

Independent Review of Scotland's Legislative Framework for Children's Care Final Remit (12 months) from 15 February 2025

PURPOSE

To undertake a comprehensive, independent review of Scotland's legislative framework affecting children, young people, families within the children's care system, and to provide Scottish Ministers with clear, evidence-based and practical recommendations, focused on the structure, coherence, and accessibility of the existing legislative framework, that aim to improve outcomes and experiences for children and families, and support those who work with and alongside them.

The review will provide specific recommendations on:

- whether new primary legislation is required to give better effect to existing provisions, and/ or address identified overlaps tensions or contradictions in the current law, clearly setting out the problem being addressed, who is affected, and why change is needed;
- where existing legislation should be amended, consolidated, simplified, restated, modernised or repealed to resolve identified problems and improve practical operation;
- whether the language and structure of the law itself should be modernised so that it can be more readily understood and used by children, families and non-legal professionals, while maintaining legal certainty; and
- what non-legislative action is required alongside, or instead of, legislative change to address practical challenges and improve real-world outcomes.

GUIDING PRINCIPLES

The review will be guided by the principles that: children's rights and wellbeing are central; law should be clear, accessible and proportionate; reform should be grounded in real-world experience; legislative change should be necessary and deliverable; and improvement should support good relationships, professional judgment and sustainable practice.

Any legislative change suggested will be ECHR and UNCRC compliant, and within the legislative competence of the Scottish Parliament.

CONTEXT AND RATIONALE

Scotland's legislative framework affecting children and the care system has developed incrementally over many decades. While this has delivered important protections and duties, it has also resulted in a landscape that is frequently described as complex, fragmented and difficult to navigate, particularly for children, families and frontline professionals.

The review will explicitly build on, and not duplicate, the substantial body of work already undertaken across Scotland, including work by The Promise Scotland, Social Work Scotland, the judiciary, academics, practitioners and people with lived care experience. This existing work provides a strong foundation; the purpose of the review is to translate the evidence and insight gathered from that work into clear conclusions and specific recommendations about what changes to the legislative landscape might be required, why they matter, and who they are intended to benefit.

The review will also take account of:

- the extent to which the legislative framework could be improved to support meaningful participation and understanding by children and families in the processes that affect them;
- the need for clarity about rights, responsibilities and routes to help;
- evidence of tensions, contradictions or misalignment across statutes and policy frameworks; and
- the scope of the protections in the UNCRC (Incorporation) (Scotland) Act 2024 including the section 6 compatibility duty, which makes it unlawful for a public authority to act, or to fail to act, in a way that is incompatible with the UNCRC requirements¹.

LEADERSHIP AND APPROACH

This independent review will be led by Professor Kenneth Norrie, working in partnership with CELCIS.

The review will be analytical, evidence-based and solution-focused. It will not assume that legislative change is always the correct response. It will explicitly identify where legislative change is necessary to resolve problems that cannot be adequately addressed through guidance, practice, or system reform alone.

SCOPE

The starting point for the review will be the key legislative and legal framework governing the children's care system in Scotland, including:

- relevant primary legislation;
- secondary legislation made under those Acts;
- associated statutory and non-statutory guidance; and
- relevant judicial decisions that shape the interpretation and application of the law.

The review may also consider such other material as it considers appropriate, including policy frameworks, inspection findings, academic analysis, professional guidance and evidence from those with lived experience of the care system, where this is necessary to understand how the law operates in practice and to inform its recommendations.

ENGAGEMENT

The review will engage widely and proportionately to inform its analysis and recommendations.

Engagement will reflect commitments already made to ensure that reform of the legislative landscape is informed by those with direct experience of the care system, including:

- children and young people, including those with experience of care;
- families, including parents and carers;

¹ In response to the Supreme Court judgment on the original bill, this duty applies only when a public authority is exercising functions conferred by Acts of the Scottish Parliament (ASP), Scottish Statutory Instruments made under Acts of the Scottish Parliament, or common law powers. Section 6 does not apply when a public authority is exercising functions conferred by an Act of the UK Parliament, even in devolved area and even if the function has been conferred by an amendment to a UK Act that has been made by an ASP.

- those who support children and families, including practitioners across social work, health, education and justice; and
- key partners and stakeholders, including professional bodies, the third sector, advocacy organisations, local government and the judiciary.

The review will build on existing engagement and evidence wherever possible, including work undertaken by The Promise Scotland, Social Work Scotland and CELCIS, to avoid duplication and engagement fatigue.

In considering how best to hear the voices of children and families, the review will take a proportionate and ethical approach, recognising that engagement must be inclusive, trauma-informed and meaningful, and that lived care experience should inform understanding of how the law operates in practice alongside professional and legal expertise.

KEY ISSUES FOR EXAMINATION

1. Gaps, Tensions and Contradictions in the Law

The review will identify and analyse material overlaps tensions, or inconsistencies within and between statutory provisions affecting the care system. For each significant issue identified, the review will clearly describe the nature of the problem, who is affected and how, and why addressing it is important. The review will then set out specific recommendations on how each issue might be addressed.

2. Accessibility of the Legislative Framework

The review will assess the accessibility, intelligibility and navigability of the legislative framework for children, young people and families and those supporting them, including whether the law is structured in a way which enables clear understanding and participation. It will identify areas where legislative complexity, fragmentation and presentation may create barriers to understanding or engagement, with particular attention to practical impact.

3. Language, Structure and Modernisation

The review will consider whether the language, structure and organisation of the current statutory framework reflect contemporary understanding of children's care, relationships and family life. It will examine whether existing approaches, terminology or structural arrangements created unnecessary complexity or undermine clarity, trust or effective implementation and will seek to offers suggestions for modernisation or restructuring where this would be likely to improve coherence and usability.

4. Children's Rights and UNCRC

The review will take full account of the requirements of the UNCRC (Incorporation) (Scotland) 2024 Act and may make specific recommendations about how the existing protections for children's rights in that Act might be applied as widely as possible across the devolved legislative landscape. This could involve making recommendations about which provisions, currently in UK enactments and that relate to the care system, would benefit from being considered for re-enactment in an Act of the Scottish Parliament, to bring them into scope of the protections for children's rights in the UNCRC (Incorporation) (Scotland) Act 2024.

5. Assessment of Outcomes and Practical Impact

The review will assess whether current legislation enables outcomes in the best interests of the child, supports professional judgment and is capable of effective implementation.

SOLUTIONS AND RECOMMENDATIONS

The review will recommend the most effective combination of legislative and non-legislative responses to address the challenges identified. For each major recommendation, the review should explain the problem it seeks to address, who is expected to benefit, and why the proposed approach is the most appropriate response.

The review will highlight key priorities for action, including in respect of any implications for the legislative programme, suggestions for sequencing of activity and opportunities to deliver improvement quickly.

OUTPUTS AND DELIVERABLES

The review will produce:

- an evidence-based analysis of the legislative landscape and its practical effects;
- specific recommendations addressing identified gaps, tensions or contradictions;
- clear recommendations about whether new primary legislation might be required and what it should seek to achieve; and
- a final report for Ministerial and Parliamentary consideration.

INTERIM RECOMMENDATIONS

If, during the course of the review, sufficiently clear evidence emerges on issues where early action may be beneficial, the review may make interim recommendations or share emerging findings with the Scottish Ministers. Any such action would be without prejudice to the final recommendations of the review.

TEST OF SUCCESS

The review will be successful if its recommendations enable the Scottish Ministers to make a fully informed judgment if changes to the children's care system would benefit children, families, and the professionals who support them, and provide a strong basis for decisions that will improve outcomes and experiences for children and families in practice.