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People Committee

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Dear Convener

## **CHILDREN (CARE AND JUSTICE) (SCOTLAND) BILL: STAGE ONE REPORT**

Thank you for your Committee's detailed consideration of this Bill and for your Stage 1 Report.

I attach the Scottish Government's response to the points and recommendations made in the Report. We welcome the conclusion that the Committee agrees to the general principles of the Children (Care and Justice) (Scotland) Bill at Stage 1.

As I said in my oral evidence before the Committee on 3 May 2023, the provisions within this Bill seek to improve experiences and promote better outcomes for children, particularly those children who come into contact with care and justice services and systems. The Bill proposes enhanced provision for victims, and by extension for all of Scotland's communities. These reforms will help Scotland to Keep the Promise and further advance our commitments to the UN Convention on the Rights of the Child principles.

I hope that this response addresses the concerns of Members on certain elements of the Bill and accompanying documents, and that it will enable Members to support the general principles of the Bill at Stage 1. In particular, I have taken the opportunity to set out in detail the Government's proposed plans for updating the financial memorandum. I hope these plans assure the Committee that I am committed to achieving the same outcome in terms of a meaningful and robust update to the Financial Memorandum, while clearly setting out why this is only deliverable in advance of Stage 2 of the Bill.

I look forward to exploring the issues raised in your report during the Stage 1 debate on 22 June, and to continuing to work with the Committee on this important Bill at Stage 2, should Parliament endorse the general principles at Stage 1.

A handwritten signature in black ink, appearing to read 'N. Don', with a stylized flourish at the end.

**NATALIE DON**

## **SCOTTISH GOVERNMENT RESPONSE TO STAGE 1 REPORT**

This paper provides the Scottish Government's response to the specific points and recommendations made by the Education, Children and Young People Committee in their Stage 1 Report published on 13 June 2023.

For ease of reference, the Committee's points or recommendations are shown in bold and numbered in line with their report, utilising headings from the Stage 1 report. The only exception is in respect of the Financial Memorandum where these recommendations are grouped to prevent duplication. The Scottish Government's response is given directly underneath each of those.

## FINANCIAL MEMORANDUM

**63. While the Committee notes that the Minister indicated to the Finance and Public Administration Committee that updated costings would not be presented until after Stage 1, the Committee is firmly of the view that an updated Financial Memorandum must be provided for scrutiny ahead of the Stage 1 debate.**

We welcome the scrutiny and comments of both the Education, Children and Young People and Finance and Public Administration Committees. In respect of the Financial Memorandum, extensive work was undertaken across Summer and Autumn 2022 with a wide range of directly affected delivery partners but also with others who have relevant interests. This built on the full public consultation conducted earlier that year, and together these underpin the information compiled for the Financial Memorandum for this Bill. The Financial Memorandum sets out total costs for the Bill in the range of £10.67m-£11.94m additional annual public spending. This includes costs to Scottish Government of £5.31m-£5.38m and to Local Government of the order of £5.36m-£6.56m.

We recognise the Committee deems it critical that the best possible full and sufficient costings and information is placed before Parliament for scrutiny ahead of Stage 1 of the Bill. We have given careful consideration to our approach to revising or supplementing the Financial Memorandum in order to provide Parliament with the most up-to-date and accurate information as possible. An important factor in our consideration has been the timing of when these revisions are carried out. The following paragraphs aim to illuminate this and provide some reassurance about our intended approach.

In order to provide the most accurate costings possible, the Scottish Government considers that this must be based on the most recent data available, except in certain circumstances (as explained below). For this reason, we intend to use data from 2022-23 to update the forecasts and costs in the supplementary Financial Memorandum. The Committee will note that the Financial Memorandum, as it stands, uses figures from 2019-20. Use of the most recent data available at the time was not the most appropriate option, as 2020-21 and 2021-22 figures were both significantly affected by the height of the pandemic's impact on public services, and in the latter year to a considerable degree by the recovery from the impact of Covid-19. We are advised by Scottish Government analysts that 2022-23 figures should now be applied to our calculations where possible, with uprating for inflation to 2024-25 prices.

We are committed to using verified, published, annual or quarterly data sets where applicable. However, affected agencies will require time to supply updated information following the end of the 2022-23 business year on 30 March. Many do not anticipate producing such data sets until later in Summer 2023, at a time following the Stage 1 debate. The table below indicates this.

Availability of annual or quarterly verified, published data					
SCRA	CHS	COPFS	Children 1 <sup>st</sup>	Advocacy	SLAB
29 June 2023	October 2023	COPFS do not publish reporting data throughout the year. It is only available on request, within the appropriate data protection protocols.	Report each quarter and the information is available 6 weeks after the quarter.	Calculations are based on SCRA figures.	SLAB have confirmed that they may be able to provide 2022-3 data over the Summer, following analysis.

Work will therefore continue to update costings with these figures as soon as they become available.

To meaningfully update the Financial Memorandum and to produce a supplementary document, it will also be essential to take account of Stage 2 amendments. We propose to publish the supplemented Financial Memorandum during Stage 2 with the benefit of being able to reflect how the Bill will be amended, and any new impacts of these amendments. This timing is in line with precedent, and reflects Rule 9.7 Stage 2 8B of the Standing Orders of the Scottish Parliament<sup>1</sup>, which states that:

*“If a Bill is amended at Stage 2 so as to substantially alter any of the costs, savings, and changes to revenues set out in the Financial Memorandum that accompanied the Bill on introduction, the member in charge shall lodge with the Clerk, not later than whichever is the earlier of—*

*(a) the tenth sitting day after the day on which Stage 2 ends;*

*(b) the end of the second week before the week on which Stage 3 is due to start,*

*a revised or supplementary Financial Memorandum. The revised Financial Memorandum (or supplementary Financial Memorandum, when read in conjunction with the original Financial Memorandum) shall set out, in relation to the amended Bill, the information required under Rule 9.3.2 in relation to the Bill on introduction.”*

As we anticipate that there will be amendments brought forward at Stage 2 that may impact costs, we have always intended to take forward supplementing the Financial Memorandum as a Stage 2 activity, in line with the above expectations and practice guidance set out in the Scottish Government’s Bill Handbook.

<sup>1</sup> [Chapter 9 Public Bill Procedures | Scottish Parliament Website](#)

The Scottish Government is also of the view that the supplementary Financial Memorandum has dual applications – not only is it a required document for the introduction of a Bill to Parliament to illustrate indicative costs, it also has a vital role in budgetary processes within the Scottish Government for 2024-25. Therefore, it follows that we produce the revision of the Financial Memorandum with the most up-to-date information and latest inflation forecasts and ensure alignment with the 2024-25 budget conversations which, the Financial Memorandum states, is the year that we see many of these costs starting to crystallise.

Finally, as the Minister for Children, Young People and Keeping the Promise stated in evidence to the Finance and Public Administration Committee, the Implementation Group - comprising over 35 stakeholders - began its work on 5 June. That marks the beginning of renewed and refreshed discussions with delivery partners on the finances and resourcing required for the Bill. Given these important and additional factors, the updated data and costings to be reflected in the supplementary Financial Memorandum will take some months to assemble and compile with the necessary level of engagement and accuracy.

This group will continue to meet in parallel to the Bill's continued progression through Parliament, should Parliament agree the general principles at Stage 1. This will also help us to explore resource and capacity requirements in more depth, while co-designing commencement plans alongside governance and oversight measures. These considerations will also inform the timing and sequencing of changes resulting from the Bill if passed.

The additional detail and updated information provided to Parliament throughout Stage 1 has assisted this activity. We have also continued discussions with stakeholders at a bilateral level - this includes Social Work Scotland (SWS), Convention of Scottish Local Authorities (COSLA), Scottish Children's Reporter Administration (SCRA) and Children's Hearings Scotland (CHS) – to mutually agree our approach. Further engagement, including with other relevant partners, will continue over the Summer. Subsequent dates for the multi-agency Implementation Group meetings are set for August and September 2023.

**57. The Committee recognises that support provided by social work teams to children referred to the Children's Hearing System is critical to them recovering and/or being able to move on from offending behaviour. It notes with concern, however, that resources and time are already stretched.**

**58. The Committee shares the concerns of the Finance and Public Administration Committee regarding the lack of financial information contained in the Financial Memorandum, in relation to all aspects of the Bill. While we understand that some of these costs would be included in secondary legislation in due course, these estimates would not be subject to the same level of Parliamentary scrutiny as if they had been presented in the Financial Memorandum. Therefore, the Committee believes that these should all be included in any revised costings.**

**239. The Committee recognises that MRCs are only appropriate in very limited circumstances and, in order for them to be applied successfully, they need to be accompanied by a package of intensive support. The Committee is concerned that potential costs for such support have not been included within the Financial Memorandum. The Committee therefore urges the Scottish Government to set out exactly how this will be resourced, when revisiting the costs associated with this Bill.**

**302. The Committee notes that the Bill provides flexibility with regard to support for those beyond the age of 18. It therefore asks the Scottish Government to consider how this principle could be applied to those being referred on offence grounds who are older than 17.5 years, but under 18.**

**303. The Committee recognises that extending supervision and guidance for young people will put additional pressure on local authority budgets. The Committee therefore calls for this to be reflected in the resources allocated to local authorities to implement this change.**

**647. The Committee notes the duties that the provisions in Sections 20 and 21 will place on local authorities in relation to detained children.**

**648. The Committee is concerned that the cost of this support has not been factored into the Financial Memorandum. It recognises that the Minister has committed to provide updated costings for the Bill and the Committee would expect this support to be costed as part of that work and provided ahead of the Stage 1 debate.**

The Scottish Government is of the view that Parliament should have the best possible information about the costs and/or savings arising from proposed legislation.

As detailed above, for the Financial Memorandum, extensive work was undertaken with a host of delivery partners, in addition to full public consultation, to produce the Financial Memorandum for this Bill.

As the Financial Memorandum noted:

*“10. There are a significant number of variables which make the resource and cost impacts of this change difficult to forecast with a high degree of precision[...]*

*11. In order to give an illustrative example of the costings associated with the Bill against this backdrop the Scottish Government has had to make some necessary assumptions”.*

There are a number of relevant matters and decision mechanisms which the Bill itself relates to but does not make explicit provision for, because primary legislation is not always necessary to deliver reform and improvement.

However, we note both Committees' concerns and we have highlighted below the areas which we have identified as needing further consideration for inclusion in the calculations for the supplementary Financial Memorandum:

- Ensuring that delivery partners estimates were inclusive of training and IT update costs, where appropriate.
- Updating the associated costs of raising the maximum age of referral to 18 to reflect this age, including the ability for post-18 supervision and guidance (part 1).
- Ensuring that where social work costs are included they are inclusive of the most accurate estimates of costs around voluntary supervision or guidance post-18; intensive support for a child who is subject to measures through the children's hearings system that is not a Movement Restriction Condition (MRC); and intensive support where a child is subject to an MRC (part 1).
- Associated costs for aftercare for a young person placed in secure accommodation via a criminal justice route (section 21).
- Costs to the Scottish Courts in relation to sections 14 and 15 of the Bill, where possible whilst not cutting across the discretion of the courts.
- Costs of considerations of places of safety for children in police custody, where possible (section 11).
- Costs to Local Authorities of children remanded or sentenced and placed in secure accommodation (section 16 and 17).

We have committed to using the higher-end projection of additional children's hearings demand.

As stated, we are committed to working with stakeholders and taking heed of evidence which will help us better understand these variables, and provide an accurate reflection of them in the supplementary Financial Memorandum. We are already engaging with delivery partners to gather information for estimates of the above costs and will include these details where available.

We are already working with Scottish Government analysts and COSLA to agree an updated methodology for this supplementary Financial Memorandum, at official level. As part of those discussions we will revisit and clarify the formula used to calculate the implication for social work resources. We recognise the significant challenges facing the social work profession and social workers' pivotal importance in the implementation of Bill provisions. SWS will be key partners in developing the supplementary Financial Memorandum. We are also in contact with a range of partners to revisit the information provided for the original Financial Memorandum and any updates to these figures.

The initial Financial Memorandum states the rationale that underlies the decision that was made to base costings on an upper age of 17.5, rather than 18:

*"13. [...] This is predicated on the basis that 17.5 years is the likely practical cut-off for offence referrals as this will allow time for grounds to be accepted or established where required, any order to be made and services put in place."*



As above, this was a practical consideration aimed at arriving at the most accurate possible costings for the Financial Memorandum, rather than a policy position referable to the Bill itself, which is clear that all children under age 18 should have the opportunity for their circumstances to be considered for access to age-appropriate justice. We are reflecting on this and considering how to approach this in the supplementary Financial Memorandum based on the Committee's feedback.

In regard to intensive support for MRCs specifically, we recognise the importance of costing this in the Financial Memorandum, although doing so is not without complexity due to the bespoke nature of each individual package of wraparound support the child receives. In these cases it is likely more than one service would be involved in supporting a child to meet the range of needs experienced, and with a high frequency and intensity, but fluctuating, level of support being provided each week. We recognise these costs can therefore be significant, and vary appreciably between children's cases.

Social workers make a highly skilled, unique and valuable contribution to supporting individuals and families across Scotland. We acknowledge the significant pressures social workers face around increasing workloads, staff shortages and the complex needs of those they support. Scottish Government is committed to improving the experience of the social work workforce, ensuring it is more sustainable in the longer term. We have introduced measures to address the acute recruitment and retention challenges facing the Social Work profession through the development of an Improvement Plan in collaboration with COSLA and other key stakeholders. This plan includes initiatives such as maintaining a Reserve List of social workers, reviewing pay disparities aligned with a framework that remunerates qualifications and experience, international recruitment and improving access to social work education.

**59. The Committee notes that the Finance and Public Administration Committee was not convinced that the way costs were set out in the Financial Memorandum [in line with policy areas rather than the provisions in the Bill] provides the clarity and transparency necessary for detailed scrutiny. The Committee therefore seeks more information from the Scottish Government regarding its rationale for using this approach on this Bill.**

We thoroughly considered all options for how the Financial Memorandum should be structured and how costs should be set out.

As stated in the Financial Memorandum,

*"5. Many of the measures across these Parts are interlinked in terms of policy and delivery. Therefore, considering their financial implications according to the sequencing of Bill sections does not make sense for costing purposes. Whilst the running order of the Bill has been framed for legislative purposes, following that structure in order to quantify costs would be confusing for the reader and lead to a high degree of duplication. Therefore, this financial memorandum is drafted around the interlinked policies and resourcing implications which stem from them, rather than rigidly adhering to the Bill structure".*

Not all individual provisions in the Bill engage cost implications. Other individual provisions in the Bill have consequences for costs that impact on other provisions. As a result, it was necessary to take a thematic approach to capture the overall projected costs. For example, raising the age of referral under section 1 will lead to increased costs relating to the secure accommodation estate under sections 16 and 17.

Mindful of the points detailed in the Stage 1 report, we have undertaken a further recent review of the approach adopted for the Financial Memorandum produced in 2022. We continue to believe this remains the most appropriate approach, but will examine in more detail parts of the Bill that could benefit from more specific financial estimates, and update Parliament accordingly, as above. We can reassure the Committee that any revisions to the supplementary Financial Memorandum on this point will be undertaken in the spirit of engaging with Parliament with the fullest possible transparency.

**60. The Committee welcomes the reassurance from the Minister that updated costings will be provided, and that these will take account of inflation.**

**61. Committee agrees with the Financial and Public Administration Committee that the Scottish Government should revisit, for clarity, its formula for calculating the draw on social work resource, given the significant concerns raised in evidence to both Committees.**

As Parliament heard during Stage 1 Ministerial evidence, the calculations on social work costs were undertaken by Scottish Government analysts in line with the standard way in which this is regularly approached. Scottish Government agreed with the Finance and Public Administration Committee to update all costs using 2024-25 prices due to the expected commencement and implementation timelines for the Bill.

We are open to considering alternative methods and calculations, and have already engaged with Social Work Scotland (SWS) on these matters. For example, we are considering better possible means of determining average social worker salary rates on which these calculations should be based. This work will continue but as SWS themselves have acknowledged, this will require time and detailed consideration, given the current economic context and the difficulty of distilling social work involvement and interventions in individual children's lives down to inputs and outputs.

## **PART 1**

### **SECTION 1: AGE OF REFERRAL TO A CHILDREN'S HEARING**

#### **MORE EFFECTIVE OUTCOMES**

**56. The Committee recognises that it is essential that the public understands the rationale for the changes brought about by this Bill, and the benefits that they are intended to bring, both to children and young people and to communities more generally through a reduction in harmful behaviour and a reduction in re-offending.**

We welcome the comments of the Committee. We agree it is critically important for the public to understand the rationale for the changes that would be brought about by this Bill and associated reform activity, along with the benefits that they are intended to bring. A communications strategy for the Bill is one area of consideration for the national multi-agency Implementation Group, detailed above. Given the crossover of interests and issues, links are being forged with the well-established Victims and Community Confidence Workstreams supporting the Age of Criminal Responsibility Advisory Group. That group also met on 5 June, and offers considerable overlap in membership. Further discussions are scheduled across the summer and autumn - the Implementation Group will continue to meet in parallel with the Bill's continued progression through Parliament, should Parliament endorse the general principles at Stage 1.

People with lived experience of the children's care and justice systems have been heavily involved in the development of the Bill. This involvement will continue during the ongoing consideration of the Bill and planning for implementation. As part of these considerations, the availability and as necessary development of accessible child-friendly information, including for child victims, on bill implications will be explored taking cognisance of other planned activities.

#### **END OF THE "CLIFF EDGE" AT 18**

**68. The Committee notes the strong support amongst stakeholders, to raise the age at which a young person is defined as a "child" and can therefore be referred to a children's hearing.**

This support is noted and welcomed.

## CONSISTENCY WITH OTHER LEGISLATION

**106. The Committee recognises the concerns raised by many stakeholders, in relation to how the provisions in this Bill may interact with a range of existing legislation pertinent to children and young people. The Committee believes that, ahead of Stage 2, there should be detailed analysis of all such legislation and consideration of how best to ensure an alignment of approach, which takes into account both children's need for protection and their evolving capacity to participate in decisions affecting them.**

**107. The Committee also notes the suggestion from the Faculty of Advocates that a root and branch review of the definition of "child" across Scots law be carried out, to ensure consistency and reduce complexity and asks the Scottish Government for its view of this suggestion.**

We welcome the views expressed by stakeholders and the Committee on this matter. We recognise there are different definitions of a "child" across Scots law. This recognises the evolving capacity of children, as reflected in Article 5 of the United Nations Convention on the Rights of the Child (UNCRC), alongside their need for, and right to, protection<sup>2</sup>. Provided this does not prevent children's realisation of their rights, or leave them vulnerable to harm, policy and legislation related to children and young people may legitimately operate with different age thresholds. In some contexts (such as the right to vote) treating young people in the same way as adults will strengthen their rights. In other contexts (such as diversion from the criminal justice system) treating young people in a different way from adults will likewise strengthen their rights.

We believe the Bill makes an important contribution to streamlining the definition of a child across child care and criminal justice legislation. The development of Bill provisions always involves legal analysis of the impacts on connected, relevant and neighbouring existing legislation so an exercise proportionate to the extent of the Bill's impacts is already complete.

On the suggestion from the Faculty of Advocates, the Scottish Government does not at this stage plan a root and branch review of the definition of "child" across Scots law. This exercise would take considerable time and we take the view that the higher priority is to continue to make advances such as those set out in this Bill, rather than to divert capacity to audit and rationalisation work of the type suggested. In addition, some areas pertinent to the definitions of childhood and adulthood might be reserved and go well beyond the scope of this Bill and its focus on Scottish child care and criminal justice legislation. However, the Scottish Government have committed in the Promise Implementation Plan<sup>3</sup>, published in March 2022, to undertake a review of the legislative framework relating to the care system in Scotland. The intention of this is to consider the desirability and extent of a restatement of the law in this area so that law relating to the care system is identifiable and understandable, prior to considering whether a Bill restating the law is necessary. This work would likely deliver some of the streamlining and simplification suggested by Parliament. The aim is to initiate that

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<sup>2</sup> See also the UN Committee on the Rights of the Child's General Comment No.20 on the implementation of the rights of the child during adolescence.

<sup>3</sup> [Keeping The Promise to our children, young people and families \(www.gov.scot\)](https://www.gov.scot)

work in time to conclude it by 2030 - in line with the timescales for Keeping The Promise.

### **17.5 YEARS RATHER THAN 18?**

**114. The Committee notes that the Financial Memorandum sets 17.5 years as the likely effective cut-off date for referral to children's hearings on offence grounds. This decision appears to be based primarily around the length of time it might take for a case to be processed, rather than any factors relating to the child's best interests.**

**115. The Committee remains unconvinced that reducing the age to 17.5 years for these purposes is a) in the spirit of the Bill and b) compliant with the age-appropriate justice provisions set out in the UNCRC, which state that it is the age at which the alleged offence took place that should be used to determine how the child's case is disposed of.**

**116. Whilst noting that the most serious offences will continue to be dealt with via the Lord Advocate's Guidelines, and therefore may end up in court, the Committee acknowledges that, in order to be compliant with UNCRC, any young person up to the age of 18, who is accused of an offence, should have access to age-appropriate justice.**

**117. The Committee is concerned by evidence heard around the timescales from referral to a children's hearing to a decision being made being too long. The Committee therefore calls for further exploration about how these timescales could be reduced.**

**118. The Scottish Government should also explore how providing support to young people beyond 18 may impact on the Children's Hearings System.**

Current practice and operational arrangements result in an effective truncation of children's hearings referrals and proceedings 6 months before children turn 18. In the Financial Memorandum this was reflected to illustrate the likely early post-implementation costs to agencies operating in and around the children's hearings system, as currently operated. This inclusion was intended to assist Parliamentary scrutiny, but we wish to make it clear that there is no direct mandatory provision in the Bill truncating pre-18 referrals, proceedings or service provision. Any child up to age 18 may still be dealt with by a referral to the Principal Reporter in some circumstances.

The Bill does make provision for all children under age 18 to have the opportunity for their circumstances to be considered for access to age-appropriate justice. This could be by direct single agency action, by referral to multidisciplinary early and effective intervention by the police, to the Principal Reporter directly or even to the Reporter in consequence of a joint referral to the Reporter and Procurator Fiscal. Moreover, in the event that a child requires to be jointly reported to the Procurator Fiscal and the Principal Reporter, under the Lord Advocate's Guidelines a child's circumstances will remain the subject of bespoke consideration, appreciating of course the constitutional independence of the Lord Advocate in relation to prosecutorial decision-making.

If there is a need for a child to be subject to formal measures, and the imminence of an 18<sup>th</sup> birthday makes it impractical or impossible for the child to be referred to and dealt with appropriately by the Children's Reporter, the Procurator Fiscal will still have options on how to deal with the child's case. For example, diversion will remain available as an alternative to prosecution. In the event that the public interest requires that a child is prosecuted, the measures in sections 11 to 14 of the Bill will ensure that the child's rights under UNCRC are protected. In addition, a court has the power (under section 15 of the Bill) to remit a child who is within 6 months of their 18<sup>th</sup> birthday to a children's hearing for disposal. In that scenario, the court will decide in the particular circumstances whether it would be practicable in the circumstances to remit the case.

In addition, we note the research of the pilot of the youth court in Glasgow<sup>4</sup> and the potential for further work in this area to support young people aged over 18. The criminal courts now apply specific sentencing guidelines<sup>5</sup> to people aged under 25 taking into account additional factors affecting this age group.

If the child's needs can be met without compulsory measures of care, then a child may be referred to the Principal Reporter even up to their 18<sup>th</sup> birthday.

If an individual is referred to the Procurator Fiscal after they have attained the age of 18 for an offence alleged to have occurred when they were under 18, the Procurator Fiscal will take this into account in deciding what action to take, depending on the nature of the offence and accused person. However, should the child be over 18, the children's hearings system would be unable to deal with the case even if committed in childhood.

We did fully consider extending the children's hearings system beyond the age of 18. As detailed in the Policy Memorandum<sup>6</sup>:

*"100. Consideration has been given to whether to extend compulsory measures beyond 18 using the children's hearings system. The system itself is completely designed around making decisions about compulsory orders on children, with relevant persons also having rights in relation to the child. The test currently to be applied is that compulsory orders can be made only if necessary to safeguard or promote welfare throughout a child's childhood. Current disposals include measures of residence with relevant persons, kinship or foster carers, named residential places or secure accommodation. Any extension beyond age 18 would require an entirely new framework for the system, and the tests needed to justify compulsion beyond childhood would require to be restated to accommodate the rights of the evolving young-adult, with limited options for non-compliance. Further, this could cause capacity issues in the system and volunteer panel members would require to be trained and supported in decision-making in relation to young people as opposed to children. This option has therefore not been taken forward".*

The ability of a children's hearing to make a statement to the effect that a child needs supervision or guidance up to age 19, thereby imposing a duty on a local authority to

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<sup>4</sup> [Glasgow Youth Court: Full Report - Children and Young People's Centre for Justice \(cycj.org.uk\)](https://www.cycj.org.uk)

<sup>5</sup> [sentencing-young-people-guideline-for-publication.pdf \(scottishsentencingcouncil.org.uk\)](https://www.scottishsentencingcouncil.org.uk)

<sup>6</sup> [Policy memo \(parliament.scot\)](https://www.parliament.scot)

give such supervision or guidance as the child will accept, should provide some reassurance to Parliament that a child can access supports beyond childhood as they transition into adulthood. This is particularly helpful where the child, on attaining adulthood, would benefit from the continuation of services they are receiving via a Compulsory Supervision Order (CSO)

, and reduces the risks of a 'cliff edge' when an order is terminated or a child reaches 18.

The Scottish Government recognises the central importance of high quality, swift and sustainable interagency information sharing, referral action, tribunal decision making and prompt notification.

Timescales for processing a child's referral to the Principal Reporter are affected by a number of factors - starting from the receipt of referral, to the investigation of the circumstances of the child, to the scheduling and conduct of children's hearings- to the conduct of court proof and appeal proceedings, and relevant partners will work together to identify how to support expediency across the system as part of implementation plans.

There is regular reporting on performance against the Time Intervals Standards and the Blueprint for the Processing of Children's Hearings Cases<sup>7</sup>. It is notable the time from referral to decision is much shorter for offence cases than for care and protection cases – and the key factor impacting on extended delay is the establishment of grounds and the intersection with the courts system.

The need to take renewed action on the time taken to raise, consider and resolve children's hearings cases is a key recommendation of the Hearings System Working Group (HSWG) report<sup>8</sup> published on 25 May. The Scottish Government will take the time necessary to carefully consider their proposals, reflecting on the legal, financial and workforce implications before responding later in the year. Changes that need new law or new structures will take time, and would involve due process of public consultation on any legislative change that would be required for the Promise Bill which is anticipated to be introduced towards the end of the Parliamentary term.

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<sup>7</sup> [Children referred to the Reporter \(scra.gov.uk\)](https://www.scra.gov.uk/children-referred-to-the-reporter)Children referred to the Reporter (scra.gov.uk) (pp. 31-32)

<sup>8</sup> [hearings-for-children-the-redesign-report.pdf \(thepromise.scot\)](https://www.thepromise.scot/children-referred-to-the-reporter)

## **MORE SERIOUS OFFENDING AND COMPLEX CASES BEING COVERED BY THE CHILDREN'S HEARINGS SYSTEM**

**137. The Committee acknowledges the considerable effort and commitment of the volunteer Children's panel members, chairs and staff in delivering a Children's Hearings System across Scotland.**

**138. The Committee recognises that there will be an increase in 16 and 17 year olds being referred on offence grounds as a result of this Bill, and that some of these offences will be more serious in nature.**

**139. The Committee further recognises that there will be an increase in 16 and 17 year olds being referred solely on welfare grounds, and that some of these young people will have complex needs.**

**140. The Committee believes that it will be critical for all panel members to receive training to equip them to respond effectively to these young people.**

The National Convener at CHS is responsible for the recruitment, training and support of children's panel members in Scotland. As detailed in the Financial Memorandum, we have worked with CHS to cost the implications of the Bill, including training, which as detailed in the Financial Memorandum are £0.45m per year, based on the existing lay volunteer children's panel model. Plans are already underway to ensure all panel members are provided with training to ensure they can respond effectively to the needs of these children. As Stephen Bermingham of CHS advised the Committee:

*"...we are confident that, with the right planning and the right support, we can deal with it [increased demand on CHS]... We will make training on the bill and its implications mandatory for all panel members. We are already making initial contact with experts in the field with regard to how we provide a high level of specialist training".*



## **UPHOLDING LEGAL RIGHTS WITHIN THE CHILDREN'S HEARINGS SYSTEM**

**149. The Committee recognises the concerns of stakeholders regarding the potential for young people to accept offence grounds without understanding the full implications of that decision.**

**150. The Committee notes the recommendation from the Hearings System Working Group report that children should be fully informed of their right to legal representation and also that there should be an exploration and understanding of whether the current mechanism for them to access legal aid and their right to legal support is sufficient. The Committee supports these recommendations and believes, should the current mechanism be found to be insufficient, that children be provided with legal representation in all cases where a child is attending a Children's Hearing on offence grounds.**

The SCRA communicate with all children referred to a children's hearing on offence grounds, advising that there are possible implications of accepting the grounds and signposting children and families to the Scottish Child Law Centre and the Scottish Legal Aid Board.

The Scottish Government has introduced a range of recent reforms to ensure that most childhood offending and harmful behaviour does not follow young people into adulthood.

An offence dealt with through the children's hearings system is spent immediately. This means that an individual does not generally have to reveal or admit its existence. Children's hearing disposals are not disclosed on the basic disclosure issued by Disclosure Scotland. However, there are some categories of employment and proceedings where it is considered appropriate that relevant spent convictions, including offences dealt with under the children's hearings system, should be taken account of when employers are making recruitment decisions for roles that involve a particular level of trust. This is known as the higher level disclosure regime and includes the standard and enhanced disclosure and the Protection of Vulnerable Groups scheme record.

For the purposes of the disclosure of spent convictions or children's hearing disposals, the legislation has two lists of offences which are referred to as schedule 8A and 8B. Offences contained in either schedule are those which Scottish Ministers consider should be disclosed on higher level disclosures beyond the point they are spent. Schedule 8A includes serious offences such as serious violence and sexual offending. Schedule 8B includes less serious offences than schedule 8A but which still warrant disclosure even when spent, for example theft and fraud.

The Disclosure (Scotland) Act 2020, when implemented, will significantly reform the disclosure of childhood offending behaviour in recognition of the fact that this is a unique phase of life; and convictions and children's hearings' outcomes accrued during this period should be treated differently from those accrued in adulthood. There will be no possibility of automatically disclosing spent childhood convictions or children's hearing outcomes on any level of disclosure. Disclosure will only take place

if the Scottish Ministers are satisfied that a childhood conviction or children's hearing outcome is relevant to the purpose of the disclosure and that it ought to be included.

As detailed elsewhere, the Scottish Government will take the time necessary to carefully consider the proposals contained within the HSWG report before responding later in the year.

## **CAPACITY TO COPE WITH INCREASED REFERRALS TO THE CHILDRENS HEARINGS SYSTEM**

**168. The Committee recognises the importance of the work that is carried out by panel members and staff, social work teams and a wide range of other agencies, currently working to support children and young people referred to the Children's Hearing System. It acknowledges that the measures in this Bill will increase those referrals, increasing the number of hearings and the complexity of the cases before panel members. Recognising the additional pressures this may place on the Children's Hearing System and agencies supporting it, the Committee believes it is crucial that these factors are fully costed and taken into account when the Scottish Government updates the figures currently set out in the Financial Memorandum.**

**169. The Committee therefore notes the Minister's evidence to the Finance and Public Administration Committee that costings for the Bill will be updated to reflect the skills and training needs required as a result of the Bill, and be based on the higher number of projected hearings.**

**170. These updated costings must be provided ahead of the Stage 1 debate.**

**171. The Committee acknowledges the significant resourcing and training challenges that implementation of this Bill will pose to a number of key agencies, including Children's Hearings Scotland, SCRA and local authorities.**

**172. The Committee also notes the reassurances provided in evidence, for example, by Children's Hearings Scotland, that this resource will be in place ahead of the Bill's implementation (e.g. in relation to the recruitment of additional panel members).**

**173. However, given the significant risks associated with these recruitment, resourcing and training challenges not being met, the Committee urges the Scottish Government to work with Children's Hearings Scotland to set clear targets and timescales for the recruitment and training of new panel members and to outline what additional actions will be taken to address any deviation from these targets/ timescales in a timely manner.**

**174. The Committee also urges Children's Hearings Scotland to monitor and report upon the retention of existing panel members, in order to identify whether the changes brought about by the Bill are negatively impacting upon this.**

**175. The Committee notes the recommendations of the Hearings System Working Group final report, The Hearings for Children. The Committee further notes, should all the recommendations be implemented, this would have a significant impact on the way the Children's Hearing System works. The Committee urges the Scottish Government to set out how this will affect the timescales for implementing the measures in this Bill.**

We refer the Committee to the responses detailed under the Financial Memorandum section of this report. The Scottish Government has a strong working relationship with

CHS, and the National Convener of CHS has the statutory responsibility to recruit, train and support panel members. CHS have been planning for the increase in numbers of hearings and have already undertaken a refresh of their recruitment campaign materials in advance of a planned recruitment campaign in September 2023. The CHS national recruitment campaign has a target of recruiting and training circa 500-800 panel members to anticipate, and respond to, the implementation of the Bill. CHS are aware of the pressures of volunteer recruitment nationally. They have a number of mitigations in place to deal with capacity issues including live monitoring, the option of cover between areas, flexibility in the new legislation for mixed gender panels and the agility to bring forward scheduled recruitment campaigns if required.

The recruitment, retention and training of panel members is a matter for the National Convener. There is an existing internal monitoring structure in place for the CHS Senior Leadership Team to review Panel Member numbers monthly and quarterly reports are considered by their Board. CHS also has an agile business continuity plan in place should capacity become a concern. This was used successfully during the pandemic to ensure children's hearings continued to take place daily throughout Scotland.

On a broader point, the Scottish Government is also considering the place of multi-disciplinary training in respect of the Bill, the precedent for which would be the "From Act to Practice" training provided by CELCIS in partnership with Clan Childlaw in respect of the Children's Hearings (Scotland) Act 2011 ("the 2011 Act"). The training took place in 2012-13 and was funded by the Scottish Government at a cost of circa £100,000. Should conversations progress to a position which indicates that we will need a multi-disciplinary training package of this sort, we will include a cost for this in the supplementary Financial Memorandum, updated for inflation between 2012-13 and 2024-25.

Finally, on a further broader point in terms of public expenditure, we recognise the wider backdrop of the benefits these change programmes are advancing. The negative economic and social costs to society of offending and crime are well documented. However, we recognise the challenges of costing preventative spend and that these savings are often only realised in the future – for that reason we have included full costs in the Financial Memorandum.

The Scottish Government is actively considering sequencing and prioritisation in respect of the various developments that are running alongside the Bill, not least the recommendations of the HSWG. These considerations will be informed by the continued work of the multi-agency Implementation Group and planning and engagement on the response to the HSWG report.

We anticipate any legislative change needed in respect of the HSWG proposals would be introduced in 2025 and considered towards the end of this Parliamentary term. The Promise Bill, and hearings-related provisions within it, would then be subject to Parliament's approval and be implemented thereafter in the period up to 2030. If this Bill progresses through Parliament successfully, the passing and commencement of many of its key provisions would precede this timeframe. We will keep Parliament and all relevant parties informed as our projected approach to commencement sequencing

becomes more defined - as the work of the Implementation Group gathers pace across this autumn.

### **SECTION 3: COMPULSORY SUPERVISION ORDERS: PROHIBITIONS**

**192. The Committee recognises the concerns of stakeholders that these provisions could lead to putting the onus on victims to avoid people and locations that could be harmful to them.**

**193. The Committee also notes the lack of clarity as to how these measures would be monitored and enforced.**

**194. The Committee therefore asks the Scottish Government to set out how prohibitions will be implemented, monitored and reviewed and how they will protect children at risk of offending and/or at risk of harm.**

The Bill seeks to ensure a children's hearing has a fuller choice when deciding on which measure (or combination of measures) is best suited to a child's individual circumstances and is most likely to safeguard and promote the child's welfare.

In the event that a child is subject to a prohibition measure, the implementation authority would, in carrying out their duties to support the child under the CSO, monitor the child's compliance with such a measure. If the measure was not being complied with, that change in circumstances would be notified to the Principal Reporter, and may result in the terms of the child's CSO being reviewed or varied by a further children's hearing. This would allow any necessary changes to be made to the order to promote and safeguard the child's welfare. As with any compulsory order, reviews can be requested by the implementation authority at any time and a child and any relevant persons can request another hearing takes place three months after the order is made.

If the prohibition is framed in terms of a requirement not to approach a specific person, then the child who is the subject of the requirement, with the support of the implementing authority, is responsible for complying with the measures in their order. There will be no onus or responsibility on the specified person to monitor the child in any way. If they are concerned about the child's behaviour, or they observe the child behaving in a manner or in a place that is contrary to the prohibition, then the specified person can, as now, report their concerns to the police, local authority or Children's Reporter. Any necessary action will be taken by the authorities. This could, for example, be by way of a new referral to the Children's Reporter, or a review of the child's CSO.

Where it is considered that a child would not co-operate with a prohibition without electronic monitoring to support their compliance, a children's hearing could consider whether an MRC would be a more appropriate measure. An MRC (and the intensive support and monitoring arrangements that are essential to the success of that measure) could be used to prevent the child from approaching specified places or people.

#### **SECTION 4: COMPULSORY SUPERVISION ORDER: MOVEMENT RESTRICTION CONDITIONS**

**238. Whilst the Committee recognises that MRCs can provide an alternative to secure accommodation, MRCs have the potential to significantly restrict a child's liberty and may in fact amount to a deprivation of liberty. As such, they should be subject to a rigorous threshold test, to ensure that an MRC is a necessary and proportionate response to the risks posed to or by the child. In all cases, MRCs must be accompanied by an intensive package of support and their use time-limited. The Committee recognises that MRCs are only appropriate in very limited circumstances and, in order for them to be applied successfully, they need to be accompanied by a package of intensive support.**

**239. The Committee is concerned that potential costs for such support have not been included within the Financial Memorandum. The Committee therefore urges the Scottish Government to set out exactly how this will be resourced, when revisiting the costs associated with this Bill.**

**240. The Committee has significant concerns in relation to proposals in the Bill to amend the current threshold test and specifically the use of the term "psychological harm". Given the subjectivity of this term, the Committee agrees with stakeholders that an objective test should be added, for instance a qualification of "significant risk" or severe harm" or the test applied when determining harassment which is that a consideration has to be made as to what a reasonable reaction to the behaviour would be.**

**241. The Committee also believes that clear guidance and training should be provided to panel members to ensure that decisions about such "severe harm" are taken in an informed manner and applied consistently across Scotland.**

**242. Further, the Committee believes that the use of MRCs for these purposes should be closely monitored to ensure they are used appropriately. The Committee urges the Scottish Government to commit to bringing forward amendments at Stage 2 to address these issues.**

**243. The Committee notes that a decision to impose an MRC should only be taken where it is in the best interests of the child, a proportionate response to the risks posed to or by the child, and where other less restrictive measures have been fully explored. The Committee notes the Scottish Government's stated intention that MRCs should not be used more frequently in future than they are at present. Again, the Committee requests that appropriate monitoring is put in place to ensure that MRCs are used only when appropriate and also asks that the Scottish Government carries out an evaluation of the use of MRCs and their impact on the outcomes of the young people.**

**244. The Committee believes that the Scottish Government should urgently address the issues identified in relation to the automatic provision of legal representation i.e. to ensure that the child has access to a solicitor at the point at which an MRC is being considered. It should amend the Bill at Stage 2 to ensure this important safeguard is reinstated.**

The Bill makes provisions to decouple the MRC criteria from that for secure accommodation authorisations. This is in recognition of the fact that an MRC is a less restrictive measure and can be a more proportionate response to prevent a child's liberty being deprived under secure authorisation. This was a recommendation of the cross-system working group that comprised of key partners and reported to the Youth Justice Improvement Board<sup>9</sup> in September 2021.

We consider that the threshold as set is rigorous. Section 4 of the Bill amends section 83 of the 2011 Act to apply a new set of conditions for the purpose of including a movement restriction condition in a CSO. There are two conditions that need to be met. These are: (a) that the child's physical, mental or moral welfare is at risk, and (b) that the child is likely to cause physical or psychological harm to another person.

Existing safeguards apply under the 2011 Act, and a children's hearing or a court may impose an MRC only if the new conditions apply, and they are also satisfied that an MRC is necessary<sup>10</sup> and is therefore a proportionate response to the risks posed by the child, where other less restrictive measures have been fully explored.

Moreover, section 26 of the 2011 Act already requires a children's hearing or the court to consider whether, for the purpose of protecting members of the public from serious harm (whether physical or not) it is necessary that the decision be made, and the need to safeguard and promote the welfare of the child throughout the child's childhood is a primary consideration.

In addition, section 28 of the 2011 Act requires a children's hearing when considering whether to make a CSO to be satisfied that it would be better for the child if the order were in force than not.

So these general safeguards in the 2011 Act apply before any decision is made to impose any MRC<sup>11</sup>.

We are however, considering further if there are additional safeguards required to ensure a child is able to express their views in relation to the recommendation of an MRC, or if there is a need for additional support to ensure the most appropriate measure is being applied to their situation. Currently, automatic legal representation is available where the recommendation is that the child be deprived of their liberty, and legal aid can be sought in any other case. Children are also offered professional independent children's advocacy to support them in a children's hearing. Advocacy workers undertake mandatory training covering children's rights, the UNCRC and the law around children's hearings. Advocacy workers have access to Clan Childlaw's Legal Assistance Helpline when it becomes apparent that a child might need legal

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<sup>9</sup> 16/17 year old – cross system working group <https://usercontent.one/wp/www.yjib.co.uk/wp-content/uploads/2022/06/16-and-17-year-olds-closure-report-submitted-to-YJIB.pdf?media=1629890533>

<sup>10</sup> Section 83(4) of the 2011 Act

<sup>11</sup> Under section 25 of the 2011 Act, any measure placed on a child by a children's hearing or a court would require to consider the child's welfare as the paramount consideration. However, this is subject to section 26 of the 2011 Act



representation. Advocacy workers also make the child aware of the Scottish Legal Aid Board and provide contact details for the child to get a solicitor.

The Scottish Government reiterates that the intention behind the Bill is not to promote wide-scale use of MRCs, but to add to the suite of options for decision makers, by providing an option for a child's liberty to be restricted by use of an MRC, where to do so is necessary and proportionate, and as a lesser intrusive measure than secure care, and these safeguards support that intent.

The Financial Memorandum did not include additional costs for MRCs, beyond the Scottish Government funding of the costs in relation to electronic monitoring. We have been listening to the evidence from third parties during parliamentary scrutiny concerning possible forecasts for MRC usage and any resulting cost implications, and are working with stakeholders to include further information in the supplementary Financial Memorandum, to ensure that resources are available if needed.

The Scottish Government agrees with the Committee that MRCs must be accompanied by a package of intensive support. The Children's Hearings (Scotland) Act 2011 (Movement Restriction Conditions) Regulations 2013 set out the requirements for a child's plan, monitoring and review arrangements.

The Regulations require the provision of a crisis response service by or on behalf of the implementation authority, which includes immediate support for the child in accordance with the child's plan, which must include a telephone contact facility, accessible on a 24 hours per day basis, for every day of the year, both by the child, by any person designated, and by any other person identified in the plan as requiring such access.

Current Scottish Government Guidance<sup>12</sup> provides that at the point when an MRC is being imposed, the implementation authority should request that an Early Review is scheduled, ideally within 6 weeks. The MRC must not last more than six months. We will be reviewing this guidance as part of the implementation plans for the Bill.

The Scottish Government will continue to monitor the future usage of MRCs. The last Scottish research dedicated to the use of MRCs was completed by the Children and Young People's Centre for Justice (CYCJ) in 2016<sup>13</sup>. We will work with partners to establish how the impact of the provisions of the Bill can best be monitored. This will build upon existing data recording and reporting to reflect the adaptations to the MRC eligibility criteria proposed by the Bill. For example, SCRA annual statistics report on the number of secure authorisations made by children's hearings and annual changes. There are also a range of strategic and governance groups such as the Youth Justice Improvement Board, the National Youth Justice Advisory Group and the Secure Care Group, co-chaired with COSLA, where information can be shared, issues identified and activity undertaken to seek to address them.

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<sup>12</sup> [Definitions - Movement restriction conditions in the children's hearing system: guidance - gov.scot \(www.gov.scot\)](https://www.gov.scot/definitions/movement-restriction-conditions-in-the-childrens-hearing-system-guidance)

<sup>13</sup> [Movement Restriction Conditions \(MRCs\) and Youth Justice in Scotland: Are we there yet? - Children and Young People's Centre for Justice \(cycj.org.uk\)](https://www.cycj.org.uk/movement-restriction-conditions-mrcs-and-youth-justice-in-scotland-are-we-there-yet/)

As detailed in the Policy Memorandum, clear parameters on when these measures could appropriately be used will require refreshed guidance for decision makers and social workers. We will also work with partners to update existing guidance and practice documents including Practice Directions produced by SCRA, guidance produced by the Scottish Government and training materials provided to children's hearing panel members by CHS. We will consider whether any further guidance or training is required, and will discuss likely future requirements with affected delivery agencies and relevant interests ahead of Stage 2.

On the use of the term 'psychological harm', as detailed in the Policy Memorandum, our reasoning in changing the test was that the focus on 'injury' in the current test could be minimising the impact a child's actions may be having on others who may be psychologically harmed by distress or fear.

It is, and always has been, a matter for a children's hearing to decide what impact the child's behaviour has either on themselves or others, and whether all the appropriate criteria as defined in legislation are met. This decision is made based on the grounds of referral, and information presented to the hearing by way of reports by professionals, and which the child, and their relevant persons will have had an opportunity to comment on. We do not consider that any subjective element of the test has been changed. Panel members are trained in making decisions of this nature. If considering that an MRC best meets the child's needs, they would need to be satisfied that the child's behaviour was likely to cause physical or psychological harm to another person before they could find that the criteria were met. For example, established grounds that a child has committed an offence under section 1 of the Domestic Abuse (Scotland) Act 2018 could mean an MRC is considered, if necessary, to protect the victim from any repeat of such an offence.

The test for an MRC recognises the potential impact on a victim, and the provisions are designed to strike a balance between their need for protection and the referred child's welfare as identified in the children's rights and wellbeing impact assessment. It provides the hearings system as a potential route to appropriately address a child's behaviour and at the same time protect the public. Moreover, as already noted above, in making an MRC, a children's hearing or a court will be bound by section 26 of the 2011 Act, a children's hearing or a court will need to consider the child's welfare as a primary consideration rather than a paramount consideration. But this only applies if a measure is necessary for the purpose of protecting members of the public from serious harm. We think this may address the concerns of stakeholders and the Committee in relation to the proposed new test for MRC, but we will work with partners and consider if further provision is required to meet the policy intent, or whether guidance and training of panel members will suffice.

## **SECTION 5: COMPULSORY SUPERVISION ORDERS: SECURE ACCOMMODATION AUTHORISATIONS**

**253. As with section 4, the Committee believes that any threshold test should ensure that a secure care authorisation is a necessary and proportionate response to the risks posed to or by the child. The Committee is concerned that the new test is too subjective without the addition of an objective test.**

**254. The Committee believes that this provision should be amended at Stage 2 of the Bill's consideration.**

Please see the responses as detailed in Section 4. Existing general safeguards in the 2011 Act as referred to in that Section also apply to secure accommodation authorisations in terms of a children's hearing having to consider the necessity and proportionality of the measure and the welfare of the child as the paramount or, at least the primary consideration in a case where the measure may be considered necessary to protect the public from serious harm.<sup>14</sup> The assessment of necessity for secure accommodation authorisations will require consideration of this against any other less restrictive options. This section will be included in the considerations detailed above.

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<sup>14</sup> Sections 25 and 26 of the 2011 Act, and also section 83(5) of that Act

## **SECTION 6: PROVISION OF INFORMATION TO PERSON AFFECTED BY CHILD'S OFFENCE AND BEHAVIOUR**

**281. The Committee recognises that it is often challenging to balance the rights of those offending against those of people harmed by that offending. This is particularly true where both parties are children.**

**282. The Committee acknowledges the critical role that information sharing can play in allowing victims to plan for their safety and wellbeing.**

**283. The Committee notes the call of some stakeholders, including Victim Support Scotland, for a victim notification scheme to operate within the Children's Hearings System as it does within the criminal justice system. The Committee recognises that stakeholders also called for improvements to this scheme.**

**284. The Committee supports the Criminal Justice Committee's request that the Scottish Government considers how the wider needs of victims can be met, including on information sharing - in this Bill or, possibly, the Victims, Witnesses and Justice Reform (Scotland) Bill. The Committee notes that only 13-14% of victims or their families are requesting information from SCRA.**

**285. The Committee urges SCRA to undertake research to understand why the rate is so low.**

**286. The Committee recognises that the Scottish Government has committed to roll out the Bairns' Hoose model for all child victims and witnesses of violence. The Committee notes that stakeholders are unclear as to how this Bill will align with the Bairns' Hoose model roll out and asks the Scottish Government to clarify how these measures will work together.**

**287. The Committee strongly supports the need for victims, witnesses and their families to have ready access to information and support to navigate their way through the criminal justice or Children's Hearings System. The Committee acknowledges that a single point of contact was cited by many stakeholders as a good way to facilitate this.**

We agree with the Committee that there is a need to strike a balance between the rights of a referred child and those that they have harmed. It is recognised that the referred child themselves may have experience of being a victim, and that the person harmed may themselves be a child. We note the Committee's request that we consider how the wider needs of victims in the context of information sharing can be met, and the Committee's strong support for the need for victims, witnesses and their families to have ready access to information and support to navigate their way through the criminal justice or children's hearings system.

We recognise there was not a consensus from stakeholders on whether the provisions in the Bill were sufficient or had achieved the correct balance. As detailed in the Policy Memorandum:

*“82. This is a finely balanced area. Care must be taken to ensure the Kilbrandon ethos of the children’s hearings system (which has the needs and welfare of the child who is subject to the referral at the centre), is not compromised. Crucially, children’s hearings are not criminal justice settings and the rights of the victim must be carefully balanced against the rights of the child”.*

These issues were echoed by stakeholders in their evidence to Committee, who drew particular attention to existing data protection legislation governing information sharing, the limitations to when information could be shared and the crucial importance of the purpose for sharing information. Jenny Brotchie, of the Information Commissioners Office, put in her evidence to Committee as follows:

*“The other thing that we should bear in mind is the purpose of information sharing, what objective you are hoping to achieve and the personal data that it is absolutely necessary to share. In some cases—the safeguarding situations that I have mentioned—that might be necessary; in others, it might be just a case of providing the victim with information about how the children’s hearings system works more generally. That might be enough to fulfil the purpose”.*

We also recognise the evidence from other organisations, including Victim Support Scotland, as detailed by Kate Wallace to the Committee:

*“The bill is focused on the rights of the child who has harmed and is not so much focused on the rights of the child who has been harmed. That needs to be addressed. I refer to the point that I made about the lack of information. As others have said, it is difficult to see how the right of children who have been harmed to participate in proceedings can be fulfilled. There is also a question mark over the right to recovery from trauma for children who have been harmed. There is a bit of work to do on that”.*

We are committed to a person-centred, trauma-informed approach and share the Committee’s and witnesses’ clear desire to ensure a consistent quality approach to information and support from the early stages of a victim being identified. This is why we are working with partners, including under the Victims and Community Confidence workstreams that feed into Age of Criminal Responsibility and Youth Justice Improvement Boards, to explore options to assess where more could and should be done. This includes any potential legislative amendments and any potential accompanying non-statutory action in relation to tailored individualised information and ‘single point of contact ‘ services. This work will continue in tandem with the Bill and be reflected in any further changes as required.

The Victim Notification Scheme (VNS) provides eligible victims of adult offenders with information about an offender’s release and with the opportunity to make representations to the Parole Board when decisions are made on release. The VNS has recently been independently reviewed, and the review’s report<sup>15</sup> was published on 12 May 2023. The report makes 22 recommendations across a range of areas

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<sup>15</sup> [Supporting documents - Victim Notification Scheme \(VNS\): independent review - gov.scot \(www.gov.scot\)](https://www.gov.scot/supporting-documents/victim-notification-scheme-vns-independent-review)

including secure accommodation, data and monitoring, the information available, and eligibility. It also recommends that a new victim contact team be created to support victims in deciding whether to join the VNS.

We are currently considering the report in collaboration with stakeholders and intend to publish a formal response in due course. We would be happy to write to this Committee and the Criminal Justice Committee when the response is published. We will also consider what learning can be taken from the review in relation to the provision of information to victims in the children's hearings system.

SCRA recognise the Committee's comments on the number of victims or their families requesting information. The reasons why a child or relevant person might want to receive information, or not, could be affected by a range of factors. SCRA are however committed to working with partners to undertake research on this matter.

It is important the Bill is not viewed in isolation. There is a programme of work being taken forward by the workstreams of the Victims Taskforce that is of relevance in this area. This includes the development of a victim-centred approach to justice, the roll out of the Trauma Informed Justice knowledge and skills framework<sup>16</sup>, and work led by communication specialists to improve how agencies and services communicate with victims and witnesses. We will work closely with these projects to identify learning and outcomes that can be applied to the children's hearings system, to improve the experience of *all* victims and witnesses.

We have been working to adapt the Nordic model of Barnahus for the Scottish context. This includes working with partners to develop a rights-based approach to establishing a national Bairns' Hoose model which reflects all relevant policy and legislative developments across children's services, justice and health and social care in Scotland.

Our approach is grounded in the requirements of the UNCRC, and in line with the Scottish Government's policy programmes of Keeping The Promise and Getting it right for every child (GIRFEC), which seek to recognise that all children must receive the right help at the right time. Our Scotland-specific Standards<sup>17</sup>, developed in conjunction with Healthcare Improvement Scotland and the Care Inspectorate were published on 31 May. The Standards are based on the European PROMISE Quality Standards which reflect best practice from the Nordic countries.

We will be taking a three-phased approach to the development of Bairns' Hoose to help us create a system that works for all children across Scotland. That means adopting a model that can be adapted to local requirements whilst guaranteeing the same quality of care.

The first phase, the Pathfinder phase, which is described in our Bairns' Hoose Project Plan Progress Report and Pathfinder Delivery Plan<sup>18</sup>, published on 1 June, will trial the Standards through multi-agency partnerships in different geographical contexts

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<sup>16</sup> [National Trauma Training Programme - Justice KSF Full Framework and Executive Summary \(transformingpsychologicaltrauma.scot\)](https://transformingpsychologicaltrauma.scot)

<sup>17</sup> [Bairns' Hoose standards \(healthcareimprovementscotland.org\)](https://healthcareimprovementscotland.org)

<sup>18</sup> [Bairns' Hoose - project plan: progress report and pathfinder delivery plan 2023 to 2025 - gov.scot \(www.gov.scot\)](https://www.gov.scot)

and developmental stages. This will enable us to better understand and address the complexity of the necessary systemic change and learning from this phase will provide us with a blue-print for a Bairns' Hoose model, which will be tested in the Pilot phase; the second stage of development ahead of national rollout of the model. Applications to become a Pathfinder opened on 12 June.

Scottish Ministers have agreed the following scope of Bairns' Hoose eligibility. This recognises the evolving policy context and issues associated, to include:

- all children in Scotland who have been victims or witnesses to abuse or violence, which has caused or likely to cause significant harm
- children under the age of criminal responsibility whose behaviour has caused significant harm or abuse.

It will be a matter for professional judgement for practitioners as to whether the behaviour carried out by the child has caused or is likely to cause "significant harm or abuse" requiring the intervention of a Bairns' Hoose. It is recognised that children exhibiting or carrying out harmful behaviour are often themselves victims of significant harm and abuse. It is with this in mind that a Bairns' Hoose is considered the most holistic form of intervention and support for the child to ascertain the circumstances of the harm, whilst at the same time offering therapeutic support to a child who may themselves have been harmed.

The Bairns' Hoose will be an environment in which this context can be understood, and positive interventions can be made to prevent further harmful behaviour. A key consideration in the development of Bairns' Hoose, will be balancing the rights of victims and those of children whose behaviour has caused harm. We recognise the potential tension between the rights of victims and those of children whose behaviour has caused harm and, as such, addressing issues that may arise due to competing interests will be a fundamental consideration as we develop our plans for a national Bairns' Hoose model.

Under the eligibility criteria above the intention is that the Bairn's Hoose model will be used in future for children who are involved in the children's hearing system, either as victims or witnesses or as the referred child.

## **SECTION 7: SUPERVISION OR GUIDANCE POST-18**

**302. The Committee notes that the Bill provides flexibility with regard to support for those beyond the age of 18. It therefore asks the Scottish Government to consider how this principle could be applied to those being referred on offence grounds who are older than 17.5 years, but under 18.**

**303. The Committee recognises that extending supervision and guidance for young people will put additional pressure on local authority budgets. The Committee therefore calls for this to be reflected in the resources allocated to local authorities to implement this change.**

As indicated above, we take the opportunity to clarify that the Bill itself does make provision for all children under age 18 to have the opportunity for their circumstances to be considered for access to age-appropriate justice in different ways. These costs will be considered as part of the further Financial Memorandum considerations.



## PART 2

### SECTION 10: PROSECUTION OF CHILDREN OVER THE AGE OF CRIMINAL RESPONSIBILITY

**328: The Committee welcomes the policy intention of this Bill, namely that it should remove the majority of under 18s from the adult justice system. However, in doing so, it also recognises the views of the UN Committee on the Rights of the Child that age-appropriate justice should not be contingent on the severity of the offence of which the child is accused.**

**329. The Committee welcomes that the Lord Advocate will retain the ability to authorise prosecution, when it is in the public interest. However, it urges the Scottish Government to consider which measures could be put in place to ensure that a child proceeding through the adult justice system, rather than the Children's Hearings System, should also have access to age-appropriate justice, including putting in place safeguards and measures designed to help them better understand and participate in proceedings.**

**330. The Committee recommends that when the Lord Advocate's Guidelines are next revisited, careful consideration is given as to how the views of the child or young person are factored into the Procurator Fiscal's decision-making process when identifying a) if a prosecution is in the public interest and b) whether a case should be disposed of via the courts or via the Children's Hearings System. In making this recommendation, the Committee is mindful that this process should include the views both of the young person accused of an offence and any young person harmed as a result of that behaviour.**

The Scottish Government does not agree with this recommendation and does not consider that it is appropriate for any Parliamentary Committee to advance a recommendation of this nature. As set out in section 48(5) of the Scotland Act 1998:

*"Any decision of the Lord Advocate in his capacity as head of the systems of criminal prosecution and investigation of deaths in Scotland shall continue to be taken by him independently of any other person."*

That reflects the constitutional position of the Lord Advocate, as the independent head of the systems of criminal prosecutions and the investigation of deaths in Scotland. Neither the Scottish Government nor the Scottish Parliament can interfere with that fundamental constitutional principle, which includes prosecutorial decision-making as well as the content of prosecution policy, such as that contained in the Lord Advocate's Guidelines. Subject to that significant point of principle, however, the Scottish Government is aware that the COPFS is in the process of revising the Lord Advocate's Guidelines, as well as other internal guidance and prosecutorial policy, to ensure the Crown fulfils its obligations in terms of the Bill and the UNCRC. Crown prosecution policy is that there are presumptions against the prosecution of accused persons under the age of 18. However, there will still be situations where a child may still be prosecuted in court where there is a compelling reason, in the public interest, to do so. This includes where the seriousness of the offence under consideration is of such gravity that it outweighs the presumption that the child should not be prosecuted,



## **SECTION 11: CUSTODY OF CHILDREN BEFORE COMMENCEMENT OF PROCEEDINGS**

**345. The Committee welcomes the enhancement of rights for 16 and 17 years that are contained within these provisions.**

**346. The Committee shares the concerns of the Criminal Justice Committee about the capacity of Police Scotland and local authorities to ensure that these rights can be realised. Specifically, the Committee is concerned that there is a lack of suitable solicitors to advise young people in some areas across Scotland. Similarly, appropriate alternatives to police custody (i.e. places of safety) are not easily accessible in all areas. The Committee is conscious that the provisions in this Bill may place additional pressure on already over-stretched resources. As such, the Committee urges the Scottish Government to work with relevant agencies to assess where the current gaps are, and to address these ahead of the Bill's implementation.**

**347. The Committee notes the Scottish Government's assurances to the Criminal Justice Committee that local authorities will be able to advise Police Scotland about the appropriateness of any adult who is to be contacted about a child's detention. The Committee endorses the Criminal Justice Committee's request that the Scottish Government seeks to prevent individuals with the potential to exploit vulnerable young people, such as organised crime groups, from being able to do so.**

The Scottish Government agrees that police custody is not a suitable environment for children and is supportive of minimising its use as a place of safety for children in conflict with the law. Where this remains necessary, our shared aim should be for its use to be for as short a period as possible.

Section 11(2) of the Bill amends section 22(1) of the Criminal Justice (Scotland) Act 2016 ("the 2016 Act") so that all children under 18 in police custody must be kept in a place of safety until they can be brought before the court, unless released from police custody. The Bill does not change the existing exception in section 22(3), where keeping the child outwith a police station would be impractical, unsafe or inadvisable due to their state of health (physical or mental), nor does it change the definition of places of safety as per section 202(1) of the 2011 Act:

- (a) a residential or other establishment provided by a local authority,
- (b) a community home within the meaning of section 53 of the Children Act 1989 (c.41),
- (c) a police station,
- (d) a hospital or surgery, the person or body of persons responsible for the management of which is willing temporarily to receive the child,
- (e) the dwelling-house of a suitable person who is so willing, or
- (f) any other suitable place the occupier of which is so willing.

Secure accommodation involves the deprivation of a child's liberty. Should this be used as a place of safety, the child must meet the secure criteria, as amended by the Bill, and as per The Secure Accommodation (Scotland) Regulations 2013. Under

regulation 12 of that instrument, the child may only be kept in secure accommodation as a place of safety for so long as the head of unit with the agreement of the chief social work officer considers necessary. Without this agreement, secure accommodation cannot be utilised as a place of safety in these circumstances.

In the Financial Memorandum:

*“65...Due to existing exceptions and definitions being retained, no direct cost implications stemming from the Bill are quantified”.*

We however recognise the concerns raised by stakeholders regarding the usage and availability of places of safety and as detailed elsewhere, the approach taken to costing these measures will be reviewed in considering the Financial Memorandum.

A range of places of safety already exist across Scotland. Albeit for other purposes, under the Age of Criminal Responsibility (Scotland) Act 2019 a list of available places of safety across the 32 local authorities was developed and published in February 2023. In addition, developments in respect of the regulation of child contact centres may provide additional options for places of safety and Bairns Hoose. The National Bairns' Hoose Governance Group (NBHGG) agreed in principle to accept the proposal from The Promise, to set up a short-life working group to fully consider the possibility of widening the scope of Bairns' Hoose for children accused to be included in the principles of Bairns' Hoose; and to report its findings to the NBHGG. This group met for the first time in April 2023.

Accessibility is not the only issue at play. At the multi-agency Scottish Police Authority and Police Scotland 'Places of Safety for Children in Conflict with the Law' event, in November 2022, other contributory issues were identified including:

- At times, differing views across agencies on what constitutes an appropriate place of safety on a case-by-case basis;
- Gaps in understanding in terms of what each of the agencies does and their statutory obligations;
- Geographical variation, leading to the conclusion that there will not be a standardised approach to resolving this problem, but rather any national initiatives should help support and drive the best possible care for children and young people who are in conflict with the law at a local level;
- Partnership working, including sharing of information and data and management of risk.

It is recognised that addressing these issues requires the involvement of a range of partners. Activity is underway which builds upon the above event, with a subsequent national event planned for later this year. Places of safety were also a focus at this year's national Youth Justice Conference held on 14 - 15 June. This is in tandem with various local/regional multiagency events being planned, recognising the different needs and challenges that are faced, vary locally. The Strathclyde University CYCJ has offered support to any local area wishing to undertake this work. Scottish Government will continue to assess where the current gaps are, and seek to address them, ahead of the Bill's implementation.

On solicitor access, funding for solicitors to carry out work under the legal assistance schemes is available in all parts of Scotland. The schemes are also flexible enough to provide funding for solicitors to travel to rural and remote parts of the country to carry out work should it not be possible to instruct a local agent. Automatic legal aid funding is in place for any suspect in police custody including children. Access to legal advice is set down in statute and in supporting regulations and there are additional safeguards for any interview process involving child suspects, including under the 2016 Act which the Bill amends. This is supplemented by the Solicitor Contact Line which provides telephone advice for anyone arrested in police custody, as well as by police station duty plans (39 in total across Scotland) which provide details of solicitors who are on a rota to provide attendance at a police station. Police Scotland have access to both the Solicitor Contact Line and the station duty plans.

The Legal Services (Scotland) Act 2010 gave the Scottish Legal Aid Board (SLAB) the function of monitoring the availability and accessibility of legal services in Scotland, including by reference to relevant factors relating to urban and rural areas. Moreover, a duty was also imposed on SLAB to give the Scottish Ministers such information as they may require relating to the availability etc of legal services, and a power conferred on SLAB to give Ministers such advice as it may consider appropriate in relation to the same. SLAB have arrangements in place to monitor legal services by: analysing the organisation's data on trends in legal assistance and supply, supplementing this with other sources of data about legal services including information that may be requested of the Law Society of Scotland, the Faculty of Advocates and the Scottish Courts and Tribunals Service and seeking the views of stakeholders, including service providers and users.

We will work with partners including Police Scotland and SLAB to gain a better understanding of any current challenges with solicitor access for children and how the implications of the Bill can be met to ensure every child in police custody has solicitor access. However, initial discussions with SLAB have highlighted they have not heard of young people being denied legal advice in custody owing to shortages in solicitors.

Regarding the concerns raised by the Criminal Justice Committee on preventing individuals being able to exploit children, the Bill seeks to strengthen the safeguards and protections to children in police custody which should seek to prevent issues of this type. The provisions in section 11 of the Bill amend the 2016 Act. Under Section 38 of the 2016 Act when a child is in police custody, if aged under 16 their parent must be informed or if aged 16/17 an adult reasonably named by the child. Section 38 of the 2016 Act is amended by section 11(6) of the Bill so that a constable may delay sending intimation under that section in order for the local authority to be able to give advice as to whether that intimation should be sent and, if not sent, who intimation should be sent to instead. The constable must have regard to any such advice. Existing safeguards under section 38 of the 2016 Act enable an appropriate constable to delay sending intimation for various reasons, including if this is deemed necessary to safeguard and promote the wellbeing of the child in custody.

Section 11(7) of the Bill also makes a number of amendments to section 41 of the 2016 Act. The main change is to provide that the local authority is to be given intimation that a child under 18 is in custody, regardless of whether the child is subject to a CSO. The local authority can visit a child if they believe this would best safeguard and

promote the child's wellbeing. Existing safeguards under section 40 of the 2016 Act enable in exceptional circumstances, an appropriate constable to refuse or restrict access of a parent or other adult for various reasons, including if this is deemed necessary for the wellbeing of the child in custody. Should this be the case, further notification will be sent to the local authority under the provisions made by Section 11(7) of the Bill.

## **SECTIONS 12 and 13: RESTRICTIONS ON REPORTING**

**364. The Committee welcomes the Minister's stated intention that the provisions in this Bill, and those in the Victims, Witnesses and Justice Reform (Scotland) Bill, will be closely aligned. The Committee would welcome sight of any analysis carried out by the Scottish Government to inform this process to date and an indication of which amendments the Scottish Government believes might be required to each Bill to ensure this alignment. The Committee asks that this be provided ahead of Stage 2 consideration.**

**365. The Committee asks the Scottish Government to clarify when reporting restrictions begin to apply when there is a suspected offence involving a child.**

**366. The Committee would also welcome the Scottish Government's views on the other changes suggested by Dr Andrew Tickell and Seonaid Stevenson-McCabe regarding the—**

- The ability of children and young people to waive their anonymity, without committing a criminal offence;**
- Removing the Scottish Government's power to dispense with reporting restrictions;**
- Increasing the maximum penalty for violating reporting restriction; and**
- Updating of reporting restrictions in civil as well as criminal cases which involve children, to bring greater consistency.**

We are considering the evidence provided to Parliament at Stage 1, including the material generated by the calls for views. The provisions in this Bill under section 12 cover all suspected offences involving children either as the person suspected of committing the offence or as a witness. Witnesses can of course include a victim of an offence. It is in relation to victims where there is an overlap with the Victims, Witnesses and Justice Reform (Scotland) Bill (the VWJR Bill). In respect of court proceedings, as per section 13 of the Bill, reporting restrictions would apply when the child was aged under 18 at the alleged date of commission of the offence and until the child turned 18 or the conclusion of proceedings, whichever came later, and all witnesses aged under 18 at the date of commencement of the proceedings.

The VWJR Bill is proposing to create an automatic lifelong right to anonymity for victims of sexual offences, offences with a significant sexual element and certain other offences where similar questions of vulnerability and privacy arise. Namely, this would extend to human trafficking, modern slavery, female genital mutilation, virginity testing and hymenoplasty.

This policy applies whatever the age of the victim, and so includes children and young people. However, the VWJR Bill includes additional safeguards in respect of victims who are children and young people (i.e. those aged 18 and under). These safeguards relate to potential publication of identifying information by third party publishers wishing to tell a child or young person victim's story, such as newspapers or television programmes, with a requirement of a court order.

In terms of the interaction between the VWJR Bill with the Children (Care and Justice) (Scotland) Bill, the respective Bills were developed and introduced at different times.

With specific reference to the area of anonymity, they cover different aspects of anonymity policy with some limited overlap. The approach of the Scottish Government is set out in the Policy Memorandum for this Bill as follows:

*“144. It is the Scottish Government’s policy – notwithstanding the general approach to reporting restrictions in this Bill – that child victims of sexual offences should benefit from the planned provisions on automatic anonymity in the forthcoming Criminal Justice Reform (Scotland) Bill [now the Victims, Witnesses, and Justice Reform Bill]. The particular traumatic nature of these offences and their impact on a victim, especially where that victim is a child, means that a bespoke approach is appropriate and as such it is planned that the provisions in the Criminal Justice Reform (Scotland) Bill will take precedence in this area. Therefore, it should be noted that the provisions governing restrictions on publication of identifying information insofar as they extend to child victims of sexual offence cases in this Bill are subject to change in the future given the planned provisions on automatic anonymity for complainers in sexual assault causes in the Criminal Justice Reform (Scotland) Bill”.*

The VWJR Bill is at the very early stages of Committee examination, and the call for views is yet to open. We will therefore continue to pursue consistency where possible, and offer coherence where there are justifiable points of difference. The analysis will inform Stage 2 considerations.

In the Children (Care and Justice) Bill, reporting restrictions apply as soon as a child is suspected of committing an offence. This had not been restricted within the Bill or designed to activate at a given point, for example, the report of the suspected offence to the Police. This is intended to provide the maximum possible benefit of these restrictions to children suspected of committing an offence, child victims or witnesses. This rationale is echoed within the VWJR Bill, where the Policy Memorandum<sup>20</sup> sets out the start point of anonymity as being:

*“376. The right to anonymity provided for in the Bill takes effect from the moment a relevant offence is committed. That is to say, the gaining of anonymity is not contingent upon certain positive actions of the victim, for example, reporting the matter to the police, or making a disclosure to a specialist support service”.*

We have heard the views of stakeholders that greater clarity within the Bill would be welcomed - we will consider those views as part of the broader analysis of these provisions ahead of Stage 2.

The other suggestions provided in the calls for views, including by Dr Andrew Tickell and Seonaid Stevenson-McCabe, are also being considered, and will inform consideration of any necessary policy refinement and amendments.

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<sup>20</sup> [Policy Memorandum accessible \(parliament.scot\)](https://www.parliament.scot/Policy-Memorandum-accessible)



## **SECTION 14: STEPS TO SAFEGUARD WELFARE AND SAFETY OF CHILDREN IN CRIMINAL PROCEEDINGS**

**381. The Committee notes the evidence received and welcomes recent developments in relation to specialist provision for young people accused of offences in court settings.**

**382. Whilst there is evidence of recent good practice and innovation in the court system in many parts of Scotland, much remains to be done to ensure all under 18s have access to age-appropriate justice. The Committee recommends that this work commences without delay.**

We welcome the Committees' responses on these matters, and the recognition of the good and innovative practice that is underway in the court system across Scotland. Further work is in train to ensure all under 18s have access to age-appropriate justice.

The 2021 Youth Justice Vision and Priorities committed to scoping out options for a future approach where no under 18s are in an “adult court” setting, through the development of a child-friendly approach; including the gathering of data, views from key partners and evidence of good practice from other countries. This work is underway, with a dedicated post having been funded by The Promise Scotland at the CYCJ. There is an open offer of support to all local authorities who may wish to consider the development of local approaches to meet the needs of children and young people at court. These decisions need to be taken at a local level.

A short life working group has been established under the Implementation Groups of the Youth Justice Improvement Board to look at developing a Youth Court blueprint, based on national and international evidence for approaches to children and young people at court. This will draw on the learning from the recent evaluations of the Structured Deferred Sentencing courts in Lanarkshire<sup>21</sup> and the youth court in Glasgow, as well as international human rights standards. The progression of this activity will continue to be reported to the Youth Justice Improvement Board.

This work is also linked to developments under the Vision for Justice in Scotland<sup>22</sup>, with the Justice and Youth Justice Improvement Boards meeting jointly regularly, with the next joint meeting planned in Autumn 2023.

Any connections with the recommendations of the HSWG will also continue to be explored as part of preparing the Scottish Government’s response to that report.

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<sup>21</sup> [2019\\_09\\_Miller\\_et\\_al\\_deferred\\_sentencing.pdf \(uws.ac.uk\)](https://www.uws.ac.uk/2019/09/miller-et-al-deferred-sentencing.pdf)

<sup>22</sup> [The Vision for Justice in Scotland - gov.scot \(www.gov.scot\)](https://www.gov.scot/2021/04/the-vision-for-justice-in-scotland)

## **SECTION 15: REFERRAL OR REMIT TO THE PRINCIPAL REPORTER OF CHILDREN GUILTY OF OFFENCES**

**390. The Committee notes that a key aim of the Bill is to bring about positive change for all 16 and 17 year olds involved in offending. However, as currently drafted, any additional protections may only be available to those up to the age of 17.5 years.**

**391. The Committee does not believe that it is fair that the Bill treats young people over the age of 17.5 years but under 18, differently, purely on the basis of how long it might take for agencies to put in place support.**

**392. The Committee requests that the Scottish Government urgently addresses these concerns to ensure that all under 18s in Scotland have access to age-appropriate justice.**

As indicated above, the Bill does make provision for all children under age 18 to have the opportunity for their circumstances to be considered for access to age-appropriate justice. This is not dependent on timings for agency to provide support, but rather what is needed to institute rights-respecting investigation and determination processes and to properly address the needs of the child. If there is a need for a child to be subject to formal measures, and the imminence of an 18<sup>th</sup> birthday makes it impractical or impossible for the child to be referred to and dealt with appropriately by the Children's Reporter, the Procurator Fiscal will still have other options on how to deal with the child's case appreciating of course the constitutional independence of the Lord Advocate in relation to prosecutorial decision-making. In the event that the public interest requires that a child is prosecuted, the measures in sections 11 to 14 of the Bill will ensure that the child's rights under UNCRC are protected.

As detailed elsewhere in this response, as with other Bill provisions, the provisions relating to remittal are available to children under the age of 18. In summary cases, an exception to the court's duty to either request advice on the disposal of the child's case from a children's hearing or to remit the case to the hearing for disposal, is where the child is within 6 months of turning 18 and the court considers that it would not be practicable to do so. The same exception applies to sheriff court solemn cases, where the sheriff has a choice between requesting advice from a children's hearing; remitting the case to a hearing for disposal; or disposing the case without remitting. This echoes, but improves, the existing arrangements in respect of remittal under section 49 of the 1995 Act whereby a child who is not on a CSO, in a summary case, and is over 17.5 years cannot be remitted. It is for the court in each case to consider whether a remittal would be the most appropriate disposal in the circumstances, in respect of both the child and of the offence.

## **SECTIONS 16 AND 17: DETENTION OF CHILDREN INVOLVED IN CRIMINAL PROCEEDINGS**

**458. The Committee recognises the strong support among stakeholders for the provisions that ensure that under 18s will no longer be sent to a YOI or prison.**

**459. The Committee welcomes this support and agrees that, in the event that a child must be deprived of their liberty, this should be within the secure estate (i.e. a secure accommodation provider).**

**460. The Committee agrees, however, that it is essential that secure care providers have the resources - in terms of training, staff and stability of funding - to be able to provide the therapeutic care, rehabilitation and reintegration service that children and young people require, as well as being able to provide the protections needed for all who live in secure care.**

**461. The Committee asks the local Health and Social Care Partnerships to scope out the possibility of formal arrangements with secure accommodation providers in their area, to ensure that young people have timely access to services.**

**462. Given the vital nature of its work, the Committee is concerned about the financial stability of secure accommodation services and the fact that it depends on such high occupancy rates to be viable.**

**463. The Committee welcomes the planned expansion of the pilot scheme to increase the number of places held for Scottish children at secure accommodation services, to ensure that there is protected capacity across the secure care estate. It also notes the ongoing Secure Care review and that this is considering the funding of secure care as part of its work. However, it notes that the Secure Care review is not due to report until Spring 2024.**

**464. The Committee therefore asks the Scottish Government to urgently produce interim findings in relation to how the measures set out in the Bill are likely to affect the financial sustainability of the secure care sector.**

**465. The Committee would also welcome reassurance that the extension of the pilot will mean that decisions regarding placements can, where at all possible, be based on what is in the best interests of the child, rather than simply where there is available space.**

**466. Given the concerns about potential capacity issues across the secure care estate, the Committee would urge the Scottish Government to consider publishing data on the capacity of secure care on a monthly basis in order to monitor the impact of the pilot scheme, and to assess where pinch points remain.**

**467. The Committee recognises that secure care providers may have capital costs relating to the re-design of their estates to manage the increase in older young people with more complex needs staying with them, as result of the**

**provisions in the Bill. This might include adjusting existing accommodation arrangements, or putting in place additional security measures, to ensure the safety of other young people. The Committee is concerned that these costs do not currently appear in the Financial Memorandum and suggests that the Scottish Government includes these potential costs when revisiting the Financial Memorandum.**

**468. The Committee notes the Criminal Justice Committee's findings regarding a more flexible, individualised system which isn't based on age alone. The Committee suggests that the Scottish Government conducts a review of international evidence governing the use of individualised assessments at the point of sentencing to help inform any next steps.**

We welcome the support of stakeholders and the Committee for this essential legislative change if Scotland is to Keep the Promise. It is an absolute priority to ensure that secure accommodation centres can continue to meet the needs of all children in their care. Under the Bill, secure accommodation will be the normal place of detention for children via a criminal justice route, but it should be noted that under sections 44 and 51 of the 1995 Act, children may be detained in another form of residential establishment or place of safety.

We agree with the Committee that it is essential that secure accommodation providers have the resources to be able to provide the therapeutic care, rehabilitation and reintegration service that children and young people require, as well as being able to provide the protections needed for all who live and work in secure accommodation.

The responsibility for providing, or arranging placements in, secure accommodation remains with local authorities and Scottish Ministers, albeit in practice the direct provision of this service is via the four independent, charitable organisations and one local authority run centre. Some, but not all, Health and Social Care Partnerships have the function of providing children's services (and therefore the provision of secure accommodation) delegated to them. We will, however, seek to share the Committee's comments with responsible partners, including their relevance to Children's Services Planning duties.

We recognise the Committee's concerns about the impact of current arrangements on the financial sustainability of the secure accommodation services. The sustainability of provision to meet Scotland's future needs at a national and local level is an absolute priority.

Since the Minister's appearance at Committee on 9 May, the Scottish Government's pilot of paying for one bed in each of the 4 independent secure centres has been extended to cover up to 16 beds. This reflects the average number of children in YOI in 2021-22 was 16, with this figure being used for the Financial Memorandum. More recent numbers are lower than that. The aim here is to allow some flexibility, capacity and financial stability to secure accommodation providers and to ensure capacity for children in Scotland.

In terms of the financial sustainability of secure accommodation centres, the Committee heard that economic viability for secure centres rests on occupancy rates

around 90%. That figure is referable to the current framework arrangements, and the absence of any guaranteed Scottish local or national funding for the centres. Guaranteed funding is now being provided by the Scottish Government for 16 beds. This funding will also address the reduction of revenue from cross-border placements, thereby reducing the providers' reliance on such placements. We will continue to closely monitor the implications for the secure accommodation sector.

We recognise demand for secure accommodation fluctuates, however since Stage 1, Scottish demand appears to have increased. On 20 June, there were 8 children in YOI and 1 vacancy in secure accommodation. It should be noted the estate is currently running below capacity owing to refurbishment and staffing recruitment and retention challenges – the position is expected to improve by September. We recognise the need to ensure issues such as these are addressed, which alongside the Scottish Government funding of beds over the coming financial year will build capacity in time for implementation of the Bill, if passed.

The longer-term funding and commissioning arrangements for secure accommodation are being considered as part of the Reimagining Secure Care project. Strathclyde University's CYCJ is leading on this work on behalf of the Scottish Government, in tandem with the Bill. This activity will also inform considerations and costings of implications of the Bill including the additional resources that secure accommodation centres may require such as service developments like accommodation arrangements, security measures, training, staffing changes etc.

It should be recognised that secure accommodation centres already care for a number of 16 and 17 year olds. According to the last Social Work Statistics<sup>23</sup>, on 31 July 2021 36% of children in secure accommodation centres were aged 16 years or older. In addition, recent research<sup>24</sup> considered the needs and experiences of children placed in YOIs and secure accommodation, specifically to inform preparations for Keeping the Promise, including the ending of YOI placements, concluding that the needs of these groups of children are remarkably similar. Recent research evidence from England<sup>25</sup> also debunks the proposition that the risks posed to staff and young people by children in secure accommodation relates to the reason for the child's placement, or the gravity of the offence that led to their being placed in secure accommodation.

Regarding the Committee's suggestion to include costs on the re-design of secure accommodation estates, the Scottish Government recognises the need to consider a contingency plan for secure accommodation to ensure this is available, if needed, to meet the implications of the Bill. However, what this will look like is currently subject to the conclusion of the current Reimagining Secure Care work and to live discussions with secure providers. We will be undertaking a procurement exercise in the next 6 months.

Interim findings of the Reimagining Secure Care project are expected to be published in Autumn 2023. We will seek to include these figures in the supplementary financial memorandum.

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<sup>23</sup> [Children's Social Work Statistics Scotland: 2021 to 2022 - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/consultations-petitions/embedded/childrens-social-work-statistics-scotland-2021-to-2022)

<sup>24</sup> [Preparing-to-Keep-The-Promise-Comparative-Study.pdf \(cycj.org.uk\)](https://www.cycj.org.uk/preparing-to-keep-the-promise-comparative-study.pdf)

<sup>25</sup> [Secure children's homes: placing welfare and justice children together \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/100000/secure-childrens-homes-placing-welfare-and-justice-children-together.pdf)

Decisions on placements are always made in the best interests of the child. Secure accommodation centres have a duty to consider if they can meet the needs of the child before accepting a placement. The options available to purchasers reduce when there are limited places available, however, the Scottish Government's funding of beds in each of the independent centres will, over the course of the year increase capacity and in turn options available.

Data on the number of vacancies in secure accommodation is already published on a daily basis via the Secure Accommodation Network website. This information is publicly available. The Scottish Government monitor this information on a daily basis, are provided with weekly information on vacancies by each secure accommodation centre, and cross-refer to Scottish Prison Service data on the number of children in young offenders institutions. We are also informed any time a child enters custody. Through the Scottish Government funding of secure accommodation beds, data will be gathered to monitor the impact for this initiative. We will consider the publication of additional information.

The Financial Memorandum states that:

*“69. Secure accommodation costs vary depending on the provider, with the fees set annually for the coming year in the Scottish Excel contract. This shows an average of around £6,500 per week – or £338,000 per year per placement. Based on an average of four additional under 18s being placed in secure accommodation, who would otherwise have been in a YOI, this leads to additional annual recurring costs of £1.35m.”*

As part of our commitment to provide the latest up-to-date information to Parliament, we can confirm the refreshed average weekly cost of one placement in secure accommodation is circa £7,000 per week – as per the renewed Scotland Excel 2023-4 annual contract. This updated figure will be reflected in the supplementary Financial Memorandum.

We note the findings of the Criminal Justice Committee. The decision to remand or sentence a child to be deprived of their liberty will remain a matter for the judiciary. As detailed in the Policy Memorandum provisions in sections 16, 17 and 18:

*“192. These provisions do not interfere with the court's ability to deprive children of their liberty where this is deemed necessary; rather they change where a child may be detained. In cases where a child is remanded, the place of detention would either be secure accommodation if the court requires this or a place of safety as determined by the local authority, which could include secure accommodation in certain circumstances. Children under 18 can no longer be committed to a prison or YOI. Likewise where a child is sentenced to detention under summary proceedings, this will be in a residential establishment chosen by the local authority, which could include secure accommodation in certain circumstances. Where a child is sentenced under solemn proceedings, Scottish Ministers will direct where the child is to be placed - this may not be a YOI or prison but may be secure accommodation. This change enables all under 18s to benefit from the same treatment and removes potential discrimination against 16/17 year olds in the context of UNCRC”.*

This Committee agreed that where a child must be deprived of their liberty, this should be within the secure accommodation estate (noting that under sections 44 and 51 of the 1995 Act, children may be detained in another form of residential establishment/place of safety).

Where a child requires to be deprived of their liberty, there will still be an individualised assessment of where that child's placement should be. That will consider the needs, vulnerabilities and risks a child may face or pose. The setting should be child friendly, trauma-informed and rights respecting, which secure accommodation can provide.

Where a child has been remanded or sentenced to secure accommodation before the age of 18, the Bill enables Scottish Ministers to make regulations to enable children to remain in secure accommodation beyond their 18<sup>th</sup> birthday (to a maximum age of 19). This will remove the requirement for children to automatically leave secure accommodation when they turn 18, as criticised by the Promise and the previous Justice Committee. It will enable any decision to be made on a case-by case basis to ensure that the decision is in their best interests and not contrary to the best interests of other children in the facility. This is consistent with UNCRC defining a child as up to 18 and Article 37(c) which says that children are to be separated from adults unless it is otherwise than in their best interests. The UN Committee on the Rights of the Child General comment No. 24<sup>26</sup>, amplifies that by saying that Article 37(c):

*“...does not mean that a child placed in a facility for children should be moved to a facility for adults immediately after he or she reaches the age of 18. The continuation of his or her stay in the facility for children should be possible if that is in his or her best interests and not contrary to the best interests of the children in the facility.”*

It is recognised that choosing any chronological age cut-off will always mean that some young people fall just beyond the threshold. However, we also acknowledge that the older an individual young person becomes as they grow to adulthood, the more difficult it would be to justify that young person's ongoing placement with younger children. There is a greater likelihood that such a practice would be contrary to the best interests of all concerned. The secure accommodation establishment is designed around the needs of children, and is not designed for young adults. Therefore, we have no intention to extend secure accommodation beyond this age range at present.

Legislation, policy and practice should be informed by the best possible evidence base. We have an established basis of national and international comparative work that relates to children's care and justice, not least through work that has and continues to inform considerations of the minimum age of criminal responsibility, the HSWG, and approaches to deprivation of liberty.

We will work with partners to consider whether any such international review of evidence on individualised assessments is required that may inform sentencing decisions and if so seek to commission this work to be undertaken.

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<sup>26</sup> [General comment No. 24 \(2019\) on children's rights in the child justice system | OHCHR](#)

## **SECTIONS 20 AND 21: LOCAL AUTHORITY DUTIES IN RELATION TO DETAINED CHILDREN**

**483. The Committee notes the duties that these provisions will place on local authorities in relation to detained children. The Committee is concerned that the cost of this support has not been factored into the Financial Memorandum.**

**484. It recognises that the Minister has committed to provide updated costings for the Bill and the Committee would expect this support to be costed as part of that work and provided ahead of the Stage 1 debate.**

These matters are being considered as part of the revision to the Financial Memorandum, as detailed elsewhere in this response.



## PART 3

### SECTIONS 22 AND 23: SECURE ACCOMMODATION

**496. The Committee notes concerns of secure accommodation providers regarding the definition of secure accommodation. The Committee asks the Scottish Government that, however this section is worded, it reflects the reality that secure care goes well beyond the deprivation of liberty, and must provide care, education, healthcare, support and safeguarding to the children and young people living there.**

We welcome the input of secure accommodation providers on this matter. We consider that the amendments made by section 23(4) of the Bill in relation to the definition of a “secure accommodation service” in Schedule 12 of the Public Services Reform (Scotland) Act 2010 (new paragraphs 6 and 6B) clearly reflect that secure accommodation goes beyond a deprivation of liberty of a child and includes the provision of “appropriate care, education and support as required to meet the health, educational and other needs of the child”.

We will however work with partners to consider the evidence provided at Stage 1 and ensure these provisions sufficiently align with the Promise which stated that,

*“Scotland must fundamentally rethink the purpose, delivery and infrastructure of Secure Care, being absolutely clear that it is there to provide therapeutic, trauma informed support”,*

considering any amendment as necessary<sup>27</sup>.

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<sup>27</sup> [The-Promise.pdf \(carereview.scot\)](#)

## **SECTIONS 24 AND 25: CROSS-BORDER PLACEMENTS**

**519. The Committee recommends that the use of cross-border placements should be monitored and assessed by the Care Inspectorate to ensure that they are only used where it is assessed to be better for a child/young person, than a placement closer to home.**

**520. The Committee believes that young people should be fully included in the planning process for a cross-border placement. Their needs and wishes should be taken into account, alongside an assessment of what is in their best interests, recognising that what the young person wants and what is in their best interests may not always be the same. This process should be clearly set out in guidance for providers offering cross-border placements.**

**521. However, the Committee notes concerns from stakeholders that—**

- young people from England in cross-border placements do not have the same rights as Scottish children, and may also find it more difficult to enforce their rights;**
- there is a lack of clarity as to the standards and outcomes for residential homes providing cross border placements; and**
- there is a need to ensure advocacy support, legal advice and rights representation for young people subject to cross-border placements.**

**522. The Committee suggests that further thought be given as to how these issues could best be addressed ahead of Stage 2 consideration of the Bill.**

**523. The Committee notes from the Minister's evidence that engagement between the Scottish and UK Government is due to take place on this issue. The Committee would welcome an update on this engagement once it has taken place.**

The Scottish Government welcomes the Committee's recommendation that cross-border placements should be monitored and assessed. We will explore further, including with the Care Inspectorate, how best that can be achieved. It is vital that cross-border placements are only used in exceptional circumstances and where it is in the best interests of the individual child.

The Scottish Government agrees with the Committee's recommendation that any decision to place a child or young person in a cross-border placement should be subject to an appropriate planning and assessment process in advance of any placement, and the child or young person should be fully included in that process. We will consider further how best that can be reinforced at the Scottish end of these processes. However, we recognise that many of these issues fall to be considered by the Needs Assessment submitted by non-Scottish local authorities to the High Court, and we have no locus in that aspect of the process.

Stakeholders giving evidence to the Committee raised concerns that young people on cross-border placements do not have the same rights as Scottish children and may find it more difficult to enforce their rights. This is also of concern to the Scottish Government and is a key driver of the provisions in this Bill.

Whilst the Scottish Government cannot stop other UK Courts from determining that a cross-border placement might be the right course of action for any given child or young person, the Scottish Government can through the provisions in the Bill seek to safeguard those children's rights once they are placed in Scotland. The Bill's provisions will allow the Scottish Government to recognise a wider range of care orders through the amended regulation-making power in section 25 of the Bill, which will ensure that accountability for placements is held by the placing authority alongside the placing provider, in order to guarantee that the young person's experience is carefully planned (including rights to contact with family and friends whenever it is safe for this to continue), and the route to return continually reviewed and considered whilst putting the child or young person at the centre of that process. Furthermore, the provisions will grant the Scottish Government the power to introduce new standards and outcomes to ensure that young people on cross border placements are receiving the same standard of care as Scottish children, if required.

Stakeholders giving evidence to the Committee sought more detail as to the power allowing standards and outcomes to be developed for residential homes providing cross border placements.

The Scottish Government must have the ability to put in place a more flexible framework to address cross-border placements in a way which enhances the rights of children affected by those placements. This requires better regulatory oversight of such placements rather than making children the responsibility of Scottish authorities and systems. This fits with the government's policy of ensuring such placements only occur in exceptional circumstances.

Cross-border placements represent just one facet of the complex residential children's care landscape and the Scottish Government wishes to consider how all residential placements are made in Scotland alongside children and young persons', and service providers', experiences in order to understand exactly what needs to change to best support residential children's care in Scotland.

The Scottish Government's aim is to drive the quality of care those on cross-border placements receive so that the experience delivered by providers offering cross-border placements is as good as the experience offered by those providing care to Scottish looked after children in residential care. These provisions provide the Scottish Government with the ability to produce standards and outcomes, the detail of which would be determined in collaboration with partners and driven by evidence, if required.

The third key issue raised by the Committee was about ensuring that appropriate advocacy, legal support and rights representation is available for young people subject to cross border placements. The Scottish Government believes that the provision of advocacy/safeguarding support – to ensure that the placement meets the needs and upholds the rights of the child or young person – ought to, in the case of temporary placements in Scotland, sit with the placing authority who is responsible for care planning and planning the placement given that they have existing duties of this nature which they are legally required to fulfil. Children and young people coming to Scotland on cross-border placements will not become looked after children under our system

and that is fully intentional given that these placements are intended to be recognised on a temporary basis.

Other UK local authorities with social services responsibilities must ensure that advocacy services are provided for children and young people making or intending to make a complaint about their care<sup>28</sup>. In developing regulations under section 25 of the Bill, the Scottish Government will seek to require the placing authority to demonstrate the anticipated duration of placement, what needs are being supported and how the placement will meet those needs, including a requirement that a placement cannot be legally recognised until a clear plan is in place outlining who will support that child or young person, communication arrangements and frequency, and how that person will be accessible to the child or young person whenever they need them.

It is the Scottish Government's view that there is a clear distinction here between Deprivation of Liberty placements – where we have provided advocacy provision through the children's hearings system – and the types of placement which these Bill provisions support, in that Deprivation of Liberty placements can occur at incredibly short notice for the young people whereas other types of cross-border placements ought to have benefited from a longer lead-in time and more comprehensive care planning.

In relation to access to legal advice and representation, however, the Scottish Government considers that given the placement is not subject to separate legal proceedings in Scotland, it is more appropriate that children and young persons should have appropriate and continuing access to legal representation in their home jurisdiction, to ensure that the placing authority's obligations are fully met.

The Minister for Children, Young People and Keeping the Promise will undertake to provide the Committee with an update following her meeting with the UK Government, which is due to include cross-border placements as a key agenda item. Through ongoing engagement with UK Government, the Scottish Government continues to emphasise the importance of addressing the lack of capacity and adequate care accommodation in England. Accordingly, we now have in place a Memorandum of Understanding which underpins regular discussion on the issue. This commenced in March 2023, and will enable us to pursue the UK Government's intended course of action particularly following its response to its Independent Care Review. These discussions will include further exploration of whether any orders recognised through the amended regulation-making powers under the Bill should be supplemented with further enforcement provisions under the law applicable in other parts of the UK.

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<sup>28</sup> For example, in England and Wales, under section 24D or section 26 of the Children Act 1989 ([legislation.gov.uk](https://legislation.gov.uk))

## **SECURE TRANSPORT**

**544. The Committee believes that the use of some secure transport providers (e.g. those in the South of England) is inefficient, resulting in unacceptable delays for both children and secure accommodation services. Given the significant travel involved to transport children for short distances, the Committee does not believe that current practice provides good value for money.**

**545. The Committee recognises that the Scottish Government, COSLA and other stakeholders are currently working to develop guidance on secure transport.**

**546. The Committee urges them, as part of this work, to identify why secure accommodation providers often only source secure transport for children from outwith Scotland. It also urges the group to conduct a Children's Rights Impact Assessment on the specific issue of secure transportation, to ensure that the needs of children and young people are at the forefront of any future reforms.**

**547. The Committee urges the Scottish Government to ensure that, in future, secure transport operators are—**

- sourced as locally as possible;**
- are appropriately trained in trauma-informed practice; and**
- are fully regulated.**

**547. The Committee is concerned by the apparent inconsistencies in the reporting of incidents of restraint within a secure transport environment. It believes that incidents of restraint should be logged, reported and analysed regularly.**

**548. The Committee recognises and welcomes COSLA's support for secure transport to be regulated to similar standards as secure accommodation.**

**549. The Committee welcomes the Scottish Government's commitment to consider these issues ahead of Stage 2.**

Ministerial evidence to the Committee confirmed that the Scottish Government recognise the challenges related to the provision of secure transport in Scotland and commissioning arrangements. The lack of Scottish provision means often the only option available to local authorities is provision from elsewhere in the UK. We recognise this is not an acceptable arrangement for anyone, not least the children who require this transport. However, the absence of Scottish provision makes addressing these issues extremely difficult.

As stakeholders highlighted in their evidence, a national service specification for secure transport is being developed by the joint Scottish Government and COSLA led Secure Care Group. This specification aims to bring consistency to the expectations and requirements, wherever secure transport requires to be commissioned. This document is in the later stages of drafting form but covers areas such as data gathering, information sharing, recording, trauma informed practice and staff training. This includes the recording and reporting of restraint to the team around the child. The

specification states that any use of restraint must be in line with Scotland's Holding Safely guidance. It also prohibits the use of mechanical restraint, handcuffs or pain-inducing techniques. How this information is analysed will be considered further. The specification aligns with the Secure Care Pathway and Standards<sup>29</sup> and children's rights legislation. We will put to this Group the Committee's recommendation that a CRWIA is completed.

As part of the secure care transport work, further consideration is underway as to who is best placed to provide secure transport in the future. This includes consideration of whether secure transport should be a regulated/registered service and who should do so. We recognise the evidence provided to the Committee by Jackie Irvine from the Care Inspectorate:

*"In relation to having those services regulated, the question is who would regulate them? Just to be clear, nothing falls within the legislation for the Care Inspectorate that allows us to regulate transport, particularly if it is based outwith Scotland. We have no jurisdiction over any service outwith Scotland. However, we are involved in a working group discussion with the Scottish Government, COSLA and other colleagues in relation to the myriad complex issues around transport, although no one solution is jumping out at us at the moment. Some people might assume that the Care Inspectorate could take on that role and we cannot, as things stand".*

We do not believe legislation is a panacea here. Alongside partners, we will further consider the implications of changing the legislative and regulatory framework for secure transport to address the issues raised at Stage 1.

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<sup>29</sup> [Secure care: pathway and standards - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/secure-care-pathway-and-standards/pages/29.aspx)

## **PART 4**

### **SECTION 26: ANTISOCIAL BEHAVIOUR ORDERS RELATING TO CHILDREN**

**557. The Committee notes the support for the provisions in section 26 of the Bill from stakeholders.**

**558. The Committee acknowledges the concerns of Police Scotland regarding the potential unintended consequences of these measures.**

**559. The Committee therefore asks the Scottish Government to monitor 16 and 17 year olds, and their access to accommodation with a Registered Social Landlord, to ensure that it is not being impacted by this Bill.**

We welcome Police Scotland highlighting the risk of potential unintended consequences. Monitoring arrangements for the Bill will be explored with partners.

## **SECTION 27: NAMED PERSON AND CHILD'S PLAN**

**569. The Committee notes the support for the provisions in section 27 of the Bill from stakeholders.**

**570. It further notes the Care Inspectorate's call for the refresh of the child's plan & supporting guidance to be brought forward and asks the Scottish Government to indicate when that is likely to be published.**

The Scottish Government is committed to providing practitioners and professionals working with children, young people and their families with the confidence, clarity and practical support to continue to embed the GIRFEC approach.

An interim position statement on Child's Plan will be published by Autumn 2023.

We are currently considering a single planning process for children and young people. A collaborative and pragmatic approach will be taken in the development of any new planning guidance and subsequent impact on statutory and non-statutory plans.