



# Children's Hearings Redesign

CONSULTATION RESPONSE

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Submitted to Children's hearings redesign  
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## The Principles of a redesigned children's hearings system

### 1 What principles should underpin a redesigned children's hearings system and why?

Please give us your views:

We support the views of the Hearings for Scotland report that principles should include an 'inquisitorial' approach. Although the consultation paper is clear that the principles of the Kilbrandon report remain relevant to date, an explicit rhetoric of an inquisitorial approach will support further culture change in how we think of, and deal with, children and young people in the children's hearings system. This is especially important as the Children (Care and Justice)(Scotland) Act 2024 continues to be implemented.

Further, we believe that principles such as 'least restrictive option', 'best interest of the child', fairness, dignity, voice, access to universal services, non-judgemental could all be considered relevant principles to underpin the a redesigned children's hearings system.

### 2 What would be the advantages and disadvantages of setting out overarching principles in legislation?

advantages:

Setting out principles in legislation ensures legislation is read with the principles in mind, further enhancing the intended aims of legislation. Although principles are not legally enforce-able, they foster a shared understanding of the approach of the legislation and allow those subject to legislation to understand the intended approach.

It is our view that setting out overarching principles in legislation also signals commitment by the Scottish Government to ensure they are not easily discarded or ignored. Further, setting out principles in legislation allows children, young people and families to reference these when engaging with a redesigned children's hearing system.

disadvantages:

Principles must be clearly thought out and considered by people with lived experience of the children's hearing system to ensure they are fit for purpose and written appropriately to avoid confusion or mis-reading of the principles.

A further disadvantage of including principles in legislation is that they may give families a sense of recourse to justice if they feel principles are not being adhered to, although previous experiences of principles in legislation have highlighted that these are not enforceable. As such, it must be clear that principles are guidance.

## Statutory referral criteria

### 3 What elements of language in the existing referral criteria need to be updated, if any?

'control'

Please provide any other "elements of language" needing to be updated:

### 4 Do you support the proposed referral criteria from the Hearings for Children report?

Yes

Please explain your answer:

We support the proposed referral criteria from the Hearings for Children report. However, we do consider that at times 'treatment', for example for mental health may be required and we are hesitant to support the removal of this. We do support the recommendation to include support and guidance as opposed to 'control' but think removal of 'treatment' needs to be further considered.

### 5 What are the advantages or disadvantages of the proposed draft referral criteria?

advantages:

In our view, the language of the proposed draft referral criteria is more in keeping with the ethos of care and support. As outlined in the consultation document, language matters and can have a profound effect on children and young people. The recent report by CYCJ on 'Re-imagining Secure Care' highlights that prior to their experiences of secure care, many children and young people felt it was a 'punishment'. Changing the language of referral criteria is one change that can assist in creating a less adversarial system.

disadvantages:

As per our previous answer, we consider that removing 'treatment' from the referral criteria requires further consideration.

### 6 Do you have any other comments about potential changes to the referral criteria?

Please give us your views:

No.

7 Do you support the proposal to change the applicable referral test that compulsory supervision 'might be necessary' to it being 'likely to be needed'?

Yes

Please explain your answer:

Compulsory supervision can significantly disrupt the life of a child or young person, and their family, and can include deprivations of liberty. Considering this, it is crucial that this only occurs when absolutely necessary, and for the shortest time possible. Changing the applicable referral test to 'likely to be needed' strengthens the idea that interventions must only be authorised if there is a likely need for them, and not because they 'might be necessary'. This will also prevent the system from becoming overwhelmed, and families from being unnecessarily traumatised, and relationships disrupted.

## Relevant persons

8 What are the advantages and disadvantages of the current definition of "relevant person"?

advantages:

We believe that the current definition of 'relevant person' ensures that parents continue to have a say about the life of their child.

disadvantages:

Currently, the definition of 'relevant person' is not broad enough and may inadvertently preclude the views of individuals who know the child or young person well from having their views heard at the earliest opportunity. The current definition also makes no reference to 'best interest of the child', which should be considered when deeming someone a 'relevant person'. It is also difficult to determine relevant persons for babies and infants, beyond their parents.

9 Should the legislation include a definition of "parent" and if so, what should it be?

No

Please explain your answer:

We believe the word 'parent', especially in the context of children and young people with care experience, can be multi-faceted and complex. For this reason, we believe that 'relevant persons' should be retained instead, with further clarification of a relevant person if this is deemed necessary.

10 Do you have any views on whether it would be appropriate for a hearing to have the power to remove relevant person status from any relevant person in certain circumstances and if so, please explain?

Please give us your views:

We support the proposal that a hearing could have the power to remove relevant persons status from any relevant person if, in doing so, it supports the rights and best interest of the child or young person. This is particularly important when 'drift and delay' occurs on account of a 'relevant person' not being involved in the life of a child or young person, or not able to engage with the system or their responsibilities for the child or young person. We have also considered that in some instances, being a relevant person may cause significant stress and burden on siblings or other family members, to the detriment of their relationship with the child or young person, or at a cost to their rights. For these reasons, we support the proposal.

11 What are the advantages and disadvantages of an earlier process for deeming other people to be relevant persons?

advantages :

An earlier process for deeming other people to be relevant persons will allow people who have significant interest and knowledge of the child to be included and have their views heard at an earlier stage. We believe this also fits the model of whole family support, where community assets and other relationships are considered alongside the child and their immediate family.

disadvantages:

There is a risk that deeming other people to be relevant persons can cause delay to proceedings on account of the additional burden of considering other people. Where other people may be deemed relevant persons this may be contested by parents or others who under current legislation would be considered relevant persons. Despite this, we feel the advantages of this approach outweigh the disadvantages.

12 What changes could be made to legislation to enable more effective gathering of information prior to a hearing and to support proper opportunities to participate for other people in the child's life?

Please give us your views:

Changes to criteria of who is considered a relevant person, including people employed by third sector or other organisations who often have incredible insight into the life of a child, work using a strengths-based approach, and have developed good relationships with the child and their families.

14 What are the advantages and disadvantages of the creation of an additional class of person whose views and participation are essential to the business of the hearing, but do not require the full rights and obligations of a relevant person?

advantages:

Creating an additional class of persons whose views and participation are essential to the business of the hearing ensures that relevant information to the child and their life is considered at all stages of the process. It also means persons who have experience of the child and their family in different contexts and across different stages of their lives.

disadvantages:

Creating an additional class of persons whose views and participation are essential to the business of the hearing may create additional complexity for the administrative functions of the hearing. Criteria for deeming someone a relevant person must be considered to ensure that this additional class of people add value to proceedings rather complexity and unnecessary delay or administrative burden.

## Participation and attendance

15 Do you agree with the recommendation to remove the child's obligation to attend their hearing, to be replaced with a presumption that the child will attend?

Yes

If yes, what limitations would need to be applied to this presumption?:

In our views, limitations need to be applied to this presumption with regards to offence grounds. In these cases, the child should be obligated to attend. In addition, representation of the views of the child must be made to the hearing either through independent advocacy or different means in line with the needs and preferences of the child. Removing the child's obligation to attend must not be a means of reducing the need to make hearings flexible and child-centred.

16 Does the hearing need a power to overrule the child's preference not to attend their hearing in certain circumstances?

Yes

Please explain your answer:

As outlined above, children should still be obliged to attend hearings held in consequence of offence referrals, with the necessary adjustments to avoid infringing on other rights for example the right to education.

17 What steps could be taken to support the child's participation and protect their rights, if they choose not to attend their hearing?

Please give us your views:

Children must have access to independent advocacy to represent their views, if they choose not to attend. Where the child does not want independent advocacy, there must be a clear record of the child's views, including how and when they were obtained.

18 Should a child still be obliged to attend hearings held in consequence of offence referrals, or in consequence of the 2011 Act section 67(m) 'conduct' ground?

Yes

Please explain your answer:

In our view, attending hearings held in consequence of offence grounds is an important aspect of the child's understanding of their offence or 'conduct'.

## Voices of very young children

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

Yes

If so, what should those arrangements be?:

Where the voices and experiences of very young children need to be considered, hearings should have access to relevant evidence-based information about the needs of a child relevant to their development stage. There may be a need to consider the experiences and views of siblings, or 'deemed relevant persons' to support the formulation of voices and experiences of very young children. Hearings must be cognisant of the support available to parents or caregivers of very young children when considering their voices and experiences.

## The offer of advocacy to the child

20 Should the focus and wording of section 122 of the 2011 Act be reformed to reflect an earlier, more agile and flexible approach to the offer of advocacy to the child?

Yes

Please explain your answer:

Many children and families who are referred to the hearing will have mistrust of services, including advocacy services. Reforming legislation to reflect an earlier and more agile approach allows children and families multiple opportunities to learn about, and consider independent advocacy. In our view, it is also important that the offer is made on multiple occasions to enhance the importance of this in the eyes of the child and the family. None withstanding, we believe that the chairing member of a hearing must repeat the information about available advocacy services.

21 How should the rights and the views of children and young people of all ages, including very young children, be better represented in the children's hearings decision making?

Please give us your views:

We believe that a continuous gathering of views from the child, throughout the process, should be maintained to ensure that any changes or deviations from views expressed initially are captured and shared with the hearing. Although advocacy services are offered we know that services are stretched, and advocacy workers often don't have sufficient time to get to know a child or their family. For this reason, additional resourcing is required to ensure children's advocacy provision across Scotland is sufficient, and access is equitable. Where the views of very young children or babies are considered, they must be informed by people who know the family and their circumstances well, and must represent a range of individuals or services to prevent bias.

22 Should there be a statutory obligation to support the sharing of information to advocacy workers, and other people who can help children and families to understand their rights?

Yes

Please explain your answer:

Understanding rights is critical to accessing rights. For this reason, we suggest that anyone who can help children and families understand their rights, including advocacy workers, should have access to information relevant to the hearing. In many instances, relationship-based practice is essential for positive outcomes and enabling sharing of information with relevant persons may support children and families to engage with this information better.

## Amplifying children's voices throughout the process

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

Yes

Please explain your answer:

Capturing children's views and participation preferences must be central to any intervention in their lives. For this reason, we support a statutory process, undertaken by the children's reporter to capture these views. While we believe in the commitment of those working in any part of the children's hearing system, a statutory process would create a standardised process, not dependent on individuals. We also believe that it is important for children to feel that their views are being heard and taken into consideration and a statutory process will strengthen the representation of these views throughout the different stages of the child's journey through the children's hearings system.

## Provision of papers

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

Yes

Please explain your answer :

In our view, the timeframes for the provision of papers in advance of a children's hearings should be standardised across the different reports to ensure children and relevant persons have all the information presented at a hearing at the same time. We also wish to highlight the need for support to understand reports and papers shared ahead of a meeting as these can be difficult to understand, and the emotive nature of the hearing can further exacerbate this. Children and relevant persons must be offered support to understand papers in advance of their hearing to ensure meaningful participation and engagement in the process. The pressures on the workforce have been well document and while we understand that this change could have implications for professionals, we urge the government to consider investing in the workforce to ensure changes do not affect the rights of children and their families when interacting with the children's hearing system.

25 Should the timeframes for the provision of papers to children's panel members as set out in the 2013 Rules of Procedure be altered?

Yes

Please explain your answer :

We support the recommendation by the Hearings for Children report that states in a redesigned system, panel members have plenty of time to review papers, particularly where cases are complex.

### Grounds of referral: concept and language

26 Do you consider the current scheme of stating the grounds of referral sufficiently promotes the understanding of children and families as to why they are in the children's hearings system?

Yes

Please explain your answer:

27 Do you agree that there should be changes to the current approach to grounds of referral?

Yes

Please explain your answer:

Although we feel that the current scheme of stating the grounds of referral sufficiently promotes the understanding of children and families as to why they are in the children's hearing system, we believe that changes to the current grounds of referral would be a positive step in engaging children and families in the process. Rights-based language is especially important for children, as systems and services are moving towards rights-based language. We agree that continuity of language and meaning for children and families and professionals reduces the risk of causing confusion and overwhelming children and families. In addition, we know from our experiences of working with children and families that language matters and using positive language may go some way towards fostering co-operation and positive experiences of the children's hearings system.

28 Do you agree with the proposal to set grounds positively as a range of wellbeing-orientated entitlements, before clarifying how the child's experience or conduct falls short of expectations - to the point that compulsory care is needed?

Not Answered

Please explain your answer:

We support the proposal in principle but the consultation document has outlined potential risks of this approach. Before committing ourselves to the proposal, we would require further information on how grounds can be set as wellbeing-oriented entitlements to avoid unintended consequences of language or concepts that are not fit for purpose.

29 If a new scheme of grounds based on unmet expectations around wellbeing indicators were to be introduced, are any safeguards needed (statutory or operational)?

Yes

Please explain your answer:

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

30 Do you support the introduction of the offer of a post-referral discussion between the children's reporter and the child and family?

Yes

Who else, if anyone, should attend a post-referral discussion?:

In our view, relevant and 'deemed' relevant people may be helpfully included in a post-referral discussion with the children's report, if this is considered to be in the best interest of the child, and support their understanding of the referral. We think an element of judgement should be exercised by the children's report in determining whether to include deemed relevant people.

### Establishing grounds of referral

31 What would be the advantages and disadvantages of passing the fact finding function from sheriffs to a new cohort of legal members within the redesigned children's hearings system?

advantages:

Advantages of passing the fact finding function from sheriffs to a new cohort of legal members has the potential reduce demands on sheriffs. We also see the advantages of minimising the exposure of children and families to the court environment. Legal members may also be seen as less intimidating by families and children and have a different experience of engaging with families, relevant persons and professionals during fact finding.

disadvantages:

We are concerned that the proposal for passing the fact finding function from sheriffs to a new cohort of legal members has not been fully explained in terms of who those legal members might be, and what their roles and responsibilities are. We also note that attending a 'fact finding hearing' operating within the environment of the children's hearings system may not include the necessary safe-guards inherent in these decisions being taken in a court of law.

32 Do you consider that this proposal fulfils the intention of the recommendation from the Hearings for Children report that there should be a consistent specialist sheriff throughout the process?

No

Please explain your answer:

We cannot confidently comment on whether this proposal fulfils the intention of the recommendation from the Hearings for Children report, as the new cohort of legal members was not covered in the report.

33 Do you have any views on the proposed retention of the appeal arrangements within a redesigned children's hearings system?

Yes

Please explain your answer:

Appeal arrangements are an important aspect of ensuring access to justice. For this reason we support the proposed retention of the appeal arrangements within a redesigned children's hearings system.

34 Other than a legal member or sheriff is there another person or body who could:

Please explain your answer:

No. The significance of interim orders on the child and their family must be carried by a sheriff or other legal member to retain safeguards. Interventions in the life of a child or family must be authorised at the highest level to safeguard rights and ensure due process.

35 What would be the advantages and disadvantages to replacing grounds hearings with a fact finding hearing where the process would be undertaken by a single 'legal member'?

advantages:

As outlined in the consultation document, advantages of replacing grounds hearings with a fact finding hearing undertaken by a single 'legal' member would minimise the need for children and families to attend court.

disadvantages:

As per our previous answer, replacing grounds hearings with a fact finding hearing undertaken by a single 'legal' member would risk intervention in the lives of children and families without the safeguards inherent in court and legal proceedings.

36 Is it proportionate and necessary for there to be a fact finding hearing in every case?

No

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

37 In order to safeguard the interests of very young children, should the legal member or sheriff have discretion to convene a fact finding hearing, even if all relevant persons accept the statement of grounds?

Yes

Please explain your answer:

We support the power of the sheriff to convene a fact finding hearing at their discretion, to safeguard the interests of very young children. As per our previous answers, more detail must be provided on who the legal members might be, what their powers and training are, and how they operate in conjunction with a sheriff.

38 Do you have any other views about how the youngest children should be supported in this part of the process to establish grounds of referral?

Please give us your views:

The views of babies and the youngest children can be supported through people in their life who know the family well, as well as siblings and other family members. Where possible, observations about caregivers and their relationship with babies and infants can also be considered as part of the process to establish grounds for referral.

## Statutory time limits in establishing grounds of referral

39 A period of three months has been suggested as a time limit for triggering a review where an application to determine grounds of referral has not been dealt with.

Please give us your views:

We support the proposal for a time limit for triggering a review where an application to determine grounds of referral has not been dealt with. This is to ensure children and families are not kept 'in the system' unnecessarily, and to ensure that information is relevant and up to date. We know that the lives of children and families in contact with the children's hearings system are often complex and their needs evolving. Setting a time limit for triggering a review ensure that this is kept to a minimum.

40 Do you support a defined time period for triggering a review of the progress of the case?

Yes

If you support defining a time period, but not the suggested three months, should another time period be considered? :

We support the suggested three month period for triggering a review.

## Potential involvement of safeguarder in grounds establishment proceedings

41 Do you agree that there should be earlier consideration of the appointment of a safeguarder in a redesigned system?

Yes

Please explain your answer:

We support the proposal to enable earlier involvement of a safeguarder if this is for the benefit of the child or children, and decision-makers.

42 Should the proposed legal member have discretion to appoint a safeguarder to assist them with establishing the grounds of referral?

Yes

Please explain your answer:

If appointing a safeguarder is for the benefit of the child, and the decision to do so is informed and adequately recorded, we support this proposal.

43 Do you support the suggestion that a safeguarder's early appointment to a child (before grounds have been established) should be presumed to end once grounds have been established?

No

Please explain your answer:

Where it has been deemed necessary for a safeguarder to be appointed before grounds have been established, we do not see the rationale for a presumption to end once grounds have been established. Instead, the presumption should be that the safeguarder remains involved, unless it is not deemed necessary by the Sheriff.

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

44 How could a redesigned children's hearings system better protect babies shortly after their birth?

Please give us your views:

45 What can be done to improve interagency pre-birth preparatory work?

Please give us your views:

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

Not Answered

Please explain your answer:

## Children's reporter's ability to call a review hearing

47 Do you think it would be appropriate for the children's reporter to be able to initiate a review hearing before the expiry of the relevant period?



Yes

Please explain your answer:

We believe that three months is a long period of time, especially for children who are subject to compulsory supervision orders. For this reason, and in keeping with a child rights approach and the principle of least restrictive option for the minimum amount of time, we support the proposal that the children's reporter is able to initiate a review hearing before the expiry of the relevant period.

48 Do you think the statutory three month period should be revised so that individuals who are entitled to request a review of a child's compulsory supervision order (CSO) can do so within a shorter time period?

Yes

Please explain your answer:

As per our previous answer, three months is a long time, particularly for children and infants or babies. For this reason, we support the proposal that individuals who are entitled to request a review of a child's compulsory supervision order can do so within a shorter period of time.

49 Do you consider that a child being re-referred to the children's reporter within a certain timeframe should result in that 're-referral' being treated as forming part of the pre-existing referral?

If yes, what is an appropriate timeframe from the original referral for re-referrals to be treated in this way?:

In our view, this depends on the reason for re-referral and whether forming part of the pre-existing referral is in the best interest of the child. We feel that this proposal should be further developed and examined with stakeholders to ensure that children's rights are upheld, while minimising unnecessary burden on the system.

## A redesigned children's panel

50 Do you believe the children's panel element of the children's hearings system should retain the unpaid lay volunteer model in whole or in part?

Yes

51 Would you support some measure of payment for panel members, over and above the current system of expenses, in return for the introduction of new and updated expectations?

Yes

52 Do you have any views on the introduction of new roles into the children's panel?

Paid specialist Panel Member – possibly including care-experience

Please explain your answer:

We support the introduction of paid specialist panel members, especially care-experienced persons, who will bring particular skills and knowledge to the proceedings. Where specialist knowledge would be beneficial to assist the panel in their decision-making this should be provided. We do not support the introduction of a paid chair only, as we are concerned about the potential shift in dynamics inherent in the panel if only the Chair is a paid member.

53 Recognising that payment of panel members/chairing members would represent a significant new national investment in decision making, do you have views on priority resourcing for other parts of the system?

No

Please explain your answer:

54 Each children's hearing currently consists of 3 panel members, with one chairing:

Each children's hearing currently consists of 3 panel members, with one chairing: - Should the number of panel members required for each hearing be reduced?:

No

Each children's hearing currently consists of 3 panel members, with one chairing: - Should all panel members, on completion of appropriate training, still be required to chair hearings?:

No

Each children's hearing currently consists of 3 panel members, with one chairing: - Should some children's panel members be paid for 'specialist' knowledge, while others' involvement remains voluntary? E.g. a specialist panel member may have a particular qualification or expertise in childhood development, ACEs, or be a professional with prior experience of working with children in some other capacity.:

Yes

Each children's hearing currently consists of 3 panel members, with one chairing: - Should care-experienced members be considered 'specialist' given their experiences of the system?:

Yes

### Engagement with the Chairing member before the Children's Hearing

55 Should the chairing member of the hearing meet the referred child, their family or representatives to welcome them to the centre and offer any appropriate explanations and reassurances before the actual children's hearing?

Yes

Please explain your answer:

We understand that attending a children's hearing can be a very anxious and stressful experience for children and families. Being greeted by the chairing member, and welcomed to the centre can go some way towards creating a more positive experience for those attending the hearing. For this reason we support the proposal.

56 If a meeting is held in the hearings centre with the chairing member, would you support this being an informal meeting?

No

Please explain your answer:

In theory, we support the idea of an informal meeting held in the hearings centre with the chairing member but we are aware of the limitations of informal meetings and are concerned that families and children may expect to discuss details of their referral. If informal meetings are to take place, there should be clear, child-friendly guidance on what the visit is about, and what the limitations of the visit are. The chairing member should remind families and children of these limitations and be clear about the need to record anything that falls outwith the parameters of the informal meeting.

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

57 Do you support the proposal that the children's hearing should have a brief period of recess/adjournment before reaching their decision and sharing it with those present?

Yes

58 Do you agree that the majority decision-making approach should be maintained?

Yes

59 Should the children's hearing be asked to reach a unanimous decision during adjournment, in order to minimise repetition and potential retraumatisation?

Yes

60 If a majority decision approach remains, would you agree that any dissenting decision should be noted and explained?

Yes

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

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

Yes

Please explain your answer:

As outlined in the consultation document, introducing more clarity and specificity in SCO decisions assists children to challenge interventions and restrictions that have not been explicitly authorised by a Sheriff or hearing. Restrictions and deprivation of liberty are serious infringements on children's rights and should be clearly articulated and authorised to protect the principles of least restrictive intervention, and ensure access to justice, where necessary.

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

No

Please explain your answer:

In our view, 'maximum authorised intervention' does not sufficiently explain what that might mean in practical terms for the child or their family. Instead, more work needs to be done to consider the types of interventions and restrictions and name them explicitly to ensure there is no unnecessary or disproportionate intervention in the life of a child under the umbrella of 'maximum authorised intervention'. We are also concerned that 'maximum authorised intervention' allows the state and professionals the opportunity to include restrictions which may not have been adequately considered by the hearing.

### Timely notification of children's hearings decisions

63 Is the current time frames for written confirmation of the decision by the children's hearing (5 working days) still appropriate?

Yes

Please explain your answer:

64 Should certain children's decisions (e.g for an ICSSO) have accelerated notification timeframes, relative to the urgency of the decision?

Yes

Please explain your answer:

In line with our previous responses, we view uncertainty in the life of a child as something that should be minimised as much as possible. Accelerated notification timeframes, relative to the urgency of the decision, can mitigate the feelings of uncertainty and ensure that relevant organisations and people can implement support and other measures in a timely fashion. Accelerated notification timeframes may also reduce the burden on children and families to communicate decisions made by the panel, reducing the risk of re-traumatisation.

65 Should consistency or continuity of chairing members be the default position for each child's hearing?

Yes

66 Would you support one single children's panel member's consistent involvement as an alternative approach?

Yes

### Substantive vs procedural decisions

67 Should children's panel members or chairing members, for certain procedural decisions, be able to take decisions without recourse to a full three member children's hearing?

No

Please explain your answer:

While we understand the challenges that panel members and the hearings system face in terms of capacity, it is our view that the full three member children's hearing should remain the default. Procedural decisions taken by the panel can have a significant impact on children and families and should be discussed and made by the full three member children's hearing.

68 Are there other areas you would consider appropriate for a single-member decision making approach?

No

Please explain your answer :

We think there are safeguards inherent in maintaining the full three member children's hearing.

69 Would you propose additional safeguards to accompany these proceedings and decisions?

Yes

Please explain your answer :

If the proposal for panel members or chairing members to be able to take decisions without recourse to a full three member children's hearing be taken forward there must be additional safeguards to accompany these proceedings and decisions. Decisions, and the rationale for making them must be recorded and made available to the full panel ahead of a hearing. The Scottish Government should consider creating guidance for panel members or chairing members regarding procedural decisions and whether certain cases will require the full panel even for procedural decisions.

### The Powers of the Chair during a children's hearing

70 Would it be beneficial for the chairing member to have a robust and clearly stated set of powers to manage how and when people attend and participate in the different phases of a children's hearing?

Yes

71 Are the existing powers of the chairing member and of the hearing sufficient to protect the rights of all involved?

Yes

Please explain your answer:

In our view, existing powers of the chairing member and of the hearing are sufficient. However, we support the introduction of robust and clearly stated set of powers which should be made available to anyone who wishes to understand the role of the chairing members and their powers. Rather than extending powers, continuous training should be developed to ensure chairing members are skilled in their role, cognisant of all the rights of the child, not biased towards professional opinions, and confident in their role.

72 What enhancements could be made to the existing powers of the chairing member and the hearing to promote inquisitorial approaches?

Please give us your views:

As outlined above, we feel that training and guidance can promote inquisitorial approaches.

## Recording of children's hearings

73 In your view, should children's hearings be routinely recorded?

No

If yes - which method of recording should be routinely used? - If yes - which method of recording should be routinely used?:

74 What are the main benefits and risks of this method of recording hearings?

benefits:

Recording hearings ensures all those involved in the process have access to the detail of the hearing. As hearings can be especially emotive, having a record may be useful for children and families to help them understand their experience. Recording of hearings may also be beneficial in the cases of re-referrals. For children and families, a record of the hearing can support them to challenge decisions and interventions.

risks:

Risks include data protection issues, where sensitive information is shared without the consent of those involved. In children's hearings, families will be asked to share deeply personal information about their lives. Where there are challenging relationships, individuals attending the hearing may use sensitive recorded information against family members or professionals.

75 If only the decision element of a children's hearing were to be recorded, would this change your view?

No

## Child friendly summaries of decisions

76 Should there be a statutory requirement for the production of age and stage appropriate summaries of Children's Hearing decisions?

Yes

77 Should the specific needs of other family members, especially other children, be taken into account when decisions and reasons are being prepared and issued?

Yes

Please explain your answer:

The Scottish Government and partners across different sectors are committed to working in a rights-based way and acknowledge the importance of whole family support when considering interventions or supports for individuals within a family. Taking into account the needs of other family members is part of holistic family support/principles of family support? Also respects the right to information.

## Family Group Decision Making (FGDM) and restorative justice

78 Is it appropriate for children's hearings to defer their decision in order for Family Group Decision Making or restorative justice processes to be offered, or to take place?

No

Please explain your answer:

In our view, there is a difference between deferring hearings for Family Group Decision Making and restorative justice processes being offered, or for them to take place. Our view is that these supports should be offered far earlier in the process, and should be undertaken (where possible) prior to a children's hearing being offered. For that reason, we do not think hearings should be delayed due to the offer of these supports. We do, however, recognise that increasingly complex needs of families in the context of continually stretched resources mean that sometimes services and supports can't be accessed in a timely matter. For that reason, we support hearings being deferred for these processes to take place, if this has not been possible by the time a hearing is scheduled.

79 What other ways could consideration of these processes feature in the redesigned hearings system?

Please give us your views:

When establishing grounds, the reporter must give consideration to these processes, or other relevant and appropriate interventions, and established if they have been offered, and that decision recorded. This process could be similar to establishing and recording the offer of independent advocacy. Crucially, families must not be at a disadvantage if they have not had access to processes and supports due to a lack of provision or barriers to accessing them.

### The length of interim orders

80 What are the advantages and disadvantages of increasing the statutory 22 day time limit for the duration of interim compulsory supervision orders (ICSOs)?

advantages:

In our view, advantages of increasing the statutory 22 day time limit must be carefully considered alongside the disadvantages to ensure changes respect and uphold children's rights.

Increasing the statutory 22 day limit for the duration of interim compulsory supervision orders may create greater consistency for children if their circumstances are stable under an interim compulsory supervision order. Reducing changes and disruptions in a child's life, where this is in their best interest, must be considered when deciding the time limit of the order. Similarly, increasing the time limit for the duration of the ICSO could reduce the need for hearings to consider extensions, which may cause children and families additional stress and anxiety.

disadvantages:

There are a number of potential disadvantages to increasing the 22 day time limit:

As discussed earlier in the response, time may be experienced differently by children, especially where they have experienced trauma, insecure attachment, and a lot of disruptions in their life. Extending the time limit may increase uncertainty and cause additional worry for children. We have a real concern that extending time limits may lead to 'drift and delay' as professionals experience less pressure to 'act quickly'.

81 Do you feel that there should be more flexibility in the duration of these interim orders?

Yes

If so, in what circumstances and what maximum duration do you consider appropriate?:

As noted above, where the advantages of increasing the duration of the interim order outweigh the disadvantages, the hearings panel should have the ability to do this. However, a concrete list of checks and balances must be created for panel members to consider the benefits and costs to this decision, which must be clearly documented and evidenced based on the experiences of the child. Children's and families views about the duration of interim compulsory supervision orders must be captured as part of this decision-making process.

82 Could ICSO reviews be undertaken by lone children's panel members? (See section 8.8 of the consultation document)

No

Please explain your answer:

Interim compulsory supervision orders can constitute a deprivation of liberty for the child, and often involve disruptions to routine, and great levels of uncertainty. For this reason, we believe that a full panel should consider, discuss and decide these matters to ensure appropriate safeguarding.

83 Do you support the proposal to create a child's exit plan from the children's hearings system?

Yes

84 What elements should be included in a child's exit plan?

Please give us your views:

In our view, where statutory measures exist, a statutory exit plan should exist to not only signal the end of the intervention, but also to provide consistent clarity for all parties involved of the continued support children and families can expect following statutory intervention.

A child's exit plan should detail the support needs of the child as well as support received to date. This should include health, education, social and emotional development. Detail should be provided on how this support will continue to be provided on a voluntary basis, with clear accountability to ensure children's continued wellbeing and safety. Exit plans should consider the transition children and young people will experience on account of their

move from compulsory measures and should document how children have been prepared for this move, including factors such as community supports, housing, health and education. Children should be supported to understand and feedback on their exit plan so it represents their views and voices. Independent Advocacy should be available for children when discussing and considering the development of their exit plan.

## System redesign overall

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

Please give us your views:

In our view, more work needs to be done to align the various legislative and non-legislative changes currently underway to ensure clarity not only for practitioners, but for children and families who are experiencing these systems and processes.

## Secure accommodation timescales for review

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

Yes

Please explain your answer:

In our view, the most important point is that a review must be carried out whenever the child or relevant person requests one. While this is upheld, we think the current timescales are still appropriate.

## Assessing Impact

87 What, if any, do you see as the data protection related issues that you feel could arise from the proposals set out in this consultation?

Please give us your views:

We have outlined our concerns about this in our response to question 74.

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

Please give us your views:

We would like to use this opportunity to raise concerns about geographical variations and how this affects children's rights. Training, and measures available to panel members to support children and families should be equitable and easily accessible to ensure rights are upheld and principles such as the least restrictive intervention are able to be implemented in practice.

We feel that where children and young people have developed positive and pro-social relationships with adults, including those employed by the third sector, those adults should be included in discussions about the child, and support the child to have their views heard.

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

Please give us your views:

Please see our answer above.

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

Please give us your views:

We support the following recommendations made by the Hearings for Children report:

- There must be a provision that enables the Hearing to make a requirement for the implementing authority to regularly report back to the Hearing on progress.
- There must be a clear understanding at all levels of a redesigned Children's Hearings System about what children and families' rights are and how they should be accessed and upheld. This is particularly important where children's views conflict with those of the panel. There should be a mechanism to assess rights-respecting practice when children's preferences and views are not upheld due to safeguarding.

## About you

What is your name?

Name:  
Lisa Weylandt

Are you responding as an individual or an organisation?

Organisation

What is your organisation?

Organisation:  
includem

Further information about your organisation's response

Please add any additional context:

includem are a Scottish charity that work with children, young people and families to help them transform their lives. We support children, young people and families to make positive life choices and progress towards the type of future they want to live.

To do this, we work with social services, schools and a variety of partners including statutory services to identify which children, young people and families would benefit from our support. We then engage the child or young person and their family or carer to develop a package of support, tailored to their specific needs. Our support is unique to each individual. We don't use a 'one size fits all' approach when it comes to supporting children, young people and families to achieve positive outcomes.

We work with children and young people aged 0 – 26 across Scotland.

We support children who are in need of care or are in conflict with the law and have extensive experience of supporting children and families through the hearings system.

Our response is based on these experiences and developed in partnership with colleagues and those we support. We also have a team dedicated to supporting the implementation of The Promise across Scotland, ensuring care experienced children and young people grow up loved, safe and respected, so they can reach their full potential.

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

Publish response with name

Do you consent to Scottish Government contacting you again in relation to this consultation exercise?

Yes

What is your email address?

Email:  
publicaffairs@includem.co.uk

I confirm that I have read the privacy policy and consent to the data I provide being used as set out in the policy.

I consent



includem  
Unit 6000, Academy Office Park  
Gower Street,  
Glasgow,  
G51 1PR

[publicaffairs@includem.co.uk](mailto:publicaffairs@includem.co.uk)