

# **Children (Care, Care Experience and Services Planning (Scotland) Bill**

## **Social Work Scotland response to Scottish Parliament's call for views**

**15 August 2025**

### **Introduction**

Social Work Scotland is the professional body for social work leaders in local government and wider care sector. We exist to shape policy and practice, in order to improve the quality and experience of social services in every part of Scotland. Chief among our members' priorities is delivery of the Promise, and taking advantage of this unique political opportunity, secured by children and young people's voices, to transform how we support families and keep safe those at risk of harm. For social workers, delivery of the Promise is not a narrow concern; it is central to realising our collective national ambitions to reduce child poverty, close the educational attainment gap, and improve the population's health and wellbeing.

We therefore welcome all opportunities to make progress on the Promise and are grateful for this invitation to inform the Committee's scrutiny of the Children (Care, Care Experience and Services Planning) (Scotland) Bill (from herein "the Bill"). We will also be responding to the Finance and Public Administration Committee Call for Views on the Financial Memorandum. Our submission is drawn from wide engagement with our membership, including the thirty-two local authority Chief Social Work Officers, service and team managers from across the country in all sectors, and social workers directly involved in the delivery of services to children and adults. This represents a cross-section of a social work workforce, across local government, integrated partnerships, and the voluntary sectors, who are central to successful delivery of the Promise.

### **The case for new legislation**

Our members are clear that new legislation is a necessary component to delivery of the Promise. We currently operate within a framework of legislation built up incrementally over nearly sixty years. Additions have not always been constructed with an eye to overall coherence, nor has sufficient attention been given to the system's central operating principles, as set in the foundational Social Work (Scotland) Act 1968 and Children (Scotland) Act 1995. Law has been conceived with the best of intentions, designed to address real and specific issues, but has resulted in a sprawling, labyrinthine edifice, through which professionals, including lawyers, struggle to navigate. For children and families, it is impenetrable, which undermines their personal agency and rights. This has

been well documented by the Independent Care Review, and raised repeatedly by the Promise Oversight Board, Promise Scotland, CELCIS, us and others.

This legislative framework now stands as an obstacle to social work and others delivering on the agreed national vision - the Promise. Among the concerns of Social Work Scotland members' is the extent to which the current legislative framework has stretched a finite social work resource over increasing groups, to make up for deficiencies in universal services, such as support for learning, health, and housing. This is inconsistent with the vision of the Promise, in which families are supported as much as possible *out with* statutory social work provision, reducing the need for formal interventions or measures of 'care'. The Promise emphasises that legislation should facilitate children, families, and adults to access the support they need when they need it, from those best placed to provide it; an emphasis that aligns fully with Scotland's overarching children and families framework, Getting it right for every child. Social Work, in this context, provides input where our specific remit and skills are required, often where situations are complex or where risks to the wellbeing of children are evidenced. This is most often undertaken in partnership with other disciplines. The emphasis for all public authorities is on working *with* families, with legal interventions in family life being pursued only where absolutely necessary.

This Bill, like much recent legislation, pushes the system in the opposite direction, encouraging formal involvement in the care system. For example, by making eligibility for financial and educational assistance for young people contingent on a period in care at any age, it incentivises the application of statutory or voluntary measures of care. Being 'in care' becomes a passport to resources and benefits you cannot otherwise access. SWS queries if this is consistent with the vision set out in the Promise. The Scottish Government is correct in its analysis that care experienced young people in Scotland would benefit from additional support as they transition into adulthood, and as Scotland's biggest corporate parent, it is right for Scottish Government to seek to improve provision. However, the approach, evidenced in this Bill, is to address the limitations and inadequacies of the current system by expanding it, pushing further against Scotland's core approach, and stretching local authority responsibilities and social work resources ever further

SWS agree that legislation is needed to deliver the Promise, but in our view the legislation that is needed is something more consequential than this Bill represents. It is nearly thirty years since the Children (Scotland) 1995 Act came into force, and just as that Act brought the system created in 1968 up to date, a similar re-set is required now. Legislation which brings greater clarity and alignment, rather than the tinkering that make up this Bill. For social work, a key objective of the re-set would be to (re)articulate the principles which underpin the system and specifically to what extent, the "minimum intervention" principle still holds. This foundational principle is set out in the 1995 Act and elsewhere, and states that a public authority should intercede in a child's life only to the level needed to safeguard their welfare and wellbeing. This does not mean that the state provides only the minimum level of support, but rather that the state should not formally intervene in family life unless this is required to keep the child safe and well. Part 1 of this Bill contradicts this principle incentives state intervention with an objective to secure local authority social work support

for as many young people, for as long as possible, rather than to skill and resource universal and partner services to meet increasingly complex levels of need.

A fundamental review and re-set in our legislative framework would allow for the Scottish Parliament to consider, with the public, the expectations of state provision and the role of social work in the 21st century in respect of children and families, including whether GIRFEC and the principle of minimum intervention remain our foundation, and the powers and resources local authorities would need to fulfil those expectations. As a profession and public service, social work is currently caught between competing priorities. On one hand the Promise, and a call to minimum intervention, keeping families together wherever possible, supported by universal services. On the other, rising concern about the levels of risk being held within families and communities, and calls for us to act more quickly and decisively. These priorities are not incompatible. Social Work has managed this tension for decades, but needs legislation which assists us, rather than making the job more difficult. We are worried this Bill does the latter.

It has taken Scottish Government five years to bring forward legislation to help deliver the Promise, and in that time there has been little appetite for discussing or addressing the kind of issues set out above. We know that it is not through a lack of effort on the part of the sector, including the Promise Scotland.<sup>1</sup> Our hope is that the Scottish Parliament, in the scrutiny of this Bill, emphasises to Scottish Government how important it is that such work now begins in earnest, and as soon as possible. A reduction in national policy activity over the next few years is a welcome price to pay for ensuring the foundations of our system are fit for purpose.

### **Specific concerns relating to the Bill**

Social Work Scotland has been public in our support for the Promise, and our commitment to improving the systems which make up our care system, with the consequent improvement in the quality of experience for those in receipt of that care. Our organisation has at its core a remit to support leaders in social work to facilitate and enable good social work practice, thereby improving the lives of those we work with. Alongside this is extensive partnership work across local and national government and agencies to influence policy development to ensure that it translates into practice and the desired changes and improvement. For a workforce whose code<sup>2</sup> is based on human rights, dignity and empowerment, the Promise is a once-in-a-generation opportunity to fulfil the mission social workers came into their jobs to do: to make the lives of children and families better. We are committed wholeheartedly to making the Promise a reality.

Unfortunately, we do not consider that the specific proposals in the Bill will achieve their desired aims. We have set out above our concern about the continued drift away from the foundational principles of the 1995 Act, and GIRFEC. But the Bill also lacks detail around

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<sup>1</sup> The Promise Scotland (2025) Current laws around the care system.  
<https://thepromise.scot/resources/2025/report-current-laws-around-the-care-system.pdf>

<sup>2</sup> <https://www.sssc.uk.com/standards/codes-of-practice/>

key proposals, with significant areas left to secondary legislation and guidance. As with the National Care Service (Scotland) Bill, such an approach asks Parliament and stakeholders to trust Scottish Government with the powers to address an issue in the future, in a manner – and at a cost - as yet not determined. The award of such powers to Ministers should be on the basis of Parliament's scrutiny of detailed plans (and financial memoranda), and not promises of further exploration and potential, unspecified action. We note that even where Ministers hold these powers for action, those actions are not always progressed, with the Children (Scotland) Act 2020 a recent example.

The Bill also adds to the general 'clutter' of the legislative landscape - something the Promise noted as a problem. With the Children (Care and Justice) (Scotland) Act 2024 and the Children (Care, Care Experience and Services Planning) Scotland Bill, we add two more pieces of legislation to the 44 pieces of primary legislation, 19 pieces of secondary legislation and 3 international conventions originally identified by the Care Review<sup>3</sup>. As we have noted above, the Children (Scotland) Act 1995 provides an example of how major, system-changing legislation can be successfully developed and implemented: a period of review, clear and comprehensive consideration alongside partners of changes which would improve provision, followed by a single set of legislation and guidance which was clear, easy to follow, and available 12 months in advance to facilitate agencies' readiness – including funding, processes, and training.

In our answers to the specific questions asked by Committee's we underline the importance of sequencing the implementation of new legislation. This is critical to ensure that the policy intent of proposed changes is able to be realised. Legislation and policy is translated into reality by human beings who may simultaneously be having to implementing other new duties or policy initiatives. The size of the social work workforce has remained largely static for the past decade<sup>4</sup>, despite a steady increase in the number of duties for which they are responsible. Where changes to systems are planned it must be done so with an eye to what else is going on, impacting on the children's social work sector and wider profession. The importance of careful consideration of what is required to achieve the Promise, including the necessary time, has been highlighted in previous responses to the Committee<sup>5</sup>. Relevant to this point is current activity to implement the remaining aspects of the Children's (Care and Justice) Scotland) Act 2024, work to take forward the non-legislative aspects of redesigning the Children's Hearing System<sup>6</sup> and the Reimagining Secure Care<sup>7</sup> work. These

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<sup>3</sup> <https://www.gov.scot/publications/keeping-promise-implementation-plan/pages/8>

<sup>4</sup> Scottish Social Services Council (2025) Social worker filled posts and vacancies six-monthly survey at December 2024; <https://data.sssc.uk.com/data-publications/409-social-worker-filled-posts-and-vacancies-december-2024>

<sup>5</sup> <https://socialworkscotland.org/consultations/response-to-future-of-foster-care-consultation/>  
<https://socialworkscotland.org/consultations/response-to-developing-a-universal-definition-of-care-experience-consultation/>  
<https://socialworkscotland.org/consultations/response-to-childrens-hearings-redesign-policy-proposals-consultation/>

<sup>6</sup> <https://www.gov.scot/groups/childrens-hearings-redesign-board/>

<sup>7</sup> <https://www.cycj.org.uk/wp-content/uploads/2024/09/Reimagining-Secure-Care-Final-Report.pdf>  
<https://www.gov.scot/publications/scottish-government-response-reimagining-secure-care-report/>

pieces of work are equally important to realising the Promise<sup>8</sup>, and to the development of a more trauma informed approach<sup>9</sup> to children's care.

Social Work Scotland is supportive of improvements in these areas but underline that policy and system change is a demand on the workforce. Change requires planning, investment, time and people, all of which are immensely challenging to find in a sector and workforce that is depleted and struggling<sup>10</sup>. The sector is having to respond, prepare and deliver an unprecedented level and pace of change, while continuing to provide services to children and families. Few organisations or systems could absorb this level of transformational change without it impacting on service delivery. With reference to this Bill, SWS is of the view that pushing such changes through 'at pace', to meet a primarily political timescale, will undermine our ability to deliver on the policy intent, and impact negatively on children and families.

### **Current context for local authority social work services**

The centrality of the workforce is reflected in the Promise pillars<sup>11</sup>. This Bill comes to Parliament in a context where social work services are facing challenges not seen since the establishment of our current framework of local area based social work provision, in the 1970's. We have previously profiled to the Committee the staffing shortages and retention problems in social work, the issues with recruitment of foster carers, access to secure placements and alternatives, increased demand for support as a result of greater levels and complexity of need. Our workforce is also still adjusting processes and practice to the world which has emerged following the Covid 19 pandemic<sup>12</sup>, and the ongoing, cumulative financial pressures. Underfunding, and the current short-term, highly specified approach to funding exacerbates stresses in the sector, including undermining the essential partnership between public and voluntary sectors. Recent years have also seen a steadily growing implementation gap between national policy ambition, levels of investment, and local capacity to deliver, all of which represents cumulative pressures on staff, and our childcare and wider systems. These are documented reasons why children and families social workers are despairing<sup>13</sup>, and choosing to move to other areas of social work or out of the profession entirely.

The international context adds to this picture. While Scotland must continue to welcome anyone requiring sanctuary, we must also acknowledge the systems pressures resulting from the numbers of unaccompanied asylum-seeking children and other international developments. Our care population has fundamentally changed since the Promise launched in 2020, and some local areas estimate that almost a third of children in their care

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<sup>8</sup> <https://thepromise.scot/>

<sup>9</sup> <https://www.gov.scot/publications/psychological-trauma-and-adversity/pages/social-work-services/>

<sup>10</sup> <https://data.sssc.uk.com/data-publications/409-social-worker-filled-posts-and-vacancies-december-2024>

<sup>11</sup> <https://www.plan2430.scot/>

<sup>12</sup> <https://socialworkscotland.org/wp-content/uploads/2025/01/CV-19-Inquiry-Scot-SWS-response-to-narrative-questions-Nov-2023-FINAL.pdf>

<sup>13</sup> CELCIS (2024) Children's Services Reform Research: Concluding Report

<https://www.celcis.org/knowledge-bank/search-bank/childrens-services-reform-research-concluding-report>

are now unaccompanied asylum-seeking children. Many of these young people have experienced specific trauma, and the support provided must also be culturally and linguistically competent. The demands of adjusting our systems to meet the needs of these children are considerable – and being undertaken in a context where the total number of children and families social workers has decreased over the past five years, from 2,536 to 2,478.<sup>14</sup>

SWS very much welcome the steps Scottish Government is taking to establish the National Social Work Agency, and its participation alongside ourselves and COSLA in the Scottish Social Work Partnership. The focus of both the new Agency and Partnership is on stabilising and then rebuilding the social work workforce, understanding that the care system is in essence the people who work in it. The pathway to successful realisation of the Promise is through the workforce, and the Agency and Partnership will hopefully ensure that national and local activity is focused on that priority. Indeed, if the National Social Work Agency was in place now, bringing oversight to the Scottish Government's social work policy agenda, we wonder if this Bill would currently be before Parliament.

### **Concluding remarks**

Delivering the Promise continues to enjoy cross-party support in Parliament, and we therefore question the need to rush this Bill through, as the limited time before dissolution of parliament and the 2026 election suggests might happen. As recent developments around secure care following commencement of the Children (Care and Justice) Act 2024 have illustrated, any change to our highly interconnected and interdependent care system needs to be carefully worked through, risk assessed and properly costed. While some specific parts of this Bill are welcome, if Scottish Government is committed to the foundational aims of the Promise, including simplifying the legislative landscape, the threshold for new duties and legislation should be very high. We believe that all reforms should be assessed against a test of whether, from the perspective of those working with children and families, this reform makes it *easier or harder to realise the Promise*? Scotland's children and families social work leadership have not yet been asked this question in relation to this Bill.

Given all the issues and concerns outlined above, Social Work Scotland encourages the Committee to interrogate whether all parts of this Bill must be progressed now. A strong case may be made for progression of the reforms to Children's Hearings, but in other areas, where the legislative prescription is poorly conceived, or where detail is absent, a pause may help facilitate better policy making, involving the people who will be responsible for translating the law into reality, thus better meeting the needs of those we exist to support. SWS and other partners are eager to work with Scottish Government to define the issues, identify options and their costs, and assess their viability and chances of success with particular reference to the realities of the current context, and the many interdependencies

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<sup>14</sup> Scottish Social Services Council (2025) Social worker filled posts and vacancies six-monthly survey at December 2024; <https://data.sssc.uk.com/data-publications/409-social-worker-filled-posts-and-vacancies-december-2024>

which exist in the children's care system. The world has changed significantly since 2020, and the steps we take today to realise the Promise needs to reflect those changes.

Streamlining the Bill will also give Parliament and stakeholders opportunity to give more detailed scrutiny to the remaining parts, increasing the chances of the final law being balanced, robust and implementable. A streamlined Bill would also help with the sequencing of the many changes already underway and go some way to upholding the call by the Promise call for a simpler policy and legislative landscape - a smaller, tighter Bill may result in a both a better Act, and more sustainable improvement on the ground.

Ultimately, however good the words or intentions in a Bill or Act may be, without the resources and in this case specifically the workforce required to implement them, they will not deliver change. Instead, such legislation risks placing further pressure and stress on an already stretched workforce, undermining their ability to deliver today's services, let alone innovate towards tomorrows. That means further delay in the transformation of services which the children and families of Scotland have been promised.



## Questions

### Part 1 Chapter 1

#### What are your views on the aftercare provisions set out in the Bill?

SWS members support the *principle* of young people with experience of the care system being able to access appropriate support in early adulthood. There are however significant concerns about the practicalities, equity and legality of the proposals contained within the Bill, and whether the proposed extension of aftercare duties will increase rather than decreases the existing stigma related to the term 'care experience'.

Issues and points raised are:

- Concerns about what evidence will be required to demonstrate that an individual has care experience, and how will they know where to get this. This is especially important given the amount of movement around the country, particularly for those who may have been in care when they were very young. Our recent experience supporting individuals to access records, in order for example to apply to the Historical Abuse Redress scheme, also suggests that such 'evidence gathering' activity is a considerable administrative and social work task, with commensurate costs. The administrative aspects are predictable, but less so are the planning and support which must be built around every case, as sensitive information may be disclosed. Such complexities highlight the importance of thinking through clearly the practicalities of translating this policy into a workable system.
- A concern that we are creating a system where we incentivise being in care in order to access additional support as young adults. This fundamentally conflicts with the Scottish policy and legislative foundations of minimum intervention/no order principles<sup>15</sup> and GIRFEC<sup>16</sup>. Members also note that local authority social work services are working with many young people without recourse to formal measures, and these young people have needs as great as many who are or have been in care. The introduction of these eligibility criteria for accessing aftercare would create a two-tier system, where some young people (with equivalent or greater levels of need) are excluded. Members describe such a two-tier approach as 'feeling wrong', particularly as many looked after children return to their families in young adulthood. While social work is able, on a discretionary basis, to support young people who have not been in care, the reality of how legislation is (under) funded means that an increasing proportion of local authority resources will go towards the statutorily "eligible" children, at the expense of others.

<sup>15</sup> The "no order principle" dictates that a court or [children's hearing](#) should only make an order regarding a child if it is deemed better for the child's welfare than making no order at all. This principle, found in the [Children \(Scotland\) Act 1995](#), aims to minimise intervention and avoid unnecessary legal proceedings. The principle is intrinsically linked to the welfare of the child, which is the primary consideration in all decisions related to children in Scotland

<sup>16</sup> <https://www.gov.scot/policies/girfec/>



- Any need could be defined as an after-care need, but members note that most needs will not be within the gift of the social work/aftercare teams to meet e.g. housing, benefits, mental health challenges. Members query what the definition of 'aftercare need' might be, and whether many needs would be best met by other services. To properly address the challenges faced by young people transitioning to adult, the priority should be improving referral and access routes for this population into other services e.g. NHS, and upskilling the workforce of other corporate parents to allow them to better identify and address needs.
- SWS is very concerned about any extension of the definition of 'care leaver' to encompass the broader idea of 'formerly looked after', and the inclusion as part of this of young people who have never been formerly "looked after" e.g. many of those subject to Kinship Care Orders. To intervene in the lives of a child or family is a serious step, and one which local authority social workers do not take lightly. Where that intervention involves removal of a child from their family home, this is a major interference in the parental rights which are a foundation of our family law. Any policy which changes the incentives around state intervention in a child's or families' life, whether intentionally or not, must be tested rigorously, to ensure the benefits outweigh potential risks.
- Including all those who have been subject to a Section 11 Kinship Care Order<sup>17</sup> (KCO) requires further careful consideration in the light of the above point – many children subject to a KCO may never have had contact with the state care system. This is explored further in the question relating to definition of care experience. SWS is of the view that there may be a fundamental human rights issue at play here, which runs counter to the wider policy direction of family and community empowerment, rights, and early intervention.
- Extension of the right to aftercare or assessment for aftercare to anyone who has been in care, and to many who have not, is a huge group. Access to aftercare assessment, and the resultant aftercare services for the extended group, will be difficult to resource, there being no real data available around the potential numbers - especially those who were looked after when they were very young. The Scottish Government priority around whole family support and lifespan provision would further support consideration of both provision of support and funding in this area, connecting adult and children's focused policy.
- There is general concern that provision for various groups is being 'siloe'd' and we are creating one approach for children living at home in their families, and a different one for those in care and those who have left care. While efforts to extend

<sup>17</sup> Section 11 of the [Children \(Scotland\) Act 1995](#) allows kinship carers to apply for a Kinship Care Order, which can formalise their care arrangement for a child who cannot live with their parents. This order can transfer some or all parental rights and responsibilities to the kinship carer and outlines the conditions of the child's residence.

support to care experienced people are both necessary and desirable, the further development of a two-tier system for children and families feels messy, inequitable, and fundamentally against the principles of our frameworks for care in Scotland – GIRFEC and the Promise.

- Members additionally query if we are judging and limiting our young people by giving an (inaccurate) message that because of experiences which led to time in care, they are care experienced and ‘harmed for the rest of their lives’. Some members suggest this has connotations of excessive state interference in family life. .
- Without taking away from the need and appropriateness of post adoption support, the message these provisions give to adoptive families also seems confused and problematic. Essentially, the law would say that we will empower, trust and support you to be a family up until the child is 18 years of age, but after that the child can come back into parameters of the social work system for support. We do not doubt that there are many adopted children and families who would welcome more support. We question whether these proposals are the right way to provide it, and whether they are consistent with other messaging.

Fundamentally, while keen to see all young people able to access the support they need to thrive, our membership question whether extending the right to assessment for aftercare is the right way of achieving this . It could increase the stigma still linked to the term and push young people into declaring their care experience, or seeking to have their experience defined as care experience, in order to access the support they need. This is particularly the case when mental health and housing services, primary areas where care leavers often require support, are in crisis. These proposals risk making “care experience” into a passport to (potentially) access services not available to other young people.

SWS would advocate wider consideration of the aim of the policy and how support in adulthood might be available, including upskilling universal and targeted adult services to better understand the impact of trauma in childhood on young adults, and the experiences which may result in a child becoming looked after. While more complex to achieve than extending eligibility for assessment, this would result in a more informed adult workforce which also benefits a wider proportion of the population and enable the needs of care leavers to be met without stigma. It would also be beneficial in meeting some of the wider government aims such as tackling poverty, and whole family support.

Additionally, SWS is seriously concerned that much detail is left to secondary legislation , thus minimising scrutiny, and opportunities to explore any unintended consequences. Should the proposals progress, there will be a need for the guidance around all of the above to be particularly clear and to involve in design and development those who will be applying the guidance, to ensure its usefulness and application in practice.

SWS will respond to the financial memorandum but note here that:

- There is no provision made for delivery of ‘advice, guidance and assistance’ services which may result from the assessment for need for aftercare provision. This is primarily in the form of social worker or other social work staff time. From our member’s experience, this is often the most important aspect of the support we can provide young people; a relationship, and human source of support and guidance and a role which is even more important if the financial support for young people is increased. The day-to-day realities of delivering “aftercare” are often extremely practical and relationships based - assistance in opening up a bank account or joining a young person in making decisions about how to furnish their accommodation. There is almost no recognition of this and the humans who provide the service in the financial memorandum.
- The figures used to determine the costs of an assessment have been lifted from material provided to Scottish Government by SWS and COSLA for the Children’s (Care and Justice) (Scotland) Act 2024 in relation to children’s hearings. Assessment for aftercare involves different processes and these figures do not transfer. They are also now two years out of date and currently being updated as part of work to implement the remainder of the Children’s (Care and Justice) (Scotland) Act 2024.
- The £4,000 quoted as housing “set up” costs is considered to be inadequate, and largely irrelevant at a time of a national housing emergency. The primary pressure facing local authorities and young people is access to housing, not the ability to furnish them.

## What are your views on the corporate parenting provisions set out in the Bill

The Bill sets out extended corporate parenting duties in relation to a range of groups. This includes duties to children who have periods of time in care or are looked after at home, for the rest of their childhood and through the aftercare period, regardless of whether state intervention continued or they were adopted, or subject to other non-state care permanence options – including a return home to their parents.

SWS has serious concerns about the corporate parenting provisions in the Bill, including a potential rights issue.

Members appreciate and align with the desire to ensure that children and young people in Scotland receive the right support at the right time, and SWS is committed to this underpinning principle of GIRFEC. This is also reflected in the minimum intervention principle which shapes social work systems and practice.

The suggestion that children, for whom there is no need for state intervention, be subject to corporate parenting duties by a range of agencies, is in our view in contradiction to these legislative principles. It may also infringe on parental rights if the state has a say in a child's care and life, even though children and their parents are no longer involved with the care system and are assessed as no longer requiring this level of support. Examples include:

- A child adopted as an infant. While the support needs of adopted children are well evidenced, and there is much room for improvement in this area, this is already provided for within both GIRFEC and post adoption support duties, neither of which conflict in any way with the parental rights of the adoptive parents.
- A child cared for by the local authority for a short period while a parent with no other family support received medical treatment. That child – and parent – are then subjected to a level of state involvement for the rest of their childhood and early adulthood.
- A child and their family require support and intervention for a period – which could be for a wide range of issues such as substance use, protection or relationship matters – but intervention results in positive changes, and they continue with their lives without the need for any social work or corporate intervention. They are now subject to corporate parenting duties for the remainder of their childhood and young adulthood.

While families may not need any active intervention by the state, this adds up to a level of potential state interference in family life which SWS considers may be a breach of the UNCRC<sup>18</sup>, as well as out Scottish childcare framework of GIRFEC and minimum intervention.

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<sup>18</sup> <https://www.cypcs.org.uk/rights/uncrc/>

This raises for SWS a fundamental concern about a number of the provision within the Bill, which is advocating an interventionist approach to certain Scottish children; those with experience of the care system, and those who, while not having a formal experience of care, live in alternative family arrangements.

While noting this, SWS would underline that seeking to ensure that children have their needs met, including those which may arise after time in care, is a desire that is completely shared. It is the methods and vehicles by which Scottish Government is proposing to do so that is concerning. That this be achieved by extending corporate parenting duties is not a step SWS or our members can support. This particularly relates to the inclusion in the definition of those who have at no point experienced state care i.e. many of those who are subject to a Section 11 Kinship Care Order.

We reiterate our significant concern that the proposals extend the definition of 'looked after' i.e. state care to those who have no experience of state care, and by extension, of 'formerly looked after' to include those who have never been looked after. This tinkering with the definition in the view of our members is a recipe for confusion and conflict. It is an invitation for complaints and disappointment, contributing to a further sapping the public's confidence in public services. It also denies professional's agency, dictating who must be supported, rather than allowing skilled professionals to make judgements on the basis of assessment and evidence. Perhaps most distressingly, the idea that extending corporate parenting duties will make a difference to more young people is yet untethered from evidence. While SWS firmly believe in the value of corporate parenting, and wish to see much greater embodiment of corporate parenting responsibilities across public sector partners, the existence of these duties has not, since 2014, always made a material difference at scale for care experienced people.

This is not to detract from the intent of the proposals, just the means of achieving this. We strongly urge policy maker to consider the core values upon which our state childcare system is built. If, as a country, Scotland wishes to consider adopting a more interventionist approach, then there is a need for a period of careful review, consideration and public discussion, before potentially retracting those fundamental legislative and practice principles.

Our members raised other concerns. These include:

- The financial implications of managing the complexities which would result from a confusing definition of corporate parenting
- The importance of consultation with the wide range of families impacted.
- The workforce implications not only for social work but also other corporate parents, and what this would mean in relation to provision and resources, and for other groups whom they may serve and who could by default receive a lesser level of service.

In summary members consider the proposals well-intentioned but not well thought through.

## What are your views on the advocacy proposals set out in the Bill?

Social work is a profession rooted in advocacy, and much of the work of social work at individual and strategic level is related to ensuring the voice of those we work with is heard and reflected in policy and practice.

We are therefore supportive of advocacy services, and fully agree that it is important children who have experience of care, or have experienced trauma in their childhood, receive the support they need in adulthood, including, where relevant, advocacy. But while supportive of the principles and intent, SWS is concerned about a number of issues linked to this part of the Bill:

- The label of care experience continues to not always be construed positively, despite some progress in public understanding and across public services. To access advocacy individuals will be pushed to declare their care experience, and to frame their support needs in the context of their care experience.
- The complexity of determining if advocacy is needed due to a young person's care experience, or other factors.
- The interface with existing adult advocacy provision, for example Mental Health or Adults with Incapacity and Learning Disability. Given the over-representation of young people with care experience in some of these groups, we wonder if focusing on improving that provision may result in better advocacy provision for all our young people
- It's unclear what the basic financial costs of providing lifelong advocacy is, and it is questionable whether the advocacy staff are there to be employed. Also, if there is a big uptake of advocacy above the current baseline, what will be the related impact on wider areas of social work and social care provision? SWS suggest that a pilot scheme would help us better understand the costs and other implications, and therefore design a better national scheme in time
- It is questionable whether this proposal would actually meet the intent behind the proposals.
- Why consideration of upskilling existing provision has not been scoped or explored.
- Lack of clarity around who might be eligible for advocacy, especially given the definition of care experience is to be developed within secondary legislation
- The links between the possible need and wider factors e.g. the housing and mental health crisis have not been fully explored.

SWS suggest that there is a need for in-depth consideration of what the proposals are trying to achieve and how best to achieve this. The current provisions within the Bill are likely to lead to additional complexities and confusion and will not meet the policy intent. SWS is also concerned that much of the provision will be developed in secondary legislation. If the work suggested by our members is undertaken before any legislation is

progressed, then this will ensure provisions which are achievable and ultimately meet the need and will also enable proper co-development and parliamentary scrutiny.

We advocate exploration of other means of meeting the identified need, including the upskilling of existing advocacy provision and awareness within universal and targeted adult services. Pilots and testing of models would also give us a much more granular understanding of costs, risks, issues and interdependencies.

We appreciate that this is a harder task than what is proposed in the Bil but firmly believe that if undertaken it will result in more effective and achievable plans, which are non-stigmatising, and able to meet the needs identified in the Independent Care Review.

## **What are your views on the proposals in relation to care experience?**

SWS responded to the consultation on definition of care experience<sup>19</sup> In brief, while supportive of a clearer definition members felt it was not necessary to legislate– the simplest approach is to confirm that care experience is what it says - experience of local authority care. There are, however, no strong objections to the definition being in legislation, assuming it is simple, clear, and does not blur boundaries. Many of our members see benefits in having a definition clearly set out.

However, as noted elsewhere in our response, it is the view of SWS that Scottish Government should not seek to extend the definition to include groups where children were not ‘looked after’ e.g. some of those subject to section 11 order.

Becoming ‘looked after, whether on a voluntary or compulsory basis, is a significant intervention in family life, and Scotland has a child care system based on the ‘minimum intervention’ principle, which is well evidenced. SWS members consider that we should not extend the definition of care experience into areas where individuals do not have experience of state care simply to maximise access to certain benefits in adulthood. GIFREC, our foundational and rights based legislative framework, states that children and their families should receive the ‘right support at right time’ based on the minimal intervention principle. This aligns with UNCRC and human rights and getting it right for everyone (GIRFE)<sup>20</sup> should be similar.

SWS is also particularly concerned that the definition will be set out in secondary legislation. Other parts of the Bill suggest Scottish Government favour the sort of broad and all-encompassing definition we advise against, including children who have not been ‘looked after’. Progressing a definition in secondary legislation, or even guidance, would

<sup>19</sup> <https://socialworkscotland.org/consultations/response-to-developing-a-universal-definition-of-care-experience-consultation/>

<sup>20</sup> <https://www.gov.scot/publications/getting-it-right-for-everyone-girfe/pages/girfe-principles/>



deny Parliament the opportunity for proper scrutiny, and leave the definition too open to easy change e.g. in response to pressure from specific groups or interests. Any legal definition, which will be critical to determining eligibility, needs to be set out in primary legislation.

Furthermore, if this definition is set out in secondary legislation or guidance, we are concerned about the risk of it being muddled, and in conflict with other terms the Scottish Government is using to delineate eligibility, such as Care Leaver. Even without a definition of care experience in law, Scottish Government is currently advancing two separate definitions of 'Care Leaver': one in this Bill, and another -the current formulation - for the about to be implemented Care Leave Payment. This is the sort of policy incoherence which makes delivery of services and support on the ground difficult, and which evidences the criticality of the call by the Promise legislative.

## Part 1 Chapter 2

### What are your views on proposals to limit profit for children's residential care services

SWS along with others were involved in the Competition and Marketing Authority (CMA) exploration into profit in childcare and are supportive of the recommendations for further exploration and work which the final report outlined for Scotland.

We are also supportive of the principle of ending profit in care, and aware of the strong views expressed by young people as part of the independent Care Review. We are equally cognisant of the complexities that any move to end profit in residential care is likely to have on provision and ability to meet the increasingly complex needs of the children being cared for.

These complexities include the real potential for loss of capacity at a time when provision for children is stretched – private provision is now a significant aspect of our care environment within Scotland. Recent experiences within secure care illustrate well the implications of capacity challenges and the resultant risks to both local authorities and the children requiring placement.

Members have expressed worries that the legislation is a 'plan to have a plan' and that it would be more effective to undertake this planning and be able to fully consider and mitigate for any unintended consequences before framing anything into legislation. Again, learning from the Children's (Care and Justice) (Scotland) Act is relevant.

Additional comments include:

- A query about why a different approach is being taken to fostering and residential care. While fostering agencies must already be 'not for profit' the CMA report clearly highlighted issues with whether this was in fact the reality. While requiring that fostering agencies register as charities may assist with tracking spend and ensuring that it is reinvested, it is not ideal. However, a similar approach to residential care, if appropriate as a stepping stone to broader change, may be worth considering and would additionally provide sector consistency.
- Profit is only one aspect of the market dysfunctionality around care. Others include matching, notice periods, the level of change and need, and pricing issues. A more coordinated approach to residential care and its role as part of the whole care sector would be valued.
- The risk of a north/south divide, with some agencies deciding to only take children from the rest of the UK.
- That the proposals will not change anything on the ground, in respect of the availability and quality of care for children.

While supportive of the aims, SWS's view is that more time is required to properly consider the environment and to undertake a risk assessment around the potential implications of the proposals, to ensure that there is an evidenced and evaluated approach. If Ministerial powers are needed to implement whatever plan is agreed among stakeholders, Scottish Government can return to parliament with that request. But it may be possible, using existing legislation and structures (such as Scotland Excel) to achieve the same aims. In the interests of subsidiarity, local democracy and professional leadership, all options should be evaluated before we default to giving Ministers unspecified powers to fix a poorly defined problem.

SWS also note recent challenges being faced in Wales, as part of their attempts to progress the no-profit-in-care agenda. This adds weight to the need to take time for proper consideration of the sequenced steps required to reach the desired goal, learning from further research and recent, relevant experiences.

### **What are your views on proposals to require fostering services to be charities?**

SWS members agree in principle that Independent Fostering Agencies should be registered as Charities, though with reference to the CMA report, they are not convinced that this will change the costs of placements - indeed some believe it will lead to increases - nor to the level of surpluses / retained earnings which organisations accrue. and related costs of placements, across sector of any great extent

Concerns were expressed about the importance of a phased introduction to ensure those who are not currently charities are given adequate time to register. This would ensure that there is no disruption to the children who are currently in placement.

### **What are your views on proposals to maintain a register of foster carers?**

SWS members expressed mixed views on a national register with some – those closest to fostering – strongly against the idea and seeing limited benefit. Others could see possible benefits.

Members universally expressed the need for more detail on aspects such as management, oversight, who would hold the register, access to the register, the level of detail held and the added benefits or otherwise which is anticipated. Each of these aspects, and in particular what functionality the register will have, will make a big difference to overall complexity, sensitivity, impact and costs. The options should therefore all be worked through before any final decisions are made, and then the plan agreed by stakeholders brought to Parliament for proper scrutiny (including a detailed financial memorandum).

Potential benefits expressed were around safeguarding, and the register being somewhere for the 'softer' information about carers who have either been de-registered, or who have been assessed by one agency and not taken forward for some reason. However, queries were raised about whether existing processes such as the Disclosure Scotland role, could be enhanced to cover this function.

Concerns, many based on early experiences of other areas such as the adoption register noted are:

- Data protection concerns, and whether carers – and their family members – would need to give permission for their details to be shared, or if this would be required to obtain approval. If the former the register may not achieve this matching goal, if the latter, it could put individuals off proceeding with assessment to become carers.
- Will there be registration fees for utilising the register?
- If the purpose is to provide a picture of fostering across Scotland, then there are other ways of doing this e.g. Care inspectorate collect copious levels of detail about all fostering agencies, little of which at the moment is utilised, or reported on.
- There are worries about the potentially disproportionate time and effort required to keep a register up to date given the daily changes – and related staff and financial costs.
- The potential of a national register to facilitate better matching goes against local drives to keep children local, close to their family and community. This is a commitment in the Promise.
- While the improved safeguarding benefits are acknowledged, members wonder if a 'de-registered carer/not progressed' register may be more effective.
- Whether the register would contain only current carers, or also those being assessed, or deregistered. There are various benefits and disbenefits to either approach, and the costs of any register would differ considerably depending on which option is chosen. This illustrates the importance of Scottish Government working out the details first, then returning to parliament with thought through proposals.
- Greater clarity about what information would be required and the parameters around that information is lacking. Much concern was expressed around the inclusion of information about carer's family members. Members felt this was overly intrusive. On a related area, the position of children adopted or in permanent carer with a carer being included raises other wider privacy issues.

Members raised concerns about an underlying 'sense' that a national register may be a means to monitor what agencies are doing, and who is approved, and that this could impact negatively on recruitment and retention. Real fears were expressed that some carers who already have gone through an intensive assessment will feel overly scrutinised. There have also been suggestions that the register will play a role in 'matching' children with carers; while this might be welcome from the perspective of a

social work team who are struggling to identify suitable carer for a child, consideration is needed of the implications from a macro perspective, and what such a development would mean in terms of keeping children close to family (including siblings),

Members made a plea that those involved in fostering be part of considerations to ensure that any register adds benefit to the current challenging landscape and that it does not become a big issue with minimum benefit, and feed into unhelpful discussions about the status of foster carers e.g. regulated vs. unregulated, employment status, etc. rather than enhancing messages about their value.

Related, the need for more work on the purpose of a register, whether the benefits outweigh any issues, and the best way of achieving the desired outcome be explored with the sector before being progressed in legislation.

## Part 1 Chapter 3

### What are your views on the proposed changes to the Children's Hearing System

Although SWS was not involved in the original *Hearings for Children* work, and were disappointed that other models of provision for children were not explored, we have worked closely with key partners since then, and continue to be significantly involved in the work to re-design the children's hearing system.

In developing our response to the Hearings for Children report, SWS undertook a range of consultation processes with members and wider partners. The biggest issue for social workers was the current culture of the hearing system, which is confrontational and not child centered. Members recounted regularly sending managers to hearings with social workers because of the aggression directed towards them, and how this contributed to social workers leaving children and families to work elsewhere. Core to this was what such a hearing would feel like to the children involved.

SWS is now represented on the Hearings Redesign Board - the strategic group overseeing the changes required - and on the Children's Hearing Planning Group, the 'doing group' taking forward the key practice aspects of the reforms, including changes to culture which SWS members feel has the potential to fundamentally change hearings and enable them to work in a child focused and respectful manner.

The proposals in the Bill focus on the legislative aspects required, but they cannot be distanced from the wider work of hearing redesign. Reflections on the proposed changes are taken from this wider contest.

While SWS is calling for a pause in some aspects of this Bill, it is recognised that legislative changes to facilitate better hearings require earlier attention, and SWS would support such a move.

We have grouped our response but are able to provide more details should this be helpful.

#### **Proposed changes to the role of the Reporter in grounds process, and power to initiate a review of a CSO.**

Members noted their support generally for removing unnecessary meetings, and some flexibility for the Reporter in determining this. The attempt to 'declutter' hearing processes, and avoid unnecessary panels is considered generally helpful, especially where young children are involved, and expanding the options is generally favoured. The scope of the proposed grounds options, however, were less favourably viewed with a sense that put together, they constitute a complex process which is too 'multi-layered'.

Specific comments:

- For younger children and those without capacity, immediate referral to the Sheriff to establish grounds removes unnecessary hearings and should speed up the process.
- The process of meeting with families was viewed positively. However, members considered that the parameters of the meeting, who should be present and how it is recorded were critical. They were not supportive of a Reporter/family meeting without some additional checks.
- The option of a single panel meeting around grounds was considered cumbersome and potentially contributing to delays

Members also noted that there is a need, throughout the proposals, to consider if and how any legal or advocacy representation is appropriate and how this might change meetings. If the new options for consideration of grounds are restricted to steps one and two – grounds going straight to the Sheriff, or a conversation with the Reporter which either leads to acceptance of the grounds or not (or if there is dubiety it then goes direct to the Sheriff for proof) – this complexity would be removed. A two-option change of this nature would be supported by Members, removing the single person panel option.

Members were not in favour of having the single panel option in relation to grounds, noting that this would risk delaying the grounds process further, and could result in confusion around role and remit. No added value was perceived from these options where there has already been discussion with the Reporter. The skill and capacity of a single person panel as also queried.

The role of any relevant person also requires consideration.

On the proposed power for the Reporter to initiate a review hearing, members questioned what this would add beyond current provision for relevant individuals to request a review hearing, and how the power might be used, with some members expressing specific concerns around potential for it to be misused.

Many members noted that hearing ran better and were more child centered prior to the 2011 Act, when Reporters routinely attended hearings ensuring that both process and legislation were followed, and keeping order in the hearing. This also ensured that poor behaviour and inappropriate targeting of individuals was minimised, and the focus remained on the child. A return to this approach would be welcomed.

### **Single person panels/extended role of the chair – grounds, extending an ICSO, pre-panel functions.**

There is general anxiety across SWS members about the proposed single person panels, with members expressing concerns about the ask of panel chairs who would undertake these roles, whether in relation to grounds or wider aspects. While panel chairs are likely to be renumerated, the role is not one which requires specific qualifications or is subject to external scrutiny in the manner of wider professional groups, or other similar



inquisitorial processes. Three person panels provide a level of check and balance which would not be available in a single person panel, which also exposes that individual significantly.

SWS members did, however, distinguish between single person panels and process matters i.e. there is support for 'procedural' decisions being taken by a panel chair. Examples provided included how a panel might be managed in relation to attendance, requiring a child to attend, or decision relating to relevant persons.

### **Remuneration of panel members/specialist panel members**

SWS expressed in our response to the consultation in 2024, our key consideration that those involved in making critical decisions around children who are within the hearing system are suitably experienced, qualified, and supported. This includes imbuing the core principles of respect and consideration essential to an effective tribunal forum. If remuneration assists in achieving this then SWS would be supportive of the move but note that paying an individual does not equate to improvement in the quality of understanding and chairing and in itself will not address the culture which currently permeates the hearing system.

Members can see potential benefits in remuneration attracting those with the right experience and skills but note that given there is no detail around skills, structure, expectations or oversight, therefore whether remuneration might facilitate this is difficult to determine.

With the focus on culture, SWS is also concerned about the introduction of specialist panel members, with an almost universal questioning about what they would add which is not already available to hearings, who can call for specialist report from for example a psychologist and who already have included in the material provided the input of a range of specialist including social workers, educationalist and health professionals. . Additionally, the potential for conflict between specialist panel members and a chair or other panel members has been noted, and the view is that it introduces a status and power dynamic unlikely to be helpful to the fundamental desire to create a more collegiate and respectful culture within the panel system.

Members also note that a criteria for involvement of specialist panel members would be necessary and there is a lack of detail in the Bill about what this might include, who would determine if a specialist panel member was required, how this would be measured and what input if any others would have to the process – including the child, family, relevant persons and others attending a hearing

### **Removal of requirement for a child to attend a hearing**

Members of SWS did not consider this to be a controversial proposal and given that the highest proportion of hearings involve younger children, this approach would be helpful for them.

Members note that there are many methods of gaining a child's views without them actually attending a meeting and that meetings are not an easy context for a child to express views.

However, members equally consider that there are some situations where children should be required to attend and that the regulations should clearly outline those situations e.g. where secure is being considered, or a child has committed an offence.

### **Relevant person proposals**

The ability to remove the right of a relevant person to attend a hearing is positive and members provided examples where an individual has been disruptive in the past, and removing the right to attend would enable a more constructive discussion, or where an individual was no longer relevant to a child's care. They also note that a right to be involved rather than attend would enable someone relevant who is unable to take part constructively or whose presence would cause trauma to another individual to provide views in writing to the panel. There may be potential to explore amending/expanding the 'relevant person' definition to involvement rather than attendance with the Reporter – or should some of the proposals progress, the chair - determining if an individual is invited to attend or not.

Members note that the principal reporter would 'un deem' an individual and noted that the processes around this are important - who refers concerns to the Reporter and who does the assessment for this e.g. social worker, safeguarder, advocate or another?

Anyone whose relevant status is removed should also have the right to appeal, with the potential for this to cause delay.

SWS members also make a plea for a simpler relevant person process e.g. that the person caring for a child – a kinship carer or foster care – is automatically deemed relevant. Carers advise that having to apply to be a relevant person when they have care of a child is devaluing.

### **Changes to terminology**

Members are generally of the view that the changes to terminology are acceptable, proportionate and in keeping with social work values. They note however that it is important that the addition of 'support' does not lead to the inclusion of children in the panel system where this is not required. Hearings should only be for those who require compulsory measures – a small proportion of the population needing care and protection. Definitions of 'advice, guidance treatment and support' is therefore critical.

In common with others, some SWS members still find the term 'treatment' to be out of date, but others acknowledge the compulsory nature of the hearing system and that treatment is at times necessary – and may be more so as the age of referral is extended with implementation of the Children's (Care and Justice) (Scotland) Act 2024. Options for mandating beyond the parameters of the implementing authority to wider corporate

parents, for example health and CAMHS, to provide treatment was viewed by some as worthy of exploration.

### **Extension of the time period for an ICSO**

SWS members are generally supportive of the proposed changes to timescales for Interim Compulsory Supervision Orders but note that this does feel as if we are adjusting our children's system to cope with issues in the justice system. A more child-centered approach would be to have timescales applied to grounds hearings in the court.

### **General:**

Members have reiterated their views that children's hearings are dealing with complexities beyond anything which was envisaged when the system was first developed. They note that the hearing system is traumatic for children, families and social workers, and that we ask a huge amount of volunteer panel members and panel chairs, who are often unable to manage the complexities of trauma, need and challenges they face, including complex legislation. Many SWS members are of the view that a family court-based system would be both easier and more able to be understood by families.

While the fundamental principles of the hearing system – seeing children as first and foremost children, who express trauma in different ways – have stood the test of time doubt is expressed by SWS members on whether our current hearing system still holds to those principles.

Many of the procedural aspects of the Bill's proposals are considered acceptable, but members highlight that the changes do not take account of some of the basic issues with the current system – the many individuals who now attend a hearing, and the consequent loss of the child and their voice in the process, and the adversarial culture of hearings. These features have led to the loss of the application of the foundational principles referenced above. At the core this results in disrespect for those involved, and a culture of distrust which spills into hearings and the treatment of those involved to the detriment of the child and their interest.

Members retain the previously expressed strong view that without a change in this aspect of hearings, any reform will not achieve the desired improvement and welcome the attention as part of the work of the Children's Hearing Reform Group to this area.

The wider challenge for SWS, and indicative of the level of change required, is a struggle by some members to have confidence that the changes will result in the necessary improvement and difference in children's lives. Enhancing the role of the Reporter rather than the panel chair feels to members likely to be most impactful in this area.

## Part 2 Chapter 3

### What are your views on the proposed changes to Children's Services Planning set out in section 22 of the Bill

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

If it is Scottish Ministers' aims to ensure the contribution of adult services towards the Promise is enhanced, and to improve the coordination of child and adult services for children and families, SWS is strongly in agreement. But if these are the aims, we are highly doubtful of the efficacy of the proposed vehicle for achieving it. Reform of Children's Services Planning is at best only going to make a marginal difference to the siloes which exist between child and adult sectors, or to the shift of NHS budgets towards children and families, as part of a broader investment in prevention.

Our members, who live and experience the reality of Children's Services Planning, have almost universally struggled to understand what difference the inclusion of IJB's as core duty holders will make. They note that an IJB does not have responsibility for delivering services and are simply a mechanism for shared planning and organization. The IJB is made up of health board and local authority, and both of those already hold the core statutory planning duties. Children's Services Plans also already go to IJBs for review and approval. Thus, what would the addition of the IJB, a composite of the existing two core planning members, actually make in practice?

Additionally, the logic is considered to be flawed – seeking to provide equity across the three bodies assumes they are equal, which they are not - IJBs exist to facilitate the integration of the health board and the local authority, not as a partner to those bodies. There is indeed an issue with the extent to which IJBs which do not encompass children's services give attention to the needs of children and families, but we would suggest that the solutions to that lie in the regulations governing IJBs, or in guidance issued to IJBs and NHS Boards.

Members are therefore unclear what difference or added value would be achieved by IJB's holding the same statutory duties as the bodies which make up the IJB.

### Are there any other comments you would like to make in relation to this Bill?

SWS and our members universally reiterate our commitment to the Promise and working together to ensure that this is achieved and effectively implemented.

SWS has outlined in our introduction our overarching view and the reasons for this. As an organisation SWS is calling for the Bill to be streamlined, removing parts where the detail of plans is absent, or where provisions are unlikely to deliver the policy intent, or which might create negative unintended consequences. The remaining Bill, including aspects relating to hearing redesign, may then appropriately be progressed. We have come to this conclusion for a number of reasons

- The framework nature of many of the provisions means that much critical detail is left to secondary legislation or guidance. This makes it difficult for our members to evaluate and give a view on proposals. Detail is required in order to know if those proposals will make the required difference to children's lives.
- Much of the Bill is legislating for consideration of what requires to be in legislation. That feels largely opportunistic, filling up space in the Bill and taking up parliamentary time because there is a chance to do so. It does not feel part of a worked through strategy, in which the award of new Ministerial powers has been identified as central to delivery.
- In the development of this Bill, the lack of engagement with the sector in developing what will work in achieving the Promise, and identifying unintended consequences. There is learning in relation to this from the Children's (Care and Justice) (Scotland) Act 2024. Given the cross sector and cross-party support for the Promise, there is commitment to this approach.
- The Bill does not change the system's capacity e.g. people to meet the Promise, and risks adding to the confusing legislative landscape.
- Aspects of the proposals have significant implications and appear to contradict the foundational basis of our Scottish care system, and particularly the minimum intervention principle. Careful consideration of this aspect of legislation is important if the proposals are to continue, and this requires time and full engagement, given the fundamental nature of such a change to our core approach in Scotland – and the wider legal ramifications.
- The financial memorandum is insufficient to enable proper scrutiny of these plans, and to determine whether they represent value for money. In some cases, this is because there is no substantive policy yet to be costed, and in others it is because out of date or inappropriate data has been used to construct costings. We will take this opportunity to note that, while Scottish Government officials ordinarily make an effort to work with SWS and COSLA to construct financial memoranda, in the preparation of this Bill we received no requests for information or invitation to input. The weakness of the current financial memorandum reflects this.

While very supportive of ensuring that adults who have been in care receive the support they need, members are particularly concerned about the tensions this legislation, like others, creates between underlying principles and mandated actions. There are related

concerns about the potential contradictions and rights issues which arise from blurring the boundaries between state care and non-state care in order to maximise support in adulthood. SWS would underline the seriousness of extending corporate parenting duties to those not in the care system, and the rights issues which may arise.

SWS is also concerned about the nature of the Financial Memorandum and will respond to the Call for Views related to this. Within this response, the importance of proper costing of the proposals and related funding is underlined, as is the need for investment rather than re-allocation of funds. This is not reflected in the Financial Memorandum as it is currently.

In summary, the transformation of our care system in Scotland has universal commitment. SWS represents those who hold statutory responsibility for those who need support and care in order to provide both the protection and the conditions necessary to support their wellbeing. This is a sobering task as it involves intervention in the lives and rights of children and families, and one which can only be safely undertaken within a legislative and policy context. Careful and considered attention is therefore required to ensure that legislative change supports the aims of the Promise and is able to be properly implemented, thus improving the lives of children and their families.

SWS is of the view, supported by our membership, that more underlying work is required to frame a Bill which achieves this goal, and are committed to playing our part in that process.

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