherd Centre; Kibble Education and Care Centre; and St Mary's Kenmure, all of which are independent charitable organisations. Scotland's secure accommodation centres offer therapeutic care, education and support, taking account of the trauma which the children may have experienced before being placed there.

### 9.6 Proposal

The Scottish Government is clear that children who require to be placed in secure accommodation should only be placed there for as short a period as necessary, when they meet the statutory criteria for being accommodated there.

The 2011 Act sets out criteria for a secure accommodation authorisation being imposed in a compulsory supervision order, an interim compulsory supervision order, a medical examination order or a warrant to secure attendance (“a relevant order”).

These criteria will be amended by the Children (Care and Justice) (Scotland) Act 2024 (“the 2024 Act”) so that, in future, before a children’s hearing or sheriff imposes a secure accommodation authorisation in an order, they must be satisfied that it is necessary and that:

- the child has previously absconded and is likely to abscond again unless they are kept in secure accommodation, and, if they child were to abscond, it is likely that their health, safety or development would be at risk;
- the child is likely to engage in self-harming conduct unless they are kept in secure accommodation; or
- the child is likely to cause physical or psychological harm to another person unless they are kept in secure accommodation.

Criteria for implementing a secure accommodation authorisation will continue to apply under section 151 of the 2011 Act and the Scottish Government will consider any amendments required to secondary legislation to support implementation of the 2024 Act. As things stand, regulation 10 of the Children’s Hearings (Scotland) Act 2011 (Implementation of Secure Accommodation Authorisation) (Scotland) Regulations 2013 sets out arrangements for review of a child’s secure placement where they are subject to a relevant order with a secure accommodation authorisation. It requires that the relevant chief social work officer must review the placement from time to time and carry out the following mandatory reviews:

- a first review within 7 days of the placement,
- a second review within 1 month from the date of the first review, and
- thereafter, subsequent reviews within 1 month from the date of the previous review.

A review must also be carried out whenever the child or relevant person requests one.

The Scottish Government notes that in an emergency situation and subject to stringent conditions, a child in Scotland may need to be placed in secure accommodation without the authority of a children’s hearing or a sheriff. The Secure Accommodation (Scotland) Regulations 2013 specify the maximum period during which a child may be kept in secure accommodation in this scenario. The statutory limit is an aggregate of 72 hours (whether or not consecutive) in any period of 28 consecutive days, except in very limited circumstances in which a further period of 24 hours is available<sup>35</sup>.

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<sup>35</sup> See regulations 5(1), 10(5) and (6) of the [Secure Accommodation \(Scotland\) Regulations 2003](#) (“the 2003 Regulations”).

The placement of children who are accommodated in secure accommodation via provisions of the Criminal Procedure (Scotland) Act 1995 must also be kept under regular review. Currently, the relevant local authority's chief social work officer and the head of the secure unit must ensure that they make arrangements to review the child's case—

- within 7 days of the placement being made,
- at such times as appear to them to be necessary or appropriate in light of the child's
- in any event, at least every 3 months<sup>36</sup>.

Following the review, the child may only be kept in secure accommodation where the chief social work officer and the head of unit are satisfied that this is in the child's best interests.

The Scottish Government has carefully considered the existing timescales and believes that they are still appropriate to protect children's rights.

#### **Questions:**

- Do you agree that the timescales for review of a child's placement in secure accommodation in Scotland, as laid out in legislation, are still appropriate?

## **10. Assessing Impact**

### **10.1 Background**

The Scottish Government propose to carry out impact assessments alongside the development of any new legislation which would be required to implement the changes proposed in this consultation.

These include a Data Protection Impact Assessment, Child Rights and Wellbeing Impact Assessment, Equality Impact Assessment (related to the protected characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation). The Scottish Government would be interested in your views on these areas to help develop these and any other necessary assessments.

#### **Questions:**

- What, if any, do you see as the data protection related issues that you feel could arise from the proposals set out in this consultation?
- What, if any, do you see as the children's rights and wellbeing issues that you feel could arise from the proposals set out in this consultation?

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<sup>36</sup> See regulations 11, 12 and 13 of the [2003 Regulations](#).



- What, if any, do you see as the main equality related issues that you feel could arise from the proposals set out in this consultation?

## 11. Glossary of Terms

### 'Hearings for Children'

- denotes reference to the work of Sheriff Mackie's independent Hearings System Working Group and the May 2023 final report.

### Principal Reporter

- An individual appointed by the Scottish Children's Reporter Administration (SCRA) with the approval of the Scottish Ministers, carrying overall responsibility for children's reporter's functions, including decision-making, communication, arranging hearings, notifying outcomes. Used in this consultation with reference to that individual officer.

### Children's Reporter

Used throughout the document to mean the Principal Reporter and professionals employed by SCRA carrying out functions delegated to them by the Principal Reporter

### National Convener

- The National Convener of Children's Hearings Scotland (CHS), who is responsible for the recruitment, reappointment, training, oversight and support for members of the national children's panel, which is made up of specially selected and trained lay volunteers.

### children's hearing

- three children's panel members make up a children's hearing, which is a legal decision-making forum which determines whether or not measures of compulsory supervision are required for a child, and if so, what the measures should be.

### Grounds/Statement of Grounds

- refers to a document setting out which grounds in section 67 of the Children's Hearings (Scotland) Act 2011 that the children's reporter believes apply in respect of a child and the supporting facts. This document is shared with the children's hearing, which will explore whether the child and their family accept what is in it.

### Referral to the children's reporter

- A 'referral' to the children's reporter is when information about a child is sent to the children's reporter by someone who is concerned about them. Anyone can make a referral to the children's reporter, who will then investigate the concerns as necessary and consider whether a children's hearing needs to be arranged.

### Post-referral

- refers to the period of time after an initial referral to the children's reporter, but before the children's reporter has taken a decision that a children's hearing needs to be arranged.

### Safeguarder

- a person who is on the national “Safeguarders Panel”, currently managed by Children 1<sup>st</sup>. In individual cases, a safeguarder can be appointed by either a children’s hearing or a Sheriff to act independently in the child’s best interests, to safeguard those best interests throughout proceedings and to prepare a report.

### Compulsory Supervision Order (CSO)

- A compulsory supervision order is an order made by a children’s hearing or sheriff that requires a child to comply with specified measures and makes the local authority responsible for giving effect to them.

## Children's Hearings Redesign Consultation on Policy Proposals

### Respondent Information Form

**Please Note** this form **must** be completed and returned with your response.

To find out how we handle your personal data, please see our privacy policy:

<https://www.gov.scot/privacy/>

Are you responding as an individual or an organisation?

- Individual
- Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email Address

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
- Publish response only (without name)
- Do not publish response

#### Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes
- No

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