

Children's hearings redesign – policy proposals:

Consultation summary

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1. What is a Consultation?

The law says that the Scottish Government has to ask people their views before important changes are made.

When the Scottish Government asks people for their views it is called a Consultation. The Scottish Government would like your views on how we can improve the children's hearings system. Some children and young people in Scotland are in need or at risk and need legal protections. That can be because of what other people have done, or because of something they may have done themselves. The children's hearings system makes legal decisions to help keep children and young people, and those around them, safe. We want to make sure it can deliver the best possible experiences to the children and families in need of its support. There is lots of other work happening, but your views will help inform any changes to policy or law.

The responses should be made by 28 October 2024.

2. Why should I get involved?

The changes could have a big impact on different people, including children, young people and their families. We want to hear from as many people as possible. We especially want to hear from children and young people. We know you are the experts.

You do not need to answer all questions. Only the ones you want to.

A conversation guide for staff working with children and young people, and other materials, are being produced. Those will also be available soon. People who work in the Scottish Government in this area would also be very happy to meet with, or hear from, children and young people directly – please contact childrenshearingsconsultation@gov.scot

The team working on the consultation would also be happy for you to get in touch or to try and meet with you and any groups. You can contact them at:

childrenshearingsconsultation@gov.scot

3. Giving your answers

Please give us your answers to this consultation online here [Children's hearings redesign - Scottish Government consultations - Citizen Space](#) Please give your answers before **28 October 2024**

If you are unable to give us your answers online, please complete the Respondent Information Form and send it to: childrenshearingsconsultation@gov.scot

4. What we do with your answers

If you ask for your answers to be kept private, we will not publish them. The Scottish Government follows the Freedom of Information (Scotland) Act 2002. This includes requests we get for information about this consultation.

5. What happens next?

If you have given permission for your answers to be made public, your answers will be published at <http://consult.scotland.gov.uk>. If you use Citizen Space to give your answers, you will get a copy of them sent to you by email.

Following the closing date, all answers will be looked at with other information we have.

We will make a report saying what we did with the information. This information will then be shared with Scottish Ministers. They will decide what changes to the law are needed and suggest these to the Scottish Parliament. Parliament makes law. Different people might want different changes. Scotland's Parliament will then decide what changes are made to the final law.

6. Comments and complaints

If you have any comments about how this consultation has been done, please send them to: childrenshearingsconsultation@gov.scot

7. Background: The Care Review

The Independent Care Review heard that Scotland needs to change how it cares for children - these changes are set out in the [Pinky Promise](#). The Care Review heard a lot about the children's hearings system and what needed to change to make it work better in future for Scotland's children who may need its help. We are committed to Keeping the Promise.

8. Hearings for Children

Between 2021 and 2023, the Hearings System Working Group looked at what was working in today's children's hearings system and what could be made better for children going to hearings. Children who had been to hearings gave their ideas to the chair of this group. They also spoke to young people, parents, carers and other experts. They asked for over 100 changes to be made to the way the system works just now.

The Scottish Government looked at this report and now want to hear from you about what to do next – looking most closely at the changes that might need new law. We have lots of ideas.

9. What is the Children's Hearings System?

The children's hearings system is the care and justice system for children. Some children do not have all their needs met. They can face risks at home or in their wider lives. This may be because of one thing that has happened, or people who work for children may have been worried about them for a long time. It can be complicated.

10. What is a referral and what happens next?

Concerns about a child can be reported to someone called the Children's Reporter. When this happens, this is called a referral. A referral is usually from the police, social work, school or health professional. Actually, any person can make a referral to the Children's Reporter. This is done because they think that the child or young person not only needs help but may need that help to be put into a legal order.

The Reporter is a professional who makes the decision about if a child needs to go to a children's hearing or not. They may decide the child or their family needs support from social work and other services. In many cases, the child and their family agree to take some help without going to a children's hearing and without a legal order. Some children will not need any further help at all. The child should only go to a children's hearing if a legal order might be needed. If the legal order is put in place by the children's hearing, this would mean that the child will need to do, or not do, certain things.

11. How the Children's Reporter gathers information and decides what to do

The Children's Reporter needs to investigate any referral made to them to decide whether a children's hearing might be required. The Children's Reporter will write to a family to explain what they are doing and asking them to share any views or information. We are asking if you think that there should be a law in place that says the Reporter must offer an opportunity to actually meet the family and listen to their views (with the help of a children's advocacy worker if required), before deciding to arrange a children's hearing.

Question

- Do you think that the Children's Reporter must offer to meet with a family to discuss a referral and listen to their views before making their decision on setting up a children's hearing?
- Who else should be allowed to come to that meeting?

12. What is a Children's Hearing?

A Children's Hearing is a meeting that makes decisions about children. It is organised by the Children's Reporter and the decisions are made by 3 Children's Panel Members. The Panel Members will listen to everyone at the Hearing and will

make the best decision for the child. They will explain what is going to happen and why. The child's parent or carer will be there, as well as a Social Worker. If Panel Members are worried about a child, they might make what's called a Compulsory Supervision Order. This is a legal document which means that the Social Work Department or the Local Authority must be involved in the child's life and that they are responsible for looking after and helping the child.

Most children on a Compulsory Supervision Order stay at home, but if the Panel Members are very worried about the child's safety, they might decide that they need to stay in another place for a while to keep the child safe.

13. Making the Child's voice heard

We know how important it is that a child is heard by adults making decisions about them. We are thinking that new a law could be made telling a Children's Reporter what to do so that a child feels really listened to at each stage. This could include how their views have been recorded before the referral was made, listening to how the child wants to participate in their hearing, and making it as easy as possible to say how they feel and think. A child's voice could be heard in different ways such as: through completing a written form, speaking to a Children's Reporter, social worker or advocacy worker, recording a message electronically on their phone, writing a letter. We want to hear your suggestions about other ways that a child's voice could be heard.

Question

- Do you agree that there should be a law to make sure that this happens?
- Do you have any other suggestions about how a child's voice could be heard?

14. Very Young Children

It can be hard for the children's hearing to listen to very young children and to understand what will be best for them. There could be other ways to make sure that what very young children are thinking and feeling is properly listened to and thought about. This might include information (in writing or spoken at a hearing) from carers, health workers, nursery staff, and might relate to:

- changes in the child's behaviour
- whether they appear happy or not
- if they look well cared for
- how they respond to the person caring for them

Question

- Do you think that more could be done to help hear the views of very young children? Can you give any examples?

15. Advocacy

A children's advocate (or 'advocacy worker') is an independent person (they don't work for the Children's Reporter, Children's Hearing, the council or the police) who helps a child to tell their children's hearing what they want to happen. This might include – helping the child to tell how they feel, what they think, and what they would like to happen or not happen - when the children's hearing has to make their decision. Advocacy workers also tell children about their rights and what to expect before, at, and after children's hearings.

All children going to a hearing should be told that they can have an advocacy worker. This should usually happen when someone has made a referral to the Children's Reporter, and certainly before any children's hearing.

We are thinking that if the child does not already have one, an advocacy worker should be offered earlier – for example as soon as a child is referred to the Children's Reporter.

Question

- Should an advocacy worker be offered to the child as soon as the child is referred?

16. Grounds for referral

The reasons why a child is referred to a children's hearing are known as grounds. There are 17 different grounds in law. The children's Reporter takes all the information they have and chooses which grounds best reflect the concerns about the child.

We are thinking about changing the way that the grounds are written. We think that it might be better to use the 'wellbeing indicators' that we want all children to achieve so that these are easier to understand. You may have seen them before – they are 'Safe', 'Healthy', 'Achieving', 'Nurtured', 'Active', 'Responsible', 'Respected' and 'Included'.

For example, currently a ground would be: *"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"*. This could be replaced with a new ground: *"the child is entitled to be cared for in a safe and nurturing environment..."*

Question

- Do you think that grounds could be written in a way that is easier to understand, and uses clearer, more positive language about what a child needs?

- Do you think that using the wellbeing indicators would be a helpful way to do this?

17. Establishing Grounds

If the Reporter decides that there are grounds, and that the child needs a legal order, a type of children's hearing called a "grounds hearing" takes place. The statement of grounds is read to the child and their family by the Chair of the children's hearing, and they are then asked if they accept the grounds.

If the grounds are not accepted by a child and their family, or there are worries that a child or their family do not understand the grounds, then the grounds need to go to court. This is where a judge called a Sheriff looks at the grounds, the evidence and information and decides if they apply to the child. This is called proof. In Scotland a Sheriff is a judge in a court. A sheriff makes sure that the law is followed and is responsible for making a decision when they have heard all the evidence about what should happen next.

We have heard that it can be difficult for children and families to understand grounds and that the proof process for establishing grounds that is in place just now can be too long and upsetting.

We are therefore thinking of replacing the current 'grounds hearing' with a 'fact finding hearing'. The main difference is that the fact finding hearing would be in front of only one person or 'legal member' (instead of 3 children's panel members or a Sheriff), who would be legally qualified.

When some or all of the grounds are not accepted by a family, the same legal member will hear all the evidence, and make the decision as to whether grounds have been established. This would avoid anyone going to the Sheriff Court and should make the process much quicker than it can be at the moment.

Children and families would still be able to appeal to the Sheriff court if they are not happy with the legal member's decision.

Question

- If it was the job of one legally qualified person to decide whether grounds had been established or not, would this be better than it being done by a Sheriff or by a Children's Hearing?
- Do you see any problems with this new approach?

In lots of cases, the child will be too young to understand and accept the grounds. Even if the child's family and carers agree with the grounds, there might still be times when the legal member would still want to hold a fact finding hearing.

Question

- Should the legal member be able to organise a fact finding hearing for babies or very young children even if their relevant person(s) accept the grounds?

Sometimes it can take a long time for grounds to be established. This can be frustrating for families and for other agencies involved in trying to help the child. We are thinking that there should be a law put in place which means that after 3 months the case has to be reviewed.

Question

- Should there need to be a review after a set time if grounds have not been agreed? If yes how long should the time limit be?

18. The role of a Safeguarder

A Safeguarder is an independent expert who sometimes provides reports to hearings to help them make their decisions. We are considering whether involving a Safeguarder at an earlier stage – such as establishing grounds – would be helpful.

Question

- Should the legal member have the option to appoint a safeguarder when grounds are being established?

19. When should you get the paperwork for a hearing?

We want to make sure that a child and their family gets enough time to read all the papers for a hearing and any support they might need to understand them. These reports can contain a lot of information, and some of that information can be upsetting for the child and their family. Usually someone who knows the child will go over this information with them, but this is not always possible.

It is also important that children's panel members have enough time to read and think about all the information. At the moment, the aim is to have the paperwork shared one week in advance of the children's hearing.

Question

- Do you think that one week is long enough? If not, what would be the right length of time?

20. Should a child always have to attend their hearing?

Children have the right to give their opinions freely on issues that affect them. Adults should listen to children and take their views seriously. This includes children being able to express their opinions at a hearing. The right of a child to take part in any meeting taking decisions about them is very important.

At the moment, when a hearing is taking place, the child has to attend their hearing. Sometimes it is agreed beforehand that they do not need to attend – often because of their age. If this hasn't been agreed to and the child does not attend, the hearing cannot go ahead.

We think that it might be better to say that a child should usually be at their hearing where possible, but they would no longer be forced to attend by law. This would apply particularly to younger children. But we think that in some cases there might still be times when the child must attend, such as when they have been charged with an offence. This is important so that their rights are protected.

Even if a child doesn't attend their hearing in person or online, there are other ways in which their views can be heard, and they can understand what happened at their hearing.

Questions

- Do you agree that it should be easier for a child not to attend a hearing if they don't want to?
- What situations do you think that a child should still have to attend a hearing?
- If a child does not attend their hearing, can you think of any other ways their views could be shared, or to help them understand what happened at the Hearing and what decisions were made?

21. Who should be on the children's panel – what should be their skills and backgrounds?

A children's hearing is a legal meeting that children and young people can be asked to go to. The children's hearing is made up of 3 people, with one of them chairing the hearing. They are called the panel members. They usually live in the same area where the child does and are volunteers – they have to apply and are selected and trained, but do not get paid. One of these people will be the chairing member of the hearing. Panel members make decisions to support children based on information shared by everyone involved in the child's life.

If a child has been at a hearing before, the panel members and chair at the next hearing are not always the same. We have heard that it can be better for the same chair and panel members to be at a child's hearings all the way through a child's involvement with the system where possible. This is because the panel members already know the child and what is happening in their life, so the child does not need to keep retelling their story. But it can sometimes be difficult to make this happen, because panel members are volunteers giving of their own time, so their own work or family commitments mean that the same panel members may not always be available when the child's next hearing comes up.

Questions

- If it could be arranged, would you like to have the same panel members for every hearing for a child?
- Or, would it help to have at least one panel member who comes to every hearing?
- Do you see any problems with having the same panel members for every hearing?

22. Should there always be three children's panel members for every type of hearing?

Sometimes hearings and meetings are also held for making decisions about how the main children's hearing should take place, like to discuss if a child or an adult does not need to go to the hearing but can be there on a video call, or when the hearing is being asked to give their view to court to help the court make a decision. These hearings are also held in the same way as other hearings, so with three panel members, but the child and their family don't always need to be there. We are thinking about changing this to having only one panel member making decisions at these kind of hearings.

Question

- Do you agree that some types of hearings could be done with only one panel member?
- Do you think that there could be problems with this approach? If yes, what might this be?

23. Meeting the chair before a hearing

We are thinking that it might be helpful for a child to meet, and get to know, the chair of the hearing before the hearing takes place. This would be an informal chat, to explain more about how the hearing will work, and hopefully reduce any feelings of worry or uncertainty for the child. This would take place at the hearings centre, so would also be a chance to see what it looks like inside.

Question

- Should the chair meet the child, their family or representatives before a hearing?

24. Powers of the chair during a hearing

Hearings can be difficult. The chair can do a lot to make sure hearings are as positive an experience as possible. This might be saying a certain person cannot

attend a hearing, asking people to leave after they have shared their views, or having the hearing in different parts for different people. We are wondering about giving chairs more powers to make sure everyone's rights are upheld at hearings.

Question

- Should chairs have more powers over how and when people attend a hearing, or parts of a hearing? What other powers do you think they could have in order to make a hearing work better?

25. How decisions are made at a hearing

The panel members might have different views about what should happen, but the final decision needs to be agreed by at least two panel members.

Question

- Do you think that we should keep the rule that at least two panel members must agree on any decision made?

Hearings can be complicated and difficult. They sometimes take a long time, and we think that there should be an option for everyone to take a break and where panel members can talk about their decision before this is shared with everyone else at the end of the hearing.

Question

- Should there be a break at the end of the hearing, before the decision is shared?
- Should all three panel members be told to reach an agreed decision during the break?
- If any panel member had a different view, should that be recorded and explained?

26. When restrictions on a child are required

If panel members are worried about a child, then they can make a compulsory supervision order – the legal order we have mentioned earlier. This is a legal document which allows people like a social worker to help the child or young person.

It might also say who the child can see, where they need to live and what can happen to them. Sometimes when a child has to live away from home then other rules might be made to help keep them safe. This could be things like accessing the internet or being in the house at a certain time. Sometimes a child might need to be held by staff in order to stop someone getting hurt. These rules are called 'restrictions'. We want to know if you think that a compulsory supervision order

should make it clear at the start what kind of restrictions can be placed on a child living away from home.

Question

- Do you agree that an order made at a hearing should be more clear about the kind of restrictions that can be placed on the child?

27. Recording of Children's hearings

Hearings are not recorded just now. The decisions of the hearing, and the reasons for the decisions, are written down and shared with children and families. These are not always easy for children and their families to understand. We are asking whether you think that it would be better if some, or all, of a hearing was recorded.

Questions

- Do you think that hearings should be recorded? Should this be the whole hearing, or just the part where the decisions are made?
- If yes should this be by:
 - Video that can be watched again
 - Audio recording that can be listened to again
 - In writing
 - Any other ways?
- What do you think would be good about recording a hearing? Is there anything that would worry you about recording a hearing?

28. Easy to read decisions

We have heard that written decisions from hearings can be hard to understand for the child and their family. While decisions are important legal documents that need to be written in a certain way, we are wondering about having a separate summary that is easier to understand.

Question

- Should the hearing be required to also provide a summary of decisions in a way that the child and their family can easily understand?

29. Family Group Decision Making and Restorative Justice

Family Group Decision Making (FGDM) brings families together, often with staff who work with them, to talk about what is happening for them and to make a plan for how to make things better. This can help a hearing to make better decisions.

Restorative Justice offers the chance for a person who has caused harm and the person they have harmed to consider what has happened and how it made them feel. This might be by writing letters back and forth, telling a staff member who can pass it on to the other person, or sitting down together to make a plan for how to make things better. This can take place at any time during a child's journey through the hearing system, or even before a referral has been made.

We are asking your views on whether you think it would be OK to delay a hearing, in order for FGDM or Restorative Justice to be offered as an alternative to a legal order, and to give those services a chance to work.

Questions

- Should hearings be able to delay their decision so FGDM or restorative justice can be offered again, and get a chance to take place?

30. Secure Care

For some children, the hearing makes a decision to place them in a locked care setting to keep them and/or others safe. This is one of the most serious decisions anyone can make for a child.

When the hearing makes this decision, the head of the local authority needs to review this often to make sure the child should still stay in secure care. The first review needs to take place in the first week and then every month after that. The child or their relevant person can also ask the hearing for a review at any time.

Question

- Do you think these timescales for review should change? If yes, what should they change to?

31. Leaving the children's hearings system

Children, young people and their families have said sometimes it is hard to know what needs to happen before they are then able to get the help they need without a legal order and therefore to leave the children's hearings system. This can mean sometimes children get stuck in this system for longer than they need to be. We are thinking about changing the law to say that there needs to be an "exit plan" for children that says what needs to happen and when, so a child can leave the hearing system. This would need to be written down and discussed with the family each time an order is made or reviewed by the hearing.

Question

- Should children have a clear exit plan from the children's hearing?
- If yes, can you think of anything that should go in this plan?



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