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# Non-compulsory care for children and young people in Scotland: Learning from experiences of Section 25

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## Summary

This report presents the findings of a 30-month project, funded by the Nuffield Foundation, into how Section 25 of the Children (Scotland) Act 1995 is used, understood, and experienced.

Section 25 of the Act places a duty on local authorities to provide care and support to children and young people away from the parental home where it is necessary for their care and protection, and their parent/s either do not object, or are not present. As with all children who become cared for away from the parental home, children experiencing Section 25 arrangements may live with family or close family friends, foster carers, or in other settings such as children's homes, and are subject to regular social work review meetings. What sets Section 25 arrangements apart from compulsory measures for care and protection, is that they are entered into and monitored without court or court-like processes (such as Children's Hearings) and contain a legal provision for parents to be able to bring their children back to the parental home (Scottish Office, 1995).

Section 25 arrangements are sometimes referred to as 'voluntary care arrangements' or 'voluntary care agreements', and have parallels in other countries in the UK (Section 20 of the Children Act 1989 in England, and Section 76 of the Social Services and Well-Being (Wales) Act 2014 in Wales), as well as further afield (e.g. Republic of Ireland, Finland), which provide for the care of children and young people on a non-compulsory basis.

In Scotland, the annual data published by the Scottish Government shows that use of Section 25 arrangements has approximately doubled over the last 10 years from 12% of legal reasons for children and young people cared for by the local authority away from home in 2012, to 23% in 2022. A 'legal reason' is the term used in annual local and national data reporting as shorthand to refer to the legal status applied when a local authority provides care and protection for children and young people. Despite regular use of Section 25 in Scotland, and research on the use and experiences of non-compulsory measures for care and protection in international jurisdictions, there was little available evidence on the Scottish context. In 2019, the Permanently Progressing study highlighted the fact that Section 25 arrangements were the most common legal status used to support children when they first became cared for away from the family home (Biehal et al., 2019). A small-scale study by the authors of this report in 2020 highlighted the variation in use between three different local authorities, demonstrating differences in the numbers of Section 25 arrangements used and the length of time that they lasted (Anderson et al., 2020).

## Aim

Against this background, we were interested to explore the use of Section 25 arrangements in Scotland, to better understand how they are understood, used, and experienced. We wanted to gain a full understanding of how these arrangements were experienced from the perspectives of children and young people, parents, and practitioners (social workers and solicitors, later expanding to include children's reporters and independent advocates) who were involved in their use.

## Methods

We used a mix of qualitative and quantitative methods, to gain as full an understanding of the use of Section 25 arrangements as possible.

Interviews and focus groups with children and young people, parents, social workers, legal representatives, Children's Reporters and independent advocates were used to gain an in-depth understanding of the views, perspectives, and experiences of these individuals or groups. In total we spoke with 101 individuals, through 22 interviews and 13 focus groups, about their experiences.

In addition, we conducted quantitative analysis of the Looked After Children Scottish Longitudinal Dataset, which contains longitudinal records of the care experiences of all children and young people in Scotland, to examine the use of Section 25 arrangements across the country. We used this data to conduct descriptive analysis across the whole population.

We also conducted a cohort analysis by grouping the children and young people in our data into three cohorts: those who had only experienced a Section 25 arrangement; those who had never experienced a Section 25 arrangement but had experienced compulsory measures; and those who had experienced a Section 25 arrangement and other legal reasons. We then compared these groups' experiences as represented in the data.

## Quantitative findings

We found that the use of Section 25 arrangements was even more frequent than previously understood, because previously published data only looked at the use of Section 25 arrangements for children in care on 31 July each year. Through looking at all legal reasons experienced throughout children's care pathways in the longitudinal dataset, we found that Section 25 arrangements were used as the first legal reason for 71% of children and young people who became cared for away from the parental home in 2021-2022.

We found significant variation in use of Section 25 arrangements between different local authorities. Looking at the most recent five years of data available (from 2017-2022) shows use of Section 25 arrangements as the legal status for children and young people who become cared for away from the parental home ranging from just 29% to 87%, with a national average of 63%.

During this five-year period, a majority (93%) of Section 25 arrangements were used as the first legal reason for a child or young person to become cared for away from the parental home, and most of those who experienced a Section 25 arrangement (67%) did not experience any other legal reasons. We also found that 50% of Section 25 arrangements lasted under six months, while 12% lasted more than three years, with an average duration of just over one year and three months. Section 25 arrangements were also used for all ages of children and young people, and all placement types.

Our cohort analysis highlighted that those who experienced both Section 25 arrangements and other legal reasons spent longer in care, with more periods of time ('episodes') in care and more changes in where they live ('placements'), than those who only experienced a Section 25 arrangement, or who never experienced Section 25 arrangements. We also found that the group who only experienced Section 25 arrangements were more likely to return home to their parents than those who never experienced a Section 25 arrangement, or those who experienced a Section 25 arrangement and other legal reasons.

### Qualitative findings

Through interviews with a young person, parents, social workers, legal representatives, independent advocates, and Children's Reporters, we heard about how Section 25 arrangements were experienced, understood, and used.

In speaking with parents, we heard how they often did not understand the arrangement and could feel that they had no choice but to agree to it. They reported that Section 25 arrangements did not feel 'voluntary' (which they are often known as), or that they didn't feel that they had any significant control or influence in the care planning for their child. Parents reported that they needed greater practical support, particularly in relation to family time with their child, as well as social support to help them resume care of their child, such as mental health, substance misuse, and emotional support.

Throughout our research, consent was repeatedly raised as a significant issue in the use of Section 25 arrangements. The legislation itself does not refer to Section 25 arrangements as 'voluntary', nor does it contain a requirement for parents to consent to Section 25 arrangements. Despite this legal situation, social workers routinely sought and recorded active consent to the Section 25 arrangement. Many social workers told us that they aim to undertake Section 25 arrangements in partnership with parents and therefore try to clearly explain what would happen if parents objected to the arrangement, that is that they would seek compulsory measures. Compulsory measures may be made through Children's Hearings, which are legal meetings in which three lay panel members decide whether a compulsory measure of care and protection (a Compulsory Supervision Order) is required. Compulsory measures may also be granted through court by a sheriff in the form of a Child Protection Order.

During our conversations with social workers about this process, many expressed discomfort with how Section 25 was experienced by parents, with some reflecting that parents may feel coerced into agreeing. Some questioned the appropriateness of asking parents to consent to Section 25 arrangements in what were sometimes crisis, and always emotional, circumstances.

We heard about wide variations in the use of Section 25 arrangements from social workers. Different individuals and teams reported using Section 25 arrangements in seemingly contradictory ways: for example, only in emergency situations vs only in pre-planned situations. Interestingly, they all based their rationales for their use on what they felt best supported families and was in the best interests of the children and young people. We also heard that there was very little training or continuing professional development in the use of Section 25 arrangements for social workers.

In speaking with social workers, we also heard about the reasons for using Section 25 arrangements as opposed to compulsory orders to ensure a child or young person is kept safe. In these conversations we heard about the strong influence of 'external' factors (that is, those which are outside the control of the social worker or family, such as national policy) on decision-making. These external influences pushed social workers towards using Section 25 arrangements, even in some cases where they felt that compulsory measures would be better suited to the situation.

The management of Section 25 arrangements was reported to be the same as for children and young people who were on compulsory orders, with the exception that children and young people living under Section 25 arrangements did not have to attend Children's Hearings. Some social workers felt that this deprived parents of a clear opportunity to share their views, and that Section 25 arrangements lacked oversight from outside social work departments. Others felt that keeping families out of the children's hearings system was less stressful, and better supported partnership working with the family. Some felt that there might not be the same level of urgency to make decisions about permanent care plans for children on being cared for under Section 25 arrangements as children being cared for under compulsory orders.

### Key learning

From the quantitative data, we have found that the use of Section 25 arrangements is even higher than previously thought. In addition, we found that for approximately one third of children and young people cared for under a Section 25 arrangement this is the only legal status they experience before returning to the care of their parent(s). However, we also found that children and young people who experience other legal statuses in combination with Section 25 arrangements appear to spend longer in care, with more periods of time in care, and experience a greater number of different living arrangements

than the children and young people who only experience Section 25 arrangements, or those who experience only compulsory measures.

Although the term 'voluntary' does not appear in the legislation it appears in the accompanying regulations and guidance published by the Scottish Office in 1997. Section 25 arrangements are primarily sought by social work departments, and the parents we spoke to do not experience these as voluntary in this way. From the information shared with us by parents, social workers, and others, it appears that the use of the term 'voluntary' in relation to Section 25 arrangements should be avoided. Our findings indicate that the continued use of this term hinders clear understanding of Section 25 arrangements and is experienced as negative and stigma-inducing by parents by carrying the connotation that they willingly initiate the process.

Variation in use of Section 25 arrangements is significant across Scotland and is at least in part due to a lack of training and guidance in how and when Section 25 arrangements should be used by social workers. Developing a consistent approach to the use of Section 25 arrangements across Scotland will require a national programme of work involving all relevant voices to agree on the role and purpose of Section 25 arrangements.

Social workers experience ethical challenges using Section 25 arrangements. These challenges often involve gaining consent to a Section 25 arrangement when they are unsure if a parent has fully understood the arrangement and its implications. Some social workers also expressed ambivalence in their perceptions of the benefits of Section 25 arrangements over compulsory measures.

The use of Section 25 arrangements clearly has implications for the fulfilment of children and parents' rights. Our findings have highlighted several elements in the use of Section 25 arrangements that warrant further consideration of the impact of these on the rights of children, young people and their families.

### **Suggested next steps**

The variation in practice highlighted in our findings, alongside the experiences of parents and ethical challenges experienced by social workers in their use of Section 25 arrangements indicate a clear need for a new shared vision of when and how Section 25 arrangements should be used. Following a national programme of work to agree this shared vision, guidance and practical support should be developed to promote consistency and good practice across the country. Further, it is important that the voices and experiences of children, young people, and families with experience of Section 25 arrangements are prioritised in these conversations. Alongside this programme of work, resources to support effective practice need to be developed for social workers, such as written materials and training opportunities. Given our findings about the use of the term 'voluntary', and the fact that it is not part of the original law itself, we suggest that the term should henceforth be avoided in discussions of Section 25

arrangements. Finally, but very importantly, resources are needed to support children and families in their understanding of Section 25 arrangements.



## Acknowledgements

We wholeheartedly thank the 101 people who took part in interviews and focus groups for this research, for engaging openly and honestly, and for teaching us about what it's like to make decisions about, or experience, Section 25 arrangements in Scotland.

To the parents and young person who took part in interviews, thank you for trusting us with your stories. Your voices have been central to our thinking about Section 25 arrangements, and we have strived to represent your experiences in this report. Your stories have stayed with us.

To the social workers, Children's Reporters, solicitors, and independent advocates who reflected on your current and past practice, thank you for the dedication you brought to helping us explore understandings of Section 25; your candid, constructive critiques introduced far more depth and nuance on the subject than we could have hoped.

It was an honour to meet and speak with all research participants, and to be trusted with analysing and presenting on your thoughts and experiences. We hope that you see your truth reflected in these pages.

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# Introduction



Section 25 of the Children (Scotland) Act 1995 provides a legal route for local authorities to provide care and protection for a child or young person away from the parental home. In these instances, the parent(s) must either not be present, or must not object to, this arrangement.

Section 25 arrangements are sometimes referred to as 'voluntary care arrangements' or 'voluntary care agreements'. Section 25 is the only non-compulsory measure for local authorities to provide formal care and protection for children and young people away from the parental home. As with all children who become cared for away from the parental home, children experiencing Section 25 arrangements may live with family or close family friends, foster carers, or in other settings such as children's homes, and are subject to regular social work review meetings. What sets Section 25 arrangements apart from compulsory measures for care and protection, is that they are entered into and monitored without social work departments engaging families in courts or court-like processes (such as Children's Hearings), they require that the parent is absent or does not object to the arrangement, and they contain a legal provision for parents to be able to bring their children back to the parental home (Scottish Office, 1995).

Given these differences, we were interested in how Section 25 was used, understood, and experienced in Scotland. Although there was evidence that Section 25 arrangements were often used when children first became cared for away from the parental home (Biehal et al. 2019), alongside a growing body of research surrounding similar legislation for non-compulsory care in other jurisdictions, little was published on Section 25 in Scotland at the time we began this work. We conducted an initial study based on data from three local authorities that found variation in the use, duration, type of placement, and outcomes for children and young people on Section 25 arrangements (Anderson et al., 2020), which led to us conducting this national study.

This mixed-methods research project builds on the initial scoping to understand how Section 25 arrangements are used, understood, and experienced by children, young people, parents, and practitioners throughout Scotland.

### The research questions

Within the context of the legislation, policy, and available literature, summarised below, the aim of this research was to understand five linked themes in the use of Section 25 arrangements:

- the national picture of use in Scotland;
- how issues of parental consent are managed;
- understandings of use and purpose;
- how Section 25 arrangements are managed locally; and
- experiences and outcomes of Section 25 arrangements.

This report answers specific research questions on each theme which go some way to addressing these issues, and shed further light on the use, understandings and experiences of Section 25 arrangements in Scotland.

Between April 2022 and July 2024, we undertook analysis of the Scottish Government's Looked After Children longitudinal data set, and spoke with parents, social workers, solicitors, Children's Reporters, and independent advocates.

Building an understanding of Section 25 informs how it is used with families, which then influences experiences. This report therefore focuses largely on what has been shared by parents and social workers. The input from other practitioners has provided invaluable insight to the broader context of this report and will also inform further outputs including information for social workers in their practice, and information for children, young people, and parents.

### Who is this report for?

Information about the use and experience of Section 25 arrangements is relevant to a wide range of individuals and organisations, and we hope that this report will be of interest to parents and families, as well as frontline practitioners and policy makers.

In particular, we hope that this report will:

- Enable children and families to recognise their experiences in relation to Section 25 arrangements.
- Provide information for children and families about Section 25 arrangements and their rights.
- Provide social workers and social work teams with an overview of practice within Scotland.
- Explore the impacts of Section 25 arrangements on children, families, and social workers.
- Provide policy makers with clear information and priority areas to support their considerations of Section 25 arrangements.
- Identify key areas for further exploration and action in order to ensure that Section 25 arrangements provide the best support for children and families.

## A note on language

It is important to provide a note on some of the language issues that have emerged through this research, and we have also provided a glossary for the terms that are used.

### ‘Voluntary’

In our previous publication on Section 25 arrangements, we used the phrase ‘voluntary care arrangements’ (Anderson et al., 2020). This was based on the existing literature on similar international legislation, and while it did not reflect the wording used in the 1995 Children (Scotland) Act, it reflected the terminology used in the official national regulations and guidance that accompanies the Act and provides the basis for practice, and information on the Scottish Government website (Scottish Government, 2024b). We also understood from conversations with key stakeholders that ‘voluntary care arrangements’ may also be more immediately understood than ‘Section 25 arrangements’ to those with relevant experience, and so the phrase also appeared in our recruitment materials and early research discussions for this new research.

During interviews and focus groups for this research, many of the people we spoke to reflected on the appropriateness or otherwise of the term ‘voluntary’ to describe Section 25 arrangements. Parents did not feel that the term appropriately reflected their experiences, and we have recorded these critical considerations of the term in the research findings which are important to explore given the impact language has on understanding and relationships. Practitioner comfort levels with this short-hand term for these non-compulsory measures also varied.

Finally, Section 25 arrangements are a duty on a local authority based on *non-objection* rather than active agreement. Non-objection is not the same as voluntary. In response to this technical distinction, and despite the international literature referring to similar laws as such, we have not referred to ‘voluntary care arrangements’ in this report and our findings aim to prompt wider reflection on the use of this term. Instead, we have used the term ‘Section 25 arrangement’, except where referenced in quotations. This decision is based on the majority view shared during our research that the term voluntary is at best inaccurate or euphemistic, and at worst, actively misleading and harmful.

### Parents and other adults with PRRs

The legislation covers parents and anyone else with legally recognised parental responsibility and rights (PRRs) towards a particular child. For clarity, this report uses ‘parent’ to include both parents and other adults with PRRs, with the recognition that all adults with PRRs who we spoke to were parents.



## A glossary of terms

We recognise through research evidence and the work of The Independent Care Review that the language of the 'care system' can be stigmatising for care experienced children and adults and can compound a sense of being different, especially when jargon is used or words are used about them, their lives and their experiences that are not used when talking about children, young people or adults who don't have experience of care. Where possible, we have tried to use non-stigmatising language throughout this report. The terms explained here in this glossary are terms we have included in this report only where it has been necessary to refer to the legal, technical or official name used by a third party.

### **Child Protection Order (CPO)**

This is a form of compulsory measure that can be issued immediately by a sheriff to remove a child from risk or keep them in a place of safety. The order authorises, but does not require, the local authority to remove the child to a place of safety or, if they are accommodated away from home, prevent the child from being removed from a place of safety.

### **Child's Plan**

A Child's Plan is what is created to co-ordinate and set out the work and services that will be put in place to meet the needs of a child or young person when a child and their family is being supported by a local authority. The plan should reflect the views of the child or young person, and input from their families.

### **Children's Hearings System**

Scotland has a system called the Children's Hearings System to decide what's best for a child or young person under 18 who needs help. A hearing may be held if there are concerns about their care and protection or if they have come into conflict with the law. Children's hearings are where members of a panel decide if compulsory measures of care and protection are required and if so, a Compulsory Supervision Order (CSO) is made.

### **Children's Reporter**

The Children's Reporter is part of Scotland's Children's Hearings System. Practitioners and members of the public can refer concerns about the care and protection needs of children to the Children's Reporter. The Reporter then considers the referral and must decide whether compulsory measures of supervision for the child's care and protection are required. If they think that compulsory measures of supervision may be required, they will convene a Children's Hearing.

### **Compulsory Supervision Order (CSO)**

This is a form of compulsory measure that is agreed at a Children's Hearing or by a Sheriff when it is determined the local authority needs to provide support to a child or young person, and their family, to care and protect them. The local authority is then responsible for caring for the child, whether at home or away from home.

### **Episodes of care**

An episode of care refers to a continuous period in which a child or young person is formally 'looked after' and can contain multiple placements. A child or young person may experience one or more episodes of care during their childhood when arrangements are made to support them and their family.

### **Foster Care**

Foster care is a family setting of care for a child or young person provided by a foster carer who has been trained, assessed, and approved to provide such care.

### **Family Group Decision Making (FGDM)**

These are meetings co-ordinated to look at the support a child and their family needs and family members, relevant members of their social support networks, and the practitioners are invited. The aim is to generate open discussions on what is best for the child concerned, and to agree on a family plan to provide the appropriate care and protection for their child.

### **Kinship care**

Kinship care is when a child or young person is cared for, whether formally or informally, by a family member or family friend.

### **Legal Reason**

The term 'legal reason' is used in annual Children's Social Work Statistics reporting to refer to the legal status applied when a local authority provides care and protection for children and young people.

### **'Looked After'**

The term 'Looked After' is a formal legal term used in Scotland to refer to the local authority's support for children in need of care and protection where their parents are unable to care for them without that support. Children may be 'looked after' at home or away from home. Children and young people with experience of care have found this term to be stigmatising. This report therefore only uses 'looked after' where this has been used in formal titles, quotes or official documentation, such as data. In all other circumstances, this report uses 'cared for' to emphasise the nurture and love that all children should experience.



### **Minimum intervention**

The Children (Scotland) Act 1995 requires courts and Children's Hearings to protect and promote a child's welfare when considering limitations to a parent's Parental Responsibilities and Rights. The 'no order principle' says that a child's welfare should be the paramount consideration and compulsory measures must not be put into place unless making an order is considered better for the child than not having an order in place. The concept of minimum intervention is also applied to ensure that any compulsory measures put into place are justified and do not go beyond what is necessary to promote and protect the child's welfare. These principles also guide social work practice.

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### **Parental Rights and Responsibilities**

The Children (Scotland) Act 1995 sets out that there are legally recognised parental responsibilities and rights (PRRs) that a parent or another adult will have towards a particular child. These PRRs give them legal duties and responsibilities for that child to enable them to care for and advocate on behalf of the child, including safeguarding the child's welfare and exercising these responsibilities in the best interest of the child.

### **Permanence Order (PO)**

When social workers have undertaken sufficient assessment and it has been decided that a child should not return to their parent's care, they seek a permanence order. A permanence order is a court order requiring the local authority to provide for a child or young person's care and protection away from the parental home. Permanence orders may retain a parent's PRRs yet remove the ability for the parent to decide where their child lives, or remove the parent's PRRs.

### **Placement**

Placement refers to an environment within which a child lives while 'looked after' by their local authority. This could be, for example, living with kinship carers, foster carers or in residential childcare.

### **Section 25 arrangement**

A Section 25 arrangement is an arrangement made between a parent and a local authority (through social workers) for a child to be cared for by the local authority away from the parental home. The child or young person becomes formally 'looked after' and enters into the same processes as children or young people who are subject to compulsory orders.

# Background



In 2022-23, just over 3,000 children and young people became 'looked after' in Scotland, contributing to a total of just over 12,200 children 'looked after' as of 31 July 2023. Of these, approximately 80% were cared for away from the parental home, and 31% of these children and young people were cared for away from the parental home on Section 25 arrangements.

## Legislative and policy context

In Scotland, Section 25 of the Children (Scotland) Act 1995 places a duty on local authorities to provide care and protection for children and young people away from the parental home. This covers children who are "lost or abandoned", who do not have any adults with legally recognised parental responsibilities and rights (PRRs), or where "the person who has been caring for him is prevented, whether or not permanently and for whatever reason, from providing him with suitable accommodation or care" (Children Scotland Act 1995, Section 25 (1a-c)). Additionally, the local authority may provide this care and protection for any other child or young person to "safeguard or promote" welfare (Section 25 (2)).

The legislation sets out that the local authority cannot use Section 25 if anyone with PRRs objects and is willing or able to provide or arrange appropriate care (Section 25 (6)). Although "any adult" with PRRs has the right to remove their children from the Section 25 arrangement at any time (Section 25 (6b)), this right is limited by the requirement to provide 14 days written notice if the child has been cared for under Section 25 for more than six months (Section 25 (7b)). In this report, the term 'parent(s)' will be used to mean anyone with PRRs.

The law also contains two important subsections regarding the influence that children and young people may have on Section 25 decisions. Subsection 5 requires the local authority, before providing care and protection away from the parental home under Section 25 arrangements, to "have regard, so far as practicable" to the views of the child or young person. This requires the local authority to take account of the child's age and maturity for those under the age of 12, with the presumption that children aged 12 and over should be deemed sufficiently capable. The presumption set at the age of 12 reflects the fact that in Scotland, children 12 and older are usually deemed to have decision-making capacity<sup>1</sup>, even if they do not have full rights regarding legal capacity, which are conferred at the age of 16. Section 25 requires that for children under 12, social workers should make considered efforts to explore whether a child is able to understand and share their views on the situation they are experiencing. Children aged 16 years or older can agree for the local authority to provide for their care and protection away from the parental home, without parental involvement (Section 25 (7a)).

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<sup>1</sup> Unfortunately, this also reflects the current age of criminal responsibility in Scotland, which is below the minimum age recommended by the UN Committee on the Rights of the Child (General Comment No. 10, 2007).

Although the term ‘voluntary’ does not appear in the 1995 Act, it appears in the Act’s accompanying regulations and guidance (Scottish Office, 1997) and a Scottish Government website uses the term ‘voluntary agreement’ when referring to Section 25 arrangements (Scottish Government, 2024b). Both terms are also occasionally used in Judgements of Sheriffs (for example, SH Pursuer against CARE VISIONS GROUP LIMITED Defender 2021 Scot (D) 8/5). Use of the term ‘voluntary’ may have reinforced public perceptions that Section 25 arrangements require the active consent of parents. The use of language referring to a lack of objection in the legislation clearly indicates that active consent is not required, however as we will see throughout this report of our research, the issue of consent and parental agreement to Section 25 arrangements frequently arises.

Section 25 does not operate in a vacuum and implementation of the law, particularly in the context of children’s care and protection, is dependent on a range of other considerations, including the policy and guidance issued by national and local government. The minimum intervention principle has a key role in the use of compulsory and non-compulsory measures in child protection and children’s services. This principle appears in the 1995 Act and is explained as requiring “courts and children’s hearings to consider whether the making of an order... is likely to bring about a better outcome for the child than making no order” (McRae, 2016, p. 99). The purpose of the principle is to limit compulsory intervention by the state into the relationship between children and their families unless it is properly justified and supported by an appropriate range of services (McRae 2016: p. 100). Alongside its use by courts and children’s hearings, minimum intervention is also a “guiding principle for professional practice” (McRae, 2016, p. 100).

Getting It Right For Every Child (GIRFEC) is a Scottish Government policy framework, originally developed to reflect a child’s rights under the United Nations Convention on the Rights of the Child (UNCRC), which prompts practitioners to consider eight wellbeing indicators for children and young people: Safe, Healthy, Active, Nurtured, Achieving, Respected, Responsible, and Included (Scottish Government, 2024a). GIRFEC is now enshrined in law through the Children and Young People (Scotland) Act 2014, and the National Practice Model, which provides structure for practitioners working in partnership to undertake shared identification, assessment and analysis of a child’s wellbeing and needs (Scottish Government, 2024c). While GIRFEC is the foundational approach to children’s care and protection within Scotland, it has experienced some implementation challenges, including a legal challenge to the Named Person service regarding some of the information sharing processes. In 2022, the Scottish Government published refreshed policy and practice materials, followed by guidance on the Child’s Plan, the plan agreed to meet the care and protection needs of an individual child when support from a local authority is required, in 2023 (Scottish Government, 2024e).

In 2016, the Scottish Government announced the Independent Care Review to review how the 'care system' functioned. The Review's concluding report was titled *The Promise* and set out the principles (known as foundations) for all children in Scotland to be loved, safe, and respected: voice; family; care; people; and scaffolding (Independent Care Review, 2020). When undertaking our research, it was clear from conversations with social workers that the foundations of *The Promise* have become part of their thinking. Following on from the publication of *The Promise*, the Scottish Government established *The Promise Scotland*, a non-governmental body responsible for overseeing the implementation of *The Promise* for Scotland's children, young people, and families, which has a remit to operate to 2030. *The Promise Scotland* recently published an updated plan, *Plan 24-30*, to monitor and drive efforts to keep *The Promise* by 2030 (*The Promise Scotland*, 2024). The Scottish Government's commitment is also underpinned by its own implementation plan (2022). Finally, the United Nations Convention on the Rights of the Child (UNCRC), including the first and second optional protocols, have been fully incorporated into Scots law, placing a duty on public authorities to act in line with the rights and obligations within the convention (Scottish Government, 2024d).

## Research on non-compulsory arrangements

The state providing for the care of children and young people away from home on a non-compulsory basis, which variously requires parental consent or 'non-objection', is in place throughout many jurisdictions beyond the UK (including the Republic of Ireland, and other European countries such as Finland) and is often referred to as 'voluntary' care. What is common between nations, is that children are moved into the care of someone other than their parent or legal guardian, such as a relative or a foster carer, without the use of a court order or court-like processes, while that parent or guardian retains parental responsibilities and rights (Brennan et al., 2021, p. 2).

Research on Ireland's Voluntary Care Agreements found that they were beneficial for short-term accommodation, allowing parents time to address issues or access support such as addiction services, and where parents and social workers had positive working relationships (O'Mahony, 2020, p. 63). In the final chapter of an edited volume on child welfare removals in nine jurisdictions, editors Burns et al. summarised the issues, raised by respective authors, common across the jurisdictions where non-statutory accommodation of children takes place (2016). Voluntary processes are considered to be less adversarial and bring greater opportunity for partnership with parents, with parents retaining key decision-making rights (Burns et al., 2016, p. 225; O'Mahony et al., 2020, p. 373). These processes may also involve fewer people, and "can support and reduce stress on parents" (Burns et al., 2016, p. 226). However, these arrangements may include some elements of "soft coercion" for parents to consent to the arrangement, as parental refusal may be interpreted as a "lack of commitment to change", and involuntary removal of a child is often



the contingency plan (Burns et al., 2016, p. 226). Crucially, informed consent requires that a parent has the capacity to decide at the time of the arrangement, they consent freely, and they're fully informed of the implications and alternatives of the proposed agreement (O'Mahony et al., 2020, p. 380-381). Overall, however, Burns et al. emphasise that not enough is known about how children and families experience voluntary placements, and the authors highlight additional areas for enquiry, including the pressure felt by parents to agree to such arrangements, and children's insecurities around the placement and its duration (2016, p. 225).

### **International non-compulsory provision for children's care and protection**

The English (Children Act, 1989, Section 20) and Welsh (Social Services and Well-Being (Wales) Act, 2014, Section 76) legislation which provides for non-compulsory care of children and young people are of particular interest due to their similarity to Section 25. The English and Welsh acts apply in the same circumstances as the Scottish Act in regard to when care away from the parental home must not be provided (such as when there is an adult with Parental Responsibilities and Rights who is willing and able to arrange for the child's appropriate care and housing). The technical differences are largely around the mechanisms for caring for a child in a local authority area in which they are not "ordinarily resident" and that only the Scottish law requires written notice to request a child's return to the parental home when that child has been cared for away from the parental home for six months or longer. While the different social contexts and technicalities mean that issues with implementation of S.20 in England and S.76 in Wales cannot be unquestioningly applied to Scotland, the similarity in non-compulsory legal processes and the common referencing by social workers of the case law from England means that the literature and developing case law are useful to guide areas of inquiry and inform analysis.

### **Scottish and English Case Law**

Despite being enacted for nearly three decades, Section 25 has not received substantial consideration within the Scottish Courts system. Cases where it receives passing consideration are in the context of age assessments for unaccompanied minors (See *L vs Angus Council* [2011] CSOH 196; and, *A vs Angus Council* [2012] CSOH 134). The Scottish courts have not made decisions which provide guidance or direction on the use of Section 25, however, there has been significant case law in relation to Section 20 in England. Section 20 has almost identical wording to Section 25 in Scotland and places a duty on local authorities, and does not mention consent nor voluntariness within the text of the law. English case law around Section 20, although not binding on Scottish courts, provides useful insight into how courts across the UK have dealt with questions relating to the use of such care arrangements.

Section 20 came to prominence in the English courts around 2011 – 2016, with cases that first established the circumstances under which children cared for by relatives were formally 'looked after' under Section 20 (*R (SA) v Kent County Council* [2011] EEWCA Civ 1303; *R (on the application of T) v Hertfordshire CC* [2015]), namely where the local authority had requested that the relative take care of the child as opposed to the relative initiating undertaking that care.

There then came a number of successful cases brought by parents who sought damages primarily because the local authority had not gained appropriate consent to the Section 20 arrangement. The most noteworthy of these cases is *Re N (Adoption: Jurisdiction)* [2015] EWCA Civ 1112, [2016] 1 FLR 621, in which Justice Munby asserted that there was "far too much misuse and abuse of Section 20 [which] can no longer be tolerated". This misuse was said to stem from: failing to obtain informed consent in writing; not informing parents of their rights; and for the arrangements continuing for too long (Masson, 2018).

This interpretation and these criticisms of Section 20 persisted until the UK Supreme Court, and Lady Hale in particular, heard the case of *Williams and another v London Borough of Hackney* [2018] UKSC 37. This judgement provided an opportunity for the Supreme Court to clarify the meaning and interpretation of Section 20, as it concerned an instance where the parents were found to have not been appropriately informed of their rights or the legal basis for the agreement, and that this was "compulsion in disguise". The Supreme Court used the opportunity to clarify that Section 20 involved the "delegation" of parental responsibility to the local authority, and that parents were able to do this without an informed understanding of the legislation. Lady Hale clarified that there was no time limit on the use of Section 20 arrangements, and that parents could be asked to give notice for the return of their children. Lady Hale also recognised that where a parent objected to the use of Section 20 but was unable to provide or arrange alternative appropriate care, the local authority had a duty to care for the child. The English cases brought attention to the matter of consent and the lack of informed consent, the duty on local authorities to provide care under Section 20, and the length of time that these arrangements are maintained.

Prompted by the judicial attention around use of Section 20 in England, and in recognition of the lack of statutory guidance at the time for Section 20 and Section 76 in Wales, the Association of Directors of Children's Services (England), Children and Family Court Advisory and Support Service (England), and Association of Directors of Social Services Cymru (Wales) produced practice guidance (Webb et al., 2016). This guidance called for robust reviews of Sections 20 and 76, reinforcing the potential for these arrangements to support positive working relationships between children, parents, and social workers. The practice issues covered in the guidance mirror many of the issues discussed by the range of practitioners with whom we spoke for our research into the use of Section 25 in Scotland:



- Review all children's experiences for "drift" (delayed decision-making) and undertake active permanence planning once a return to the parental home is ruled out (p. 5).
- Sections 20 and 76 are "not usually appropriate" for accommodating an infant at birth for child protection reasons unless child protection is only needed short-term and there are no concerns around the parent with PRRs "who can be supported to achieve the degree of protection for the child needed on the basis of a clear safety plan" (p. 2).
- "Positive" uses of the arrangements include: when parents are unable to provide care for short periods; unaccompanied refugee and migrant children (henceforth referred to as separated children<sup>2</sup>); where parents have consistently expressed their intention to and consent for placing their children for adoption; in cases of relationship breakdown in order to support relationship repair (p. 3).
- Best practice requires local authorities to provide the support needed to enable parents to "resume safe care of their child/ren as soon as possible", and to promote effective family time between children and parents "even though it is not a duty" under the legislation (p. 4).

The guidance also addresses the importance of ensuring that parents have "sufficient capacity" to understand the proposed arrangements, noting that consent must be truly informed ("never 'compulsion in disguise'") and care should be taken where a parent has a learning disability or "communication difficulties", and language interpreters should be engaged where parents are identified as not having a sufficient understanding of English (p. 5).

In 2019, the President's Public Law Working Group was established by the President of the Family Division of the Courts and Tribunals in England to investigate the rise in public law cases coming to the Family Court in England and to offer recommendations for improving the system's ability to address the needs of the children and families. In 2021, the Public Law Working Group published Best Practice Guidance: Section 20/Section 76 accommodation. This guidance reiterated that Section 20 and Section 76 arrangements can be positive when used appropriately and covered many of the same themes as those raised in Webb et al. (2016):

- When used appropriately, Section 20/Section 76 can be positive, and a way to avoid court proceedings; the context and purpose of the arrangement must be identified;
- Appropriate use of Section 20 and Section 76 should see a move away from the legal lack of objection to encourage consent as a "positive act" (p. 7).

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<sup>2</sup> Separated children is the term used by Refugee Council UK. This term highlights the ongoing separation the children experience from parents and other family.  
<https://www.refugeecouncil.org.uk/information/refugee-asylum-facts/separated-children-facts/>

- Collaboration and partnership with parents and families is an essential part of the arrangement. The purpose and duration of the accommodation should be agreed in advance, where possible.
- Social workers should “locate and consult” with every person with responsibility, as far as possible (p. 7).
- Social workers should “ensure that the voice of the child is clearly recorded and stated” (p. 14).
- Separation of a newborn or young baby from parents under Section 20/Section 76 is only rarely appropriate (p. 15).
- It should be ensured that parents have the capacity to consent; consent can change and should be reviewed if needed. Ensure individuals have the relevant information in a form and language they understand. Social workers should take special care with mothers who are close to giving birth or who have recently given birth (p. 15).
- It is good practice to record the agreement in writing, with key information around parental rights in the document (p. 17).

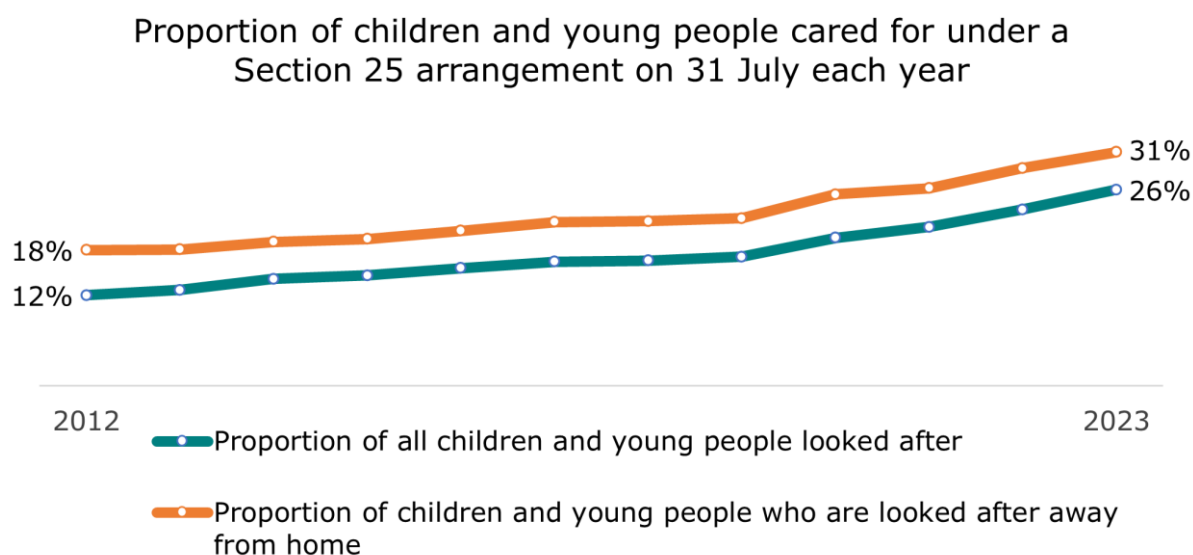
The guidance frames the giving of consent as a “positive act” that should not be “given under duress or compulsion” and states that local authorities should ensure “the relevant person is aware of the consequences of giving consent and full range of available options”, as well as and their right to withdraw consent at any time (p. 16). This guidance also includes a sample agreement and checklist for practitioners to use.

How Section 20 in England and Section 76 in Wales are articulated and potentially re-shaped through legal decisions and emerging guidance is relevant to the use of Section 25 in Scotland. Guidance for practitioners to use for all children who are cared for under the supervision of the local authority is contained within The Looked After Children (Scotland) Regulations 2009, which does not contain any specific guidance in relation to best practice in the use of Section 25 arrangements. Accordingly, social workers referred to these cases and the issues they raise in their discussions with us in our research.

### Existing evidence on the use of Section 25 in Scotland

While there is little published information available on how Section 25 is used in Scotland, the Children’s Social Work Statistics, published annually by the Scottish Government, provide an insight into the number of children who received local authority care and protection on 31 July each year as snapshot data. The term ‘legal reason’ is used in annual Children’s Social Work Statistics reporting to refer to the legal status applied when a local authority provides care and protection for children and young people. Analysing these statistics on the legal reasons for children’s placements - where they are living if they are being cared for away from the parental home - enables us to see the number of children who are cared for under a Section 25 arrangement, and any variations between local authorities. Although we can see the number of children living

under a Section 25 arrangement on that date, it does not reflect the number of children who may have experienced a Section 25 arrangement in that year (as the arrangement may have ceased before 31 July), nor the total number of Section 25 arrangements which were made in that year (as some children may have experienced more than one). With 12 years of published data, the overall trend in the use of Section 25 arrangements can be seen.



*Figure 1: Proportion of children and young people cared for under a Section 25 arrangement on 31<sup>st</sup> July each year 2012-2023*

Over the last 12 years of data there has been an increase of approximately 54% in the number of children experiencing Section 25 arrangements (from 2,035 in 2012, to 3,123 in 2023). However, because of the declining numbers of children who are formally 'looked after' overall, the proportion of children who are cared for away from home through a Section 25 arrangement has risen in the same period, from one in eight (12.4%), to just over a quarter (25.5%) (or from 18% of those cared for away from the parental home in 2012 to 31% in 2023) (Figure 1).

In 2020, the authors undertook a small-scale study into the use of Section 25 arrangements, using data from three local authorities. Our 2020 findings suggested significant variation in the use of Section 25 and gave some indication of the lengths of time that these arrangements were active (Anderson et al., 2020). Figures 2 and 3 of this report are replicated from Anderson et al. (2020). Figure 2 shows the proportion of children and young people who were cared for away from the parental home under Compulsory Supervision Orders (that is, the compulsory legal orders commonly used to provide care and protection for children and young people in Scotland), Section 25 arrangements, or other arrangements. Permanence Orders (POs) were excluded in the 2020 reports' analysis as the focus was on children and young people who may still experience a change in status.

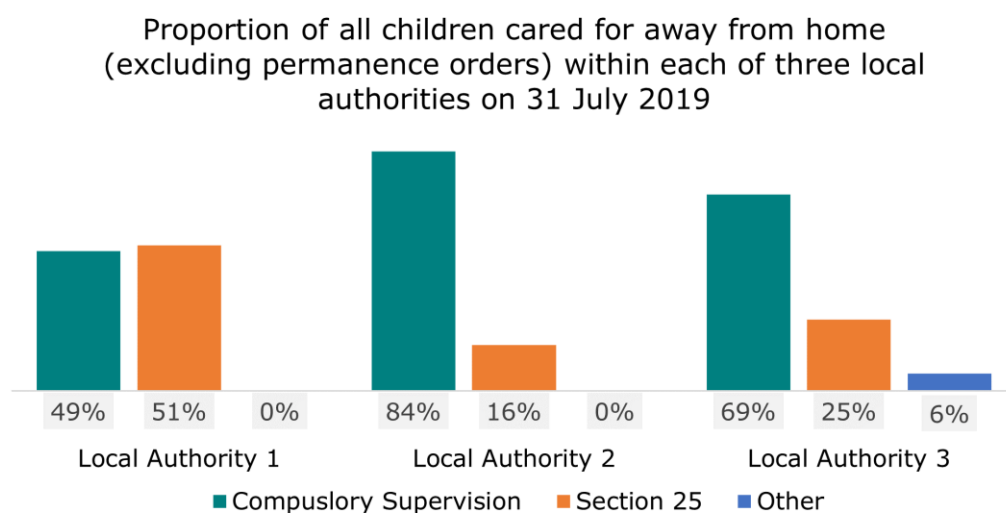


Figure 2: Children cared for away from the parental home on 31st July 2019 (reproduced from Anderson et al. 2020).

As can be seen, the variation between these three local authorities is significant, with approximately 50% of local authority 1's (LA1) children and young people being cared for under a Section 25 arrangement, whereas this is the case in only a quarter of local authority 3, and just 16% of local authority 2. Figure 3 highlights the variation that is seen in the length of time that Section 25 arrangements were in place within the different local authorities. LA1 had 30% that lasted less than a year and 14% lasting more than 5 years, while LA2 and LA3 had over 50% that lasted less than a year and just 7% and 6% respectively lasting over 5 years.

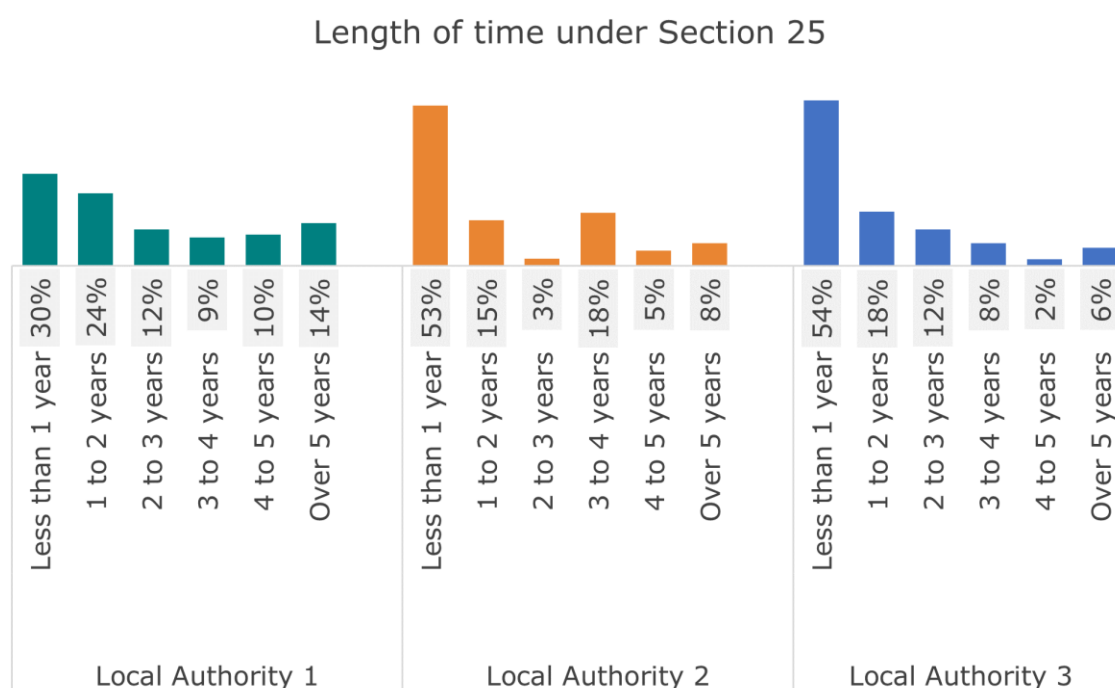


Figure 3: Length of time cared for under a Section 25 (reproduced from Anderson et al. 2020)

What this data shows is a picture of increased use of Section 25, and a high degree of variation in use between at least some local authorities. We could not know from that data the extent to which this variation extended across the country, nor how these arrangements were used by social workers, or experienced by children, young people, and families.

# Methods





Beginning in April 2022, this research used a mixed methods approach to gather an in-depth picture of the use and impact of Section 25 arrangements in Scotland. Quantitative methods enabled us to generate a reflection of the prevalence and variation in the national use of Section 25, alongside valuable insight into the overall care experiences of children and young people. This quantitative data also enabled a comparison between the care experiences of those cared for under Section 25 arrangements and those cared for under compulsory measures. The quantitative element of our research makes use of the Looked After Children Longitudinal Dataset (LACLD), which is a dataset managed by Administrative Data Research - Scotland, a partnership between the Scottish Government and academic institutions within Scotland. The data we accessed represented all children and young people's care placement histories and legal status histories between 2008 and 2022.

We used qualitative methods to explore the complex contexts, approaches, lived experiences, and perspectives which contribute to decisions about the care of children and young people living under Section 25 arrangements. Through our focus groups and interviews, we spoke with parents, a young adult who had been cared for under a Section 25 arrangement and a range of practitioners; children and families social workers and social work managers, solicitors, independent reviewing officers (IROs), children's reporters (whose role is to receive referrals to the Children's Hearings System and to decide whether compulsory intervention through the Hearings System is likely to be required), and independent advocates.

We formed an expert advisory group of stakeholders including policy makers, practitioners, researchers, and groups representing the experiences of children, young people and parents. The advisory group provided feedback on our draft recruitment materials, interview and focus group questions, quantitative data analysis plan, and initial report structure and draft content.

### Recruitment

We sought the potential involvement of child, young person and parent participants through both an open call via CELCIS's networks and those of our partners (including through e-bulletins, a project webpage, social media and approaches to youth groups for young people with care experience and parenting groups). We also received support from Scotland's Chief Social Work Officers who asked social workers in their local authorities to share research materials with people with relevant experience who might have wished to take part, and we raised this open call with every social worker who took part in interviews or focus groups. The aim was to recruit equal numbers of mothers and fathers, and to recruit from a range of geographic areas in line with our recruitment of practitioners.

Prior to beginning the study, we wondered whether children and young people would be aware of what particular legislation had been used when they became

cared for away from home. Expert advice from the advisory group for this research suggested that they may not. We have subsequently learned, during our research with social workers and independent advocates, that children and young people are rarely told of the legislation used and conversations instead focus on daily practicalities such as where they will live. On the basis of the advice from our advisory group, we designed a direct recruitment model with the support of Chief Social Work Officers through local authority social work departments to raise awareness of the research with children and young people with experience of Section 25.

Attempts to recruit sufficient numbers of young people, and parents represented a significant component of our research activity. After several months of recruitment through social work and partner networks, we broadened our reach and intensified the efforts to include direct mailings to contacts for youth groups, clubs in further education settings, and children's advocacy services. We similarly contacted the few support groups for parents whose children are cared for away from the parental home, as well as contacting general parenting groups across the country.

Participants with lived experience, rather than the practitioners in various agencies taking part in a work capacity, received thank you vouchers of their choice for their time, set to reflect the standard living wage. Social workers were recruited through open calls through CELCIS's social media accounts and those of partner agencies and electronic newsletters, as well as through information shared internally with colleagues. We also recruited for solicitors, children's reporters, and independent advocates through direct communication with their organisations or professional networks. After we undertook some focus groups and interviews with practitioners, we recruited additional participants through 'word of mouth' with colleagues of those who had taken part then approaching us to contribute.

Inclusion criteria required participants to have experience of a Section 25 arrangement as a child, young person, parent, or as a practitioner working with children and families. We chose eight as the minimum eligibility age for children to reflect the possibility of them having been informed of or involved in sharing their views during the decision-making processes. The upper age limit of 25 was set to balance our interest in relatively recent experiences with the practicality that the age of 25 is the common upper age limit for youth groups, which we had planned to involve in recruitment for discussion workshops.

Parents were invited to take part if they had either experience of a Section 25 arrangement or an objection to an arrangement within the last five years. All participants who met the inclusion criteria were included based on their capacity to consent to take part which was assessed by the researchers on an on-going basis at the point of initial contact and during data collection.



Overall, we undertook 35 interviews and focus groups with 101 people with personal or professional experience of Section 25 arrangements across Scotland. Participants came from 21 of Scotland's 32 local authority areas.

*Table 1: Research Participants*

Category	Number of Individuals	Interaction
Young people (16+)	1	Interview (1)
Parents	7	Interviews (7)
Children's reporters	4	Focus group (1)
Independent Reviewing Officers (IROs)	7	Focus group (1)
Independent Advocates	13	Focus group (1)
Local Authority Solicitors	9	Interview (1) Focus group (1)
Social workers	60	Interviews (13) Focus groups (9)
TOTAL	101 participants	35 interactions

In addition to the focus group specifically aimed at IROs, some IROs also attended focus groups aimed at social workers. Despite our best efforts, we only secured the involvement of one young person, discussed in more detail in the section on limitations.

We used semi-structured and open-ended focus group and interview questioning to prompt reflection or discussion on specific topics while enabling participants the ability to follow their line of thought.

The qualitative data collection took place both online and in person, with the majority taking place through online video calls. Although in-person focus groups and interviews enabled better reading of body language, tone, and interpersonal dynamics, it was more difficult to capture these for later inclusion as context to the transcript. Our online engagement, on the other hand, experienced delays or overlap in communication, yet provided an opportunity to return to the visual cues available in the video recording when undertaking transcription. Additional reflections on online recruitment and data collection are further detailed in the limitations section of this report.

## Data collection, storage, processing, and analysis

Qualitative data was collected through audio recordings for in-person interactions and audio and video recordings for online data collection. The digital files were securely stored in line with university guidance, GDPR and best research practice, in limited access, secured folders on our university's server.

Two researchers transcribed interviews and focus groups. The act of transcribing the data allowed us to become familiar with the raw data prior to analysis. We entered the transcripts into NVivo software, which facilitates digital organisation of files during coding and analysis. We then reviewed the transcripts of the recorded data and reflections written during data collection, and used inductive thematic coding to identify what themes and patterns were visible across the responses (Braun and Clarke, 2006). This meant that we read through each transcript and labelled ('coded') what was there, applying high level code names to start with. As we worked through all transcripts, the code names changed, becoming broader or narrower depending on the discussion points related to it. For instance, a code named 'relationships' later became 'relationships and boundaries'. The resultant initial codes, which signified the salient themes in the data, reflected not only areas directly related to the discussion topics covered in interviews and focus groups, but also concepts raised that we hadn't expected beforehand. The aim of broadening our understanding and being guided by participants on the ways in which themes are understood, approached, or discussed, led us to choose an inductive analysis.

After this stage, we researchers met to review the initial codes and consider any links or overlaps in - and relationships between - the codes. The links and overlaps led to recognising some patterns that we explored further as potential themes. Some codes were moved into others as sub-codes and we returned to all the coded data to further analyse the patterns within them, to guide our themes.

Initial themes were presented to and discussed with our advisory group to highlight potential additional areas for analysis. Finally, we returned to all focus groups and interviews to verify that the themes and coded sections we had chosen accurately reflected the discussions, before structuring our writing.

Quantitative data was provided by the Scottish Government Education and Analytics Department, who are the data controllers for the Looked After Children Longitudinal Dataset (LACLD), and this was analysed in Microsoft Excel and R to explore prevalence and relationships between key variables. The LACLD consists of two separate sheets in one excel file, which contain the placement histories, and legal status histories respectively of children and young people who were cared for by a local authority between 2008 and 2022. The experiences of individual children and young people are linked by a common, randomly generated, identification number which allows their experiences to be linked.

Unfortunately, but in common with many administrative datasets, the data contained within the dataset contains errors, omissions, and is sometimes contradictory. Accordingly, it requires significant cleaning (ensuring that the data is consistent and accurate) and linking between the placements data and the legal status data before any analysis can be conducted. In the course of this cleaning and linking work, we identified errors and omissions in the dataset that required the Scottish Government Education Analytics Service to provide a new version of the dataset, on which we then had to run the same cleaning and linking processes. This created significant delay in the analysis process. Following data-cleaning processes based on Soraghan & Raab (2023), with additional checks and processing, we were able to identify a dataset of 47,515 children and young people, for whom we had sufficiently complete data on which we could conduct analyses. These children and young people experienced 56,201 episodes of care.

In the final stages of analysis, we hosted a roundtable event with practitioners who had taken part in focus groups and interviews. The roundtable discussion provided an opportunity to disseminate information and receive feedback on our initial findings as a form of 'sense check' by participants. We also gathered participant views on key themes from the findings, alongside input from our advisory group to shape outputs for specific audiences. While a feedback session with parent participants has not taken place within the report timeframe, we have shared with them their quotes that we wished to use and hope to engage with parent participants on the development of a parent-specific resource.

## Ethical considerations

Ethical approval was obtained through the University Ethics Committee at the University of Strathclyde. There were a range of ethical issues considered by the researchers when planning, designing, and implementing the study. Of particular salience were informed consent, representation, confidentiality and anonymity, and safeguarding.

### Informed consent

In accordance with Article 12 of the United Nations Convention on the Rights of the Child (UNCRC), we believe that all children and young people should be able to communicate about issues that affect them. We further believe that children are able to consent to opportunities to provide their own views and opinions in a safe and supported environment. We aimed to reduce barriers to participation while prioritising wellbeing and safety. We designed a multi-step consent process for children and young people, involving social workers who were directly told of the project, and carers for children and young people who may have encountered the research information through a different route. Had children under the age of 16 contacted us directly, we planned to involve a carer or trusted adult in the consent discussions, which was the same processes planned

for use with children and young people who had received information from their social workers.

Participant information sheets and initial conversations - for children, young people, parents, and practitioners - emphasised the voluntary nature of participation, with assurances that respondents did not have to answer any questions unless they wished to do so. The information provided clear information on research processes and how their data would be handled and processed, including confidentiality and accompanying safeguarding limitations, and anonymity). The information also detailed their right to withdraw consent and data up to the point of publication. We recognise consent as an ongoing process and confirmed active consent again with all individuals immediately prior to beginning our data collection, as well as being alert to signs of hesitancy or distress during interviews and focus groups.

### **Safeguarding**

Our approach to safeguarding during the research project was approved by the University Ethics Committee. The participant information shared during the consent process explained the safeguarding exceptions to confidentiality, namely that if researchers were concerned about harm to an individual, they would be required to raise this through the appropriate routes.

We also implemented the following help and support for people taking part in the research:

- Participant information sheets for children, young people, parents, and practitioners contained information on support services (ChildLine, ParentLine Scotland, and Breathing Space).
- After interviews and focus groups, children and young people were signposted to support and advocacy services, parents signposted to support services, and practitioners were encouraged to speak to line managers or access support services if required.
- Research engagement with children under the age of 16 was designed to not ask about their experiences and instead gather their views on what children in general might want to happen in certain situations.

### **Representation, confidentiality and anonymity**

GDPR compliance reflects good research practice and we complied with the regulations throughout, from the initial project design to sharing our findings. We greatly limited the type of personal information we requested from participants: we asked practitioners for their name, pronoun and job title; and asked children, young people, and parents for their name, pronoun, and preferred pseudonym. The use of pseudonyms allowed us to incorporate personal signifiers throughout the report while also protecting the privacy for children and adults with lived experience. One parent did not wish to have a pseudonym and is therefore represented by an initial.

The nature of the focus groups and interviews exploring personal experiences meant that, particularly during parental interviews, the names of people not taking part in the study and other identifying information was revealed to us. This has been dealt with through safe and secure storage procedures, and in how we have analysed and reported on the data. This report does not share identifying information and aims to strike a balance between contextualising the experiences and narratives through details and quotes, and the necessity of protecting participant privacy and anonymity by providing general information or reporting on multiple experiences together where numbers are low. This has been the deciding factor in not reporting directly on the experiences of one young person, as discussed in the limitations section of this report. Most of the quotes we have included in this report have been chosen to illustrate a shared view under discussion in a particular section. Where we deviate from this, the text will make it clear by, for instance, referencing the fact that it was a small number of views, or where several quotes on the same theme have been presented to show variation within that experience.

The Looked After Children Longitudinal Dataset (LACLD) is 'research ready' which means that it does not contain personally identifiable information. Access to a subset of the LACLD was gained through the Scottish Government Public Benefit and Privacy Panel processes. Approval was granted for the Scottish Government to share data on the full care histories (all information contained within the LACLD) for all children and young people who were cared for by a local authority in Scotland outside of the parental home between 2008-2022. Due to the fact that this data was 'research ready' and was not being linked with any other data which might make children and young people identifiable, we received approval for the Scottish Government Education Analytics Services to share the appropriate LACLD data directly with the research team to securely store it on University of Strathclyde servers.

The LACLD was accessible only to Micky Anderson and Dr Robert Porter of the research team, and all analysis was conducted on encrypted University of Strathclyde computing equipment, and the data was never removed from the secure file location. Micky Anderson and Dr Robert Porter both have active 'Safe Researcher' training which supports safe and appropriate use of Administrative Data. All outputs were checked for statistical data control by the researchers prior to exporting them for publication. Where analyses represented in this report created categories with fewer than ten individuals, this category has been suppressed to prevent any risk of identification.

### **Ineligible participants with falsified accounts**

Finally, we experienced a significant challenge during the study which required additional researcher capacity to reflect on our processes, actions, and biases to ensure that we continued to conduct ourselves as researchers focused on inclusion and social justice. In November 2022, after launching a new round of online recruitment aimed at children, young people and parents, the researchers

received a high volume of emails in batches, with similar address formats and content. At the time, this was a novel experience, yet similar experiences have since been noted in a growing body of literature (Drysdale et al., 2023; Owens, 2022).

Through careful analysis of the messages, and ethical and methodological focuses on overcoming any cultural, financial, communication or other forms of barriers, we identified several 'red flags' that indicated that the emails were potentially from ineligible participants. One clear example was an email from a public email domain, with minimal message content. The author of the message claimed to be a social worker and, when asked to contact us from their work email to add them to the correct focus group, the communication ended. In response to these messages, we nevertheless sought to facilitate inclusion for genuine participants and submitted an updated communications protocol to the University Ethics Committee. We chose to engage with any email that displayed only a few of the 'red flags' which could also have been explained by potential cultural or communication differences. By the time we had received emails confirming that they understood the study, and correctly completed consent forms, we had thought that the issue of ineligible participants had drawn to a close.

One parent interview took place that was later excluded from the study. Throughout the interview, the inaccuracies and non-sensical answers were of a different quality to those which could have been misremembered or subtly changed by the participant to protect privacy. It was researcher understanding of the Scottish context that flagged several answers as potentially fabricated. The researcher privately noted their concerns, transcribed the interview as usual, and then shared the recording and transcript with another project researcher to review. This researcher then reviewed the interview, separately reviewed the transcript, and then took note of their views. The two researchers then met to discuss the experience, and it was decided that this participant's account would be excluded.

## Limitations

This section outlines the limitations to the study and how these were mitigated or overcome through our recruitment of participants, data collection, analysis and reporting.

### Representation of children and young people

The first limitation encountered was in relation to the representation of the experiences of children and young people. Despite a long-term and wide-spread approach to recruiting young participants, we received very little communication from young adults interested in taking part, and none from children. In Scotland, recruitment of young people to research studies has become increasingly challenging over recent years, which may be due to 'fatigue' from an increasing

number of researchers, policy staff, and practitioners who seek to gain children and young people's views to improve services. This can sometimes be compounded by a perception that the same questions and responses are being given, with little changing as a result.

Follow up with the young adults interested in the study resulted in a handful of scheduled interviews, with one participant taking part. To protect the participant's anonymity, we are not able to provide information about their experiences, however we have:

- Highlighted themes from our interview with them.
- Referenced key issues in the broader literature, such as involving young people in decision-making.
- Explored what practitioners have shared with us around the experiences of children and young people they have supported.

### Representation of parents

The second limitation concerned the representation of the views and experiences of parents. Like all participants, the seven parents self-selected to share their experiences and were motivated to contribute to discussions and considerations of how Section 25 is used, understood, and experienced. All but one were mothers, and the majority had either negative or variable experiences of having a child cared for under Section 25 arrangements. Social workers recounted working with parents who had both negative and positive experiences of the process. While we had support from social workers directly sharing information on the study with parents with whom they had worked, we did not speak with anyone who relayed overwhelmingly positive experiences.

Amongst those who participated in the research, the variation in circumstances and the manner in which they detailed their experiences meant that we have a sufficient spread of experiences to be able to understand some of the information or support gaps experienced by parents overall, particularly within the context of social worker reflections on the limitations of their practice.

Some aspects of the stories parents shared about the processes and events they experienced were fragmented or asynchronous. Considering they were very clearly able to report visceral memories of these processes and events, highlighting the depth of memories they created at this time, the asynchronous aspects in some of the accounts is an accurate reflection of their experience. The processes themselves are confusing. Confusion can result from a lack of understanding of the processes they were going through or the impact that stress and emotional experiences can have on how one is able to process the information and remember events.



# Findings





Our findings begin with some of what we found from the quantitative data analysis of the LACLD and present an overview of how Section 25 arrangements are used for children and young people. The data covers the length of time that the arrangements are in place, including differences across children and young people's ages, care settings, and what happens after a Section 25 arrangement. We then used the LACLD to provide additional information on the scope and scale of how Section 25 use has changed between 2009 and 2022, and how it is applied across Scotland's 32 local authorities.

Next, qualitative findings are explored to share insight into the lived experiences of being cared for, or of a parent having their child cared for, under a Section 25 arrangement, as well as practitioner experiences of working with families through this process. The findings begin with what we can know from the limited data collected on children and young people's experiences, before moving to an exploration of how practitioners understand Section 25.

The report presents what we found social workers consider to be appropriate and inappropriate uses of Section 25 arrangements; and how they raise the possibility of Section 25 arrangements with parents, including issues of consent and capacity. Our findings on parent's understanding of the uses of Section 25 arrangements reflect the discussions we had with our participants on what affected their understanding of the processes, the emotional impact of the experience, and the support they received during the Section 25 arrangement. We also mapped the various influences that social workers discussed that shape how Section 25 is used, often in contradictory ways, to achieve the same aims of providing care and protection to children and young people.

Finally, we compare the results from the analysis of three cohorts of children and young people: those who only experienced Section 25 arrangements; those who never experienced Section 25 arrangements; and, those who experienced a Section 25 arrangement and at least one other legal status.

### **Experiences reflected in the quantitative data**

The quantitative data in the LACLD available to us for analysis, gives us some insight into how Section 25 arrangements are experienced by children, young people, and families. As Figure 4 shows, half of all Section 25 arrangements last less than six months, but 6% last over 5 years. When we look at the average length of the first Section 25 arrangement experienced by children and young people in the age groupings used by the Scottish Government (Figure 5), we can see the impact that longer periods on the initial Section 25 arrangement have on the mean values, which are substantially above the median values for younger age groups (under 16). Children under the age of one have a median length of six and a half months being cared for under Section 25 arrangements. This drops to four and a half months for children aged up to four and increases for each age group under 18. The median length for children aged 16-17 is longest

at almost one year (11.6 months). All but two of the differences between median length of Section 25 arrangements for age groups under 18 are significant.

Section 25 arrangements grouped by length of arrangement (episodes closing 2017-2022)

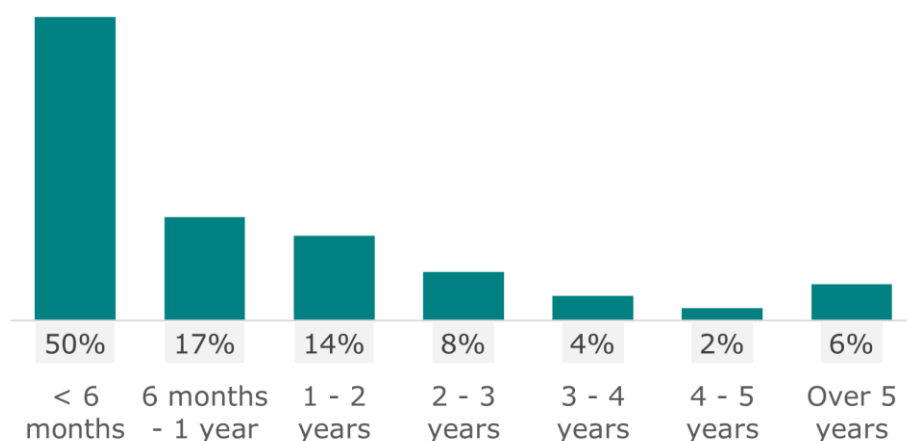


Figure 4: Section 25 arrangements grouped by length of arrangement (episodes closing 2017-2022, n=6656)

Number of months (median and mean) under first Section 25 arrangement by age group at start of episode (episodes closing 2017-2022)

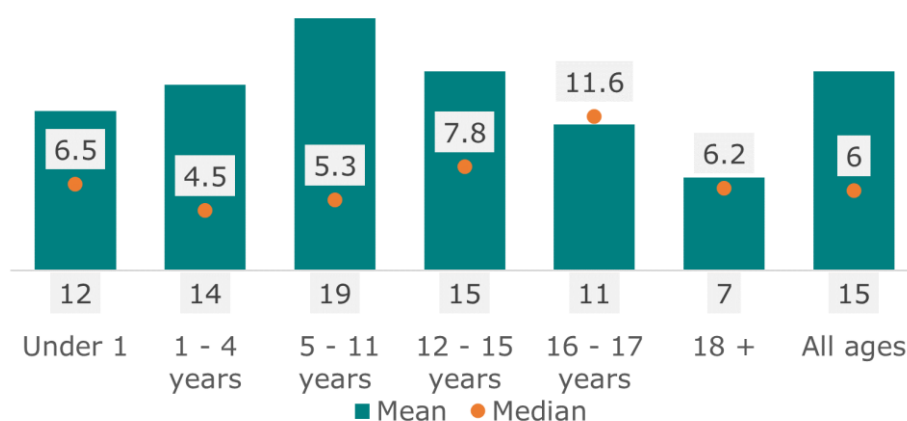


Figure 5: Average time on first Section 25 arrangement by age group (episodes closing 2017-2022, n=6656)

When we look at the different care settings that children and young people experienced at the start of being cared for under a Section 25 arrangement (Figure 6), we can see that there is some variation in the length of these Section 25 arrangements, with children in kinship care experiencing the highest proportion of arrangements lasting under six months (59%), while children living with foster carers had the highest proportion of arrangements that lasted for over five years (9%). Shorter Section 25 arrangements are consistently more common across the different settings, as is expected from the data in Figure 4. A higher proportion of children and young people in 'residential care' and 'other community' settings experience longer Section 25 arrangements between six months and three years compared to the other settings. This likely reflects that 'residential care' includes children and young people in residential schools and residential placements for children with complex needs, while 'other community' refers primarily to supported accommodation, all of which are often entered into as longer-term arrangements.

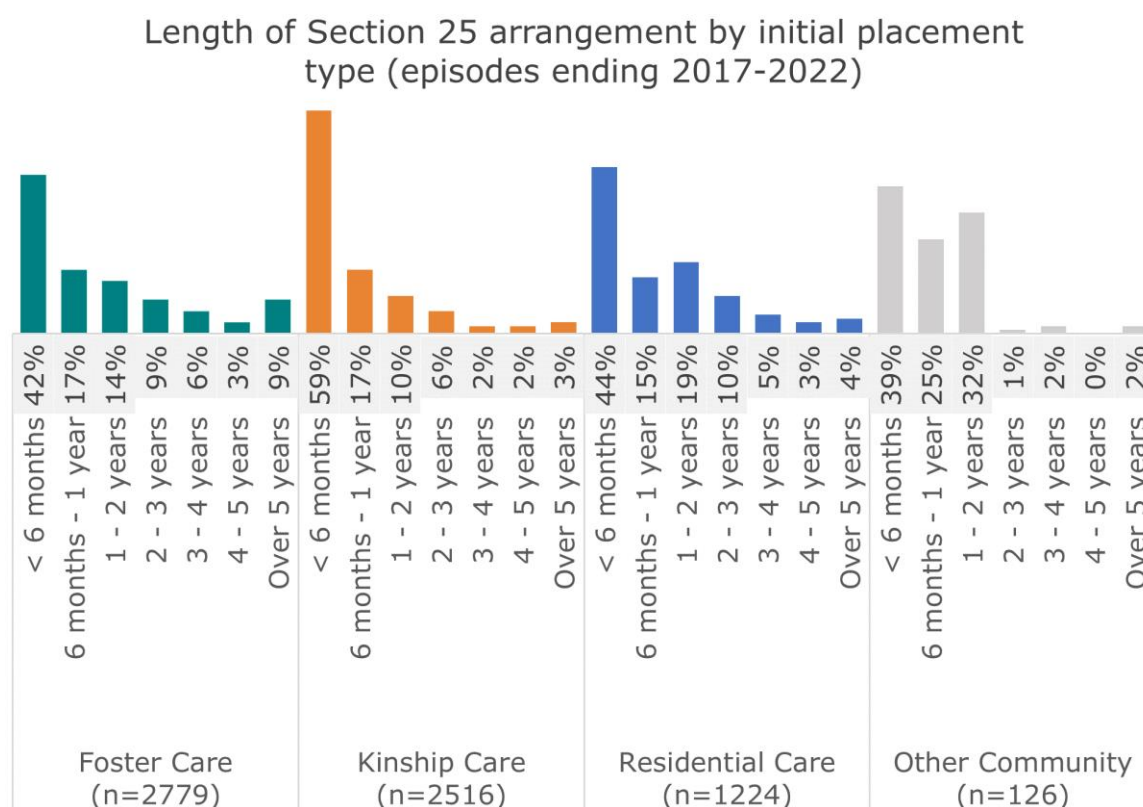


Figure 6: Length of Section 25 arrangement grouped within initial placement type

Figure 7 shows that Section 25 arrangements are overwhelmingly used as the first legal reason for a child or young person to be cared for outside of their parental home. We can also see that this is an increasing trend, with the proportion of children and young people experiencing their Section 25 arrangement as the first legal reason, rising from 86% across the entire dataset (2008-2022) to 93% over the last five years (2017-2022).

When Section 25 arrangement has been used during episodes of care (episodes closed during each period)

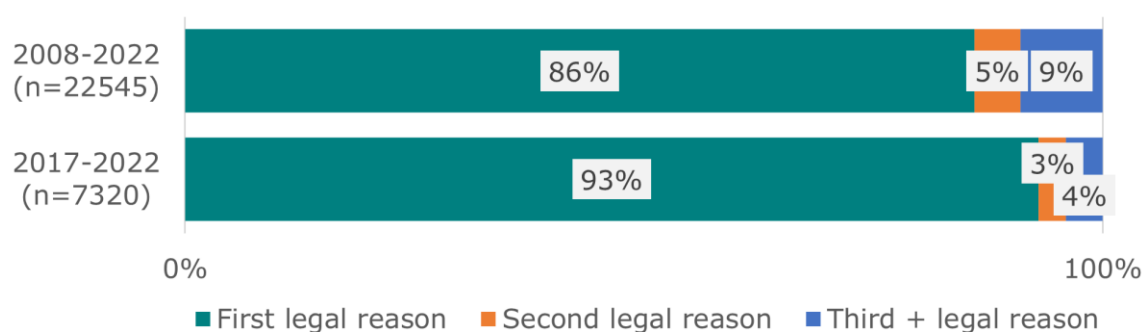


Figure 7: When Section 25 arrangements have been used in an episode of care

For the 7% of children and young people who experienced a Section 25 arrangement as a second or third legal reason within an episode of care (2017-2022, Figure 7), approximately 40% of them were previously cared for 'looked after at home' under a CSO, and about a third were cared for away from home on a CSO, immediately prior to being cared for under the Section 25 arrangement. When we look at the data for what happens after a Section 25 arrangement (Figure 8), we find that for two thirds of children and young people (67%), the Section 25 arrangement was the only care arrangement that they experienced.

Next status of those going into care under a Section 25 arrangement, 2017-2022



Figure 8: Next legal status for those entering care under a Section 25 arrangement (episodes ending 2017-2022, n=6657)

When we look at what happened after the Section 25 arrangements ended (recorded 'destinations'), for the children and young people who only experience a Section 25 arrangement with no other legal status during that episode of care, Figure 9 50% returned home to live with their parents, while 17% continued to be cared for in kinship settings (with Friends/Relatives) (Figure 9).

Unfortunately, it is not possible to be confident in the detail of this data, as many of the categories given in the data are not mutually exclusive (for example, a young person may be in 'Continuing Care' while living with 'Former foster carers') and it is not possible to know which categories will be applied in each instance. Additionally, this data simply tells us that these children and young

people were no longer being formally cared for by the local authority, and where they were then living. We cannot know whether these children and young people remained living with the same carers or the same care environment that they were in when they were cared for under a Section 25 arrangement (for example, 'Friends/ Relatives'), or if they went to live with different carers or a different care environment. Finally, there was a large portion of 'Not known/recorded' which indicates the large gaps in this data.

#### Destination of children and young people leaving care after only experiencing Section 25 arrangements, 2017-2022

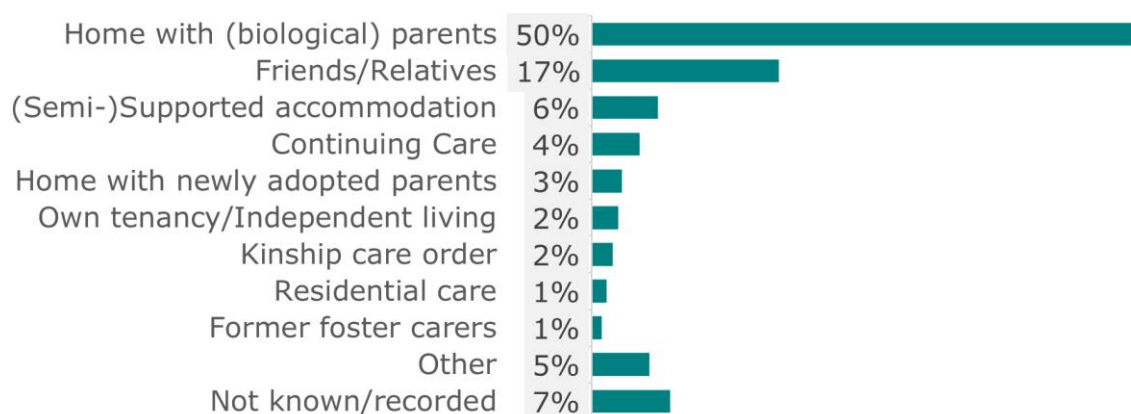


Figure 9: Where children and young people leaving care went to live after having only been cared for under Section 25 arrangements when arrangements were put in place for their care (n=4470)

Of the one third of children and young people who remained cared for away from their parental home following a Section 25 arrangement, the largest number went on to be cared for under an Interim Compulsory Supervision Order (ICSO) (34.4%), or by a Compulsory Supervision Order away from home (34.3%) (Figure 10).

### Subsequent legal reason of those moving from an initial Section 25 arrangement (2017-2022)

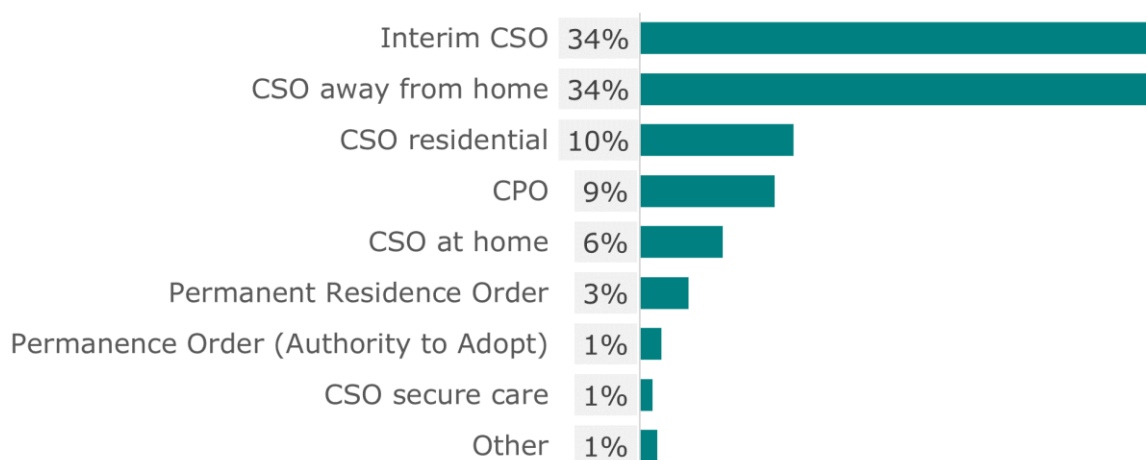


Figure 10: Subsequent legal reason for a change from a Section 25 arrangement (Episodes closing 2017-2022, n=2187)<sup>3</sup>

Overall, these national figures paint a picture of the most common care experience for children and young people who experience Section 25 arrangements only ever being formally cared for away from the parental home under this arrangement. Additionally, the majority of these arrangements are relatively short-lived, lasting under six months, with a return to the care of their parents the most common outcome. Indeed, as can be seen in Figures 8 and 9, one in three young people cared for away from home under a Section 25 arrangement only ever experiences that arrangement, before they returned their parents' care. Figures 12 and 13 show that this group of children and young people are typically cared for away from the parental home for less than six months, and have a slightly older age-spread than the wider population of children and young people being cared for under Section 25 arrangements. An examination of children's experiences of multiple episodes of care can be found in the cohort analysis section.

<sup>3</sup> 'Criminal Court Provision' is excluded from this figure as it represented <0.5% of legal reasons

### Care episodes ending between 2017-2022

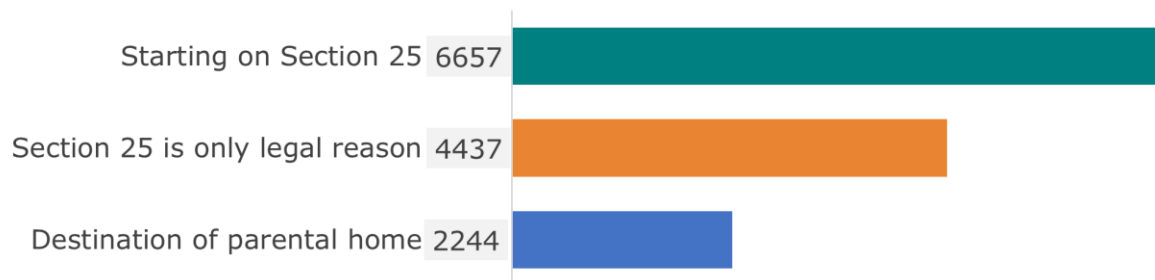


Figure 11: Selected data on Section 25 arrangements

### Length of episode under Section 25 arrangement only (home to parents)

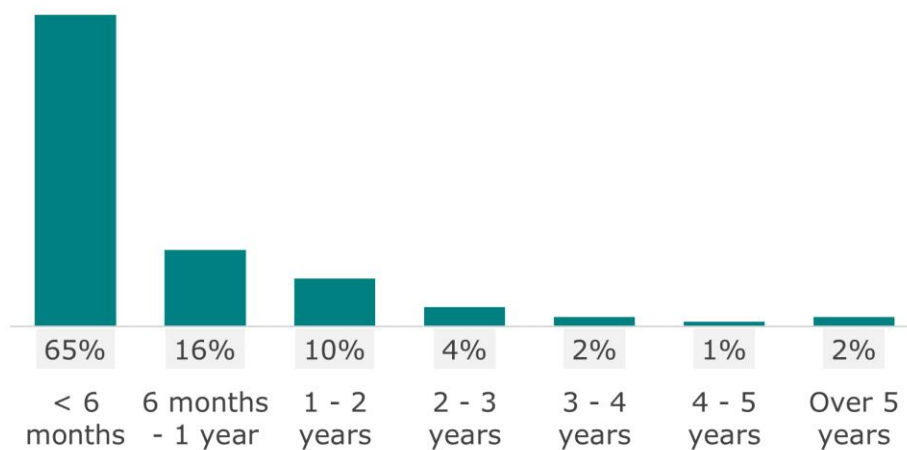


Figure 12: Length of episode for those who returned to their parents' care after only experiencing Section 25 arrangements, (n=2244)



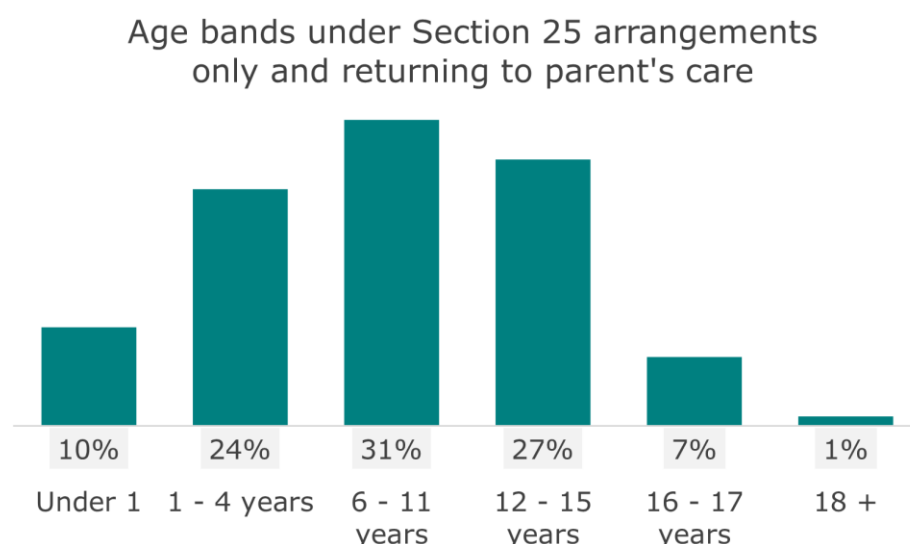


Figure 13: Age of children returning to their parents' care after only experiencing Section 25 arrangements (n=2244)

While Section 25 arrangements are clearly often used to provide care and protection for children and young people on a short-term basis, prior to returning to the care of their parents, there are also a significant number of children and young people who remain cared for under Section 25 arrangements for significant periods of time, and who then go on to a variety of different living arrangements.

The data highlights a wide range of experiences for children and young people. Between 2017-2022, more than 460 children and young people who had been cared for under a Section 25 arrangement for more than five years experienced a change in the legal status for their care. A further 750 children and young people went on from being cared for under a Section 25 arrangement to being cared for under an Interim Compulsory Supervision Order. These orders by their nature only last 21 days, and their use indicates that the decision to move to compulsory measures may not have been planned in advance.

## National use of Section 25 arrangements

Using the Looked After Children Scottish Longitudinal Dataset (LACSLD), we can examine the national picture of Section 25 arrangement use in Scotland, and trends from the 2008-09 to 2021-22 reporting years.

Figure 14 shows the steady increase in the proportion of children cared for away from their parental home who are first cared for under a Section 25 arrangement from 2008-2022. This reflects the trend seen in the Scottish Government snapshot data (Figure 1), however as we are now able to look in detail at the full care histories of children and young people, we can see that Section 25 is the first legal reason for over 70% of children who become cared for away from their parental home. This is a much higher proportion than that represented in the snapshot data, and this likely reflects that children and young people who are in

care under Section 25 arrangements often go on to have other legal protections put in place for their care prior to the 31 July (the date at which the Scottish Government snapshot data is taken). This more accurate reflection of the number of children and young people who experience Section 25 arrangements demonstrates that their use is even more prevalent than had previously been thought.

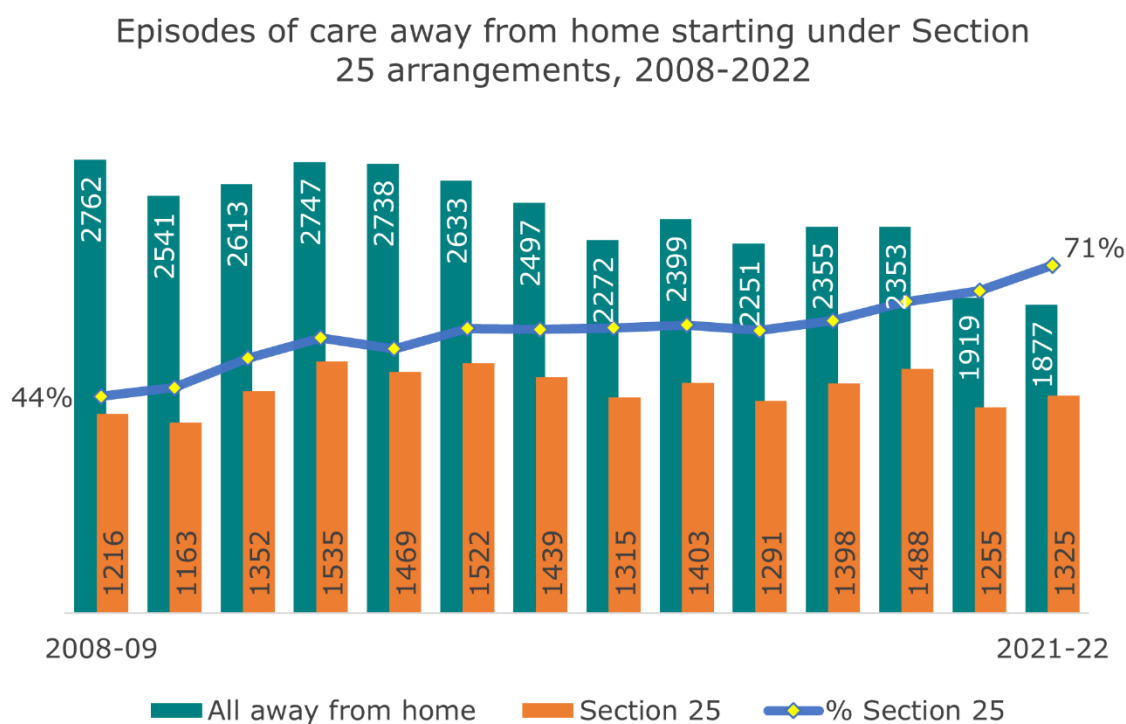


Figure 14: Legal reason when going into care away from home 2008-2022

Looking across Scottish local authorities, we see a reflection of the less complete data gathered before this research (Figure 2). In Figure 15 we can see that there are dramatic differences in the proportion of children for whom an episode of care starts under a Section 25 arrangement over the most recent five years of data across Scotland: in Inverclyde 29% of children (112 children and young people) cared for by the local authority were being cared for under Section 25 arrangements, while in Midlothian it was 87% of children (226). Figure 15 also shows that the national five-year average is 63% of children starting their episode of care under a Section 25 arrangement. We do not have a complete understanding of the reasons for these differences, although indicators of

multiple deprivation are likely to have an impact (Bilson & Bywaters, 2020).

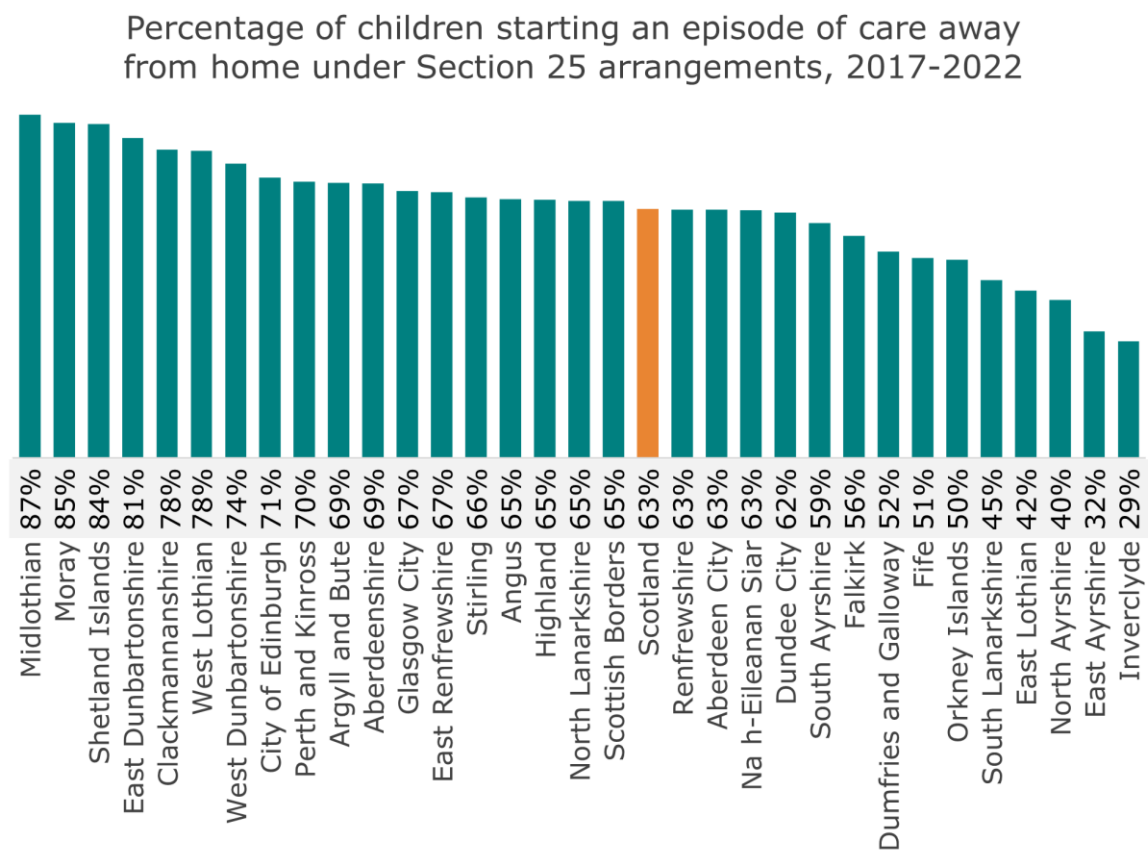


Figure 15: Percentage of children starting an episode of care under Section 25 arrangements

Figure 16 shows the ages at which an episode of care starts for a children or young person under a Section 25 arrangement, compared to other legal reasons. Here we can see that there is a relationship between the use of Section 25 arrangements and the age of children and young people, in that as age increases, the use of Section 25 arrangements also increases.<sup>4</sup> This increase may be related to the use of Section 25 arrangements for unaccompanied asylum-seeking children (UASC). Rigby et al. (2018) highlight the lack of available data in this area but cite a figure of 140 UASC being looked after in 2018, although this number is likely to have increased in the years since due to ongoing international conflicts.

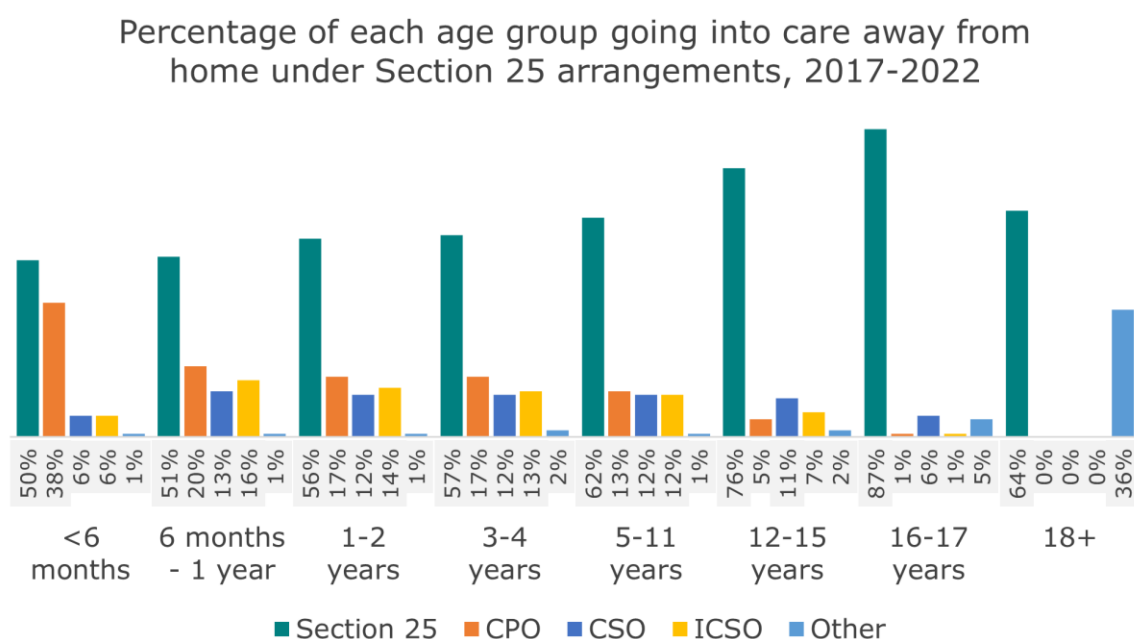


Figure 16: Percentage of each age group starting a period of care under a Section 25 arrangement, 2017-2022 (n=10775)

Together, Figures 14-16 give a picture of the increasing use of Section 25 arrangements across Scotland with significant variation in their use across local authorities, and age groups.

We can also look at where children and young people live when being cared for under Section 25 arrangements. Figure 17 shows that when children and young people are being cared for away from the parental home, Section 25 arrangements are the most common legal reason. While children and young people being cared for under a Section 25 arrangement are most often living with kinship carers, they are also frequently living with foster or residential carers.

<sup>4</sup> Chi-squared test,  $p < 0.001$

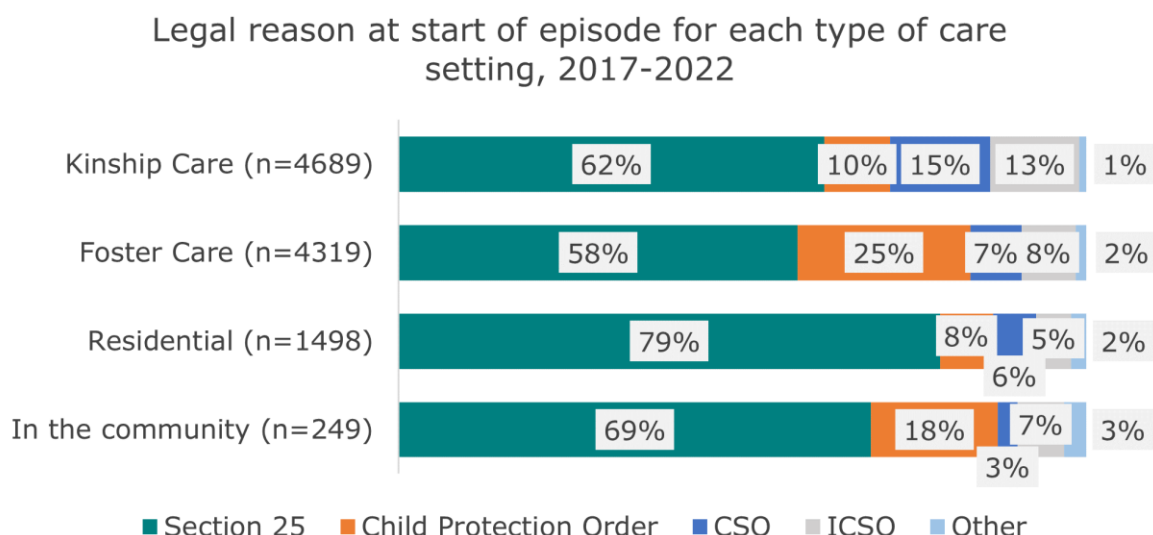


Figure 17: Legal reason at start of period for each type of care, 2017-2022

In summary, this initial data highlights the scale and variation in the use of Section 25 arrangements, as well as diversity in the type of care and the age of children and young people when these arrangements are made. This emphasises the importance of addressing the research questions relating to how Section 25 arrangements are understood, used, and experienced.

## Children and young people's experiences

Through our attempts to recruit participants for this study, we heard from those working directly with children and young people cared for under Section 25 arrangements (such as social workers and advocates) that children and young people are rarely aware of the specific legislation or arrangement that is used to provide for their and protection.

One key difference between children and young people being cared for under Section 25 arrangements and children and young people being cared for under compulsory measures is that the children for whom there are Section 25 arrangements in place do not have to attend court or Children's Hearings. Indeed, we learnt that this was a motivating factor for their use by many social workers, alongside applying the minimum intervention principle, as experiences of these processes are often reported as difficult by children and families (Independent Care Review, 2020; The Promise Scotland, 2023).

## **Direct experience**

This research was only able to speak with one young person who had direct experience of being cared for under a Section 25 arrangement. To protect their anonymity, we only lay out the two broad themes which arose through the interview.

The young person we spoke with was under 16 at the time of their experience of this care arrangement and they spoke about feelings of instability and associated anxiety they often experienced which they considered was due to their Section 25 arrangement. This instability was experienced through a cycle of meetings with practitioners and their parent, each with inbuilt stress and uncertainty about where they would live and who they would be cared for, as the Section 25 arrangement was established and re-established. This instability was also experienced in the young person's home life, which was subject to change many times. The initial Section 25 arrangement was created with an anticipated outcome that the young person would return to live with their parents, however after the Section 25 arrangement had been extended several times, the young person eventually went to live in long-term foster care, under on a compulsory order.

The young person also spoke about power relations. This included how the young person had felt relatively powerless to control the situation, how the social worker had expressed a lack of power to prevent the parent exercising their parental rights if they wanted, and how their parent "had all the power" to agree to the Section 25 arrangement or not.

## **Indirect experiences**

In some cases, parents may also be sources of information about the experiences of their children. The parents we spoke to, however, had not been involved in the discussions that social workers had with their children to explain and seek their views prior to the Section 25 arrangement being put in place.

Social workers told us about how they would speak with children and young people to explain the situation and seek their views. They were clear that they would generally not draw attention to the parents' role in agreeing to the Section 25 arrangement, rather emphasising what would happen practically, providing reassurances about any specific issues or questions. Social workers also reported that they might speak more directly about the legal situation with older children and young people they considered to be more able to understand and process this information.

## Understanding of Section 25

We asked participants about their understanding of the purpose of Section 25. Both groups spoke predominantly about specific uses, rather than the theoretical purpose of the provision, with the exception of conversations regarding the legal duty to provide care, and the concepts of objection or consent.

Some social workers noted the legal duty on local authorities to care for children in the relevant circumstances. These comments emphasised the fact that the duty applies regardless of whether a parent signs paperwork, or that 'active' agreement or consent is not required, only a lack of objection to the proposed arrangement. In contrast, other social workers spoke about gaining active consent from parents. This lack of objection was a topic that several solicitors we spoke to returned to during the solicitor focus group, with one comment highlighting the potential impact on parents of the distinction between a lack of objection and active consent:

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**“When we're dealing with the Section 25, it's not active agreement that you need, it's the lack of objection and there's such a misunderstanding of that. Now that's crucial isn't it, in terms of understanding rights and so on? And I don't think there's that - well, in fact I know there's not that - in my experience there is not that understanding at all. So I think that's a real fundamental issue.”**

**- Solicitor, focus group**

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This approach to consent is understandable in the context of a desire from social workers to work in partnership with parents on the arrangements to meet their child's care and protection needs.

Social workers commonly spoke about Section 25 as the last measure that would be taken. Help and support for families - referred to by some social workers as “scaffolding” in recognition of terminology used by The Promise (2020) - was reported to have been in place for some time before Section 25 was discussed. One solicitor interviewed described Section 25 as a “safety net” for use “when there's no one else and social work have the duty to accommodate the child”. This, the solicitor continued, included when there is no one present who is “able to do a suitable job”.

Common responses from social workers around the purpose of Section 25 were based on a parental need or request to meet a child's needs, and using Section 25 for child protection, including in emergency situations. They spoke about how they used Section 25 in a range of child protection situations, including where an investigation had taken place and there wasn't enough confidence that there was



sufficiently compelling evidence, when an investigation was pending, or as the first choice of legal basis when a child is moved to a place of safety:

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“So an emergency situation and usually off the back of a child protection investigation, where maybe perhaps there has been a child protection investigation and there isn't enough confidence around...drawing any early conclusions around harm. And seeking consent from a, from someone who has parental responsibility usually happens in those circumstances, I find.”

**- Social work manager, interview**

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Social workers also emphasised different parts of the 'spectrum' of care and protection needs that Section 25 arrangements could meet. Across the uses, respondents spoke at length about the importance of having parental engagement in understanding and choosing the arrangement, as well as building a shared understanding with parents around social work concerns about why a child can't be at home with them at that particular point in time.

## **Perceptions of appropriate and inappropriate uses of Section 25**

Through our interviews and focus groups, there seemed to be universal agreement among social workers on the appropriateness of Section 25 arrangements in contexts where there are no concerns about the treatment of children or young people within the parental home, for example, to meet the needs of separated children or children who require specialist physical or educational support. When it came to child protection concerns, however, there were a range of disparities in the understanding and use of Section 25 arrangements. It is perhaps not surprising that the uncontested circumstances are those which are more explicitly laid out in the text of Section 25 of the Children (Scotland) Act 1995, whereas perhaps the lack of parameters for use around child protection in the Act has then given rise to the variation in and frequency of use of Section 25 where child protection concerns have been identified by the social worker.

Interested in exploring potential variations in how the legislation was interpreted nationally, we asked participants about what they thought were appropriate or inappropriate uses for Section 25 arrangements. There was a high level of agreement by social workers on some stated uses. The seemingly uncontested uses were: short breaks for children to be cared for away from the parental home as part of the Child's Plan; where a parent was temporarily unable to care for the child (e.g. hospital admission); for separated children (who had been

trafficked or exploited into Scotland, or who were unaccompanied asylum-seeking children); and children with significant disabilities whose support needs were better met in a specialised setting, such as a residential school. These uses clearly align with what is written in the 1995 legislation. Separated children fall under Section 25(1b) designation of “lost or abandoned”. While temporary inability to care for a child, and children with significant support needs both fall under Section 25(1c), which provides for accommodation when the person who has been caring for the child “is prevented whether or not permanently...from providing...suitable accommodation or care”, and Section 25(2) notes that the “local authority may provide accommodation...if they consider that to do so would safeguard or promote his [*as written*] welfare”.

Many practitioners indicated that there came an age, often identified around 14, at which young people would share strong views on their existing circumstances by leaving the place where they were being cared for because they were unhappy with it, asking social workers to secure legal permanence for them with particular carers, or asking to live away from home.

Although it is not a common practice nationally, there was also agreement on the appropriateness of Section 25 arrangements where these were directly sought, or ‘signed’ (agreed to), by young people. Social workers from local authorities where this was more common spoke of it confidently and this prompted interest and questions during our focus group discussions from those working in other local authorities. When we asked social workers the age of the young person in the stories shared, 14 was once again a common response.

The reasons given for supporting young people to sign their own Section 25 arrangements, besides young people without an adult with Parental Responsibilities and Rights (PRRs), was to listen to and prioritise the young person’s views. Social workers in local authorities where this practice took place shared examples of young people who were:

- being cared for under compulsory measures, but were unhappy that parents receive information about them through Children’s Hearings
- over the age of 16 and being cared for under Section 25 arrangements, but were uncomfortable that their parents could give notice that they wished for their child to return to live with them
- experiencing relationship difficulties with their parents and wanted to live separately from them
- preparing to be cared for under Section 25 arrangements but disagreed with their parent’s choice of carer in their family network.

Although we do not know whether social workers in these circumstances would also seek consent from someone with PRRs, as parents still have responsibilities for children under the age of 16, this support for young people to choose to enter into their own Section 25 arrangement aligns with the legislative focus on

taking the views of the child into account (also reflected in Article 12 of the UNCRC).

The legislation also explicitly allows for the local authority to use Section 25 to “safeguard or promote” the welfare of a young person over the age of 18, who has not yet turned 21 (Section 25(3)), and some social workers highlighted that Section 25 arrangements were sometimes used where a young person’s compulsory order was removed before their 16<sup>th</sup> birthday to ensure ongoing rights to support and care (such as Continuing Care) beyond the age of 18. In some cases, this was a post-hoc addition to ensure access to these rights, while in others it was reported as a planned step into a Section 25 arrangement to remove compulsion while retaining help and support where needed.

Social workers also described various circumstances in which parents chose to initiate Section 25 arrangements: in instances of an enforced parental absence such as during recovery from illness or when entering a drug treatment facility for support; support for short breaks for children with complex support needs; for a short period when parents cannot manage a child’s behaviour or meet their needs; and when parents feel they cannot manage a child’s care in the longer term. Section 25 could also be used to “create space” within families to undertake family group conferencing or family group decision-making. These are meetings between family members, relevant members of their social support networks, and the practitioners they have invited. The aim is to generate open discussions on what is best for the child concerned, and to agree on a family plan to provide the appropriate care and protection for the child.

Discussions around the circumstances in which Section 25 arrangements were used prompted lively discussion. It was common for social workers to note that they or their teams exclusively or primarily, used one approach in their use of Section 25 arrangements over others. In many cases these discussions were between two contradictory approaches, where practitioners would emphasise, for example, short or long-term use as the most appropriate usage. Additional differences in opinion and use arose over: when (or if) to refer young people to the Children’s Reporter to determine if compulsory measures are necessary through the Children’s Hearings System; at what age a child should be cared for under a Section 25 arrangement, and; whether Section 25 arrangements should be used on pre-planned or emergency bases.

Children’s Reporters are responsible for reviewing the formal referrals they receive on children and young people’s circumstances when a professional, family member, or a member of the public is concerned about their welfare. The Reporter reviews the referral to decide whether a Compulsory Supervision Order (CSO) is likely to be necessary. If the referral is accepted and the child or young person is to be supported by the Children’s Hearings System, a panel will decide during a Hearing whether to make a Compulsory Supervision Order for the child or young person’s care and protection. The timing of referrals to the Children’s Reporter highlighted differences in tolerance of perceived risk. The social

workers we spoke to who favoured immediate or early referral to the Children's Reporter after a child became cared for on Section 25 emphasised the instability of these arrangements due to the risk of a parent requesting to have their child return to the parental home, and the value of having independent oversight within the Children's Hearings System. Those who favoured referral only once a parent had expressed their intention to object to the Section 25 arrangement and request their child return to the parental home, or when the child returning home had been ruled out, emphasised protecting children from the additional processes of the Children's Hearings System and providing parents with the opportunity to work in cooperation with social work. Indeed, this was a motivating factor for many social workers to pursue Section 25 arrangements, as experiences of these processes are often reported as difficult by children and families (Independent Care Review, 2020; The Promise Scotland, 2023).

There was some discussion of risk in situations where a social worker was unsure if they had sufficient evidence to obtain a compulsory order. In these circumstances, many social workers highlighted the anxiety they experienced due to the (perceived) risk of a parent objecting to the Section 25 arrangement. They expressed concern about their ability to then evidence a compulsory order, especially if the Section 25 arrangement had lasted some time, meaning the concerns which prompted the arrangement were some time in the past. Social workers also reported ambivalence about the use of Section 25 in these circumstances.

While different approaches are clearly in use across Scotland, it is important to note that all of these fall well within the discretion afforded within the wording of Section 25 in the legislation. However, the strength of feeling from practitioners in focus groups and interviews that their approach was the 'right' approach to the exclusion of other approaches - and the ensuing discussions that took place within our focus groups - were striking. These discussions, and the justifications given for one approach over another, highlighted how entrenched and established particular views and practices had become for individual social work practitioners and teams. We cannot know whether the emergence of these views was led by individual practitioners or shaped in response to an organisational approach (or an interplay between these forces). A common theme across all respondents, and what appeared to be at the root of their passionate discussions, was their focus on the impact that their choices had or could have for families.

Children's Reporters taking part in the focus group discussed the distinction between welfare and accommodation within Section 25 arrangements. They suggested that welfare concerns about a risk of harm to a child in the home should be referred to the Children's Hearings System, while Section 25 should be focused on situations where such risk of harm is not present. Although social workers discussed categories where the use of Section 25 arrangements was primarily to provide physical accommodation, rather than to protect from harms,

such as for separated children, children with additional support needs that cannot be met within their community, and young people asking to be cared for away from the parental home, they were also open to using Section 25 where they had concerns about the treatment and/or welfare of the child or young person. Discussions between social workers in relation to the use of Section 25 were more around these characteristics, rather than the appropriateness of Section 25 in the context of child protection concerns.

Solicitors tended not to express views on the general use of Section 25 arrangements, limiting their responses to the processes that were required or effective legally. They also recognised the diversity of situations which are involved, emphasising that some degree of variation in practice is inevitable:

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“...there will always be interpretation...So you're never going to get a scenario where everything is going to be consistent across the whole country, even within an authority, because every situation is different and the legislation isn't black and white, and I think nor should it be, because it needs to give the local authority powers that the local authority can choose to exercise, when it needs to or wants to ... the inconsistency doesn't worry me...I think, as long as it's explainable, I'm perfectly comfortable with that.”

**- Solicitor, focus group**

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Independent advocates, on the other hand, highlighted the circumstances in which they felt it was inappropriate for Section 25 arrangements to be used, with particular emphasis on circumstances where parents were experiencing acute mental health crises. They highlighted that parents could be asked to 'consent' to Section 25 arrangements for their children at these times, even where the parent had been assessed as incapable of making decisions regarding their own care. Because active consent is not necessary for a Section 25 arrangement, this may not constitute a significant breach of rights in gaining consent where a person lacks legal capacity. However, this practice is still very problematic, in that it is misleading to the parent (and potentially the child if they are also aware) about what is happening in this situation and is likely to generate mistrust of social work practice if the consent was believed to be necessary. Further, parents may also become distressed due to the belief that they consented to their child being cared for away from their care.

## Raising Section 25 arrangements with parents

Social workers spoke in some detail of the process they undertook in developing a Section 25 arrangement to meet the care needs of a child or young person, uncovering a high degree of commonality described by different social workers across local authorities.

### Consent

Discussions of consent were raised by social workers spontaneously during our interviews and focus groups. It was an issue that social workers clearly felt strongly about, and unanimously referred to as a critical part of the process of entering into Section 25 arrangements.

Despite the legal requirement for a lack of parental objection in Scotland, social workers spoke extensively about the lengths they went to in order to gain *consent* from parents for the Section 25 arrangement.

Social workers discussed a number of mechanisms used to support gaining the consent of parents. The most common of these was direct, one-to-one information given by the social worker to the parent. Social workers highlighted the importance of this, saying that it enabled them to present the most relevant and important information for parents directly, and that it provided parents with an opportunity to ask questions and respond immediately. This information was then usually included in the paperwork which social workers would share with parents, which is discussed in more detail in the [parental experiences of paperwork](#) section of this report.

Social workers' descriptions of the timescales for giving parents this information was also dependent on the contexts in which they were undertaking this process. In particular, social workers who considered that Section 25 arrangements are most appropriately used at points of sudden crisis reported spending less time explaining the detail of the Section 25 arrangement compared to those who used Section 25 arrangements in a pre-planned manner, and so would introduce information over a period of days or even weeks.



### Consent process and capacity

Social workers highlighted the additional complexity that, although in almost all cases they would seek a compulsory measure if the parent did not agree to a Section 25 arrangement, there was much less certainty that they would *obtain* such a measure. However, it was clear from some of the discussions between social workers in focus groups that this lack of certainty was not always made clear to parents; it would be mentioned, but not emphasised. See O'Mahony *et al.* for similar findings in Ireland (2020, p. 386-387).

The social workers we spoke to reported that this situation could create significant ethical tension in their practice. On the one hand, it is appropriate that parents make informed choices in possession of the full facts and information, yet on the other hand, much of this information could cause them to feel that they had no choice but to agree to a Section 25 arrangement. Additionally, giving more information about the lack of certainty of gaining a compulsory measure might cause the parent to object in the hope that it would not be obtained, which would at a minimum introduce delays in securing the safety of the child or young person, and at worst prevent them receiving the care and protection that the social worker felt was necessary.

Discussions of consent also included discussions of a parent's capacity to consent. This was a significant theme in the discussions with social workers, who reported that they often felt that parents may not have the capacity to consent to such an arrangement, either at any point, or in the specific circumstances in which the arrangement was being sought. Reasons for this concern included parental learning difficulties or mental health conditions. These were raised particularly in relation to situations where a Section 25 arrangement might be arranged with 24 hours or more notice, although were also mentioned in situations where there was even greater urgency. In these scenarios, additional issues were raised by social workers as impacting on parents' capacity to consent, such as being under the influence of alcohol or other substances, and in particular the highly emotional nature of the context in which consent was being sought. Independent advocates shared their experiences supporting parents with Section 25 where they had concerns about parental capacity to consent:

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“Often you find that child protection processes are brought on to hospital wards...My view is that if someone is mentally unwell at the point that they're needing treatment on a psychiatric ward, they're not in a place to be reading legal documents about Section 25s. And I would really question the consent given at that point, if it's informed. And I understand how the law is written at the moment, and social work are duty bound to try every voluntary way first, before they can go to a legal order...[W]e have parents who, when I say illiterate, cannot even write their name...These vulnerable adults who then do sign Section 25s...when you put it in a way in which it's 'Well, you're in hospital just now... so we're going to take wee Jimmy and he's going to sleep at Auntie Carol's tonight,' or wherever...So if that's what they're told, of course they sign it, because they want what's best for their child more often than not. But I would just question, because the legal phrase that's missing, is 'informed consent.'”

**- Independent Advocate, focus group**

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## **Parental understanding**

Parental understanding of Section 25 was largely, if not solely, influenced by the social workers with whom they spoke. Despite the reported care and attention given to informing parents, the social workers, solicitors, IROs, and independent advocates that we spoke to all mentioned examples of parents who did not understand the implications of Section 25 that they were reported to have agreed to. Among the parents we spoke with, some agreed to Section 25 arrangements fully understanding what it would entail, including their retention of parental responsibilities and rights, prior to consenting. Others were not fully aware of their rights, including those who had thought they were informed of what Section 25 meant. For example, one parent who had felt informed of the arrangement only became aware during our interview that she had retained her parental responsibilities and rights throughout the Section 25 arrangement.

Clearly, an understanding of a Section 25 arrangement and its implications is crucial for informed decision-making and realisation of rights. Incomplete understanding can affect how a parent maintains connections with their child, as well as potentially acting to nullify their right to object to the arrangement or having their child returned to their care if they wish.

These findings echo other studies finding that parents did not fully understand the 'voluntary' arrangements to which they had agreed - or not objected - to (O'Mahony et al., 2020; Masson, 2008).

### **Paperwork**

Social workers were almost unanimous in their use of paperwork to support the process of pursuing a Section 25 arrangement, although the exact nature of the paperwork varied by local authority. This was reinforced in conversations with local authority solicitors, who often reported that they ask social workers to ensure that parents signed a form, albeit not an 'agreement' or 'consent'. Solicitors considered it good practice to evidence what information had been shared with the parent and that they had received and understood it. Some social workers also mentioned (unidentified) legal opinions stating that gaining a signature was good practice.

The discussions that social workers held with parents during the completion of the paperwork were seen as a key opportunity to provide parents with information about what arrangements were being made for their children. This could include information about: family time arrangements; who would be caring for the children; how parents could be involved in care planning; and what any next steps might be in the establishment of the Section 25 arrangement or associated care plan. Social workers from many areas reported that the paperwork could be lengthy, and that the consent form appeared in the same document as information on the planned care, the child's routine, and consent for medical care. Others reported that they had undertaken work to reduce the length of the paperwork related to Section 25 arrangements, attempting to shorten it to the key information that they needed to share with parents. One local authority area reported that they had stopped gaining written consent after being advised by their legal department that it was not necessary.

The following conversation between three social workers clearly illustrates how Section 25 forms are used in conjunction with strong relational practice with parents, but also some of the ethical challenges this raises for social workers.

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**Social worker 1:**

“...[W]e have a standard form that they would sign and it's a full discussion that would then be had about daily routines, what goes on for the child, what school they attend, consent for health, different various things. There's a whole checklist, tick list. So it does involve quite a lengthy conversation. And I guess I suppose that would make you question on occasion, if you're in a crisis situation and you're removing a child, is that fair? Because it's a parent experiencing trauma and we know that our brains can't respond appropriately within a trauma situation. So I guess that's where maybe a child protection order is more, I suppose it's a fairer thing all round. But generally we still do do that [smiles], like try and get them to sign a Section 25...”

**Social worker 2:**

“And we have a similar form, [SW1 nods] but 9 times outta 10 it's a summary of what's in it and a skip to the last pages [SW1 nods and smiles]...And is that fair? No, no really because they're no reading that [SW4 nods], you are talking about it...are you fully preparing and explaining that to the parent? Potentially, no always ... But also the paperwork, it's no great, let's be honest. I think it's wordy, it's not the best piece of work. I think we've had it reviewed a couple of times to try and make it a bit better but, aye, it's still no a great document...”

**Social worker 3:**

“We have a similar document...the only time that I have used it and it's been a positive experience was when a young person was signing it for themselves.”

**- Social workers, focus group**

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## Parental experience of paperwork

When asked about their experience of discussions with social workers around Section 25 arrangements for their child, most parents spoke about the paperwork involved. The formality and process of the paperwork is also likely to be a very significant element of Section 25 arrangement experiences, as adding a signature to a document indicates a pivotal moment of the discussions.

Some parents reported not having understood what they were signing, and another indicated that the 'copy' of the agreement that they received was illegible. Another parent recollected how the paperwork implied consent, which she did not believe had been given:

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**"It was never overtly said [that it was a Section 25 arrangement], but I received papers - can't [remember] what they're titled - all about the removal...It was mentioned in there that I had agreed to a Section 25, which [I disagree with]."**

**- Rachel, parent interview**

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In these cases, the use of a written consent form appeared to contribute to the parents' confusion as much as resolve it. Similarly, some social workers reported that while they had written consent forms for parents, they did not have any associated information leaflets or handouts which provided information on Section 25 arrangements, such as those they had available relating to Children's Hearings. Resources that parents could take home with them may have served to reduced confusion.

Parents and social workers alike highlighted emotions as a key element in determining how parents understood and experienced Section 25 arrangements. Parental reflections on their experiences were deeply entwined with both consciously articulated and spontaneously expressed emotions. There were feelings about self, about the processes, and about the multiple relationship dynamics involved in having their child cared for away from home. Parents explained being upset or angry at themselves that they had allowed this situation to arise; anger with the social worker or department who were seen as removing their child; and worry about what would happen next, and how and where their child would be cared for.

The emotional nature of the contexts in which consent was being asked for weighed heavily on the social workers we spoke with. They were acutely aware that it is very difficult for anybody to truly 'hear' and retain information while in a heightened emotional state and were conscious that the seeking of a Section 25 arrangement was inherently highly emotional for parents as well as for

children and young people. This contributed to the ethical challenges experienced by social workers in their practice around Section 25.

Social workers were also clear that they modified their practice to account for the impacts of emotion, limiting the depth of information that they might give a parent if they are particularly upset. They said that they continued to provide information and answer questions beyond the point that a parent agreed to a Section 25 arrangement. All reported having follow-up meetings with parents in the days and weeks that followed the start of the Section 25 arrangement to provide additional or repeated information, and to involve parents as best as possible in the care planning for their children. These meetings included formal review meetings routinely organised for all children and young people who are formally cared for by the local authority, as well as informal meetings with parents to provide further information:

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“It's so traumatic normally when it happens, that they haven't been able to take in all of that information when it has come. So it's not to say that the social workers aren't having that conversation, or other professionals, because I do believe they are, but the parents maybe haven't just, they're too busy thinking 'oh god I'm losing my child', understandably, or the child's just thinking 'I'm not getting to sleep with mum or dad tonight'. They don't hear the rest of the information, they don't hear the rest of the conversation.”

**- Advocate, focus group**

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## Experiences of the use of Section 25

### Emotional impacts of Section 25

The parents we spoke to frequently and primarily referred to the emotions they experienced in response to their interactions with social workers and social work processes. One parent recounted feeling bullied and another felt lied to about what was happening. While Caroline felt that she had good working relationship with one of her child's social workers, the change in social workers over time affected communication and the relationship. She also felt invisible and talked about at Looked After Child Review meetings, when the practitioners spoke about her in her presence:



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“I started being talked about round the table as 'mum' in the third person, when I was sitting at the table and... You know, if that had happened in any other context, I would have taken someone to pieces for it ... I mean that, that is just not appropriate, you know? ...I'm like, have I become invisible in some way?”

**- Caroline, parent**

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Regardless of how sensitive social workers may have been - and the social workers involved in the research heavily emphasised the importance of relationship-based practice - the experiences of parents we spoke to highlight that there is often a gap in experience and perception between parents and social workers. In focus groups, many social workers said that Section 25 worked best, and its value stemmed from, when parents agreed and worked in partnership with social work to meet their child's needs together. It was clear from the parents who participated in this study that not all experienced partnership working in the way that many social workers may hope to work towards.

'Family time' was another point at which emotions came to the fore. Parents shared with us how they felt a lack of control over the arrangements made to spend time with their child. These were made to fit within social work plans and constraints. Family time, for instance, was often scheduled during the work week which aligned with social worker resourcing yet required parents to choose between family time with their children and work. In addition, parents shared many emotive and difficult experiences with us relating to traveling to and from family time appointments with their children. Alice talked about crying on buses home from family time, while Caroline spoke of how she tried to shrink into the back seat of the car and be ignored when travelling with her social worker. Amy recounted how she had to travel some distance to see her child, and so could only see her every other week.

### **When children know a parent has consented**

During a focus group discussion with social workers on the extent to which Section 25 arrangements supported children's welfare and best interests, the conversation turned to the emotional impact on older children who became aware that their parent had consented to them being cared for away from their parental home. One social worker said that it can be difficult for children and young people to deal with the knowledge that a parent had 'consented' to the arrangement. The social worker told us that they had supported multiple young people struggling with this knowledge:

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**Social worker 1:**

“I think there's something very, very profound about asking a parent to sign away the care of their child, for even the shortest period. I think I've spent many, many hours, talking with young people who really struggle with that. Struggle with that for a long time, that that actually happened, that there was a point in their life when their parent, or parents, signed that right, away. And we know as adults and as professionals we know the reasons for that, we know the context around that, we can understand it. But for young people it, it feels really powerful...”

**Social worker 2:**

“Yeah, like, why didn't you fight for me? You know, you could have taken it to... If they've got enough understanding, say a teenager, you know, ‘you should have said no’... As a parent, that's what I would think: ‘go and get your order then’...and that is the fact, because we've got an understanding of the systems and the processes and how they work, they don't have that...”

**-Social workers, focus group**

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The respondent in this interaction, a practicing social worker, mentioned that they would not agree to a Section 25 arrangement but would instead make social work pursue a compulsory measure if they faced this situation in their own personal life. Interestingly, this sentiment was raised several times by social workers in focus groups and interviews. After one such comment in a different focus group, a social worker remarked that she felt that parents were not aware of their rights, nor did they feel ‘empowered’ to challenge ‘authority’ in many cases:

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“...anybody that is a social worker or works within this field, I think every one of them would say, that ever happened to me, I'd be adamant. 'Go to the court, get the Sheriff then'. You know, you just wouldn't sign the Section 25 because we know how it works. None of us would sign that, not a chance! You'd want to have a full hearing you'd want a Sheriff, but the parents that we're working with feel that duress in that moment.”

**-Social worker, focus group**

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## **Support**

Legally, Section 25 arrangements mean that the local authority provides care and protection for children and young people (known formally as 'looked after'), alongside other children who are cared for under compulsory measures. Social workers approach the support offered to children, young people, parents, and families where there are Section 25 arrangements in line with the approach to support for all children in care.

Responding to questions about the types of support offered to parents whose children are cared for under a Section 25 arrangement, social workers spoke of support offered around the procedures of the arrangement, parenting support, referrals to external services including advocates, solicitors, and financial support for family time.

For children and young people, this support and the subsequent Child's Plan are shaped through multi-agency meetings using the GIRFEC National Practice Model, and family planning meetings to discuss the child or young person's needs. Children and young people cared for under a Section 25 arrangement will also have access to a Children's Rights Officer based within the local authority. Separated children who have been trafficked into Scotland or are seeking asylum without an accompanying adult become 'looked after' by the local authority, and, like their peers, receive support from their carers and social workers who focus on their health and wellbeing. They are also allocated a Guardian under the Scottish Guardianship Service who supports them through the asylum process.

## **Referrals**

Referrals to support services for parents mentioned by social workers included both statutory and third sector services around addictions, counselling or mental health support, domestic abuse support, intensive family support or therapy interventions, and disability assessments for parents. Existing research has shown the importance of local, collaborative, co-ordinated and multi-disciplinary support available to meet the range of needs a birth parent may have when a child becomes cared for away from the parental home (Critchley et al., 2023).

Parents we spoke to mentioned many of these services, and one specifically named financial support as important to their experience. It was acknowledged by social workers that access to services can be affected by whether a parent wants to access a service, as well as the availability of a third sector service in the area or whether there was a waiting list for statutory services.

It is common practice for social workers to advise parents to seek legal advice when initiating discussions around Section 25 arrangements, although they are not permitted to advise parents of what legal services are available locally. While this advice was considered to be positive, social workers, IROs, and advocates recognised several limitations: there is no legal advice or support 'in the moment' when parents are making their decision and not all parents will qualify for legal aid. One parent reflected that it's difficult to access legal aid, even if a parent qualifies for it.

### **Procedural and practical support**

After a child becomes cared for under a Section 25 arrangement, the primary goal is to have the child return to the care of their parent. The purpose of the support provided to parents while their child is being cared for under Section 25 arrangements is to make the child's return home possible.

Procedural support our participants referred to included talking through the Section 25 paperwork, explaining social work concerns and any changes that were required of or expected from the parent(s) before the child could return home, and supporting parents to understand what was written in the Child's Plan and their responsibilities within that. Some social workers spoke of holding meetings with parents to focus on their child's point of view or the social worker's concerns and encourage the parents to consider and share what's important from their perspective regarding the support needed. Other local authority social workers spoke about holding family conferences or family group decision-making meetings to help families develop their own solutions either prior to a child coming into care or as part of planning once a child is cared for away from the parental home.

Some practitioners spoke of the practical support offered to parents; this may include ensuring that a family has what it needs for safety or healthy living standards or services going into the home to assist, help with transport such as getting the family car repaired, helping them to enquire about existing referrals for children or their brothers and sisters (CAMHS - Child and Adolescent Mental Health Services- referrals were the given example), help with accessing medical care, accessing learning disability support, or supporting family relationships. Family support workers, where available, may help with many of these practical tasks.

## Timescales

In contrast to England, which has statutory timescales for making permanence decisions (Children and Families Act 2014, Section 14), Scotland has non-statutory guidance which suggests that a clear plan for where - and with whom - a child or young person will live permanently should be developed by the time they have been cared for away from their parental home for six months. While, if this is required for a parent, treatment time is often factored into the parenting capacity assessment timescales and they can be flexible within reason where required, social work processes need to proceed within timescales that are reasonable and which meet a child's needs. Service access isn't always available within those timescales. If the services that provide support for a parent's expressed support need are inaccessible due to waiting times or are unavailable in a particular local authority area, are parents getting the help they need to understand or engage with the processes they are experiencing?

Some social workers we spoke to discussed changes to support after determining the possibility of a child returning home to the care of their parent or parents) would not be in the child's best interests. Support for parents may then be phased out, often due to resourcing constraints within children and families' social work teams, with parents referred to other support through, for instance, an adult care team. There may also be efforts to ensure that parents have support around them to help them navigate the reality of their child not returning to their care. This may be in the form of support networks or external agencies. It was acknowledged that as a child's care may shift to a longer-term arrangement away from home, some of the support offered to parents ends. At other times, parents may stop engaging with the service:

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**“And I think it's that bit about the professional network 'round about adults can sometimes lessen and also as well sometimes it's about the emotional availability to be able to meet with professionals and things can make that difficult. So there's a bit about sometimes the network shifts away, but sometimes the person shifts away as well.”**

**- Social work manager, interview**

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## Family time

As is the case for all children who are cared for under other legal measures, how parents engage with their children during family time during the early stages of when a child is cared for away from their care, is closely tied with parenting capacity assessments. Section 25 legislation does not proscribe limits on family time, however, experiences around family time and the right to maintain relationships with their children varied for the parents we interviewed. Overall, parents did not feel in control of the timing or duration of family time, and for most, family time was organised by social workers and managed in line with compulsory measures.

A few parents in our study commented on feeling pressure to take part in these set 'family time' sessions or how unnatural the interactions felt with social workers observing the family time or when they visited their children in a foster carer's home for family time. Social workers told us that they are responsive to how children experience these interactions and may reduce the length or frequency if they feel that the family time is not meeting a child's needs. Where this dynamic differs for Section 25 arrangements, is that parents may decide to remove their child from the Section 25 arrangement if they disagree with this reduction in spending time with their child.

Two parents spoke of extremely long distances between their parental home and where the child was being cared for during the Section 25 arrangement: 100 miles and 350 miles. Other parents told us that their children had been cared for in the same town or wider area as their parents. Two other parents remembered being told that their children needed time to settle into their new home, or build a relationship with their carer. One parent interpreted this as meaning the duration of their child's time in care and did not visit the child in person and so they exchanged letters instead. Other parents were allowed to visit frequently and were supported to travel to where their child was being cared for.

Social workers discussed the balance between putting in reasonable provision to enable parents to have family time with their children, and asking parents to organise themselves so that social workers can assess consistency and how they are committed to their child's needs. Social work departments organise the financial support required for family time such as reimbursing parents for the cost of petrol or buying tickets for public transport for parents to be able to travel. The emphasis on providing finances, social work participants noted, helps when processes are moving toward permanence away from home for a child and social workers can be confident that they have removed any practical barriers to engagement for parents having family time with their children. One parent felt that she hadn't engaged with family time to the extent that she would have liked due to her addiction. She had been contacted to offer her a place in a programme, but she didn't feel that it was enough support for what she needed.

While providing financial support to facilitate parents travelling to spend time with their child was the most common approach, some social workers discussed taking children to the places where they could spend time together. This then prompted discussions around whether it should be the children or the parents who travel, and a recognition of professional practice boundaries and local authority rules around driving parents to be able to have family time.

Departmental approaches varied across the country and ranged from travelling with parents in a social worker's car, which helped with social workers' overall relationship building and assessment, to not being permitted to drive parents anywhere. One or two social workers talked about the inability to drive parents for family time with their children as potentially damaging to the relationship they had with the parents, noting that they sometimes travel past the bus stop where a parent is waiting to head back into the town from which they both came.

If social workers have determined that it will not be in a child's best interests for them to return to their parent's care, and the family continues to have a large amount of family time, some social work departments may support parents to plan suitable activities or undertake 'play work' with parents to support them to make family time as positive an experience for them and the child as possible.

One social worker explained that for situations in which permanence has been secured while a child was being cared for under a Section 25 arrangement, depending on the circumstances, sometimes parents might need to be supervised during family time, or it may be that social work no longer needs to have a role in that family time. Ideally, we were told, parents and foster carers can work together to make family time feel more natural.

### **Support to resume care of child**

As noted above, when a child is cared for away from their parental home, the primary goal is for the child to return to their parent(s) care. This is how support proceeds until a return home is no longer deemed to be an option in the best interests of the child concerned. Social workers discussed with us undertaking work to help parents set and keep rules, routines, and boundaries for children, or potentially helping parents consider how they respond to situations and recognising the role that their own trauma may play in this.

Some local authority areas undertook family group decision-making meetings when a child's return to their parent's care was still being considered, to focus on the child's support needs if they returned home, but also what additional support might be needed and potentially offered by a child's family and the family network around the parent(s).

Two parents told us about their experiences of the support they received that was explicitly focused on working towards having their children return home to them. In both cases, the amount of time they spent with their children was increased, and they were initially supported by having a social worker present



before spending increasingly longer periods of time alone with their children in public or in their own home. One of these parents said that it had helped build up and restore her confidence in her ability to keep her child safe; the other parent was eventually told that her children would not return home permanently, and that decision also ended the children's weekends at home with her.

### **Experienced gaps in support**

Although social workers described many approaches to direct and indirect support to address the needs of parents including parental health, wellbeing and safety, parenting dynamics, and practical arrangements for the home environment, not all felt that the support offered to parents was sufficient to meet their needs. The parents we interviewed referred to various support gaps, which seemed particularly important for those with little or no support network. Some parents may be in a situation where they cannot provide suitable care or protection for their child due to a limited support network, or they may have left a support network behind when moving away from an area to leave an abusive relationship or enter rehabilitation.

Parents spoke about the practical support that they felt would have helped them when the Section 25 arrangement began. Examples included the ability to have family time when it suited their responsibilities, such as on weekends or around work scheduling; recognition that accessing multiple services or dealing with private matters may take up a lot of a parents' time; and, ad hoc support during the times they were experiencing stress, such as the opportunity for child care to help them with sleep deprivation. The parent that mentioned the opportunity for occasional naps felt that it would help their ongoing health concerns.

Parents also said that emotional support alongside the practical support would be helpful, including someone to phone and check-in with them after spending family time with their child or key meetings when they have seen their children, particularly if they are travelling home alone late at night or at the start of the weekend, and earlier emotional support to prevent substance abuse relapse. In other research contexts, the need for and benefit from non-judgmental emotional and mental health support has been well established (Critchley et al., 2023, p. 14). There was also a clear role for advocacy, which is not always available to parents, and emotional support around Looked After Child Review meetings. One parent recounted attending a meeting alone, alongside a child's social worker, foster carer and foster carer's social worker, amongst others, and not feeling able to raise concerns.

## Why are Section 25 arrangements used?

Social workers who spoke to for this research frequently referred to the influences and challenges around decision-making in relation to Section 25 arrangements. They reported how these decisions can take place in challenging contexts, as well as the individual's internal influences and alongside wider external influences, and the characteristics of the child or family's circumstances which can influence decisions. In this section, we discuss these external and internal influences, before discussing how social workers described how these can have an impact on one another.

### External influences

Social workers often spoke, in a range of ways, of the influence of 'system' and societal expectations on their decision making. Specific reference was made to 'minimum intervention' or the 'no order' principle, which was described as stipulating that compulsory measures should only be used when it was absolutely necessary to achieve the required outcomes in the best interests of a child. This concept, aiming to minimise intervention into family life, comes from the Children (Scotland) Act 1995. Section 11(7) states that in regard to making decisions affecting parental responsibilities and rights or guardianship, the welfare of the child is the paramount consideration and a court must not make an order unless doing so is considered better than not having an order in place (Children (Scotland) Act 1995). As Section 25 is not 'ordered' by a sheriff or Children's Hearings, social workers appear to view the 'no order' principle as a prompt to seek Section 25 because it is viewed as 'voluntary' rather than compulsory.

Alongside this, social workers often referenced the idea that voluntary measures should always be preferred to compulsory measures. Not all social workers we spoke to agreed with this in all circumstances, however there was a general acceptance of the idea that it was preferable for a family to engage with services 'voluntarily' than it was for them to be compelled to do so. Further, it was often highlighted that Sheriffs (and by extension, legal advisors within local authorities) expected Section 25 to be used in preference to compulsory measures and would query whether a Section 25 arrangement had been explored prior to considering a Child Protection Order. Accordingly, social workers felt a strong drive to offer and support the use of Section 25 arrangements in preference to compulsory measures.

In an analysis of multiple studies about Section 20 in England, Masson argued that local authorities are reluctant to progress care proceedings due to the expectation that intervention should be the last resort (2008, p. 70). Masson also cites a care profiling study which discussed how local authority solicitors and courts expected social workers to have first tried to work with parents under Section 20 arrangements before applying for an Emergency Protection Order. (Masson et al., 2004 as cited in Masson, 2008, p. 65). A Family Rights Group

consultation with social care practitioners similarly found that they faced pressure to use Section 20 to avoid care proceedings (Lynch, 2017, p. 60).

Social workers expressed that these expectations came from positions of authority (for example Sheriffs) and were represented as being beyond the control of an individual social worker, team, or even local authority. However, there were other external influences reported which were more localised, in particular, the expectations and practice of the team in which the social worker was based, and the local authority within which the social worker operated. Social workers reported that, while they could rarely identify specific policy or guidance in relation to Section 25 arrangements from their local authorities, they felt that there was a preference for the use of Section 25 arrangements over compulsory measures.

This related to the wider external influences, but while these were consistently reported across different social work areas and teams, the perceived preferences of the local authorities were not experienced uniformly, and were reported to be different between local authorities, with some social workers highlighting differences between their experiences in their current local authority and prior experiences in other local authorities.

For example, at a local level, social workers frequently alluded to the influence of their team on their practice in relation to Section 25. Social workers with a range of experience (from those who were newly qualified or in training through to those with more than a decade of experience) reported that there was very little information given about Section 25 arrangements in training, and that there was a similar lack of information or guidance from local authorities and the Scottish Government.

When asked directly about local policies or guidance for the use of Section 25 arrangements, only a handful of participants reported that their local authority area had a policy on the use of Section 25. Several local areas, however, were reported to have either undertaken reviews of their Section 25 paperwork or sought legal advice around capturing signatures on forms. This requirement for written consent or agreement from a parent appeared to be the only consistent element across the country. Social workers from all areas reported this practice, although the associated paperwork and information varied significantly between local authority areas and teams. It was clear that this has evolved through practice and is not a legislative or regulatory requirement.

One of the results of this lack of guidance is seen in the variation in how and when Section 25 arrangements are used between different social work teams and local authority areas. Social workers reported that their understanding and use of Section 25 arrangements was almost exclusively informed by the practice of more senior social workers in their team, the practice they were exposed to as newly qualified social workers, and the practice environment of the local authority. The lack of training in relation to Section 25 arrangements while

qualifying as a social worker, and the lack of guidance at a local or national level, meant that social workers learned about appropriate and inappropriate application of Section 25 arrangements through the examples set by senior social workers, team leaders, and other colleagues. These team-level influences were apparent in the discussion of Section 25 by social workers. Use of Section 25 arrangements was often reported at a team rather than individual level, with social workers reporting how “we” (meaning their team) used Section 25 arrangements, and these reports remained consistent between social workers within the same teams. From this, we can see how team expectations and practice inform individual decisions in relation to Section 25 arrangements.

Another factor affecting team practice was resource constraints. During a focus group in one local authority area, social workers noted that there were not enough foster carers available to provide the capacity needed to bring a child into the care of the local authority. Nationally, there has been a decline in the number of available foster carers over the past four years (Care Inspectorate 2024).

Alongside these influences, other external contextual factors were also reported to influence decisions. These factors could blur the boundary between external and internal influences, as they often involved the perception or reporting of objective information which it was not possible to know absolutely. Issues here could include: the time it might take for a referral to be received, processed, and actioned by the Children’s Reporter or the Children’s Hearings System in general; the caseloads and time demands which the social worker was managing; and the thresholds that were set for obtaining a Child Protection Order (CPO), or a Compulsory Supervision Order (CSO). Finally, it was noted by some social workers that Section 25 arrangements did not require them to gather formal evidence of risk to the child or young person’s wellbeing, were quicker to establish, and involved significantly less paperwork, compared to compulsory measures.

### Internal influences

Alongside these external influences, social workers highlighted their own internal influences that contributed to their decision-making; influences that revolved around their own views and opinions on the relative value and benefits of using Section 25 as opposed to compulsory measures. The issues raised include individual social worker’s perspectives on the ability of parents to consent to Section 25 arrangements, their views on the importance of working with families on a voluntary basis, the importance placed upon keeping the child or young person out of the Children’s Hearings System, and their views on the extent to which the rights of children, young people and parents were upheld in different arrangements.

Attitudes to risk, and risk perception, were also a significant factor for social workers. Section 25 arrangements could be perceived as more or less ‘risky’

depending on social worker perceptions: social workers highlighted that they considered the risk that a parent might object to the Section 25 arrangement at a later date when deciding whether to pursue one or not. They reported concern that if a parent requested a child was returned to their care, it would require them to seek and evidence a compulsory measure at short notice, and potentially in a situation where the evidence of risk that they had was less 'immediate', and so potentially less likely to meet the thresholds for emergency intervention such as a Child Protection Order.

### **Circumstances for children and their families**

The social workers we spoke to were clear that specific details related to the circumstances of children and their families were influential in their decision of whether to pursue a Section 25 arrangement to meet a child's needs. They reported a range of factors which might influence their decisions:

- the wishes of the children, young people and parents;
- the evidence available to support a compulsory measure;
- the parents' ability to provide consent, especially in the contexts of substance misuse, mental health issues, learning difficulties, and the emotional stress of the arrangement;
- the level of risk to the children or young people;
- the impact that compulsory vs. non-compulsory intervention might have on the relationship between families and social workers, and therefore the ability of social workers to work effectively with the family.

Social workers spoke extensively about the importance of the ability of parents to consent to the Section 25 arrangement, highlighting the critical importance of this. The other factors related to family circumstances, however, were less emphasised, and while they were referred to and considered important, the external influences over decision making appeared to take precedence.

### **Thresholds**

In their discussions of decision-making in relation to Section 25 arrangements, thresholds were often mentioned in the responses by social workers. Most often, this related to the capacity for a Section 25 arrangement to be sought and obtained in contexts where the risks to the child or young person were not considered sufficient to meet the threshold for compulsory intervention (whether under a CPO, CSO, or other order).

Social workers were clear that they experienced situations where they felt that children or young people needed to be cared for away from their parents, for at least a short period of time, but that they were not confident that, should they make an application for a CPO or a referral to the Children's Reporter, that the risk would be considered sufficient to support compulsory intervention. Social workers acknowledged that this could feel challenging but also thought that Section 25 arrangements provided an opportunity to provide the support and

protection that they considered the child or young person required. .

### Competing views and interests

Through discussions of their decision-making in relation to Section 25 arrangements, social workers also highlighted a range of conflicting priorities, values, or views that they considered in their decision-making. These ranged from (perceived) organisational or 'system' requirements, through to case characteristics, to the individual perceptions or values that they held. These competing elements highlight the ethical and moral dimensions that social workers reported they are routinely engaging in, often in these explicit terms:

#### **Social Workers' perceptions of the advantages of Section 25 arrangements**

- Speed – can be obtained quickly in a crisis
- Flexibility to respond to situations where social workers may not be sure of obtaining a compulsory order
- Parents retain greater control and rights over the care of their children
- Preserves the 'no order principle'; considered less intrusive than compulsory measures
- Helps to maintain a positive social worker/parent relationship
- No requirement for formal evidence
- Child/young person does not have to attend Children's Hearings; thought to avoid the uncertainty of Children's Hearings

#### **Social Workers' perceptions of the challenges/disadvantages of Section 25 arrangements**

- No clear thresholds for children being 'looked after' away from home
- Risk of parents feeling coerced
- Lack of a timeline for establishing permanence for the child or young person may reduce urgency to achieve this
- Can be emotionally difficult for children who know that their parent consented to the Section 25 arrangement
- Possible lack of complete understanding on the part of parents
- No third-party oversight
- Compulsory orders provide parents with clearer opportunities to have their views heard and rights upheld
- Possibility for parents to remove their children from care with little or no notice and the impact of this on children and carers
- Possible impact on ability to gain a compulsory order at later date if considered necessary

## Use of Section 25

### Section 25 arrangements in practice

Our focus group conversations included unprompted discussions on what social workers felt Section 25 arrangements should involve, and on the occasions that this did not arise organically, researchers prompted the group to talk about what Section 25 looks like when it's working well. Practitioners were honest and open about the limitations of their knowledge or experience in relation to Section 25, their reflections on past actions, and how their approach has changed. There was an acknowledged diversity around social workers' knowledge of Section 25 and their confidence in using it. They felt that the detail of using a Section 25 was not covered in-depth during initial social work training and noted that only a small number of local authorities included Section 25 as part of continuous professional development.

Respondents highlighted that the use of Section 25 involves the application of both technical legislation and processes, and softer skills required for relational practice with families. Throughout our conversations with social workers we heard about the importance of learning on the job, and this was spoken of across a range of experience levels. Senior practitioners felt that they now had a deeper understanding than earlier in their careers. Whether they described this understanding as due to experience gained through supporting more families or as a result of additional responsibility, it highlights the benefit of working alongside more experienced practitioners. Some explained that within the context of staff shortages and through the recent Covid-19 public health restrictions, newly qualified social workers may now have had fewer opportunities to work alongside more experienced practitioners working on Section 25. Recent research on Scotland's Children's Services sector found that practitioners involved in the study shared this view on the impact of the Covid-19 health restrictions and also described a high number of experienced practitioners leaving the workforce in recent years (McTier et al., 2023, p. 75-76).

The diversity of knowledge and understanding was often highlighted in the context of when responsibility for a child moves between teams, such as from pre-birth or child protection to longer term teams. Social workers raised these scenarios as points at which they could become aware that parents lacked clear understanding of the care arrangement, or had been told or interpreted inaccurate information around Section 25. It was noted that this could lead to mistrust when practitioners provided different information or explanations about the arrangement.

Practitioners noted that participation in our research had caused them to consider their use of Section 25 arrangements in more detail, and this was often accompanied by a reflection that training and guidance on the use of Section 25 arrangements would be beneficial for all.



## Kinship care and Section 25 arrangements

Many children who are being cared for under a Section 25 arrangement are living with kinship carers. This itself is not surprising given the Scottish Government's priority on keeping children within their family networks where it is possible and safe to do so. While some of what was shared with us around kinship care was not unique to Section 25, such as the reflection that the transition into a kinship carer's home can be an easier adjustment for children who are already familiar with that carer, discussion around Section 25 as legal status arose in several contexts.

When we asked about their involvement in Section 25 arrangements, local authority solicitors who took part in our study explained that they were not involved with every case where a child was cared for under a Section 25 arrangement, but that social workers would consult them when they had questions. One common question that several solicitors reported dealing with concerned whether particular children were legally 'looked after'.

This question is significant because it highlights how Section 25 interacts with what has been described as a "three-tier kinship system in Scotland" (Hill et al., 2020, p. 5). Informal kinship care is entered into as a private family arrangement and generally unknown to social work, and formal kinship care arrangements are initiated and supported by the local authority and the children concerned are therefore formally 'looked after'. 'Semi-formal' kinship care, however, is when private family arrangements are known to the local authority (and the carer may receive financial support) but the child is not formally 'looked after' (Hill et al., 2020, p. 5). Social workers' questions to solicitors around whether a child is 'looked after' sits at the distinction between formal and semi-formal kinship care; the local authority was aware of the arrangement, provides a certain level of support, and must determine whether to undertake 'looked after child review' processes:

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**"I think where the uncertainty arises is in relation to children with family members. And are they accommodated, or are they not? I think if it's a child who's, who needs a placement outwith their family, I think it's pretty clear, and workers are pretty clear that those children are accommodated under Section 25, for me, the grey area for workers is where it's a, it's a family member who's being, as [Solicitor 1] said, the arrangements are being made for a child to stay with a family member, and is it, does it make the child looked after and accommodated, or is it a private family arrangement? And I think that's where the grey area lies."**

**- Solicitor, focus group**

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Within this focus group, there were differing opinions over the point at which a local authority's involvement indicated the arrangement was formal, as opposed to 'semi-formal' or informal, kinship care:

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"So, to us as lawyers, clearly where the local authority has stepped in and made arrangements for that child to be safe, you will have, well chances are you will have made a placement. So obviously, looked after regulations kick in; there's certain obligations on the local authority, there's certain information, obviously, that's got to be gathered."

**- Solicitor, focus group**

"...what I'm coming across [is] that even if it is a family that've tried to make a voluntary arrangement without social work, if social work have been involved they are not willing to just allow that arrangement. They want to go in and make it a Section 25."

**- Solicitor, focus group**

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### Framing of Section 25 as 'voluntary'

In conversations relating to consent, there was substantial discussion of the degree to which parents were free to choose to enter into a Section 25 arrangement, and the degree to which this was 'coerced'. Social workers recognised that informing parents of the compulsory alternatives could be experienced as coercive, and resulted in parents feeling that they simply had a choice between their children being cared for under a 'voluntary' arrangement through Section 25, and being cared for under a compulsory measure if they did not agree to a Section 25 arrangement. It was recognised that this binary choice did not accord with the general perception of Section 25 arrangements as being a 'voluntary' arrangement, and the social workers we spoke to reported that this created a significant level of discomfort. Many social workers were very clear that they felt that parents could be, in effect, coerced into agreeing to a Section 25 arrangement, under the perceived threat of a compulsory measure should they not agree.

Use of the term 'voluntary' to refer to the process of entering into a Section 25 arrangement appears in the official accompanying regulations and guidance to the 1995 Act and was commonly - though cautiously - used by practitioners in focus groups and interviews. Parents and practitioners do not feel that this term is accurate.

One parent who we spoke to talked about understanding the proposed Section 25 arrangement but not feeling as though she had a choice:

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#### Conversation between Alice (parent) and researcher:

Alice: "So it's like a voluntary (makes a face) agreement that you make with the council, to help protect the children, to keep the children safe..."

Interviewer: You did a little face there when you said voluntary.

Alice: Well, yeah, because I don't think it is voluntary. Actually, I think it's a case of...

Interviewer: (nods) Tell me more.

Alice: You're kind of like...It's a bit like when they say you're a voluntary patient in hospital. And you're thinking 'oh, because I know if I'm not voluntary, you'll Section me.'

Interviewer: Yeah, yeah.

Alice: So to me that word voluntary is a bit, you know, [pauses] [Interviewer: okay] (laughs) It's like welllll, it's not really voluntary. Voluntary suggests that it's a choice [Interviewer: yeah]. I mean in a way, like I did make a choice when it came to permanent care for my children, there was a choice. But you kinda feel like you haven't really got the choice because you have to do it for the welfare of the children... But you kinda feel the word voluntary suggests that you're quite happy with it. [Interviewer nods] I don't like- You know, I just think it's not really voluntary."

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As illustrated, although parents and practitioners acknowledge that parents do have a choice about objecting to a Section 25 arrangement, there is a feeling of discomfort that comes from the scope of that choice, and the perceived omission of supportive alternatives.

Social workers were also acutely aware of this tension. They expressed a wish for parents to be given a free choice and to actively consent to the arrangement, and, if this consent was not forthcoming, for compulsory measures to be used. One social worker, echoing the sentiment of many across the study, succinctly referenced the tension between being honest with parents around the reality of the situation of concerns about their child's needs, and a desire for the conversation to be free from any perceived coercion:

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"You don't want a parent to feel coerced into Section 25 and to an extent they will be. Because they're like 'Either way, you're going to remove my child, so you're not giving me choice in it'. And that's a difficult thing because [in] social work you try and go alongside people. But I think we have to recognise and own that there's times that we are going to do this to you, because we can't do it alongside you. It's not safe, it's not possible, or there's disagreement."

**- Social Work Manager, interview**

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While the legislation is clear that there is no requirement for consent in the use of Section 25, and the English courts have come to similar conclusions regarding Section 20 in England, it is common social work practice to seek active consent for Section 25 arrangements. When social workers seek active consent, they often tell parents that the alternative to entering into a Section 25 arrangement is for social work to seek a compulsory measure, which would remove their

Parental Responsibilities and Rights. Placing parents in a position in which they face compulsory alternatives and must decide upon care for their children without full information on consequences of the choice being made, while experiencing stressful or traumatic events or in a dynamic in which they experience a power imbalance, challenges the concept of the 'voluntary' nature of Section 25. These findings echo what has been found on 'voluntary' care arrangements by social service departments in Scotland and other jurisdictions (Simpson, 2022; O'Mahony et al., 2020; Pösö et al., 2018; and Lynch, 2017).

### **Right to object and have child returned to parental care**

Section 25 enables parents to request their children be returned to their care at any point. After a child has been in care for six months, this must be a written request to the local authority giving at least two weeks' notice. Solicitors and some social workers were conscious that this was not an unfettered right to request the return of the child to parental care. The parent must be both willing and able to provide appropriate care, or to arrange for such care, for their child. These practitioners were clear that these considerations impacted significantly on decisions over whether to return a child to their parent's care in the instances where a parent had requested this.

More generally, social workers reported that they experienced very few instances where parents had tried to remove their children from a Section 25 arrangement. This appeared to be in part because those situations where the social worker considered that there was a significant chance of a parent objecting to the Section 25 arrangement, referrals to the Children's Reporter or other routes to compulsory measures were used. We heard across the discussions with social workers and solicitors that in almost all cases where a parent does 'withdraw their consent', social workers again move to compulsory measures. There were very few examples shared by social workers of responding to such requests by returning the child to their parental home. The outcomes varied between families managing without having the child cared for away from the parental home, even if not at a level hoped for by social workers, and examples where the children were later cared for away from the parental home again.

The parents we spoke to had varying experiences in relation to objecting to the Section 25 arrangement. Some (Caroline, German) did not wish to object, as they felt the Child's Plan for their children was going in the right direction. Others (Amy, L, Sara) were unaware that the legal basis for their child being in care was the Section 25 arrangement, and so were not aware of their right to object. Alice only found out about the requirement for written notice after the six month point and signed a letter to formally give notice of her intention to remove her children from the arrangement. The team leader met with her to explore whether she was in a position resume caring for her children full-time. After discussing her concerns, Alice decided to not remove her children from care. For Rachel, after her child had been cared for under a Section 25

arrangement for two weeks, she informed social workers that she planned to remove her child from care and the social work department immediately sought and were granted a Child Protection Order.

These examples show the range of possibilities for a parent objecting to a Section 25 arrangement. While two of the parents we spoke to were content with the arrangements for their child's care, neither of the two parents who objected to the Section 25 arrangement had their child returned to their care. The other three parents were in what may be considered the worst situation: where they were unaware of their right to object, and so were unable to do so if they wished.

### Managing Section 25 arrangements

Due to the fact that children being cared for under Section 25 arrangements are 'looked after', monitoring and review should follow the same procedures as for other social work processes for 'looked after' children. Looked After Child Review meetings generally take place at 72 hours after a child has become cared for by the local authority, and then at three weeks, three months, and then every six months. These meetings review the needs of each child and are designed to ensure that their parents can contribute to the care plan put in place and raise any concerns or questions. The difference between Section 25 arrangements and compulsory measures is that there are no external decision-making forums involved (for example, Children's Hearings).

All the parents we spoke to said they found these review meetings stressful, with Caroline noting the very large volume of paperwork that she would receive in advance of the meetings, and others feeling that they were being ignored or forced into agreeing to the social work plan for the child (L., Rachel). Social workers often highlighted that one of the strengths of Section 25 arrangements was that they avoided the Children's Hearings System, and the stress and discomfort that they understood this to involve for families. Unfortunately, it appears that these Looked After Child Review meetings were also experienced as stressful by parents.

Some social workers also reflected that they felt that permanence decisions made for children and young people being cared for under Section 25 arrangements could be allowed to take longer than for children and young people being cared for under compulsory orders. There were a range of characteristics or circumstances that were raised as potentially contributing to this. The Scottish Government recommended timescales for deciding where a child should live permanently (a 'permanence decision') is set at six months after the child has become cared for away from their parental home. The lack of set statutory timescales for moving children and young people being cared for under Section 25 arrangements into permanence processes to determine their long-term care was often mentioned by social workers as potential reasons for the perceived differences around permanence decisions.

There was also a suggestion that Section 25 arrangements could lack a clear shared understanding between parents and social workers of what changes parents needed to make or what is being worked towards, and that this could result in a lack of clear co-ordination and progress in meeting the needs of a child or young person. This was related to the suggestion that Section 25 arrangements were used to ensure a child or young person's safety, but no longer-term plan was then put in place. Another reasoning suggested was that the ability of a parent to request the return of their child made social workers less inclined to work towards permanence away from home or introduce changes during social work review meetings, out of concern that doing so might cause a parent to object.

This could have the effect, social workers noted, of allowing Section 25 arrangements to persist as long as the child was seen to not be at risk. This was often framed in contrast to compulsory measures through the Children's Hearings System, where there was reported to be a greater accountability, despite hearings not having a role in permanence decision-making prior to a permanence order being sought:

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"I think probably in early intervention and intake that's slightly different because you're looking towards, you know, getting one outcome or not. But I think as children get older ... it kind of probably gets a little bit less, less focused ... we have to be very careful about drift in care plans and I suppose that's one of the things that the Children's Hearing keeps much tighter because you have more accountability than just solely the [Looked After Child review] processes."

**Social worker, interview**

"...but that's been good in terms of keeping us on top of the permanence plans for kids, I mean we obviously do it [review permanence plans] in [Looked After Child] reviews as well, but I think having those exterior forums, where you're being asked what's happened as well, just puts a bit more pressure on you realistically, because you know you're gonna get asked that and you know you have to have an answer for it basically."

**-Social worker, interview**

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## Permanence discussions and planning

During our focus groups, we asked respondents about permanence processes for children and young people who are cared for through Section 25 arrangements. For the most part, respondents indicated that there were few differences between processes and planning for children and young people being cared for under Section 25 arrangements compared to those being cared for under compulsory measures. One point of difference was that for some social workers, Section 25 arrangements were entered into for children and young people who they were confident would not return home to live with their parents. Alongside this, however, a few participants mentioned kinship care as potentially leading to a return home to their parents' care when a child had been in care for several years, in a way that wouldn't happen after being cared for by foster carers.

## Quantitative cohort analysis

To further examine whether children and young people being cared for under Section 25 arrangements had significantly different care pathways compared to other children and young people in need of care and protection who are supported by their local authority, we conducted comparative analyses of three different cohorts of children and young people who had an episode of care closed from 2017-2022. These cohorts represent all 13,983 children and young people who had an episode of care end within this time period.

1. Only Section 25: Children and young people who only experienced being cared for under Section 25 arrangements as their legal reason (3,477 children and young people)
2. Section 25 plus: Children and young people who were cared for under a Section 25 arrangement and at least one other legal reason in that episode of care (4,529 children and young people)
3. Never Section 25: Children and young people who were never cared for under a Section 25 arrangement (5,977 children and young people)

Due to the large numbers of children and young people in these analyses, systematic, but very small, differences may be identified as statistically significant. As we are interested in real-world experiences, we have also reported on effect sizes, which give an indication of how large the effect of a significant difference is. Effect sizes are reported as a number between zero and one, and their interpretation is not exact. It is common to understand these as representing a 'small' effect at around 0.1, a 'moderate' effect at around 0.25 and a 'large' effect if they are around 0.4 or higher.

## Age at start of the care pathway

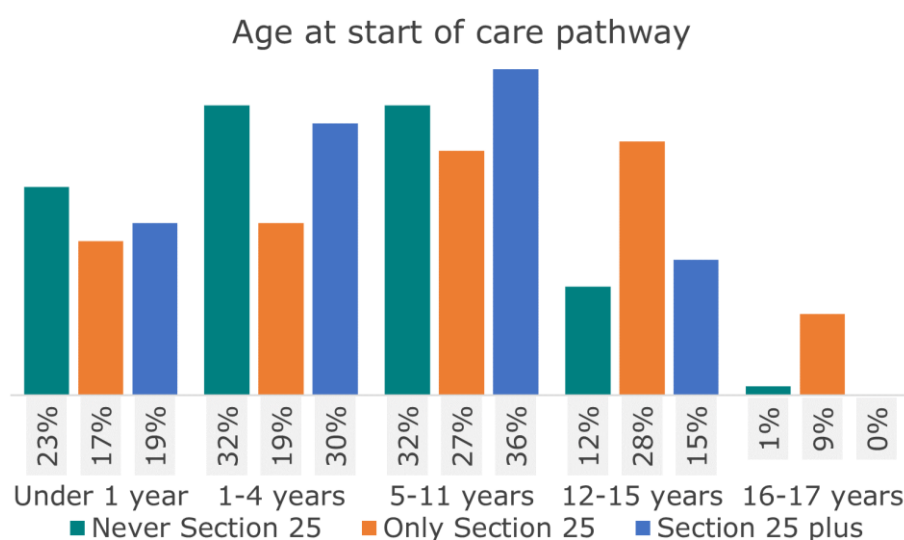


Figure 18: Age at start of care pathway by cohort (n=13983)

The median age of children and young people who were only cared for under Section 25 arrangements was significantly older (8.7 years old) than those in the Section 25 plus group (5.15 years old) and Never Section 25 group (4.3 years). All differences were statistically significant, with a moderate effect size for the difference between the Only Section 25 group and the Never Section 25 group.<sup>5</sup> Over a third (37%) of children in the Only Section 25 cohort started their care journey when they were over 11 years old. Ages at the end of care pathways were also significantly different, but with only 'small' effect sizes.<sup>6</sup>

## Cohort care journey characteristics

### Length of care pathways

When we look at the length of care experience pathways for children and young people in these cohorts, we find that those who experienced Only Section 25 arrangements had significantly shorter time in care (median of 1.3 years) than those who never experienced being cared for under Section 25 arrangements (4.1 years), and those who were cared for under Section 25 arrangements plus at last one other legal reason (5.2 years) (Figure 19).

<sup>5</sup> Overall Kruskal-Wallis test:  $p < 0.001$ ,  $T = 583.35$ . All post-hoc pairwise comparisons were significant  $p < 0.001$ , with effect sizes of: Never Section 25 v Section 25 plus = 0.06 (small); Never Section 25 v Only Section 25 0.25 (moderate); Section 25 plus v Only Section 25 = 0.19 (small)

<sup>6</sup> Overall Kruskal-Wallis test:  $p < 0.001$ ,  $T = 100.480$ . Pairwise effect sizes: Never Section 25 v Only Section 25 = 0.02 (small); Never Section 25 v Section 25 plus = 0.10 (small); Only Section 25 v Section 25 plus = 0.07 (small).

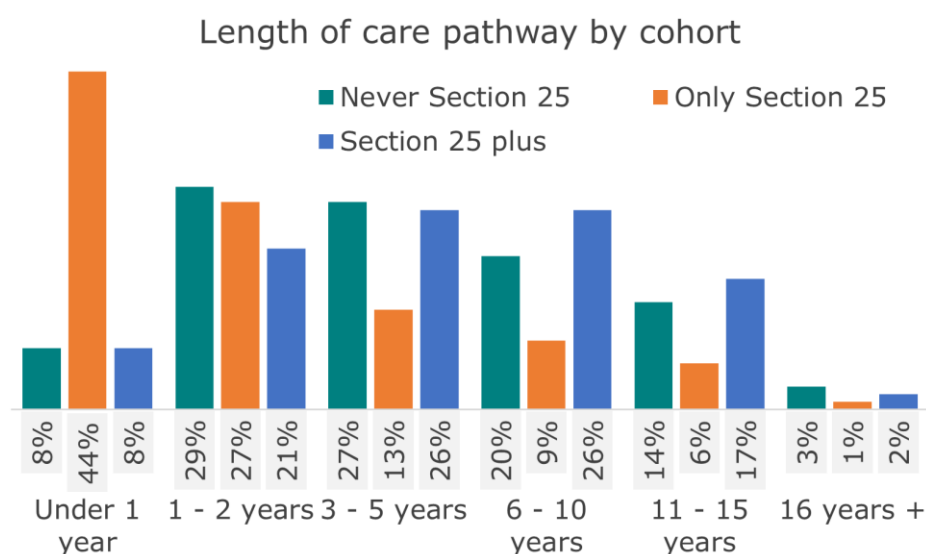


Figure 19: Length of care journey by cohort (n=13983)

When we compare the length of care experiences between the cohorts, we find that there while all comparisons are significant, the effect sizes for the differences in time for the Section 25 plus cohort and both the other cohorts are large, while the effect size for the difference between the Only Section 25 and Never Section 25 cohorts is small.<sup>7</sup>

This finding reflects some of what social workers and other practitioners told us about the use of Section 25 arrangements being used where there were positive relationships with parents who agreed to Section 25 arrangements.

### Number of episodes of care

We examined the number of episodes of care experienced by children and young people in each of these cohorts. The majority of each cohort experienced just one episode of care. However, 45% of the Section 25 plus cohort experienced more than one episode of care.

<sup>7</sup> Overall Kruskal-Wallis test:  $p < 0.001$ ,  $T = 2066.699$ . All post-hoc pairwise comparisons were significant  $p < 0.001$  with effect sizes of: Never Section 25 v Only Section 25 = 0.37 (large); Never Section 25 v Section 25 plus = 0.08 (small); Only Section 25 v Section 25 plus = 0.44 (large).

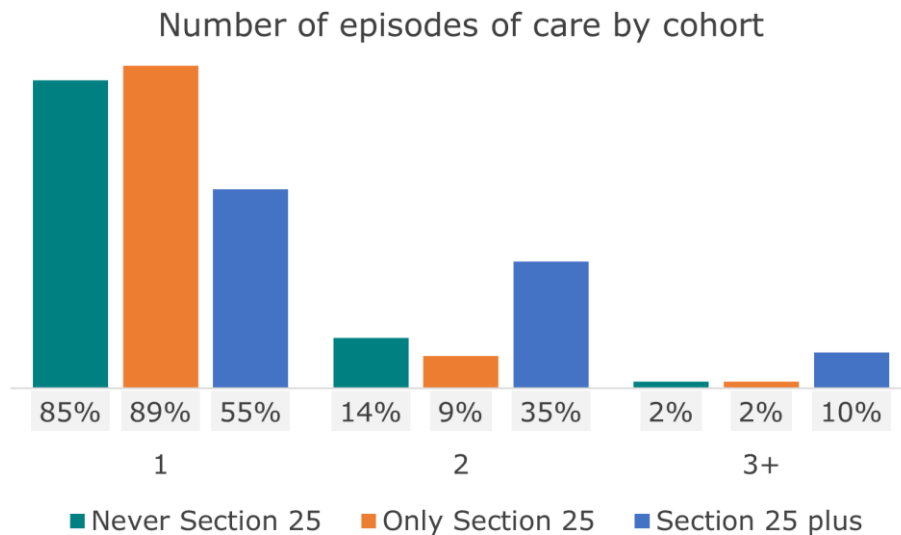


Figure 20: Number of episodes of care by cohort (n=13983)

Again, the differences overall are significant, and the differences between each cohort are also significant. The effect sizes of 0.37 and 0.40 for the differences between the Section 25 plus cohort and the Only and Never Section 25 cohorts respectively indicates that the difference in the number of episodes experienced between these groups is also large.<sup>8</sup>

### Number of placements

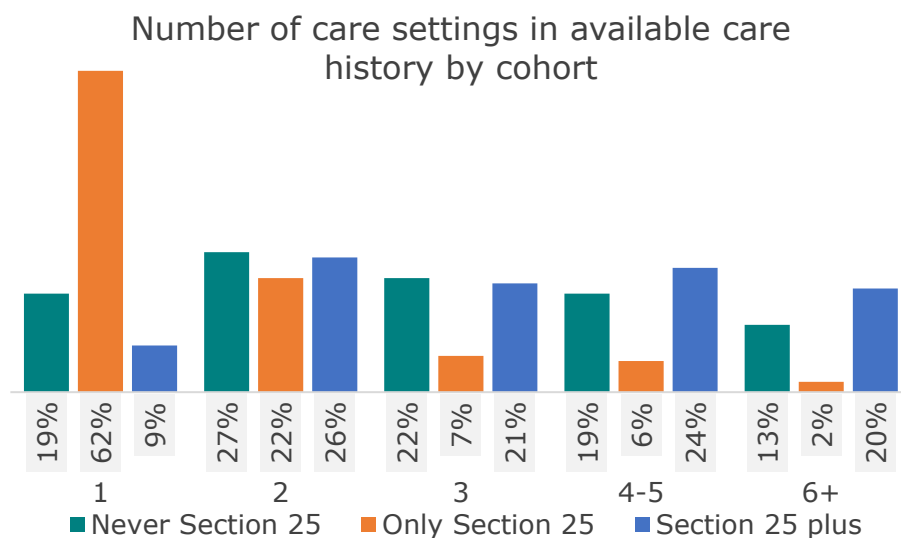


Figure 21: Number of care settings in available care history by cohort (n=13983)

<sup>8</sup> Overall Kruskal-Wallis test:  $p < 0.001$ ,  $T = 1739.399$ . All post-hoc pairwise comparisons were significant  $p < 0.001$ , with effect sizes of: Never Section 25 v Section 25 plus = 0.40 (large); Never Section 25 v Only Section 25 = 0.04 (small); Section 25 plus v Only Section 25 = 0.37 (large)

When looking at the number of different carers or care environments these children and young people experienced on average within each of the cohorts, we again find significant differences and large effect sizes. On this measure, the Only Section 25 cohort experience the fewest number of different carers or environments on average (mean = 1.7, median = 1), with the Never Section 25 group experiencing a mean of 3.3 (median = 3), and those in the Section 25 plus group experiencing an average of 4.0 (median = 3).<sup>9</sup>

These cohort comparisons on the length of pathways, number of episodes, and number of placements within those episodes paint a picture of the overall experiences of these three cohort groups. Table summarises the mean and median figures on each of these three measures for each cohort group, and it can be seen from this that the Section 25 plus group experiences the longest pathways, with the most episodes, and most placements within those episodes, while the Only Section 25 group experiences the shortest pathways with the lowest number of episodes and placements.

*Table 2: Median and mean figures for care journey measures by cohort*

	Never Section 25		Only Section 25		Section 25 plus	
	Median	Mean	Median	Mean	Median	Mean
<b>Length of journey (years)</b>	4.1	5.8	1.3	2.9	5.2	6.4
<b>Number of episodes</b>	1	1.2	1	1.1	1	1.6
<b>Number of placements</b>	3	3.3	1	1.7	3	4.0

Due to the fact that these three measures are inter-linked, it is unsurprising to see a pattern like this emerge. It must also be noted that the Section 25 plus group were likely to have experienced multiple care arrangements and environments, reflecting the multiple legal statuses applied to their needs. Further analysis of these groups may provide more information, but the stark differences in experiences between those who were cared for under Only Section 25 arrangements and those who were being cared for under Section 25 arrangements as well as other legal statuses is striking. This warrants further investigation to determine if there are particular characteristics that are associated with this particular mix of care experience for children.

<sup>9</sup> Overall Kruskal-Wallis test:  $p < 0.001$ ,  $T = 2975.727$ . All post-hoc pairwise comparisons were significant  $p < 0.001$ , with effect sizes of: Never Section 25 v Section 25 plus = 0.17 (small/moderate); Never Section 25 v Only Section 25 = 0.41 (large); Section 25 plus v Only Section 25 = 0.55 (large)

## Care setting

Looking at the type of care provided when children and young people started their care experience also shows differences between these cohorts. Figure 22 shows these arrangements for the different cohorts. As can be seen, those whose experience was analysed within the Only Section 25 cohort were more likely to be living in residential child care at the start of their care pathway than the other groups, and less likely to be living in foster care. This likely reflects a group of children and young people identified by social workers in our interviews and focus groups when we asked them about “appropriate uses” of Section 25 arrangements: children and young people who may be unable to live at home due to their significant physical support needs and who live in specialist residential accommodation with the agreement of their parents.

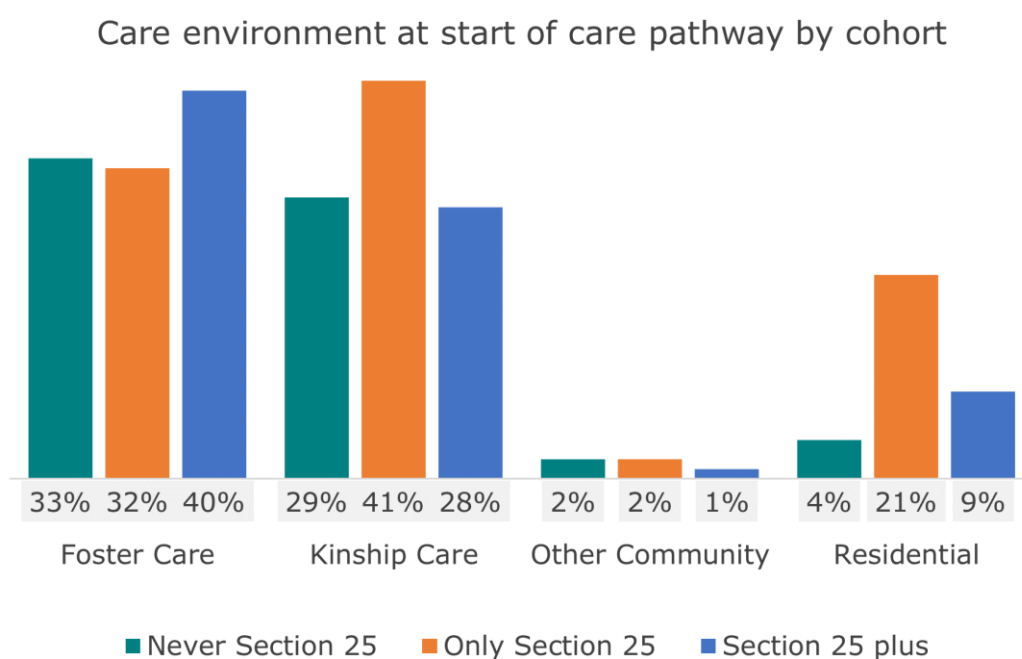
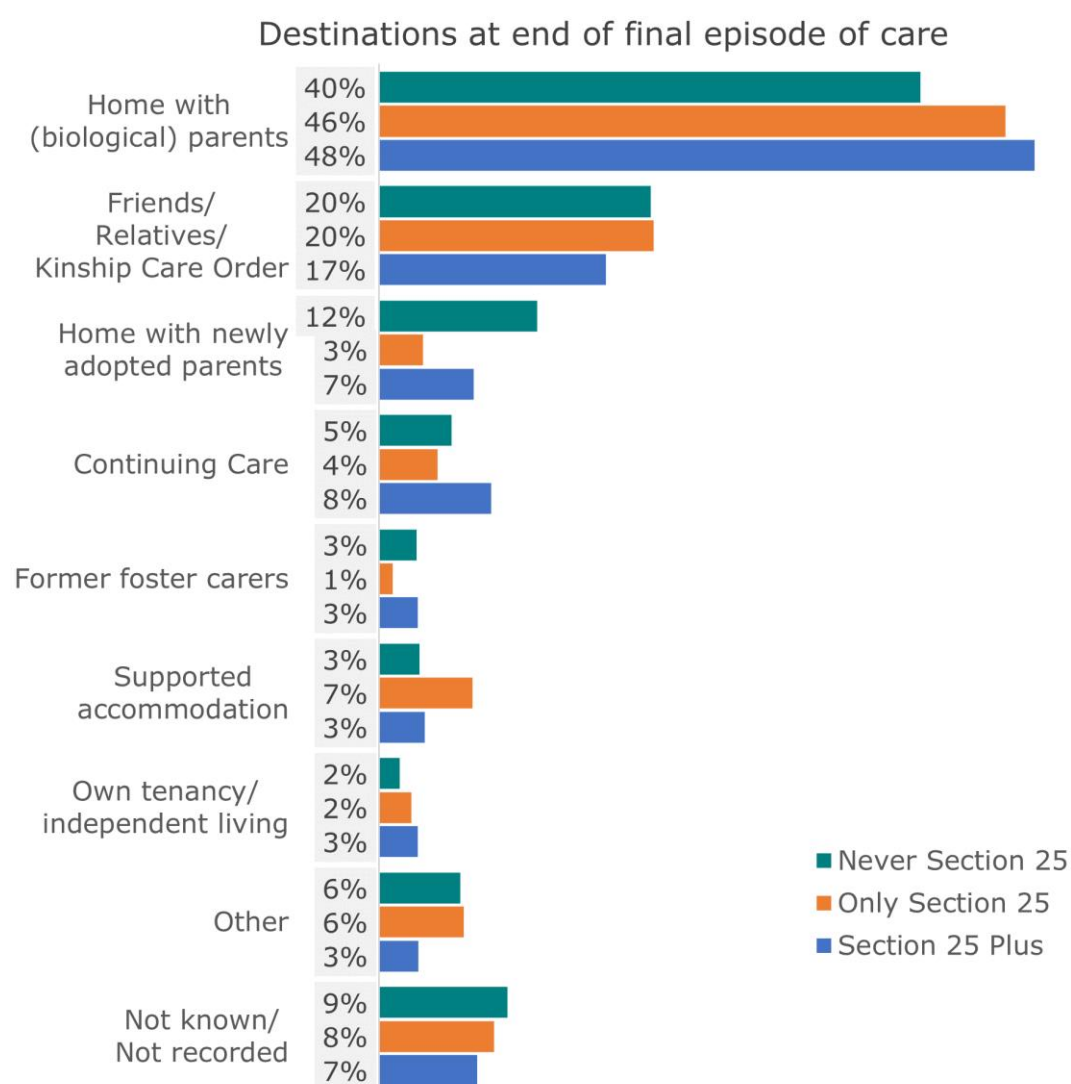


Figure 22: Care environment at start of care journey by cohort (n=13983)<sup>10</sup>

<sup>10</sup> The ‘Home’ and ‘Secure care’ categories are removed from this chart and analysis as children and young people cannot live in these environments while on a Section 25 arrangement. ‘Other community’ is defined in the Scottish Government Children’s Social Work Statistics as “any other placement in the community, such as for example, supported accommodation”.

## Destination at the end of final episode of care

To examine where children and young people lived immediately after their time in care ended, we looked at 'destinations' data following their last completed episode of care. As can be seen in Figure 23, the destinations do not appear to be markedly different between our cohorts, especially when those over the age of 16 are included (Figure 23). When these children and young people are omitted to exclude those who 'age out' of the system as opposed to a decision being made that they no longer require to be formally 'looked after', we can see that the cohort who had only being cared for under Section 25 arrangements are more likely to return home to their parents, especially when compared with the Never Section 25 cohort (Figure 24).<sup>11</sup>



<sup>11</sup> Overall chi-Square test: Test value = 407.687, df=28, p<0.001. Pairwise comparison within destination of 'Home with (biological) parents' - Effect sizes: Never Section 25 v Only Section 25, phi = 0.211; Never Section 25 v Section 25 Plus, phi=0.136.



Figure 23: Destinations at end of final episode of care by cohort (n=13983)<sup>12</sup>

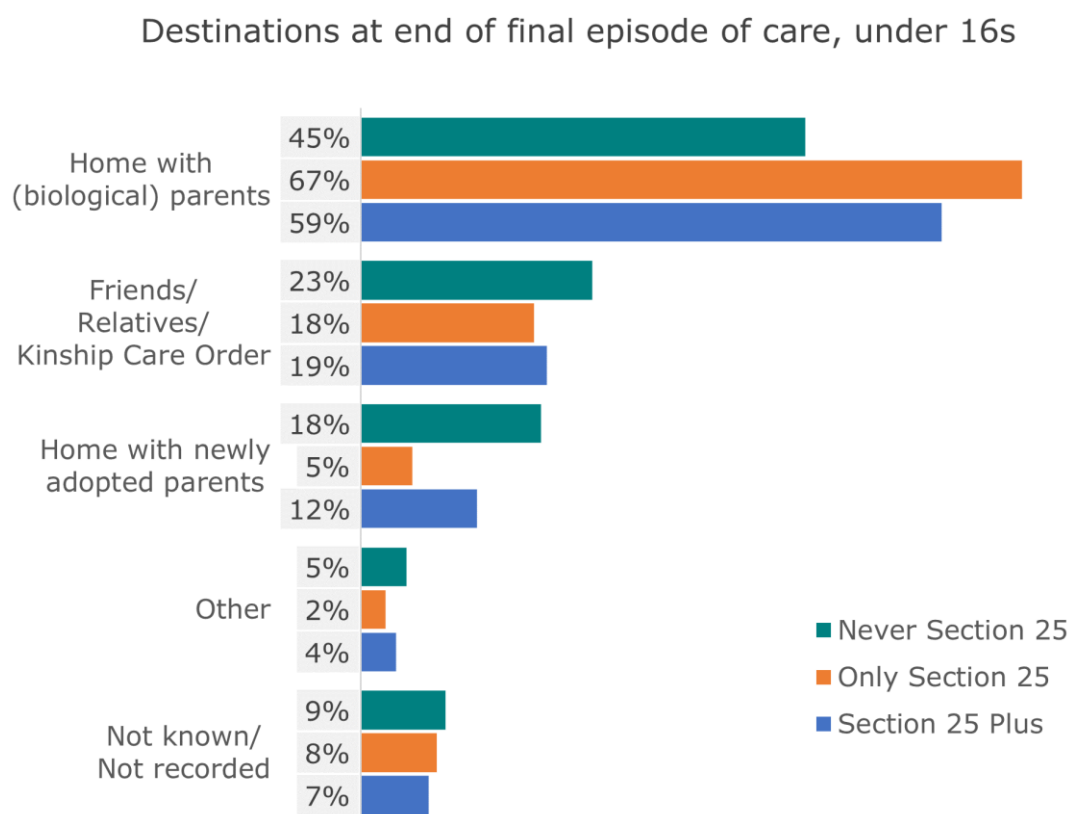


Figure 24: Destinations at end of final episode of care by cohort (aged <16 only, n=8318)

<sup>12</sup> Categories of 'Child Died', 'Homeless', 'In Custody', 'In Residential care' omitted as the figure in each category <2%

# Discussion



The high level of use of Section 25 arrangements across Scotland visible in the quantitative data we have looked at, and the frequency that similar legislation is seen in different jurisdictions, indicates the necessity of providing non-compulsory care of children and young people. Throughout our discussions, it was clear that social workers view Section 25 arrangements as an invaluable tool in their work with children, young people, and families.

Many social workers highlighted how Section 25 arrangements provided the opportunity for partnership-working with families and were important in “filling the gaps” where compulsory measures were not appropriate. Social workers largely agreed that Section 25 arrangements were appropriate for situations where there were no concerns about parents’ capacity to care or parental neglect, such as in the case of separated children seeking asylum or who had been trafficked, or where children with multiple or complex needs can have these needs met by specialist care away from the parental home.

Using Section 25 arrangements in situations where there were child protection concerns was common practice nationally, yet the subject prompted intense discussion and showed variation between different social work teams and local areas. These uses inherently involve complexity around: risks to the child or young person; relationships between social workers and the family; and, care planning. There is also more potential for engagement with legal structures in the form of the Children’s Hearings System or the Sheriff Courts to become necessary. This discussion section highlights the complexities and issues which were raised by practitioners almost exclusively where Section 25 arrangements were used in the context of child protection concerns.

### **Variation in use and understanding**

Throughout our discussions relating to Section 25 arrangements with young people, parents, social workers, legal representatives, and advocates, the lack of a consistent understanding of the purpose and appropriate use of these arrangements emerged as a strong theme. While it might be expected that groups of individuals with different roles and interests may have different perspectives on the use and purpose of Section 25 arrangements, the diversity in views between individuals within the same roles (in particular, the differences between individual, and teams of, social workers) was stark. The differences are also visible in the variation in rates of use of Section 25 between different local authorities.

Although this range and diversity of understanding has significance for the guidance, training, and supervision provided for social workers, it also directly impacts on the experiences of children, young people, and families. Children, young people, and parents’ experiences may differ significantly depending on the social worker, team, or local authority supporting them. This difference is likely to be in the form of a different legal arrangement being put in place for the care of the child or young person, and in turn different expectations of parental

involvement and control, involvement in the Children's Hearings System, and therefore how children's and parents' rights are safeguarded.

The cohort analysis demonstrates the differences in experience which can arise as a result of differences in practice. Children and young people who experience Section 25 arrangements and another legal status, for instance, have experiences such as increased number of moves, episodes in care, and are cared for away from the parental home for longer. Although we cannot attribute any causal links from the analysis in this report, and those in the Section 25 and another legal category may simply have more complex circumstances or needs, other research has found poorer outcomes for children and young people who experience an increased number of moves (Goyette, et al., 2021). More research is needed into the experiences of children and young people who are cared for under both Section 25 arrangements and other legal statuses.

### **Lack of guidance and training**

Underpinning much of the discussions we had with social workers, was an acknowledged lack of formal training or guidance to provide structure to social workers' decision-making and processes around Section 25 arrangements. In such a context, it is not surprising that very different and specific uses of Section 25 have arisen across areas and teams, as a particular perspective on appropriate use is supported and reinforced through each 'generation' of social workers within a team.

Without clear guidance and training available to all social workers supporting children and families throughout the country, it is difficult to imagine a reduction in this variation in the use and understanding of Section 25 arrangements between individual social workers, social work teams, and local authorities.

### **Power dynamics**

As a part of their desire to work in partnership with parents during Section 25 arrangements, social workers said that they were open with parents about the options available and the implications of their decisions. What social workers said this meant in practice, however, is that in most circumstances, they tell parents that they will seek compulsory measures if parents object to a Section 25. This experience is exacerbated by the challenges of providing full and complete information to parents about the implications and status of a Section 25 arrangement, in emotional, and sometimes time-pressured, situations.

Even if this information is provided, parents may not be in a position to absorb, understand, and retain that information. What we have learned from the parents we interviewed is that in most cases, parents do not feel that decisions over whether to object to a Section 25 are a meaningful choice or a choice at all. This agreement is then viewed by some social workers as being freely given by the parent, and accordingly this erodes the positive relationship and partnership working which social workers aimed to promote. An irony here is that by openly

laying out a number of possible options including compulsory measures, so that a parent can make an informed choice, the social worker may create unintended coercion towards agreement to a Section 25 arrangement for their child.

Simultaneously, we also know from our conversations with social workers, advocates, and parents, that the idealised vision of partnership-working and parental control within a Section 25 arrangement is often not realised. The management of Section 25 arrangements follows the same pattern as for other children in care, with regular review meetings. The way Section 25 arrangements and compulsory measures are managed in similar ways may contribute to some of the elements that parents were not comfortable with. Parents of children and young people being cared for under Section 25 arrangements reported that they did not feel that they had significant control or input into the care planning for their children, and that they did not have the opportunity to effectively challenge any aspects that they disagreed with. In particular, they highlighted the lack of control they experienced in relation to family time with their children.

Social workers similarly shared concerns that parents who agree to Section 25 arrangements do not have the same clear opportunities to raise any issues they may have with their child's care plan as are afforded through the Children's Hearings System, nor do they feel that they are able to challenge the basis for the child or young person being in care. Social workers acknowledged that family time between the parent and child or young person was most often determined by the social work department, as opposed to being reached through discussion and agreement with the parent/s and child or young person and was constrained by the department's ability to provide or arrange appropriate transport, locations, supervision, or oversight.

Together, these perspectives create a picture where the promise of some control is not always the reality of what parents experience. It is therefore important to acknowledge that in these situations it is not necessarily the fact that a Section 25 arrangement is put in place that is causing difficulties, as much as the approach taken with parents, and the understanding of all involved of what it means for processes, rights, responsibilities and participation in decision-making.

### **The use of the term 'voluntary'**

As highlighted at the outset, the 1995 Act does not mention 'voluntary', 'consent', or require parents to sign any documentation. Additionally, the local authority has a duty to use the Section 25 arrangement if it appears necessary to them. Alongside this, the case law we identified has clarified that neither consent, nor indeed complete understanding, are necessary for an English Section 20 care arrangement to be established. The guidance on Section 20 in England and Section 76 in Wales, however, seek to reframe parental consent as a positive act. The understanding of Section 25 arrangements as 'voluntary' (a term which many individuals used and recognised) seems to support the practice

of seeking written 'consent' from parents to the arrangement, and the understanding that parents will retain significant control of their children's care.

Social workers reflected that there is the potential for parents to feel they have no choice but to agree to a Section 25 arrangement, and they do so on the understanding that it will provide them with greater autonomy and rights than if their child were to be cared for under a compulsory measure, but these are subsequently not realised. In some cases, the benefits of additional third-party oversight, legal representation, and clear opportunities to voice their opposition to plans or decisions, are sacrificed in exchange for additional control and influence which does not then materialise.

Finally, parents were very clear that they disliked the term 'voluntary' because of the impression it gave to others - in particular, their children. It gives an impression that the decision to enter into a Section 25 arrangement was one they had instigated and actively pursued. The term 'voluntary' is therefore felt to be stigma-inducing in terms of the decision-making process for a Section 25 arrangement, it does not appear in the legislation, and gives those involved a misleading sense of the nature of, and power dynamics within, the processes that follow.

### Thresholds for intervention

While some uses of Section 25 arrangements are clearly defined within the scope of the legislation, social workers also spoke of developing Section 25 arrangements where they were not confident that they would be able to secure a compulsory measure. This uncertainty could arise because they felt that the evidence they had of a significant concern about a child in need of care and protection would not meet the required threshold for these compulsory interventions.

Social workers are then placed in a position where they must choose between using a Section 25 arrangement with the parent/s or leaving a child in what they consider to be an unsafe environment. It is not surprising that social workers might then elect to pursue a Section 25 arrangement in these circumstances, yet the implications are profound.

As parents may not experience the use of a Section 25 arrangement as a decision they have significant control over, a Section 25 arrangement is likely to be secured even where it is not desired by a parent and where there has been no test of the evidence supporting this intervention. If the parent objects to a Section 25 arrangement then the social worker may have to leave their child in what they consider to be an unsafe environment.

This all leads to a number of further questions: are the statutory thresholds for compulsory measures *too high*, leading social workers to using Section 25 arrangements to safeguard children's wellbeing, or are social workers' tolerance



of risk *too low*? Alternatively, does the emphasis placed on 'voluntary' measures result in parents feeling pressured into 'agreeing' to Section 25 arrangements?

Given the scale of use of Section 25 arrangements evident from our statistical analyses, and what social workers told us in interviews and focus groups, it is clear that many Section 25 arrangements are being used to care for children and young people about whom social workers have child protection concerns. Further work is necessary to uncover the thresholds being applied, and if these differ from those applied for compulsory measures and, if so, how.

### Drivers for use of Section 25

As discussed in the [Findings](#) section of this report there appears to be an imbalance in the power within the use of Section 25. External factors that sit outside the individual's, or case contexts and characteristics appear to weigh heavily in the decision-making processes for social workers. The interpretation of legal concepts such as the minimum intervention and 'no order' principles supporting the use of Section 25, and the understanding that local authorities promote the use of Section 25 as the first option for providing a child and their family with support for the child's care, were reported as defining in some decision-making. These factors meant that that a Section 25 arrangement had to be pursued as a first option.

It is important to note that these external drivers operate entirely independently to the specific needs of the child or young person, case characteristics, risks identified by the social worker, views and experiences of the likelihood of cooperation of the parent/s with the social workers, or long-term planning for the child or young person. Additionally, perceptions of the efficacy or otherwise of the compulsory processes weighed heavily in the considerations of social workers. Experiences and perceptions of the timescales that could be involved in obtaining a CSO through the Children's Hearings System, as well as perceptions of the quality of the hearings experience for children, young people, and families, were also frequently mentioned by social workers. These drivers were viewed as pushing social workers towards the use of Section 25 arrangements in preference to compulsory measures.

### Ethical challenges

As explored in this report, social workers frequently used ethical and moral terms when discussing Section 25 arrangements. Social workers are used to working within ethically and morally challenging environments, but many respondents discussed the discomfort they could experience when working with Section 25 arrangements. This discomfort arose as a result of a number of interplaying factors common to much of social work such as the power imbalance between social workers and parents, but also factors which are unique to Section 25 arrangements. These unique concerns were: how 'voluntary' the agreement to a Section 25 arrangement was and possible unintended coercion;



the lack of oversight from outside of social work departments (often framed as 'independent oversight'), and parental understanding of the arrangement.

These issues appeared to profoundly affect some social workers, with some reporting that they felt uncomfortable with how they had used, or were using, Section 25 arrangements with some of the families they worked with. They appeared to feel the full weight of these ethical challenges on their shoulders, and this may be exacerbated by the lack of supportive guidance or training available.

Through the responses, we can identify two specific moral questions which are raised around the use of Section 25 arrangements. Firstly, there is a question as to whether there are any circumstances in which a parent should be able to 'give up' rights to care for their children in the absence of proof of a lack of ability. Some individuals considered that the possibility for (unintended) coercion, the power dynamics at play in social worker–parent relationships, and social pressures meant that such decisions could never be 'freely' made, and if they were not freely made, should be subject to a clearly defined standard of proof.

Others expressed concern at the length of time that children and young people could be cared for away from their parental home under Section 25 arrangements – often for several years. This leads to our second question. If social work departments determine that the parents are not able to care for their children on a long-term basis, should there be a stronger legal basis and multi-agency involvement to support that alternative arrangement for the child's care? What implication does this have in terms of ensuring the felt, legal, and physical permanence for children and young people? While a child is cared for under a Section 25 arrangement, the placement is inherently subject to instability should a parent object to the arrangement at any point. This may not result in an immediate change of arrangements, as social workers report that they would quickly move to secure a compulsory order, but is likely to involve additional legal processes which may introduce instability into the child or young person's life.

### **Rights and Section 25 arrangements**

Our primary focus for this research was to gain a broad understanding of use and experiences. However, the findings of this research have highlighted areas in which the impact of practice around these arrangements on the rights of children and young people, and their parents, need to be carefully considered. Whenever a child or young person becomes formally 'looked after' by their local authority it is important to consider how their rights, and those of their parents and family are impacted. Since the fulfilment of children and parents' rights is at the heart of all social work practice, we have identified some areas where clarification or further investigation is warranted.

## Family time

One of the clear areas where the findings of this research highlight potential rights concerns is in relation to family time between the parents who do not object to a Section 25 arrangement, and their children. The English law interpretation of their Section 20 legislation is that parental responsibilities are 'delegated' to the local authority (although this may not be without its challenges, see Masson, 2018), but this does not impact on the rights held by parents. In Scotland, no such examination has been conducted by the courts, but our findings indicate that family time is frequently determined by social work departments' assessments of the best interests of a child, as well as resource constraints. Parents told us that they felt that they had little or no say in the timing, frequency or length of family time, and that supervision of family time with their children could feel like an imposition.

Given these experiences, it would be beneficial to explore how children's and parents' rights are being upheld.

## Understanding

Throughout our research we heard about a lack of understanding of Section 25 arrangements. While this was spoken about in relation to social workers and other practitioners, it was particularly pronounced in relation to parents' understandings. While again the English interpretation of Section 20 limits the requirement for full understanding, an exploration of the limits of this are worthwhile to fully clarify what level of understanding is required of which elements of a Section 25 arrangement to ensure that it is not an unjustified intrusion into family life.

## Evidence, thresholds, and oversight

Some social workers reported securing Section 25 arrangements when they were not sure that a referral to the Children's Reporter or the Sheriff would result in a compulsory measure, due to either a lack of evidence or the concern not reaching a sufficiently high threshold. Given that the established thresholds for compulsory intervention in family life are established in order to prevent unjust state intrusion, this raises questions about the validity of the state (acting through social workers) approaching parents to secure intervention in their lives without having to demonstrate that their concerns reach these thresholds.

The law is clear that Section 25 arrangements do not have a threshold test or require any evidence, and that parents have the right to cancel the arrangement and request that their children are returned home to their care. However, this research has demonstrated how the practice of securing a Section 25 arrangement can be experienced as coercive by parents. Given that this unintended coercion can at times make decisions to allow a Section 25 arrangement feel compulsory, should there be consideration of a threshold of need applied to Section 25 arrangements?

Aligned to this issue is that of oversight. Section 25 arrangements are managed and monitored via internal social work processes (including the use of Independent Reviewing Officers) in each of the local authorities' social work

departments in Scotland. The lack of oversight of Section 25 arrangements from outside of social work departments was felt to be problematic by some social workers. They explained that this could result in children and young people remaining cared for under a Section 25 arrangement for a long period, without experiencing felt and legal permanence, and for parents to lack an opportunity to freely express concerns or objections they might have. These issues potentially impact on the children's and parents' rights and would benefit from further consideration.



# Suggested next steps



## Section 25 practice

The legislation in which Section 25 is enshrined will be thirty years old in 2025. In the last three decades, the culture and use of Section 25 has evolved, as have some of the challenges facing families, and the needs their children may have. Scotland has committed to The Promise of the Independent Care Review and the ambition to put rights at the heart of improving the lives of all our children and young people.

Throughout this research, we have heard conflicting views on the benefits or disadvantages, as well as the appropriate and inappropriate uses, of Section 25 arrangements in response to the care and protection needs of Scotland's children. Across the findings laid out in this report, the plurality of views is a constant theme, and this is reflected in the wide range of use of Section 25 arrangements.

Another consistent theme in our findings, however, was discomfort with use of the term 'voluntary'. Given the concerns about the use of the term, and the fact that it does not appear in the law itself, we suggest that the term should be avoided in all discussions and literature relating to Section 25 arrangements.

Attention needs to be given to Section 25 and how it is currently applied in Scotland. There needs to be a new shared vision of the role and purpose of Section 25 among the range of measures used by local authorities to secure the care and protection of children in Scotland. This programme of work should involve all relevant voices and seek the views and experiences of practitioners and professions involved - legal, social work, caring, advocacy - and the Scottish Government. This work must prioritise those voices that can be marginalised in professional practice discussions: those of children, young people, and families. The published evidence on Section 25 and similar international arrangements must inform the themes considered.

Core considerations:

- What are the appropriate uses of Section 25 arrangements?
- When should Section 25 arrangements (not) be referred for compulsory measures? Are there circumstances or time periods in which it should be presumed that compulsory measures will be sought?
- To what extent should Section 25 arrangements be considered 'minimum intervention' in comparison to compulsory measures?
- Whether the regulations and guidance require updates?

## **Written guidance and supports for social workers**

Social workers expressed how they did not feel they have the support for their practice in relation to Section 25 arrangements that they have in relation to other similar practices, such as referrals to the Children's Hearings System. They highlighted the importance of national guidance in directing and promoting consistent practice across the country.

Additionally, some social workers reported that they felt it would be beneficial to have practical support to help to ensure they shared the right information at the right time when organising a Section 25 arrangement. The level of social worker awareness and reference to case law and guidance published for England and Wales, notably the Public Law Working Group's practice guidance, indicate that similar national guidance for Scotland would be both feasible and useful.

## **Continuing Professional Development opportunities for social workers**

At the end of our interviews and focus groups with social workers, it was common to hear reflections that they desired more training and development opportunities to better consider Section 25 arrangements. The scale of use of Section 25 arrangements evidenced in this research highlights the importance of ensuring that social workers are appropriately equipped and supported. Further supporting practitioners to critically reflect on their practice is a vital part of providing the best possible support to children and families.

## **Information for parents**

Parents who took part in the study had varying understandings of what the Section 25 arrangement they had entered into actually entailed. Some did not understand what legal provision was used at all, some knew that it was a Section 25 but did not know what it meant in practice - including their right to request their child's return home - and others thought they understood, yet misunderstood key elements.

These parents spoke of being overwhelmed by the volume of paperwork and conversations during social work interactions and the significance of the circumstances facing them, without information to take away and review and process at a later stage. Parents would benefit from a standard information document which explains Section 25 arrangements in plain terms. This document should: be made available at first mention of a Section 25 arrangement; include information on parental rights during the arrangement, particularly around family time and the right to request a child's return home; and, should avoid use of the term 'voluntary'.



## Information for children and young people

We have heard through this research that children and young people may be uncomfortable with two aspects of the experience that are unique to Section 25 arrangements. The first is the feeling of instability they can experience while being cared for under the arrangements due to a parent's right to request they return home to their care. The second is the difficult emotions they may experience when learning about their parent's role in the decision for them to become cared for away from the parental home, especially if framed as 'voluntary' or that a parent had 'agreed'.

To support them in these experiences, children and young people would benefit from clear, age-appropriate information on Section 25 arrangements. These child-friendly resources should clearly detail their rights and the rights of their parents under Section 25 arrangements, contain information on processes and how they can participate and/or have their voice heard, and outline what the long-term options might include. Such information will support children and young people to understand their own experiences of their care pathways more accurately, provide a level of knowledge that will enable them to identify issues or information they do not understand, and help them to formulate questions to gain any further information they may want. Such information will also support children and young people to appropriately participate in the decision-making about their own care and protection.

## Ongoing research

While the information presented in this report provides a deeper level of understanding than Scotland has had before of the experiences and approaches to Section 25 arrangements, there is still much to be understood about how the experiences of children, young people, and parents differ, as well as how social worker decision-making operates in different circumstances. The cohort analysis presented in this report highlights the value and limitation of the quantitative data available. Further work to explore the contexts and causes of differences in experiences between cohorts of children and young people will further aid understanding of Section 25 arrangements. Additional qualitative work can help us to understand what factors or processes contribute to the different experiences and outcomes identified, and how decision-making processes can be supported to ensure the best outcomes for children and young people and their families in Scotland.



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# Appendices

## Appendix I: Research questions

- 1) National Picture:** How does Scotland use Section 25 arrangements?
  - a. How does Section 25 usage vary across Scotland, and has this changed since 2009?
  - b. How does Section 25 fit into children's care journeys [now referred to as pathways] across Scotland?
  - c. What is already known about voluntary care arrangement use internationally, and how does the Scottish approach fit within this context?
- 2) Consent:** How is informed consent obtained?
  - a. How are children and parents consulted and informed of their rights in relation to Section 25 arrangements?
- 3) Use and Purpose:** When and why are Section 25 arrangements used?
  - a. Under what circumstances are Section 25 arrangements pursued?
  - b. Who initiates Section 25 arrangements, and for what purpose?
  - c. What are the expectations of parents and practitioners relating to Section 25 arrangements?
  - d. How do children and families contribute to planning for Section 25 arrangements?
- 4) Management:** How are Section 25 arrangements monitored, reviewed, and understood?
  - a. What monitoring processes are used for children on Section 25 arrangements?
  - b. How often are reviews held for children on Section 25 arrangements?
  - c. How are parents involved in care planning for children on Section 25 arrangements?
- 5) Experiences and Outcomes:** How are Section 25 arrangements experienced by children and families?
  - a. To what extent do Section 25 arrangements promote the welfare and best interests of children and young people?
  - b. What supports are offered to parents whose children are on Section 25 arrangements to help them return to caring for their children?
  - c. How do the care journeys and destinations of children who become accommodated on Section 25 arrangements differ from peers in similar placements on compulsory arrangements?

## Appendix II: Section 25 of the Children (Scotland) Act 1995

*A local authority shall provide accommodation for any child who, residing or having been found within their area, appears to them to require such provision because -*

*(a) no-one has parental responsibility for him;*

*(b) he is lost or abandoned; or*

*(c) the person who has been caring for him is prevented, whether or not permanently and for whatever reason, from providing him with suitable accommodation or care.*

*(2) Without prejudice to subSection (1) above, a local authority may provide accommodation for any child within their area if they consider that to do so would safeguard or promote his welfare.*

*(3) A local authority may provide accommodation for any person within their area who is at least eighteen years of age but not yet twenty-one, if they consider that to do so would safeguard or promote his welfare.*

*(4) A local authority providing accommodation under subSection (1) above for a child who is ordinarily resident in the area of another local authority shall notify the other authority, in writing, that such provision is being made; and the other authority may at any time take over the provision of accommodation for the child.*

*(5) Before providing a child with accommodation under this Section, a local authority shall have regard, so far as practicable, to his views (if he wishes to express them), taking account of his age and maturity; and without prejudice to the generality of this subSection a child twelve years of age or more shall be presumed to be of sufficient age and maturity to form a view.*

*(6) Subject to subSection (7) below -*

*(a) a local authority shall not provide accommodation under this Section for a child if any person who -*

*(i) has parental responsibilities in relation to him and the parental rights mentioned in Section 2(1)(a) and (b) of this Act; and*

*(ii) is willing and able either to provide, or to arrange to have provided, accommodation for him,*

*objects; and*

*(b) any such person may at any time remove the child from accommodation which has been provided by the local authority under this Section.*

*(7) Paragraph (a) of subSection (6) above does not apply -*

*(a) as respects any child who, being at least sixteen years of age, agrees to be provided with accommodation under this Section; or*

*(b) where a residence order has been made in favour of one or more persons and that person has, or as the case may be those persons have, agreed that the child should be looked after in accommodation provided by, or on behalf of, the local authority;*

*and paragraph (b) of that subSection does not apply where accommodation has been provided for a continuous period of at least six months (whether by a single local authority or, by virtue of subSection (4) above, by more than one local authority), unless the person removing the child has given the local authority for the time being making such provision at least fourteen days' notice in writing of his intention to remove the child.*

*(8) In this Part of this Act, accommodation means, except where the context otherwise requires, accommodation provided for a continuous period of more than twenty-four hours.*

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