



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

Education Committee call for views: SWA response

Part 1

Chapter 1

- 1. What are your views on the aftercare provisions set out in the Bill?**
- 2. What are your views on the corporate parenting provisions set out in the Bill?**
- 3. What are your views on the advocacy proposals set out in the Bill?**
- 4. What are your views on the proposals for guidance in relation to care experience?**

Chapter 2

- 5. What are your views on proposals designed to limit profits for children's residential care services?**
- 6. What are your views on proposals to require fostering services to be charities?**
- 7. What are your views on proposals to maintain a register of foster carers?**

Chapter 3

- 8. What are your views on the proposed changes to the Children's Hearings system?**

Scottish Women's Aid ('SWA') is the lead organisation in Scotland working to end domestic abuse and plays a vital role in campaigning for effective responses to domestic abuse. SWA is the umbrella organisation for local Women's Aid organisations across Scotland, each providing practical and emotional support to women, children, and young people who experience domestic abuse. The services offered by our members include crisis intervention, advocacy, counselling, outreach, follow-on support and temporary refuge accommodation. We also run Scotland's Domestic Abuse and Forced Marriage Helpline, taking over 1000 calls, WhatsApp messages, and texts (24h/365) every month.

In SCRA's 2024/25 statistical analysis, 'close connection with person who has carried out domestic abuse' was the third most common ground assigned by Reporters to children referred.¹ Many more cases are likely to involve domestic abuse than the figures show.

Our October 2024 children's hearings consultation response details our concerns at the dangerous child contact decisions that are routinely made within the children's

¹ [Children referred to the Reporter](#) p 16-17

hearings system.² Child contact is a key site of post-separation abuse.³ The system suffers from an implicit, false assumption that separation equals safety. Perpetrators of domestic abuse frequently use contact processes, including the children's hearings system, to continue to exert control post separation.⁴

In this context, it's shocking that the documentation around the Bill does not focus more closely on domestic abuse. In our children's hearings consultation response, we expressed disappointment at the limited consideration of domestic abuse within the consultation paper; eight months on, domestic abuse is only mentioned once in the policy memorandum for this Bill, and that mention is in reference to Scottish Women's Aid's consultation response. Throughout the redesign of the children's hearings system, domestic abuse must not be seen as an add-on, but the core business of the system.

The appointment and remuneration of Children's Panel members

In our response to the children's hearings redesign consultation in October 2024, we outlined our desire to see a more inclusive children's hearings system, and we said that we would support payment for panel members if this was a mechanism to achieve this.

The policy memorandum for the Bill outlines that specialist panel members would be subject to 'appropriate appointment, qualification and ongoing training criteria'. Our vision is for a system where all panel members receive high-quality training in domestic abuse, supported by a mechanism (i.e. proper implementation infrastructure) to monitor impact on practice. We would not want to see a situation where domestic abuse was designated as the responsibility only of specialist panel members. Due to the large number of cases involving domestic abuse, all panel members must be competent in handling these.

The policy memorandum states that 'The training and recruitment of panel members, including the Chairing Member, remains the domain and responsibility of the independent National Convener.' However, Scottish Government accepted Hearings for Children recommendation 2.4: 'There must be national oversight by the Scottish Government of the resourcing and provision of training in the impact of trauma, childhood development, neurodiversity and children's rights for everyone involved in the children's hearings system.'⁵ The Hearings for Children report clarified that this included domestic abuse. We believe Scottish Government has a role in setting and monitoring standards for panel member training, and we would like to see this set out in the Bill. A starting point for these standards would be that training is gender competent, and delivered and supported by a specialist organisation.

The child's attendance at their hearing

² [SWA-CHS-consultation-response-2024.pdf](#)

³ [Neither justice nor protection: women's experiences of post-separation violence: Journal of Social Welfare and Family Law: Vol 25, No 3](#)

⁴ [The Failure to Recognize Continuing Harm: Post-Separation Domestic Abuse in Child Contact Cases - Kieran Walsh, 2025 ; Section 11 Orders and the "Abuse" Provisions: Family Lawyers' Experience and Understanding of Section 11\(7A\)-\(7E\)](#)

⁵ [hearings-for-children-the-redesign-report.pdf](#) ; [Hearings for Children report: response - gov.scot](#)

We support the proposal to replace the existing obligation for a child to attend with a presumption they will attend. Where hearings are not conducted in a child-friendly or trauma-informed manner, we agree that mandatory attendance could have potentially detrimental impacts on the child's wellbeing, safety and mental health. A robust advocacy offer is essential for ensuring the process is comfortable and safe for children.

Our children's hearings consultation response expressed some reservation at completely removing the obligation to attend. This relates to where the child has committed an offence, or where the child's conduct 'has had, or is likely to have, a serious adverse effect on the health, safety or development of the child or another person' – particularly in relation to the perpetration of GBV. The policy memorandum for the Bill notes that 'there will be some situations where the child must attend, regardless of their preferences. For example, where the grounds of referral relate to the child's conduct which has brought them into conflict with the law, and the consequences for the child may include long-term disclosure of criminal offences, or restriction or deprivation of liberty, the hearing may well consider that the child's attendance is essential to uphold their right to a fair hearing or to assist the hearing in making its decision.'

Preparation and engagement with the Principal Reporter, and The process in relation to establishing grounds

For both sections, we would like to understand what the process would be for engagement with the family if domestic abuse is involved and/or if the grounds relate to domestic abuse. Our children's hearings consultation response outlined that 'In relation to referrals on grounds relating to domestic abuse perpetrated by a parent, and forced marriage, there are clear and obvious safety implications of the Reporter having a conversation with the family as a whole.' We understand the Reporter will have the ability to use professional judgement to decide how best to engage with each family depending on the family's circumstances. There must be strict oversight of this to ensure consistent, and domestic abuse competent, practice. We would want to see high-quality guidance for Reporters on identifying and responding to domestic abuse.

The policy memorandum states that 'A programme of continual practice improvement, commencing with a review of current arrangements and efforts by the Principal Reporter to engage with children and families, is being considered.' We would welcome more clarity on what this would look like.

The participation of relevant persons

As highlighted in the policy memorandum, in our consultation response we stated that we would support the hearing having the power to remove automatic relevant person status, in order to be able to remove this status from domestic abuse perpetrators.

The policy memorandum highlights that some responses expressed concern that 'the removal of automatic relevant persons status could represent a significant infringement on the rights of a parent, and that this should be a measure of last resort, if considered at all'. Our response to this is that domestic abuse is a parenting choice. If we are

looking at parental rights, we must also examine parental responsibility. Perpetrators of domestic abuse creating an atmosphere of fear within a household and impacting children's everyday lives are not fulfilling their parental responsibility.

Paragraph 204 mentions the test for removal of automatic relevant person status. The draft Bill outlines that the hearing must be satisfied:

(a) that a relevant person in relation to the child continuing to be such a person is likely to—

(i) cause serious harm to the child, and

(ii) infringe the child's rights under Article 8 of the European Convention on Human Rights, and

(b) that the relevant person in relation to the child ceasing to be such a person is the only way to avoid or sufficiently minimise such harm and infringement.

We understand that the Bill proposes that the removal of relevant person status can only take place when the relevant person (such as a father) is shown to be causing harm to the child, rather than to another relevant person (such as a mother).

Firstly, we would like to emphasise that the assumption that harm to the child is separate from behaviour harming the mother reflects a fundamental misunderstanding of how our current social arrangements protect and harm children. Robust relationships with a primary caregiver are a vital protective factor in children's lives. What threatens that relationship, threatens the child.

Secondly, responding to the Bill as it is currently drafted, it is essential for professionals and panel members to have a clear understanding of the impacts of domestic abuse on children, and that domestic abuse is not merely an 'adults' issue'. We would like to see, either on the face of the Bill or in accompanying guidance, specific clarification that perpetration of domestic abuse (in all forms, not only physical abuse) causes serious harm to the child and infringes the child's rights.

Paragraph 205 of the policy memorandum states that 'Removal of automatic relevant person status will last for the duration of the child's referral but will not automatically apply to any future referrals.' We would like to understand why removal of relevant person status would not also apply to any future referrals relating to the same child and parent. If the removal will not apply to future referrals, professionals involved in future referrals must be notified that the removal of relevant person status happened for the previous referral, and why. We would also like to understand the process for situations where two siblings might have separate referrals, and relevant person status is removed from a parent for one of the siblings. In situations where relevant person status is removed from a perpetrator of domestic abuse, it is essential that the survivors (adult and child) affected are provided with clear information about how long this removal will apply for.

Information about the availability of children's advocacy services in relation to Children's Hearings

We welcome proposals to provide earlier and more frequent information about availability of advocacy, and the commitment that ‘The advocacy worker must be appointed, if so wished by the child, by the time of the first referral to a hearing’. We would like to see confirmation that, if this does (as we would hope) result in a significant increase in the number of children accessing advocacy, the system will have sufficient resource to be able to meet demand. We are very aware that the advocacy provisions for children within the court system under the Children (Scotland) Act 2020 have not yet been implemented.

We understand that if a child is already being supported by a Women’s Aid worker, they would be able to keep the worker as their advocate in these situations. We would welcome confirmation of this, and clarity in guidance and communications to professionals that this is the case, to ensure it is well understood throughout the system. As we outlined in our children’s hearings consultation response: ‘In PowerUP, PowerDOWN, our joint project with the Children’s Commissioner, child survivors of the child contact system made very clear that the single most important action needed to support their input was a trusted advocate.’

We are aware that the Bill also provides a right to advocacy for children, young people and adults with care experience. It’s positive to see advocacy being considered so widely, but it will be important to ensure that the advocacy provisions under different sections of the Bill (and within other legislation) are streamlined, to ensure the process is as clear and accessible as possible for children. Our children’s hearings consultation response outlined that ‘As far as possible, consistency of professionals working with children should be ensured, to enable building of trusting relationships.’

Part 2

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

Other

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

We would like to add our support to the messages in Together’s briefing on ‘Bringing the Bill within reach of the UNCRC Act’.⁶ By amending sections of the Children (Scotland) Act 1995 rather than introducing stand-alone provisions, key elements of this Bill (sections 1 and 10) will be outside of the scope of the UNCRC Incorporation Act, removing children’s ability to hold duty-bearers to account through the UNCRC Act. We have not commented on these specific elements of the Bill, but are concerned at the precedent that could be set by allowing key parts of legislation to fall out of scope of the UNCRC Act.

Beyond this, we also want to see Scottish Government committing to maximising the potential of the UNCRC Act by considering how to bring all previous Acts into scope.

⁶ [cccesp_uncrc_scope_final.pdf](#)

