

Education, Children and Young People Committee

12th Meeting, 2023 (Session 6), Wednesday 26 April 2023

Children (Care and Justice) (Scotland) Bill

Introduction

This morning, the Committee will hear evidence regarding [the Children \(Care and Justice\) \(Scotland\) Bill](#).

A [SPICe briefing](#) on the Bill has been published.

Committee meeting

At this morning's meeting, the Committee will be taking evidence from—

- Information Commissioner's Office
- Social Work Scotland
- COSLA
- Care Inspectorate
- Children's Hearings Scotland

Supporting information

A SPICe briefing, prepared for this session, is included in [Annexe A](#) of this paper.

[The Care Inspectorate, Children's Hearings Scotland](#) and [Social Work Scotland](#) responded to the Committee's call for views on the Bill. These responses are included at [Annexe B](#).

COSLA similarly responded to the call for views. This has been [published](#) on the call for views webpage. [COSLA](#) has also provided an additional written submission, ahead of its appearance this morning. This has been included alongside the written evidence from the other participants, at **Annexe B**.

The [Children and Young People's Commissioner for Scotland](#) has submitted supplementary evidence, following the evidence session at the [22 March meeting](#).

At its meeting on [29 March](#), the Committee agreed to write to the five secure care providers to ask for more information about the 'last bed' policy. This policy is

designed to ensure that emergency placements can be accommodated across the secure care estate. [Rossie Young People's Trust](#) and [Kibble Education and Care Centre](#) have responded so far.

Work by other Committees

The Criminal Justice Committee is a designated secondary committee on this Bill.

At its meeting on [29 March](#), the Committee took evidence from Linda Allan and Victim Support Scotland; and then from St Mary's Kenmure Secure Care Centre, Scottish Association of Social Work, the Scottish Prison Service, the HM Chief Inspector of Prisons for Scotland, and the Governor of HMP & YOI Polmont.

At its meeting on [19 April](#), the Committee took evidence from the Cabinet Secretary for Justice and Home Affairs, the Minister for Children, Young People and Keeping the Promise and Scottish Government officials.

The Finance and Public Administration Committee has recently undertaken a Call for Views on the Bill's Financial Memorandum and has [published the responses received](#).

The Delegated Powers and Law Reform Committee has published [its report](#) on the Children (Care and Justice) (Scotland) Bill. This includes correspondence with the Scottish Government relating to a regulation-making power, which would allow some young people to remain in secure accommodation beyond their 18th birthday.

Education, Children and Young People Committee Clerking Team
21 April 2023

Annexe A

The logo for SPICe, featuring the text 'SPICe' in white on a purple-to-blue gradient background.

The Information Centre
An t-Ionad Fiosrachaidh

Education, Children and Young People Committee

Wednesday 26th April 2023 (Session 6)

Children (Care and Justice) (Scotland) Bill- Stage 1 Scrutiny

Introduction

This briefing has been prepared in advance of the Education, Children and Young People Committee meeting on Wednesday 26 April 2023 where the Committee will continue taking evidence on the Children (Care and Justice) Scotland Bill.

This briefing sets out background information on the provisions in the Bill dealing with the children's hearing system, secure care and the detention of children in young offenders' institutions.

Background

Much of the background information here is taken from the [SPICe briefing on the Bill](#).

The Children (Care and Justice) (Scotland) Bill was introduced on 13 December 2022.

According to the [Policy Memorandum](#) the main objective of the bill is to:

“Improve experiences and promote and advance outcomes for children, particularly those who come into contact with care and justice services. Building on Scotland’s progressive approach to children’s rights in line with the UNCRC, the Bill’s provisions aim to increase safeguards and support, especially to those who may need legal measures to secure their wellbeing and safety.”

The [Programme for Government 2022-23](#) also stated:

“Children also deserve extra care and protection in our justice system. The Children’s Care and Justice Bill will help us Keep the Promise by ensuring that children who come into contact with care and justice services are treated

with trauma-informed and age-appropriate support and will put an end to placing under 18s in young offenders' institutions. The Bill aims to improve experiences and outcomes for children in Scotland who interact with the children's hearing and criminal justice systems, as well as care settings and those who are placed across borders in exceptional circumstances."

Part 1 changes the age of referral to a children's hearing from 16 years old to 18 years old and removes statutory barriers to 16- and 17-year-olds being referred to the Principal Reporter to access the children's hearing system, both for welfare and on criminal grounds. It also contains some related measures, geared to assisting the raising of the age of referral.

Part 2 relates to children in the criminal justice system, including the framework on reporting of criminal proceedings involving children, remittal between the courts and children's hearings, children in police custody, and looked after children status in relation to detained children. Part 2 also makes provision for ending under 18s being detained in young offenders' institutions (YOIs), with secure accommodation services being the alternative where a child requires to be deprived of their liberty. There is also a regulation-making power around extending secure accommodation until the age of 19 in certain circumstances.

Part 3 changes the statutory definition of secure accommodation. It also legislates on the support, care and education that must be provided to children accommodated there. Moreover, it provides regulation-making powers regarding the approval framework of secure accommodation services by the Scottish Ministers. Part 3 also makes provision around regulation and recognition of cross-border care placements.

Part 4 makes two changes: it extends the meaning of child to under 18s in the **Antisocial Behaviour etc. (Scotland) Act 2004**; and repeals **Part 4 (provision of named persons)** and **Part 5 (Child's Plan)** of the Children and Young People (Scotland) Act 2014. As Parts 4 and 5 have never been in force, the repeal does not affect the existing named person or child's plan practice.

Age of 18

Part 1 will enable all children under the age of 18 to be referred to the Principal Reporter removing existing restrictions on eligibility for 16- and 17-year-olds to access the children's hearing system- both for welfare and criminal grounds. It also contains some related measures, geared to assisting the raising of the age of referral.

Section 1 will amend section 199 of the Children's Hearing (Scotland) Act 2011 which currently defines a "child" as anyone under the age of 16 or over who have been referred to the hearings system before they turn 16 in order for the hearings system to deal with them or 16- and 17-year-olds if they are already subject to a CSO.

This would provide the opportunity for children to be referred or remitted to a children's hearing up to 18 and also covers non offence (i.e. welfare) referrals too.

The Crown Office and Procurator Fiscal Service will however continue to have discretion to prosecute.

The provisions in part 2 of the Bill relate to the remand, committal, and detention of children. These include removing the ability for children under 18 to be remanded or sentenced to detention in young offenders' institutions (YOIs) or prisons, instead requiring that where a child is to be deprived of their liberty, this should normally be in secure accommodation.

The Parliament's Criminal Justice Committee was appointed as a secondary committee on the Bill and decided to focus its scrutiny on the provisions in Part 2 of the Bill. The Criminal Justice Committee held its [first meeting on the Bill on 29 March](#) where it heard from some witnesses who have also provided evidence to the Education Committee. The following paragraphs summarise some of the key issues raised at the Criminal Justice Committee meeting on 29 March and are referred to throughout this paper.

The Committee heard from Linda Allan. Linda's daughter Katie took her own life after being convicted of driving offences and placed in Polmont YOI. Katie was a first-time offender. Giving evidence, Linda stated that in terms of the age at which children and young people can be sent to YOIs or prison, the Bill, which sets that age at 18, does not go far enough.

"It is quite confusing in terms of the new sentencing guidelines that were published in 2022 and the robust research into neural development. They apply to people under the age of 25, so why would a bill be introduced that does not reflect that robust research? I can only speak from our experience. Prisons are not therapeutic environments."

Sentencing Guidelines

The Scottish Sentencing Council's guidelines ("the guidelines") on [Sentencing Young People](#) were approved by the High Court of Justiciary in November 2021. Since January 2022, the guidelines apply to the sentencing of those who are under the age of 25 at the date of their plea of guilty or when a finding of guilt is made against them.

The guidelines state that the exercise of sentencing a young person is different from that of sentencing an older person, in particular because a young person will generally have a lower level of maturity, and a greater capacity for change and rehabilitation, than an older person. The guidelines, which are based on research including how young people develop physically and psychologically, set out a range of various factors which should be taken into account when sentencing a young person.

The guidelines also state that the full range of sentencing options remain available to the court, but that a custodial sentence should only be imposed on a young person when the court is satisfied that no other sentence is appropriate.

The Committee heard from Kate Wallace from Victim Support Scotland. With regard to the fact that children under 18 would no longer be placed in YOIs or prisons regardless of the seriousness of the offence they have committed, Kate stated:

“We can see that there would be merit in not having such children in young offenders’ institutions, but only if they are put into secure care and if that care is different from and does not replicate what happens in young offenders’ institutions. That is our concern. We are not against the bill per se, but we need to make sure that the problems in young offenders’ institutions are not replicated in a different institution.”

Welfare Grounds

COSLA in their submission to the committee highlighted circumstances where a child beyond the age of 16 is referred on care and protection grounds requires more consideration. They said the interface between children’s and adult services and interlinked legislation is of critical importance.

These concerns have also been highlighted throughout the committee’s evidence sessions - particularly the impact of children being kept in secure care on welfare grounds alongside those who have committed serious offences.

Age of Young Offenders

The Criminal Justice Committee also took evidence from representatives of the Scottish Prison Service (SPS), the Inspectorate of Prisons in Scotland (HMIPS), the Scottish Association of Social Work (SASW) and representatives from St Mary’s Kenmure secure accommodation centre.

All of the organisations represented supported the provisions in the Bill which would ensure that no child under the age of 18 would be detained in a YOI or prison.

Sue Brookes from the SPS and a former governor of YOI Polmont, stated that a custodial setting is not the best environment in which to work with children. This view was echoed by the present governor of YOI Polmont, Gerry Michie. Professor Lorraine Johnstone from St Mary’s Kenmure also endorsed the age principle in the Bill but stated that 18 appeared to be a rather arbitrary cut-off point stating that development of the brain continues far beyond that.

“We also know that the cohort of young people who enter the justice system have significant speech and language deficits, cognitive limitations, and neurological difficulties, so that their chronological age is very different from their developmental age.

Similarly, post 18, into the ages of 19, 20 and 21, they are not stereotypical or prototypical adults. The bill is a phenomenally good first step, but it is definitely not the finished article. I hope that it is just the building blocks.”

Jim Shields from St Mary’s also stated that the Bill was “a good progression” but pointed out that it was not yet fully aligned with the sentencing guidelines for young people. He stated that the focus should be on research and what we know about the developmental age of a child, rather than on a chronological age limit.

That view was shared by Alison Bavidge from SASW who stated that we should be thinking about brain development, what we know about neurological development and the experiences of young people who come through the justice system.

Wendy Sinclair-Gieben, HMIPS, stated that age 18 is an important first step, but that in future she would like to see an individualised approach being taken when children and young people enter the criminal justice system. By way of an example, she stated that if someone who is 23 and has a mental age of 9, then it would be inappropriate for them to be in an adult prison. However, if a 17-year-old committed a serious and heinous offence, and was clearly very mature, perhaps an adult prison would be an appropriate place to detain them.

There was also discussion about how the possible direction of travel with regard to the age of children and young offenders within the criminal justice system could impact on the custodial estate in Scotland. For example, if the direction of travel was to further increase the age at which young people could not be detained in YOIs or prisons, would this necessitate a debate on the future of YOIs within the custodial estate?

Witnesses were clear that although the Bill represented a positive first step, the debate around the age at where young offenders could or should be detained, and for how long, would need to continue. Alison Bavidge from SASW stated:

“By having any age limit, we have a cliff edge. That is partly the way that we arrange our prisons.

You heard from Linda Allan and from people on this panel that prison is not a therapeutic environment; it is a custodial environment. Work has been done on health and social care in prisons. One of the big gaps that we know exists is around the capacity for anybody in prison to have the same kind of social care and social work assessment - adult social support assessment - as people in the community. There are options for how we smooth transitions, not only by not having hard edges but by looking at what comes next. If we could get more effective support into prisons for adults, we would, as Wendy Sinclair-Gieben said, assure victims that people who go into custodial environments will return to the community in a better place than when they left. They do not at the moment.

Let us be very clear about that. Our throughcare is not strong enough, supportive enough or resourced enough. That requires us to think about the whole system and the custodial lifespan. As people are saying, we have to ensure that transitions are smooth and that we do careful and minimal transitions.”

Children’s Hearing System

Background to the current system

The Children’s Hearing System was introduced in 1971 following the Kilbrandon Report of 1964 and the Social Work (Scotland) Act 1968. Kilbrandon recommended a welfare-based system to provide an integrated approach to children who had committed offences and children in need of care and protection. In a children’s hearing, there is an assumption that the child who has committed an offence is just as much in need of protection as the child who has been offended against. There is

a lay tribunal which does not have the formality of the normal courts. The legislation was substantially revised in the Children (Scotland) Act 1995 but the key principles have remained constant.

The Children's Hearing System is legislated for in the Children's Hearings (Scotland) Act 2011 (referred to throughout as 'the 2011 Act'). The 2011 Act consolidated existing legislation and made mostly structural changes to the Children's Hearing System. This followed a period of review which started around 2004 and coincided with the development of the 'Getting it Right for Every Child (GIRFEC)' approach to improving outcomes and supporting the wellbeing of children and young people.

Hearings are organised and administrated by the Scottish Children's Reporter Administration (SCRA) when children are referred for hearings.

A list of reasons, known as 'grounds', outline why a child may be considered to be at risk and form the basis of a referral to a children's hearing. Any person (private individuals, teachers, social workers, health professionals, police etc.) can refer a child to SCRA, who will consider whether grounds exist for a hearing. Section 67 of the 2011 Act sets out the grounds on which a Reporter may refer a child to a children's hearing.

Children's Hearing Improvement Partnership (CHIP) guidance summarises the statutory criteria for referrals set out in the 2011 Act as follows:

- “(a) the child is in need of protection, guidance, treatment or control; and
- (b) it might be necessary for a Compulsory Supervision Order to be made in relation to the child. The Local Authority and the Police must refer a child when the criteria apply. Any other person may do so.”

Once a referral is made to the Children's Reporter, the Reporter must decide whether there is enough evidence to establish the ground and consider whether a Compulsory Supervision Order is necessary. Only if both are met will a hearing be called.

Children's Hearings Scotland

The 2011 Act established a new non-departmental public body 'Children's Hearings Scotland' with five to eight board members, headed by a National Convener. Children's Hearings Scotland recruits, trains and supports around 3,000 volunteer panel members across Scotland. The National Convener is appointed by members of Children's Hearings Scotland, with the approval of Scottish Ministers, and has the following functions:

- to recruit and appoint panel members, publish a list of panel members and select members for hearings, who among them must be from all 32 local authority areas
- to train, monitor and quality assure the performance of and pay allowances to panel members
- to appoint committees known as Area Support Teams

- to give advice at hearings.

How does the Children's Hearing System work?

The following gives a very brief overview of the main stages of a hearing. Throughout, the procedures are informed by the key principles of the system which are:

- the welfare of the child is the paramount consideration
- an order will only be made if it is necessary (i.e. the state should not interfere in a child's life any more than is strictly necessary)
- the views of the child will be considered, with due regard for age and maturity.

The hearing should have the character of a discussion about the child's needs. A sheriff court is generally only involved if grounds of referral are in dispute or not understood, a child protection or child assessment order is required, or there is an appeal against a decision of a hearing. The aim is to balance the 'lay' character of the system with the guarantees of individual rights afforded by a court system.

Anyone can make a referral to the Reporter, but in practice most referrals are made by the police¹. The Reporter investigates and decides whether a hearing is required. This decision is based on whether there is sufficient evidence that a statutory ground for referral has been met and, if so, whether compulsory measures of supervision are needed.

If a hearing is required, the Reporter arranges one and three members of the local children's panel 'as far as practicable' are selected to form the hearing. The child and Relevant Persons have a duty to attend a hearing unless they are excused. They also have a right to attend (although the Relevant Person can be excluded temporarily from a hearing).

At the hearing, the grounds for the referral must either be accepted by the Relevant Persons and child or established by the sheriff in order to proceed. In considering the case, everyone should have the opportunity to participate freely. If necessary, a Relevant Person can be temporarily excluded if this is needed to allow the child to express his or her views or to prevent distress to the child, along with other grounds outlined in Section 20D of the 2011 Act. A safeguarder, whose role is to protect the child's interests, can be appointed at any time during the hearings process. A child or Relevant Person can be represented at a hearing and there is state funding available in particular circumstances for legal representation. A scheme for children has been available since 2002 and this was extended to Relevant Persons in June 2009.

Once the case has been considered the hearing can —

¹ Scottish Children's Reporter Administration. (2009) Statistical Analysis 2008/09. Stirling: SCRA. Available at: http://www.scra.gov.uk/cms_resources/Statistical%20analysis%202008%2009%20web%20version.pdf

- continue the case (i.e. defer decision to a later hearing)
- discharge the referral
- refer for voluntary support including restorative justice (if the child is aged 8 to 17 and referred on an offence ground)
- make a Compulsory Supervision Order and an interim CSO.

Although the above gives an outline, the detail of the hearings system is quite complex. For example, in addition to the above, it provides for the emergency protection of children through consideration of child protection orders, and for various warrants and orders for the removal of children to a place of safety or for a medical assessment. There are strict time limits with regard to the detention of children which vary according to the circumstances in which an order is sought. Part of the complexity is a result of the need to ensure that emergency protection, or any detention of a child, is followed up timeously with full consideration of the child's needs.

Provisions in the Bill

In their response to the committee's call for views Children's Hearings Scotland noted their concerns about the timescales for supporting 16- and 17-year-olds, particularly with joint referrals. They noted that currently it takes about nine months on average from referral to a children's hearing to a substantive decision being taken, due to the time taken for grounds for referral to be established. Discussions around joint referrals can add further time prior to the referral.

Children's Hearings Scotland called for further exploration about how these timescales could be expedited, and/or alternative more timely interventions could be made available for a children's hearing. At present, until grounds for referral are established, interim orders are only possible if they are a matter of urgent necessity. This high threshold, coupled with the length of time it can take to prove offence grounds, means that there may be limited time for the children's hearing to put in place compulsory support before the child turns 18.

The Promise Scotland are currently facilitating a project to develop proposals around the redesign of the Children's Hearings System. That work will be published in early May and shared with the Scottish Government.

Several witnesses in their submissions have raised concerns about the training of Children's Hearing System panel members with some raising concerns about the 'ask' of volunteer panel members to make life changing decisions about young people accused of a serious crime.

Secure Care

Secure care is a form of residential accommodation which restricts the liberty of children and young people. This type of care provides intensive support and safe boundaries that enable highly vulnerable children to re-engage and move forward positively with their lives and within their communities. Secure care is intended to be

a nurturing environment that is able to address specific needs and behaviours whilst providing care, including health and education.

There are currently five secure care centres in Scotland, offering 84 places (with 6 additional 'emergency' or 'respite' places across the centres, which are not within the current secure care contract). Four are independently run by charitable organisations and one directly by the City of Edinburgh Council. Edinburgh Secure Service is not part of the national contract framework for secure care, which is managed by Scotland Excel, the Centre of Procurement Expertise, on behalf of the 32 Scottish Local Authorities and Scottish Government, and under which individual contracts are negotiated with each of the four independent charitable organisations.

The centres are:

- Good Shepherd Secure Unit, Bishopton (18 places)
- Kibble Safe Centre, Paisley (18 places)
- Rossie Secure Accommodation Services, Montrose (18 places)
- St Mary's Kenmure, Bishopbriggs (24 places)
- Edinburgh Secure Service (6 places, primarily for Edinburgh children and young people through the CHS)

All five units work independently, however St Mary's and the Good Shepherd have the same management services from the CORA Foundation, which is a Catholic-based registered charity.

Funding Model

All of Scotland's secure care centres offer an integrated model of delivery, caring for children who have been placed in secure care for their own protection or that of others.

Secure care currently operates on a national contractual arrangement. The contract operates on a cost recovery basis for the independent centres and is based on a break-even rate of 90% occupancy. This means that where a centre is below 90% occupied, it is not financially viable.

The demand and supply of secure care has consistently been recognised as a complex and shifting landscape. The issue of funding for secure care establishments has also been discussed.

Secure accommodation costs vary depending on the provider, with the fees set annually for the coming year in the Scottish Excel contract. However, the financial memorandum estimates 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.

A spot purchase model operates, whereby local authorities and the Scottish Government directly approach individual centres in order to access secure care

placements. Individual local authorities have generally been content with this approach given their limited or unpredictable usage of secure care.

While the placement of children from outside Scotland into Scottish secure care centres is not new, the reliance on children from outwith Scotland being placed into secure care in Scotland (often referred to as "cross-border" placements) to sustain Scottish secure care centres has become more significant in recent years as Scottish usage of secure care has fallen. As the Bill will ensure that 16 and 17 year olds can no longer be placed in a young offenders institution, this could, potentially, lead to demand for placements outstripping supply. This could mean that Scottish children are unable to access secure care even when it has been assessed as being required immediately and all alternative measures have been attempted.

A further issue is lack of choice, with placements often being driven by whichever centre has a vacancy, regardless of the child's individual needs and the particular 'offer' a centre can provide, as well as the geographical location of the centre.

In its [inquiry into secure care in Scotland](#), the Scottish Parliament's Justice Committee in session 5 concluded that the current funding model for secure care is not sustainable and called on the Scottish Government and COSLA to look at alternative models, such as national commissioning or the use of block funding of places. The Promise identified a lack of clarity about pathways through secure care and decision making driven by overly complex funding and procurement arrangements, as well as the detrimental impact of the current competitive contractual framework. Both stressed that planning and provision must reflect the needs of Scotland's children to ensure there are sufficient places for children who require to be placed in secure care.

The Promise was also clear that Scotland should avoid the monetisation of the care of children and prevent the marketisation of care.

Claire Lunday in her evidence to the committee discussing the funding model of charging English providers for beds in secure care said:

"If we are to exist and provide a service to Scottish children and young people, it is absolutely necessary that, when there are a number of empty beds because demand in Scotland is not high, we look to cross-border placements and try to find appropriate matches. I note that it is only when young people can be matched appropriately from England or from the rest of the United Kingdom that we admit them to our service. Without that income subsidy, no service for Scottish children would exist."

Wendy Sinclair-Gieben in her evidence to the Criminal Justice Committee commented on the difference between how prisons and secure care are funded and resourced and the impact that this can have on children and young people moving forward:

"Prison staff have about 12 weeks' training, and then extra bits are added on. Staff in secure care have full social work training and have to be accredited by the General Teaching Council for Scotland or the Scottish Social Services Council. That is a big difference. Prisons are inspected once every four years.

Secure care is inspected every year. The staff to child ratios are completely different - they are so much more in favour of the child in secure care.

We have the human rights pathways, the standards and all the wonderful things that prison and secure care share but, from the point of view of straight facts, are we more likely to reduce the risk if we concentrate intensely on the child at the early stage of their offending, even if it is a serious offence, or are we more likely to do that if the child is in a prison? I think that the answer is clear: secure care offers that opportunity.”

Review of Secure Care

The Scottish Government has stated² that discussions are underway with Social Work Scotland, COSLA, Scottish Government and secure care centres to explore different funding approaches to ensure that every child living in Scotland, who requires to be cared for in secure care, can be.

A ‘Secure Care Pathway Review’ inspection is currently being undertaken across Scottish Local Authorities by the Care Inspectorate and the inspection report is due to be published in autumn next year.

The inspection which commenced in August 2022, comes in the wake of the Children’s Commissioner’s report “[Statutory Duties in Secure Accommodation: Unlocking Children’s Rights](#)” published last June which looked at the level of compliance by Local Authorities with their statutory duties when determining whether it was in a young person’s best interest to be placed in secure care.

In particular, the report placed strong emphasis on the need to safeguard the young person’s rights and ensuring that their views are consulted and recorded prior to arriving at a decision to place them in secure care.

In its submission to the committee COSLA advocated for the reform of secure care so it meets the needs of children and young people who are deprived of their liberty on care, protection, and justice grounds. They said this should also include exploring alternative community-based options to secure care.

COSLA also supports the ambition to prohibit in statute the placing of any child in a YOI in any circumstances. However, it said that until there is certainty that secure care provision can safely look after and support a child where parts of their behaviour pose the greatest risk of serious harm, they cannot support an immediate statutory prohibition on placing a child in a YOI.

COSLA said it is important to consider the safety and comfort of all children and young people within a secure care setting, and the current arrangements are not in a place which would allow for a child with this level of risk to be safely cared for.

The Children and Young People’s Centre for Justice are currently delivering work to ‘Reimagine Secure Care’ which is due to report in Spring 2024; COSLA urged that the recommendations of this report should be considered when designing secure

² Scottish Government: [Children’s Care and Justice Bill: Consultation on Policy Proposals](#).

accommodation that meets the needs of all children who are to be deprived of their liberty.

COSLA said:

“Until the secure estate is fit for purpose for the changes in the law, the move towards ceasing the availability of YOIs should be incremental and sequenced appropriately to meet the needs of all young people; and address the current resourcing, and capacity issues. The current secure care system is maintained by providing almost half the number of placements available to children in other countries in the UK.”

The Bill provides that any new care service providers must tailor provision to Scotland's particular needs, for example, by increasing scrutiny and communication around proposed new services. The Bill will also amend the powers of the Care Inspectorate to have an increased role in relation to the registration, regulation, and oversight of care settings where cross-border children are accommodated.

Finances

Both Social Work Scotland and COSLA in their submissions emphasised the importance of these changes being fully funded, and equal consideration given to the wider staffing needs and capacity of the sector to manage further change.

COSLA said of crucial importance to note is that the changes proposed in the Bill will require significant ‘system’ changes with implications for services, resources and the workforce. They said any changes should be incremental with a particular focus on the resources and skills base required to support system change.

Increases in the number of young people eligible for aftercare support for example will have significant financial implications, costs are not forecast within the financial memorandum.

The financial memorandum states that CHS has undertaken modelling encompassing detailed consideration such as additional panel members and staff, training and IT. This is estimated at £0.45m per year if the existing panel model is used.

The financial memorandum also forecasts there will be 3,900–5,300 additional referrals which require between 39,000 and 59,000 hours of social work support, while the 730–1,350 additional hearings will require between 23,725 hours and 43,875. Combining the support required for referrals and hearings, this is a total of between 62,725 hours and 102,875 hours. The Scottish Government estimates the implied additional cost of social work support to local authorities would be between £1.8m and £3m per year.

Information Sharing

Another aim set out in the Policy Memorandum is around information sharing with victims, balanced with the rights of the child. The Bill creates a statutory obligation

for the Children's Reporter to inform a person entitled to receive information of their right to that information subject to certain exceptions.

Information-sharing in relation to the children's hearings system is enshrined in legislation which makes provision for victims to request information from the Children's Reporter. Information can only be provided where it would not be detrimental to the best interests of the referred child, or any other child, and where it is appropriate to provide the information. The legislation established certain factors that the Children's Reporter is to consider when deciding whether providing information would be appropriate.

The provisions in the Bill require the Children's Reporter to inform a person entitled to receive information of their right to that information, where it is practicable to do so, and subject to certain exceptions. The provision also provides the Children's Reporter with the discretion to inform a relevant person (within the meaning of section 4 of the 2011 Act) as well as or instead of a victim, where the victim is a child.

This reframes the existing provisions which give the Children's Reporter the discretion to advise a person entitled to information of that right. Under current practice the Children's Reporter writes, where possible, to a person entitled to information under the 2011 Act now to advise them of their right. Accordingly, these provisions would place that current practice on a statutory footing.

During their evidence session on 22nd March the Scottish Children's Reporter Administration said:

“Last year, we wrote more than 2,500 letters. Only 13 or 14 per cent of recipients of those offers to receive information wanted it. It is an opt-in service, so you have to ask for the information if you want it. There could be a variety of reasons why people did not respond to that letter, but it is a low rate. For some victims, receiving that information is very important and often part of their healing process. However, for a variety of reasons, many do not want the information.”

Kate Wallace from Victim Support Scotland in her evidence said there was a “lack of information sharing” and that “people who have been harmed by children or young people do not get any information at all about the case.”

In her evidence to the Criminal Justice Committee, Kate Wallace also highlighted concerns of victims about the Bill, including around the provision of information for victims. She pointed out that the reality is that people who have been harmed by children are not entitled to the same information as those who have been harmed by adults. One reason for this is that there is no Victim Notification Scheme³ where a child or young person is the offender.

³ The Victim Notification Scheme provides eligible victims with information about offenders including the date of the offender's temporary or permanent release, if an offender escapes, and whether an offender is being considered for parole or release with an electronic tag.

“Under the proposals in the bill, more children may be placed in secure care. Because there is no victim notification scheme, victims who have been subjected to a serious sexual assault are not told when someone is being released from secure accommodation, which therefore means that they cannot effectively plan for their own safety.”

Transport

Another issue that has regularly come up in evidence sessions is around transportation. The Scottish Government in 2020 introduced [Secure care: pathway and standards](#).

Standard 14 states “I fully understand what to expect of my transport and admission to secure care and I am treated with dignity, compassion, sensitivity and respect. Someone I know and trust comes with me.”

Who Cares? Scotland recently worked with Kibble Education and Care to hold a consultation with young people living in the safe centre on how they arrived at Kibble.

The majority of young people said either the police, or existing secure care transport organisations (Wrixon Care, GEOAmev) took them to the Safe Centre. Several young people said they were handcuffed throughout the journey. Journey times varied as some young people were being transported from the main campus at Kibble, others spoke of journeys lasting up to 8 hours to get there.

The young people were asked to explain what they knew about where they were going and why, when being transported to secure care. Eight of the young people felt they had been lied to about where they were going or the nature of why they were going to the secure centre. Two young people said they knew because their social worker told them, one knew because the court let them know, another said that their lawyer gave them ‘two options’, one secure unit or another one.

The theme of deception ran through more than half of the young people’s stories about what they knew about their destination.

Young people described various issues with their journeys to secure care, including not being given adequate toilet breaks, not receiving anything to eat for long periods of time and being too hot or uncomfortable during the journey: ‘I hadn’t had anything to eat that day. My mum told the police that. So, when we stopped at McDonalds, I thought I would get something to eat. But I didn’t. It was just to change over. It wasn’t until the next morning that I got something to eat.’ They also described drivers speeding at high speeds on the journey or being unsafe in the way roads were being navigated.

When asked what would make the experience better, some young people would have liked to have gotten some food for the journey or a drink. Some wished they hadn’t been handcuffed; others wished there had been a USB port for their phone.

Others made observations about who they felt should have brought them to the Safe Centre and were clear about the reasons why. One person shared that their previous experience with the police meant it was difficult when they were the ones to take them to the Safe Centre and would have preferred their social worker to be with them instead.

The Welsh Government recently looked at this issue specifically and have amended Wales's [Reducing Restrictive Practices Framework \(RRPF\)](#) to include explicit guidance for secure transportation. The RRPF sets out the Welsh Government's expectations for policy and practice in reducing restrictive practices across childcare, education, health and social care settings. Changes made to the RRPF mean that local authorities are now formally encouraged to pay due diligence to the restraint practices of secure transportation providers when commissioning their services and introduce monitoring and scrutiny of transportation providers.

Cross Border Placements

Children and young people can currently be placed in residential care settings in Scotland from other UK jurisdictions. These are known as cross-border placements and can often occur without Scottish authorities being aware that the children are in Scotland.

The Policy Memorandum to the Bill points out that The Promise stated that the acceptance of children from other parts of the UK cannot be sustained when it is not demonstrably in those children's best interests to be taken to a place with no connections or relationships. These placements can result in children and young people being separated from their families, and community support and services. This can impact on planning for the child and may also impact on their human rights. The Promise is also clear that current commercial practices regarding cross-border placements, where they are purchased by a local authority in another UK jurisdiction, must end. The Scottish Government's position is that cross-border placements should only occur in exceptional circumstances where the placement is in the best interests of an individual child.

In order to manage issues of increasing capacity for cross-border placements, the Bill provides that any new care service providers must tailor provision to Scotland's particular needs, for example by increasing scrutiny and communication around proposed new services. The Bill will also extend the reach of the Care Inspectorate to have an increased role in relation to the registration, regulation, and oversight of care settings where cross-border children are accommodated.

Compulsory Supervision Orders

A Compulsory Supervision Order can set out where the child is to live and with whom he or she will have contact. It can have any condition attached to it, including authorising placement in secure accommodation, requiring a medical examination or a 'movement restriction condition' (electronic tagging) and imposing duties on the relevant local authority. It can be reviewed at any time and will cease to have effect unless it is reviewed within a year.

The local authority must implement a Compulsory Supervision Order. If it does not do so, the hearing can ask the National Convener to apply to the sheriff principal for an enforcement order. The child's local authority must perform duties in relation to the child's needs and supporting their family as set out in section 83 of the 2011 Act.

Prior to a child's hearing, reporters prepare a statement of grounds setting out the grounds for a CSO and supporting facts.

Section 5 of the Bill amends the secure accommodation authorisation criteria so that if a children's hearing considers it necessary to deprive a child of their liberty it would need to include in the CSO a secure accommodation authorisation. That measure attracts special legal safeguards for the child's protection.

Movement restriction conditions (MRC) are a measure on a CSO restricting a child's movements and requiring the restrictions to be monitored by way of an electric monitoring device.

An MRC can be included in a CSO only where certain criteria are met:

- The hearing or the sheriff is satisfied that it is necessary to include an MRC in the order, AND
- The child has previously absconded and is likely to abscond again, and if the child were to abscond it is likely that the child's physical, mental or moral welfare would be at risk, and/ or
- The child is likely to engage in self-harming conduct, and/or
- The child is likely to cause injury to another person.

The provisions in the Bill decouple the MRC criteria from that of secure accommodation authorisations and can apply without the prerequisite of absconding.

In addition, the new test for a MRC moves to consideration of 'harm' rather than 'injury' and also makes it clear that it can be applied where it is necessary to help the child to avoid causing physical or psychological harm to others.

The Policy Memorandum states:

"The new test would mean the MRC would be available as an option for panel members to protect both the child and others from harm where the child's physical, mental or moral welfare is at risk. This would cover situations to stop the child self-harming as well as to stop putting themselves at risk of further conflict with the law by approaching a specified person or place." (Page 14).

MRCs involve giving a child intensive support and monitoring the child's compliance by means of an electronic monitoring device which uses radio frequency technology to monitor the child.

Section 4 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 where:

- A child's physical, mental or moral welfare is at risk
- A child is likely to cause physical or psychological harm to another person.

These conditions cover a broader range of circumstances than the current conditions. For example, it might limit a child's movement to a certain address where a known abuser lives, a place where there is a risk of sexual exploitation, or a locale where the child is known to buy drugs.

A key consideration will be broadening the definition to include the likelihood of causing psychological harm.

Most recent figures from SCRA (Scottish Children's Reporter Administration) show an average of 26 MRCs per year – 2 per month – over the past 4 financial years. Costs in relation to the electric monitoring are currently met by the Scottish Government. Internal Scottish Government figures show average annual costs of £13,719 for electronic monitoring. However, there will be other costs, particularly for local authority social work, of support around the MRC, not least owing to the requirement that 24-hour support is available as part of an MRC.

Social Work Scotland in their submission to the committee highlighted the number of vulnerable 16- and 17-year-olds, not least as a result of the high number of unaccompanied asylum-seeking children now resident in Scotland. Its submission underlined the importance of implementation processes and timescales to ensure that decision makers receive the right training on the use of the new powers, and that the measures open to Children's Hearings around Compulsory Supervisions Orders are able to appropriately meet the needs of those whose safety is at risk or who are a risk to others.

Social Work Scotland highlighted that the new provisions around compulsory supervision orders have resource implications particularly for social work services. In one example it asked where a child's movement is to be restricted how this is monitored?

Remand and committal of children before trial or sentence and detention of children on conviction

The provisions in the Bill seek to end under 18s being detained in young offenders' institutions (YOIs), and/or prisons, with secure accommodation services being the alternative where a child requires to be deprived of their liberty.

The Policy Memorandum to the Bill points out that these provisions do not interfere with a court's ability to deprive children of their liberty where this is deemed to be necessary; they simply change where a child under 18 can be detained.

In cases of remand, the place of detention would either be secure accommodation, if the court requires this, or a place of safety to be determined by the local authority,

which could include secure accommodation. Essentially, children under 18 can no longer be committed to a prison or YOI.

Also, where a child is sentenced by a court to detention under summary proceedings, this will be in a residential establishment chosen by the local authority, which, again, could include secure accommodation.

Where a child is sentenced by a court under solemn proceedings, the Scottish Ministers will direct where the child is to be placed – this may not be a prison or YOI but may be secure accommodation.

The Bill also provides that the Scottish Ministers may make regulations relating to children detained in secure accommodation through a criminal justice route, which may include providing that a child may remain in secure accommodation up to a maximum age of 19. This would remove the current requirement for children to automatically leave secure accommodation when they turn 18 and is intended to provide support, stability, continuity of care and maintain relationships which will be essential for rehabilitation and gradual transitions from secure accommodation.

Although a young person may subsequently transfer to a YOI as part of their sentence, it is considered that the period spent in secure accommodation will enable them to benefit from the support and stability required to assist them in preparing for adulthood and any future transitions to a YOI.

The Bill also includes provision to make amendments which will change the definition of “young offenders’ institution” and “young offender”.

Under section 19 of the Prisons (Scotland) Act 1989 (“the 1989 Act”), the Scottish Ministers have a duty to provide young offenders’ institutions (YOIs) - places where offenders sentenced to detention in a YOI, and those aged at least 14 but under 21 who are remanded in custody for trial or awaiting sentence, can be held. As a result of the provisions in the Bill, no one under 18 will now be held in in a YOI.

Consequently, the Bill amends the 1989 Act so that YOIs are defined as places for the detention of those aged 18 but under 21.

The Bill also amends the Prisons and Young Offenders Institutions (Scotland) Rules 2011 which currently define a “young offender” as someone who is aged at least 16 but under 21. The Bill ensures that “young offender” will now mean a person aged at least 18 but under 21.

The 1989 Act also provides that the Scottish Ministers have a duty to provide remand centres, ie places where those aged at least 14 but under 21 and remanded in custody either for trial or to await sentence can be held. As there are no such centres in Scotland, amendments in the Bill will remove the duty to provide them. The Bill also repeals any other redundant and unnecessary references to remand centres in legislation.

The Policy Memorandum to the Bill states that:

“The provisions in the Bill seek to ensure that all children who required to be deprived of their liberty will receive rights-based, relationship-based,

psychologically and trauma informed responses, in age appropriate, therapeutic environments, normally secure accommodation.

The Bill ends the use of YOIs (and prisons) for all children under 18, supporting Scotland's of the current commitment to Keep the Promise and the achievement of the current Youth Justice Vision".

The following provides a summary of interrelated provisions which have been made in the Bill to:

- Enable children who are remanded or committed for trial or sentence to be detained in secure accommodation (where the court requires) or a place of safety chosen by the appropriate local authority, whether or not the child has already been subject to compulsory measures via the children's hearings system. It is also clarified within the Bill that once a person has attained the age of 18, the court may commit the person to a YOI.
- Provide that Scottish Ministers may make regulations relating to children detained in secure accommodation through a criminal justice route, which may include providing that a child may remain in secure accommodation up to a maximum age of 19.
- Bring greater consistency to where children convicted of an offence may be detained. To that end, the Criminal Procedure (Scotland) Act 1995 will be amended to provide that for those children convicted on indictment (including for example, murder) they may not be detained in a prison or YOI. The Bill provides that instead, Scottish Ministers may direct that the child be detained in secure accommodation. It is expressly provided that the age limit at which someone can be sentenced to detention in a YOI is 18-21.

The Scottish Government has set out the policy context for introducing these provisions in the Policy Memorandum accompanying the Bill, and the following paragraphs provide a brief summary.

The Scottish Government has stated that significant progress has been made in Scotland to reduce the number of children who require to be deprived of their liberty, including being held in custody. Building upon a Whole System Approach, under the current Youth Justice Vision, "to the extent possible, no under-18s should be detained in Young Offenders Institutions, including those on remand". It's suggested that secure accommodation and intensive residential and community-based alternatives should instead be used where therapeutic trauma-informed approaches are required for the safety of the child or those around them.

Evidence has shown that there can be a significant detrimental impact on children being deprived of their liberty, even for very short periods, particularly within custodial institutions⁴. The Scottish Government has pointed to international human rights instruments which specify that where a child is to be deprived of their liberty, this should take place in correctional or educational facilities, in a manner which

⁴ [Report on Expert Review of Provision of Mental Health Services at HMP/YOI Polmont – HMIPS. Rights Respecting? Scotland's approach to children in conflict with the law - Children and Young People's Centre for Justice \(cycj.org.uk\). UN GLOBAL STUDY ON CHILDREN DEPRIVED OF LIBERTY \(2019\) - Omnibook.](#)

takes account of children's needs and age and prioritises ensuring the child's effective reintegration into their community as soon as possible. The Scottish Government has stated that secure accommodation provides such facilities.

However, the Policy Memorandum makes it clear that any decision to remand or to sentence a child to be deprived of their liberty is a matter for the judiciary, informed by relevant legislation.

The Policy Memorandum also points out that there has been criticism in some quarters about the automatic transfer to a YOI when a child turns 18, having been placed in secure accommodation via the criminal justice system, whether following remand or sentence. Such transitions from secure accommodation can have a disruptive and potentially damaging impact for children, which can exacerbate existing vulnerabilities and render children susceptible to further, serious outcomes.

It is also pointed out that under the UNCRC, where a child is deprived of their liberty, they have the right to be separated from adults unless this would not be in the child's best interests. International human rights instruments support the position that a child who is in a facility for children does not need to move to adult provision immediately on turning 18 and continuation of their placement should be possible. However, this should only be permitted if it is in the young person's best interests and is not contrary to the best interests of other children within the facility.

Children in police custody

The following paragraphs provide a summary of some key provisions in the Bill relating to children who may be detained in police custody.

The Scottish Government has stated that its policy in this area has been developed to ensure that there is a more consistent approach to the upholding of children's rights when in police custody. With the amended definition of 'child' as proposed in the Bill, the intention of the changes regarding safeguards in the Bill would mean that all children under age 18 will have enhanced rights when in police custody.

The Criminal Justice (Scotland) Act 2016 ("the 2016 Act") makes provision for what happens if a child is arrested and taken into police custody.

Under the 2016 Act, a child who the police believe is under 16 or one who is subject to a Compulsory Supervision Order imposed by a children's hearing, must be kept in a place of safety until they can be brought to court. While every effort is made to avoid detaining children in police stations, which can be frightening and intimidating, it is sometimes not practicable to hold a child anywhere else. In taking a decision to hold a child in police custody, the wellbeing of the child is a primary consideration. Guidelines issued by the Lord Advocate set out a presumption of liberty, unless factors such as the seriousness of the offence, a significant risk to victims or witnesses, and the nature and timescale of further enquiries, justify police custody.

Where a child is being prosecuted for an offence and is in police custody and is not to be liberated, the place of safety where they are to be held must not be a police station unless it would be impracticable, unsafe, or not advisable for reasons of the child's health to be kept anywhere else. The provisions in the Bill extend these

considerations to all under 18s, and, except in the limited circumstances described, children should not be kept in police stations.

The 2016 Act also currently provides that where a child under 16 is brought into police custody, a parent of the child must be informed (if one can be found) and the relevant local authority must also be informed. Where the person is 16 or over, the intimation will be sent only on the person requesting it and only to an adult named by the person making the request.

A key change proposed by the Bill is that the relevant local authority will now be informed when any child under 18 is in police custody. This is to ensure that the local authority can visit the child if it decides that this would best safeguard and promote the child's wellbeing.

It is clear that being brought into police custody under any circumstances can be an intimidating experience and, for many children, they may also be vulnerable and require appropriate support. The local authority may also be able to provide information as to the child's wider needs including who may be an appropriate person to be informed of the child being in police custody or in respect of their care status.

With regard to parents of a child in custody being informed, for those children under 16, their parents will always be informed and asked to attend unless the local authority advises that this would be detrimental to the best interests and well-being of the child.

The Policy Memorandum points out that from age 16, and respecting the evolving capabilities of the child, the Bill will ensure that a child will have the choice to nominate that another adult other than a parent is notified of their being in custody (subject to the possible intervention of the local authority as noted above). The child can also request that no notice is sent or ask that no adults attend the police station. In such circumstances, the local authority would be informed to ensure that every child has someone notified of their situation. Likewise, in any case, should parental or another adult access to the child be refused or restricted, the local authority should be notified.

Other provisions in the 2016 Act include the right to have a solicitor present while being interviewed by the police. In certain circumstances, the right to have a solicitor present can be waived. However, this is deemed to be an important right by the Scottish Government and an important safeguard for children in such circumstances. Therefore, the Bill amends the relevant provisions in the 2016 Act so that no child under 18 can waive the right to have a solicitor present at a police interview.

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21st April 2023

Note: Committee briefing papers are provided by SPICe for the use of Scottish Parliament committees and clerking staff. They provide focused information or respond to specific questions or areas of interest to committees and are not intended to offer comprehensive coverage of a subject area.

The Scottish Parliament, Edinburgh, EH99 1SP www.parliament.scot

Annexe B

COSLA

Education, Children and Young People Committee

Children (Care & Justice) (Scotland) Bill – evidence session, 26th April 2023

Introduction

1. COSLA is the voice of Local Government in Scotland. We are a cross-party organisation who champions councils' vital work to secure the resources and powers they need. We work on councils' behalf to focus on the challenges and opportunities they face, and to engage positively with governments and others on policy, funding and legislation.
2. COSLA, and all 32 member councils, have fully committed to delivering the change required for Scotland to #KeepThePromise. Progress, including service and policy redesign and transformation around how Local Government engages and makes decisions with children, young people, and families, is underway. Local Government is dedicated to ensuring that Scotland's children grow up loved, safe and respected.
3. COSLA's is supportive of the Bill's approach to a more children's rights and trauma informed approach to the care and protection of 16 and 17 year olds. The move towards the definition of a child to age 18 is also welcomed and is in line with COSLA's approach and views on the incorporation of UNCRC in Scotland.
4. Whilst COSLA gives its support to the proposed legislative changes within the Bill, the Committee must be mindful of equally important improvement programmes and redesign happening, in parallel, in the system. The redesign of the Children's Hearing system and the work to 'Reimagine Secure Care', and the 'Bairns Hoose' development programme are interlinked with the proposed approaches within the Bill. Therefore, COSLA's view is that due care, attention and time is taken to ensure appropriate sequencing of implementation of aspects within the Bill; linked to the points made in the paragraph above and in recognition of the sectoral challenges facing the local government, including social work, workforce.
5. Alongside appropriate and adequate sequencing of implementation, COSLA must emphasise that any legislative and policy changes must be fully funded to allow the system to have the workforce, resources and capacity it requires to fully support the needs of children, young people and their families.

Widening access to the Children's Hearings system to all 16 and 17 year olds

6. COSLA is supportive of the Bill's move towards a more children's rights-based and trauma-informed approach to the care and protection of 16 and 17 year olds. In our view this aligns with the requirements of The Promise, which Local Government is fully committed to. On this basis, COSLA is supportive of the principle of widening access to the Children's Hearing System to all 16 and 17 year olds.

7. It is Local Government's view that the adult criminal justice system is not able to respond appropriately to the needs of children or allow for the proper management of risk. We should therefore seek to maximise opportunities for children who commit offences to be supported in age-appropriate settings, within a child care system, that reflect their age and stage of development through a trauma informed lens.
8. The Promise Scotland is currently leading a programme of work, chaired by Sheriff David Mackie, to redesign the Children's Hearings System. Any changes to existing legislation should be based on engagement in the recommendations from the Children's Hearings System Working Group and allow reform to be well-informed and appropriately sequenced.
9. Whilst COSLA supports a more child-centred approach to supporting 16- and 17-year-olds through the Children's Hearing System, the impact on the local government workforce will be significant and should be fully costed and funded to ensure young people and their families get the support they require, when they require it. It should be recognised that local authority social work staff are responsible for the provision of many of the services which support this cohort of young people. That support is currently structured in such a way to support the existing system. Changes to the current system would be likely to require increases in resources for children and family services.
10. In our submission to the Call for Views, we also highlighted that circumstances where a child beyond the age of 16 is referred on care and protection grounds requires more consideration. The interface between children's and adult services and interlinked legislation is of critical importance.

Compulsory Supervision Orders

11. COSLA recognises the need, and importance, appropriate care and support to be provided for all young people, including those transitioning into adulthood. However, extending the duties on local authorities to support a person up to the age of 19 is not considered the right approach. Decisions on the level and needs of support should be based on the young people and their capacity and maturity rather than a legal context being the deciding factor. A young person is not legally a child after 18 and support should be based around transitions to adulthood rather than extending their support, as if they were a child. Also of importance is the role of other Corporate Parents, crucially including health, and how their role and duties should be included in supporting a young person beyond the age 18.
12. COSLA shares the view of the social work profession that young people choose whether they receive support after the expiry of a compulsory supervision order and that this remains voluntary.
13. Of crucial importance to note is that the changes proposed in the Bill will require significant 'system' changes with implications for services, resources and the workforce. Any changes should be incremental with a particular focus on the resources and skills base required to support system change.

14. As set out at paragraph 10, the interaction with legislation in the adult and justice fields must be carefully considered, including how resource will be allocated to children's services to support older young people who are subject to supervision orders. Due consideration must be given to the aftercare needs of young people and the transition to adult services, where and when required.

Young Offenders' Institution (YOI) and Secure Care

15. COSLA is committed to Keeping The Promise, and The Promise is clear that no under 18s should be sentenced or remanded in young offenders institutes or prison. COSLA, are advocates for the reform of secure care so it meets the needs of children and young people who are deprived of their liberty on care, protection, and justice grounds. This should also include exploring alternative community-based options to secure care.
16. Local Government supports the ambition to prohibit in statute the placing of any child in a YOI in any circumstances. However, until there is certainty that secure care provision can safely look after and support a child where parts of their behaviour pose the greatest risk of serious harm, it is not possible to support an immediate statutory prohibition on placing a child in a YOI. It is important to consider the safety and comfort of all children and young people within a secure care setting, and the current arrangements are not in a place which would allow for a child with this level of risk to be safely cared for. We note, and are included, in the work of the Children and Young People's Centre for Justice work to 'Reimage Secure Care' which is due to report in Spring 2024; the recommendations of which should be considered when designing secure accommodation that meets the needs of all children who are to be deprived of their liberty.
17. Until the secure estate is fit for purpose for the changes in the law, the move towards ceasing the availability of YOIs should be incremental and sequenced appropriately to meet the needs of all young people; and address the current resourcing, and capacity issues. The current secure care system is maintained by providing almost half the number of placements available to children in other countries in the UK.
18. Local Government are of the view that alternative trauma-informed and child centred approaches could be developed, by partners across the system, in the interim, until the secure care redesign work is complete.

Cross-border placement

19. COSLA supports improving the definition of secure accommodation that is fit for the future and to ensure that appropriate, child-centred and trauma informed support is provided to children accommodated. As set out above, the work to 'Reimage Secure Care' work should be consider as the Care and Justice Bill progresses.
20. Significant work across the system is also being undertaken to improve access, provision and regulation of secure transportation for children and young people. Given the proposed changes within the Bill and a possible increase in secure accommodation given the removal of Young Offenders Institutes for 16 and 17 year olds, due consideration must be given to

improving secure transport for children and young people. COSLA wishes the Committee to consider the inclusion of secure transport in any regulatory changes to secure accommodation to ensure children's rights are upheld and that secure transport is considered an extension of secure accommodation and the same principles outlined in the Secure Care Pathways and Standards apply to transport.

21. COSLA is supportive of the proposal that children living in cross-border placements should be offered the support, care and protection that is required; this includes advocacy alongside education and health. However, The Promise has been clear that cross-border placements into Scotland should end, as should the marketisation and monetisation of care. Whilst young people living in Scotland on cross-border placements should be offered the support and protection they require; the focus should be on working with the UK Government to end cross-border placements into secure and residential care in Scotland.

Financial Memorandum

22. COSLA has been clear that there would be resource implications for local authorities associated with the proposals, which would need to be fully considered and costed. Additional cost burdens cannot be met by Local Government without additional resource. There was insufficient engagement with COSLA on the costings that informed the Financial Memorandum (FM).
23. Although we support the Bill's aims and principles, we have concerns about the resource implications and sector capacity for change. The impact of the changes on the Local Government workforce will be significant. We do not believe that the FM adequately reflects the additional resources that will be required by local authorities. COSLA's response to the call for views on the FM is clear that the changes must be fully funded by Scottish Government.
24. We have highlighted significant concerns with specific figures within the FM which we believe are out of date, some are under-stated and many of the costs are based on estimates. Associated funding for local authorities must be based on a more robust assessment of cost implications and must be kept under review..
25. The FM offsets the additional resource required for children's social work as a result of additional referrals and hearings with the assumed savings in social work support in the criminal system. This assumes a reduction in social work support in the criminal justice system would lead to savings for local authorities and that the funding could be transferred accordingly. We believe the proposal to offset costs is not reasonable or practical and does not reflect the current funding landscape and pressures in both Children's and Criminal Justice social work within Local Government.
26. The FM only includes costs for local authorities associated with the additional children estimated to be placed on remand in secure accommodation, who would otherwise be placed on remand in Young Offenders Institutions (YOI). Wider resource implications for local authorities associated with increased numbers coming through secure accommodation have not been included in the FM. There will also need to be consideration of what alternatives to custody for 16 and 17 year olds needs to look like and how that capacity can

be developed. COSLA would not find it acceptable that the additional cost burden of no longer placing under 18s in YOI would be met by Local Government.

27. There are other additional cost implications for local authorities not factored into the FM, in particular in relation to the increased number of children entitled to throughcare, aftercare and continuing care; staff skill, resource and service implications associated with meeting the needs of older adolescents in children's social work, including the need for more family support services and accessible youth services; and secure transport costs. The FM also identifies areas where there will likely be additional costs for local authorities but does not estimate cost implications Scottish Government should commit to monitoring this and for any cost implications for local authorities to be funded.

Conclusions

28. COSLA are supportive of the principles and aspirations of the Bill to move towards a rights based care system that protects its most vulnerable children and young people. It is a welcome step towards realising some of the aspirations of The Promise. However, COSLA must emphasise that any legislative and policy changes must be fully funded to allow the system to have the workforce, resources and capacity it requires to fully support the needs of children, young people and their families, and that due care, attention and time is taken to ensure appropriate sequencing of implementation of aspects within the Bill.

Care Inspectorate

Children's Hearings System

8. The Bill widens access to the Children's Hearings system to all 16 and 17 year olds. What are your views on this?

We welcome the provisions set out in the Bill to widen access to the Children's Hearing system to all 16- and 17-year-olds. This supports an approach that recognises a child's developmental needs are not always congruent with their chronological age, particularly when they have experienced trauma and adversity in their childhood.

We support the principle that children and young people should be treated differently to adults, with their particular needs and stage of development in mind, and therefore we are supportive of the intention for the Children's Hearings system to deal with children up to age 18. We think this proposal has the potential to ensure children's needs are considered in a holistic, rights based and trauma informed way. However, it is important to highlight that the increase in the number of children referred to the Children's Hearing system will need to be supported. At present local authority social work departments are under intense pressure. The sector will need considerable investment and support to ensure the proposals are effective and make a positive difference to children. This investment should complement resources to provide early and preventative support to children and young people.

9. The Bill suggests that the law should be changed so that most offences committed by 16 and 17 year olds will be dealt with through the Children's Hearings system in future. What are your views on this?

We are supportive of changes that ensure children below the age of 18 are not detained in prison. We welcome proposals that recognise the developmental needs of children, particularly those who have experienced trauma and adversity. It is important to recognise that secure care providers will need to meet additional responsibilities and need to be adequately supported for this task. Ensuring there are adequate resources in place to support these changes will be key to successful implementation.

10. The Bill makes several changes to Compulsory Supervision Orders. What are your views on these proposed changes?

We agree that children should not be deprived of their liberty unless in a registered secure service. We are supportive of the proposed changes relating to directions authorising restriction of liberty and believe this will provide enhanced clarity for the sector on the distinction between restriction and deprivation of liberty.

We are similarly supportive of the proposed changes relating to secure accommodation authorisations and believe these will provide clearer parameters to inform the appropriate placement of children.

13. Do you wish to say anything else about the proposals to increase the age at which young people can be referred to a Children's Hearing?

In principle, we are supportive of local authorities holding duty of support to young people up to age 19 because we know that young people benefit greatly from continuing support as they transition into adulthood. However, we recognise this is likely to add more pressure to already hard-pressed local authorities and we envisage they will need support (including financial support) to ensure they can meet their responsibilities. We acknowledge the increasing pressures on Scottish local authorities, the Children's Hearing system, health boards, advocacy organisations and third sector organisations across the country. These predate the pandemic, but it is widely accepted that pressures are likely to become even more acute in the next few years.

Criminal Justice and Procedure

15. The Bill changes the law so that young people aged 16 and 17 who are accused of or found guilty of an offence can no longer be sent to a Young Offenders' Institution or a prison. What are your views on these proposals?

With the passing of the UNCRC (Incorporation) (Scotland) Bill, Scotland has committed to ensuring that children's human rights are respected, protected, and fulfilled. Article 1 of the UNCRC states that all humans under the age of 18 should be treated as children, and so we welcome proposals that ensure Scotland's public bodies act compatibly with the UNCRC and support the principle that young people aged 16 and 17 are treated as children, as defined by the UNCRC, and should be treated differently to adults. Additionally, articles 37 and 40 of the UNCRC requires that those under the age of 18 should be treated in an age-appropriate manner, and we therefore are supportive of proposals that take into account a child's developmental needs.

We support proposals that ensure children below the age of 18 are not detained in prison and recognise that secure care operates in a way that is better able to provide therapeutic support for children with complex needs e.g., in the design of the environment; models of practice; staffing models; and family contact arrangements. However, we also recognise that secure providers will need to meet additional responsibilities and need to be adequately supported and resourced for this task.

Consideration will need to be given not just to the safety and wellbeing of those children no longer detained in prison, but also of other children already residing in secure settings, and staff working in those settings. We have particular concerns about the shift in practice that will be required, from the current model whereby we require services to undertake an admission assessment and reach a decision about whether they can appropriately meet a referred child's needs (with the ability to terminate a placement post-admission if required) – to the proposed future model whereby services will need to admit, and hold on to, children referred to them. This carries a different set of expectations and risk than is currently the case, and is likely to require a cultural shift across the sector.

It will be crucial to ensure that relevant professionals and key stakeholders are appropriately engaged to allow exploration of what greater training and support they think is necessary for the secure sector going forward.

Residential and Secure Care

16. The Bill changes the way in which secure accommodation is regulated. It would also introduce regulation for cross-border placements (for example, a child placed in Scotland as a result of an order made in England). What are your views on the proposed changes?

We agree with the proposal that registration applicants inform the host authority of their intention to register a new care service and believe this will enhance local authorities' awareness of services in their area. It would seem appropriate that evidence of this communication is provided as part of applicants' registration applications to the Care Inspectorate, to provide assurance that this has been completed.

However, we do not believe that a proposal aimed at allowing the Care Inspectorate to identify, from the outset of the establishment of a new residential care service, if it may host children from other UK jurisdictions would be helpful. We doubt there will be many independent providers who will be willing to exclude themselves from a potential market so what is most likely is that all new potential providers will opt for an inclusive registration from the beginning. Even if applicants choose not to tell us as part of the registration process, there would be nothing to prevent them from changing their mind on this once they were registered.

In relation to the proposal: 22(2)(a)(ii)"(a) in relation to Scotland, accommodation provided for the purpose of depriving children of their liberty which is provided—

(i) in a residential establishment,

(ii) (ii) by a secure accommodation service,"

We cannot foresee a circumstance under which we would agree to register a (non-secure) 'residential establishment' for the purpose of depriving children of their liberty. Equally, if a care home for children and young people was already registered, and decided to redefine its purpose to be depriving children of their liberty, we predict that we would be suggesting that they re-register as a secure service. Whilst we understand that under the inherent jurisdiction of the High Court a deprivation of liberty (DoL) order can be authorised for use with a child in a residential care setting, we know that DoL orders generally place a number of restrictions on children's liberty but are not depriving them of their liberty. While non-secure settings can accept children on DoL orders, the measures in place within DoL orders are applied with permissive intent. Our expectation is that no non-secure residential care setting should implement restrictions amounting to deprivation (the use of locked doors for example).

It would be helpful for us to understand what is intended by 'enhancing the level of regulatory scrutiny... to disincentivise the hosting of cross border placements in Scotland.' We would be wary of any approach which utilises scrutiny as a

punishment, as we have worked hard to develop a productive working relationship with the sector which affords a collaborative approach to improving outcomes for children and young people.

We would suggest exercising caution in reference to the wording around school care accommodation services within the proposals, to ensure that mainstream boarding schools (who offer hundreds of placements to children from out with Scotland) are not caught within this, unless this is the aim of the proposal. Similarly, it may be helpful to clarify whether the intention of the Bill is that it should apply to all children placed in a care service in Scotland from another UK jurisdiction, including unaccompanied asylum-seeking children.

We would welcome the opportunity to be involved in exploring further options for the longer term which engage the broader strategic and policy context of residential care, such as satisfying a range of criteria with regards to the provision; or asking providers to fulfil certain requirements that demonstrate that they are meeting local needs and/or strategic priorities at a local or national level.

It would be helpful for us to better understand the proposed specific standards and outcomes which will be applicable to providers of relevant residential care services hosting cross border placements and the rationale for creating additional standards which sit outside the current Health and Social Care Standards which currently apply to all registered care services for children. We have significant concerns about potential for creating a two-tier system here, with a different set of expectations for children placed across the border compared to children who are already domiciled in Scotland and where legal responsibilities are held by a Scottish local authority. Alternately it could mean that services who host children from both Scotland and other parts of the UK would have to work to two separate sets of standards. There is also the possibility that any potential standards are unenforceable, if they relate to aspects of care, such as assessment, care planning and placement decisions, for which responsibilities are held by non-Scottish placing authorities. These which fall out with the jurisdiction of the Care Inspectorate.

We accept that the ability to impose specific requirements in relation to individual care services may have benefits in situations where we have particular concerns about service quality and how that is impacting on children and young people. However, it should not be assumed that a care service's failure to comply with any such requirement would automatically result in de-registration of the service. Any action taken by the Care Inspectorate would be decided after careful consideration of the risks to the safety and wellbeing of children. Technical breaches are unlikely to necessitate application to a Sheriff to cancel the service's registration.

The proposal for relevant powers to no longer be limited to compulsory supervision order-equivalent orders, but to cover more generally non-Scottish orders which relate to the care, protection or supervision of a child, has the potential to create a significant additional burden on Scottish local authorities e.g., duty to provide continuing care. While fully accepting that this is likely to be in the best interests of children, we are duty bound to point out that it needs to be implementable, or it will be a meaningless change.

We welcome the intended flexibility for the system of regulation and scrutiny to respond appropriately and proportionately in the short and longer term in ways that cohere with the wider Scottish policy context. As this is a complex and ever-changing picture, we feel it is important that this be reflected in any legislative change. Similarly, we appreciate the recognition that this issue will not be solved through legislation alone, but rather act as one layer in a multifaceted approach. We believe this is the most pragmatic way of ensuring positive experiences and outcomes for young people.

The Care Inspectorate would require additional resources to meet any new responsibilities that fall to the organisation as a result of changes brought about by the Bill. As noted in the Financial Memorandum, the cost implications for us in relation to cross-border measures will involve developing a new process which will include staffing costs as well as system and guidance changes.

Anti-social Behaviour Order, Named Person and Child's Plan

17. What are your views on the proposals set out in Part 4 of the Bill?

We welcome the amendment to section 18 of the Antisocial Behaviour etc. (Scotland) Act 2004 to define a child as a person under 18, except for parenting orders, to ensure greater alignment of definition throughout the legislation.

Part 4, section 27 – We recognise the need to now repeal Parts 4 and 5 of the Children and Young People (Scotland) Act 2014 following the withdrawal of the Children and Young People (Information Sharing) (Scotland) Bill and the refreshed GIRFEC practice guidance on role of the named person published last year. We note however, that the refresh of the child's plan & supporting guidance is not yet available and would want to see this being brought forward without further delay to support good practice in planning to meet children's needs.

Children's Hearings Scotland

Children's Hearings Scotland (CHS) is the statutory body responsible for recruiting, supporting and training around 2,500 Panel Members to fulfil the legal requirements of children's hearings. Panel Members make legally binding decisions as to whether compulsory measures of supervision are needed to address the risks to children's and young people's welfare and ensure that their needs are properly met. CHS have a significant role to play in the effective implementation of this Bill.

Children's Hearings System

8. The Bill widens access to the Children's Hearings system to all 16 and 17 year olds. What are your views on this?

In order to be compliant with the UNCRC the Children's Hearings System should be available to all children. Raising the age of referral on care, protection and offence grounds will help children in a welfare-based Children's Hearings System. This will support CHS's aspiration of keeping as many children as possible out of the adult criminal justice system. Raising the age of referral will increase the safeguards in an age appropriate space that will help protect them from harm and support them to achieve their full potential. It is important that the resources are moved from existing provisions into the Children's Hearings System to accommodate the widening of access for all 16 and 17 year olds.

9. The Bill suggests that the law should be changed so that most offences committed by 16 and 17 year olds will be dealt with through the Children's Hearings system in future. What are your views on this?

Raising the age of referral on offence grounds will help children in a welfare-based Children's Hearings System, in keeping with Kilbrandon's founding principle of 'needs not deeds'.

However, we do have concerns about the timescales for supporting 16 and 17 year olds, particularly with joint referrals. Currently it takes about nine months on average from referral to a children's hearing to a substantive decision being taken, due to the time taken for grounds for referral to be established. Discussions around joint referrals can add further time prior to the referral. We would welcome further exploration about how these timescales could be expedited, and/or alternative more timely interventions could be made available for a children's hearing. At present, until grounds for referral are established, interim orders are only possible if they are a matter of urgent necessity. This high threshold, coupled with the length of time it can take to prove offence grounds, means that there may be limited time for the children's hearing to put in place compulsory support before the child turns 18.

10. The Bill makes several changes to Compulsory Supervision Orders. What are your views on these proposed changes?

Panel Members will remain responsible for making legally binding decisions in the form of Compulsory Supervision Orders (CSOs). It is therefore crucial that they understand changes and the impact they will have.

Having reviewed the proposed changes in the Bill, there are some key issues:

-Prohibitions in Section 83: the two new measures of prohibiting a child entering a specified place and being in contact with a specified person or class of person are in effect an articulation of powers that already exist in subsection (h) where a CSO can include “a requirement that the child comply with any other specified condition”. The explanatory note refers to a ‘breach’ of these measures but there seems to be no recourse if a prohibition is not complied with. It would be helpful to further clarify how these new measures will be implemented, monitored and reviewed and how the measures will protect children at risk of offending and/or at risk of harm.

Movement Restriction Conditions (MRCs) in Section 83 – the proposal to decouple MRCs and secure accommodation authorisation, and the revised criteria for MRCs. We welcome the refinement of the new criteria for MRCs to include wider definitions of ‘harm’ and ‘risk’ and the removal of absconding. There seems to be a lowering of the threshold for MRCs which may lead to an increase in their use. Therefore it is important that adequate staffing resources, training and clear guidance are put in place to support more children on MRCs.

The methods for tracking and enforcing MRCs requires further clarification, in particular the use of GPS to track children’s movements. We have concerns about how this will be implemented while ensuring that children’s right to privacy, as enshrined in Article 16 of UNCRC, is fully protected. Furthermore, there is no provision in the Bill for automatic entitlement for legal representation for children on MRCs (as exists for secure care). Further exploration of this is required to ensure the child’s rights are fully protected when they are subject to an MRC.

The explanatory note also makes it clear that the “key to successful use of MRC will remain the intensive support package that is alongside the electronic monitoring devices”. We fully endorse this statement and would like further information on the resourcing of this intensive support package and what it will look like in practice.

11. What impact (if any) do you think the Bill could have on young people who have been harmed by another young person?

It does not seem that the Bill will have a significant impact on young people who have been harmed by another young person. The Reporter will have a duty to inform a victim of the existence or variation of a CSO, but the reporter cannot inform a victim of a measure such as the prohibition of visiting the victim’s address or contacting the victim. The victim will be unaware of the specific measures in the CSO and whether or not the young person who has harmed them has breached the order by making contact with them, for example.

12. The Bill makes changes to the current law around when information should be offered to a person who has been affected by a child’s offence or behaviour. What are your views on what is being suggested?

As per our response to Question 11, it is unclear how the basic information offered will have a significant impact on a person who has been affected by a child's offence or behaviour other than establishing that they are being supported through the formal Children's Hearings System.'

13. Do you wish to say anything else about the proposals to increase the age at which young people can be referred to a Children's Hearing?

An area that would benefit from further consideration is the definition of relevant person in relation to 16 and 17 year olds referred to children's hearings. Section 200 of the Children's Hearings (Scotland) Act 2011 provides automatic relevant person status to a person who holds parental responsibilities or rights under Part 1 of the Children (Scotland) Act 1995. This provides automatic rights for a relevant person to respond to the grounds for referral, participate in a child's hearing, receive copies of the reports and appeal the decision of the hearing. It is important to recognise the developing autonomy of a young person who at 16, for example, has the right to live independently, have children, work and vote. Therefore, there may be situations where the young person would not want a parent to automatically be deemed a relevant person, receive sensitive information and be involved in decisions that affect them. At the very least it would intuitively feel appropriate that, recognising the evolving age and autonomy of the child, due weight should be given to the 'age and maturity' of the child's view in decisions that affect them in line with Article 12 of the UNCRC, including who is deemed a relevant person in their life. This would require amendments to section 200. It may be that the definition of relevant person should relate only to the parental rights afforded under the Children (Scotland) Act 1995, not responsibilities. As these rights extinguish when a child turns 16, it would allow for parental rights in children's hearings to mirror the changes to children's rights at 16 and 17.

Further consideration should also be given to the grounds for referral for a 16 and 17 year old. Section 67 (2)(a) of the Children's Hearings (Scotland) Act 2011 outlines the grounds for referral where a child is "likely to suffer unnecessarily ... due to lack of parental care". Similarly, and related to our comments on relevant persons above, section 67 (2)(n) allows a child to be referred to the Children's Hearings System when they are "beyond the control of a relevant person". Where a young person is living independently and their parent has limited involvement in their life this may not be appropriate, and other grounds relating to criminal exploitation, or sexual exploitation, for example, may be more helpful in providing access to the Children's Hearings System for children who require support and supervision.

Criminal Justice and Procedure

14. The Bill makes several changes to existing Criminal Justice and Procedure. These are related to raising the age at which young people can be referred to the Children's Hearings System. Do you have any comments on these proposals?

We welcome the raising of the age of new referrals to the Children's Hearings System for 16 and 17 year olds that come into conflict with the law. For children's hearings it will be important that prior to the hearing the panel members are provided

with adequate background information from the local authority to make an informed decision about the young person's needs, as well as their deeds. This will be equally important for providing advice to a court and will require intensive support and assessment from the implementation authority in a timely fashion.

It is important to note that we anticipate the majority of new referrals for 16 and 17 year olds will be on non-offence grounds. These young people will likely be experiencing a range of complex vulnerabilities such as poor mental health, persistent poverty, criminal and sexual exploitation, addiction issues and will require early and intensive support. Therefore, while the focus of the Bill seems to be on those children that come into conflict with the law, further clarification is needed about the resourcing of intensive support packages for those children who have not come into conflict with the law but still require additional care and protection.

15. The Bill changes the law so that young people aged 16 and 17 who are accused of or found guilty of an offence can no longer be sent to a Young Offenders' Institution or a prison. What are your views on these proposals?

We welcome the fact that children will no longer be sent to a Young Offenders Institution (YOI) or adult prison as these settings are incompatible with children's rights. The use of prison for children on remand is particularly unacceptable and fails to recognise the inherent vulnerabilities of children, regardless of their own actions. There is a significant body of evidence that placing children in custody deprives children of their rights, is traumatising and does not lead to positive outcomes.

It is important to recognise that the number of children in YOIs in Scotland is at an all-time low, fewer than 10 at time of writing. The secure care alternatives for children deprived of their liberty must be better than the current provision in YOIs for this to represent an improvement – see response to question 16 below.

Residential and Secure Care

16. The Bill changes the way in which secure accommodation is regulated. It would also introduce regulation for cross-border placements (for example, a child placed in Scotland as a result of an order made in England). What are your views on the proposed changes?

There should be improvements in the quality of the care offered by secure accommodation. Secure care providers and the regulatory body responsible for enforcement must ensure that the rights of the child are maintained, for example to a family life, therapeutic support, and access to education. The proposal in the Bill that all children who are deprived of their liberty in secure care will be considered looked after, and can therefore access aftercare support when they move on, is welcomed, as it will likely improve outcomes for these children, who will have particular vulnerabilities. The needs and rights of the child in secure care must be the primary consideration and there is scope for more robust inspection and regulation to ensure that the human rights of children in secure care are fully realised. There needs to be better regulation and inspection of cross-border placements as a matter of urgency.

In some cases, placing a child in a secure setting with other children may be to the detriment of the rights of other children living there. In such cases, risk assessments should be undertaken and alternative therapeutic settings made available. The modernisation of the secure estate so that it can consistently provide high quality, safe, therapeutic and child-centred support will require significant investment.

Social Work Scotland

Social Work Scotland is the professional body for social work leaders, working closely with our partners to shape policy and practice, and improve the quality and experience of social services. We welcome the proposal contained in the Care and Justice Bill and this opportunity to respond to the Call for Views by Education, Children and Young Peoples' Committee. We will also be responding to the Finance and Public Administration Committee Call for Views on the Financial Memorandum.

The reflections within this response are drawn from consultation with our membership which covers senior leaders, including Chief Social Work Officers, service and team manager from across the country in both local authorities and third sector involved in delivery of services to children and adults

Social Work Scotland as an organisation is supportive and appreciative of the bill's move to a more children's rights and trauma informed approach to the care of 16 and 17 year olds. With a workforce whose professional code adheres to the principles of human rights at the core of the Promise, social work can offer a particular perspective and context on the proposals in the bill, and one which is critical to the delivery of quality services

Earlier responses about care and justice and related matters such as deprivation of liberty orders outline the views of Social Work Scotland members, and these are reflected in many aspects of the bill. As a social work organisation the principles of child centred and trauma informed approaches to the care of children, and the move to extend the definition of a child to the age of 18, with all the related aspects which come with this, is welcomed and in keeping with both our organisational principles and approach and our support of UNCRC.

Our response reflects this support but underlines the equal importance of ensuring that attention is paid to the timing and sequencing of implementation. This is critical to ensure that the policy intent of the bill is able to be realised, as is alignment with the many other policy and legislative initiatives impacting on the children's social work sector. Some of the changes within the bill are dependent on or linked to other improvement programmes and particularly the work of the Children's Hearing Working Group to redesign the Children's Hearing System and Reimagining Secure Care work which has a similar remit in relation to secure care. Both of these pieces of work are also linked to the Promise, and the development of a more trauma informed approach to children's care.

This comes in a context where social work services are facing challenges not seen since the establishment of our current framework of local area based social work provision in the 1970's. Recent years have also seen a steadily growing gap between ambition, investment and ability to deliver, resulting in cumulative pressures on staff and our child care and wider system. The expression of this context includes staffing shortages, issues with recruitment of core care givers such as foster carers, increased demand as a result of both greater levels of need following the covid 19 pandemic and as a result of new initiatives and improvements, and a context of

financial pressures, change and uncertainty which is causing anxiety and uncertainty for the workforce. The current national focus on adult social care, and additional funding being directed to adult services is welcomed by SWS, but the lack of similar funding for children, and the children's social work and social care workforce is adding to these pressures and lack of parity in services. An additional aspect of this wider context is the unanticipated requirements over the past year around support to Ukrainian families and unaccompanied asylum seeking children. The profession, and organisations employing and supporting our profession, have reached out and responded willingly, but the extent of this additional demand cannot be underestimated – a third of children in care in some areas are now unaccompanied asylum seeking children

Social Work Scotland therefore, while fully supportive of the proposals in the Care and Justice Bill, would emphasise the importance of these changes being fully funded, with equal consideration given to the wider staffing needs and capacity of the sector to manage further change, including, as already highlighted, the sequencing of any changes resulting from the bill. Without those aspects being considered as part of decisions about implementation timescales, the bill will not achieve its purpose and risks placing further pressure and stress on an already stretched workforce, impacting further on recruitment and retention and capacity to meet the goals of Promise to which we adhere

Children's Hearings System

8. The Bill widens access to the Children's Hearings system to all 16 and 17 year olds. What are your views on this?

Social Work Scotland are supportive of the principle to widen access to the Children's Hearing system to all 16 and 17 year olds.

Taking in to account the views of children and young people, the extension of remit to all those under the age of 18 may indicate that consideration should be given to how the title of the Children's Hearing system might better reflect a remit which covers children, adolescents and young people.

9. The Bill suggests that the law should be changed so that most offences committed by 16 and 17 year olds will be dealt with through the Children's Hearings system in future. What are your views on this?

As the leadership organisation for social work in Scotland, SWS members have been aware for many years, that the adult justice system is not able to respond flexibly to the needs of children. Nor does managing children within an adult focused system facilitate management of risk in a child centred way. Therefore, we should maximise opportunities for children who commit offences to be responded to and managed within a child care system, where possible and safe to do so.

A small number of children will pose a significant risk of harm. This should be factored in to the changes, with a presumption in favour of most cases being dealt

with by the Reporter, but also with a view to public interest and best interest of the child. Attention to this group should not skew the overall system.

10. The Bill makes several changes to Compulsory Supervision Orders. What are your views on these proposed changes?

Social Work Scotland is positive about the recognition in the bill about the need and importance to healthy adult development of support beyond the age of 18. This is in line with knowledge and research around brain development and other policy drivers such as Promise.

While appreciative of the thinking behind the proposal to extend duties on local authorities to support a child up to the age of 19, SWS would note the importance of considering the means by which this occurs. Maturity and capacity rather than age or legal context should be the deciding factor for young people, and the opportunity to access that support is an approach SWS supports as appropriate. How the impact of support beyond the age of 18 years is evaluated and considered as part of other post 18 provision by local areas may be worthy of further consideration.

Some Social Work Scotland members have expressed concern at applying children's provision – the children's supervision concept - to adults, albeit young adults, and the potential impact of blurring that boundary, noting that there will always be a need for a point at which a child becomes an adult. We are however fully supportive of the principle of providing ongoing voluntary support, and would note that this principle already exists in the Children and Young People (Scotland) Act 2014

Transitions in to adulthood are important, and we know from the work around Principles of Good Transitions and the research underpinning the 2014 Act that it is the attitudes and relationships over any transition period which make the difference rather than the legal structures. A child cannot be a child after the age of 18, but may benefit from ongoing support as they learn to navigate the adult world question. The issue for consideration is therefore not about a duty to support a child up to the age of 19 – they are no longer a child - but the opportunity for that young adult to benefit from transition support which suits their needs.

This must go alongside consideration of development and availability of that support, which will be wide and varied and often beyond the remit or control of a local authority or children's service e.g. mental health provision, and aspects of financial or employability provision. To achieve the aims of the bill we would therefore suggest consideration is given to the how the responsibilities of other corporate parents not part of the local authority might be built in to the bill.

For young people subject to a supervision order for care and protection reasons this is of particular importance. We would note that the provision in the bill to enable referral to the Reporter of young people aged 16 and 17 is likely to result in an increase in referrals of young people of this age who are experiencing mental health difficulties, with resultant concerns about their welfare. Enabling support to be provided beyond the age of 18 in such situations is positive and welcomed, but the services needed will often sit within related agencies and professions such as health.

Mental Health provision for those over the age of 18 is within scope for all Health and Social Care Partnerships, and linkage between children's and adult mental health provision could usefully be made, particularly where children's' mental health is part of HSCP.

Central and critical to all of the above is the importance of young people having choice about whether they receive ongoing support beyond the expiry of a supervision order. Such support must be of a voluntary nature, and we are aligned with the approach of the bill in this area.

Concern was expressed by our members that the 'system' is not ready for a blurring of the boundary between adult and children's care. To ensure that this aspect of support, to both those who found themselves subject to a supervision order due to offence ground and those whose route was one of care and protection, is available and the right support is large change. There are staff skill implications, as well as resource and service implications. Social Work Scotland therefore suggest that consideration is given to this direction of travel being progressed in an incremental manner focusing initially on the resource and skill base required. This will be reflected in our response to the Finance and Public Administration Call for Evidence on the financial memorandum.

We would also note that learning from the implementation of continuing care would assist this development. Again this was, from a development and trauma perspective the right approach to take, but insufficient time and resource was given to the requirements needed for implementation. This has influenced ongoing issues and costs in this area, and importantly, the consequential impact on consistency of provision to young people.

Linked to the legal point above, we would note the need to include in this aspect of the bill the interface between other critical and related legislation in the adult and justice field. Adult Support and Protection legislation sets out specific skills and criteria for use of legislation with a vulnerable adult from the age of 16 onwards, including whether a child or adult protection approach is most appropriate. Will the proposals in the bill remove this flexibility and is it proposed that there will be resource transfer from adult services and that children's services pick up this work for young people who were subject to a supervision requirement? If so will this simply lead to a delay in the transfer to adult services where this is appropriate? We note that any proposed resource transfer from justice to children services is likely to be difficult given the ring fenced nature of funding for justice services.

Similarly for 16/17 year olds currently in the Justice system, as soon as an order ends, there is no aftercare. While we acknowledge the rightness of the change, this will no longer be the case under the bill's provisions. And provisions elsewhere in the bill, providing children in secure accommodation with aftercare rights has longer term resource implications.

Social Work Scotland along with many others are acutely aware of the number of vulnerable 16/17 year olds, not least as a result of the high number of unaccompanied asylum seeking children now resident in Scotland. We emphasise

again that ongoing support is the right direction of travel, building a system which has the infrastructure and skill base to support often struggling young people regardless of context. Such a system however, requires investment and ongoing attention to funding, staffing and knowledge/skills, and is linked and likely to compound existing factors around availability of supports including health and care, accommodation, capacity to sustain accommodation, after care provisions and continuing care.

This underlines the earlier point about the importance of attention to implementation processes and timescales not least to ensure that decision makers receive the right training on the use of the new powers, and that the measures open to Children's Hearings around Compulsory Supervisions Orders are able to appropriately meet the needs of those whose safety is at risk or who are a risk to others.

Such provision has resource implications particularly for social work services e.g. where a child's movement is to be restricted how this is monitored? Such situations should be the exception, and must be part of a wider package of care and support, and any restrictions to freedom must align with UNCRC.

11. What impact (if any) do you think the Bill could have on young people who have been harmed by another young person?

Taking a rights based approach to young people who have been harmed by another young person aligns to the move to UNCRC incorporation. It is however, important that this is teased out, as balancing the rights of the child harmed and the child who has inflicted that harm – and defining what 'harm' looks like - is not necessarily easy. We would also note that current child protection decision making processes will remain and there are specific complexities where sibling abuse has taken place

SWS members noted that both children in this situation have the same rights to privacy, and underlined the importance of respecting the privacy of the child who caused the harm, while balancing the needs and rights of the victim. We consider that the bill provides an opportunity to explore utilisation of more restorative approaches to practice in this area.

12. The Bill makes changes to the current law around when information should be offered to a person who has been affected by a child's offence or behaviour. What are your views on what is being suggested?

As noted in or response to question 4 above, this is a complex question and any action must be respectful of and uphold the rights of all children. It would in our view be dangerous to move in to a space where one child's right to privacy is superseded by another individual's rights i.e. where the confidentiality and right to privacy of the child who caused the harm is breached in the interests of the child or adult who has been harmed. Whilst appreciative of the importance for victims of knowledge about what has happened to a child who caused them harm we would query if this would be in accordance with UNCRC principles.

As such we suggest that the person harmed is provided with minimal details, but enough for them to know that something is happening. Some members considered

that going as far as the harmed person being told that the person who caused that harm has been referred to the Reporter, would be in order, but there was a general reluctance to provide any specific information.

In support of this approach, and beyond the rights issue already noted, we refer to the Kilbrandon principles on which the Children's Hearing system is built, which viewed children as in need of care and protection regardless of the reason for referral. This approach has been underlined by more recent research around trauma which underpins the Scottish Government trauma framework . Given the prison population has a high number of individuals with care backgrounds or mental health issues, it is considered risky to contemplate sharing information on children who may later be part of that population. It is also challenging to reconcile the concept of protecting children by extending childhood support, as in question 3, with sharing information about what has been 'done to' children who have been caused harm.

It is however of critical importance that victims are aware of their rights, and the duty on the Principle Reporter should ensure that this occurs unless this would be detrimental to the best interest of any child - not only the child harmed. Children referred and dealt with via the Children's Hearing system, people who have been harmed can be supported to access support organisations, and in this situation a single point of contact similar to that proposed in the victim consultation around the justice system, would be helpful.

In summary, we would suggest learning from the justice system and disclosure, and caution that care is taken in this area to avoid systems risks

13. Do you wish to say anything else about the proposals to increase the age at which young people can be referred to a Children's Hearing?

Social Work Scotland appreciates and supports the move to increase the age at which young people can be referred to the Children's Hearing. As with many proposals however, there is a need for attention to the details and specifically issues related to grounds for referral.

Referral on offence grounds is relatively simple with the caveat of referral not being made beyond the age of 17.5 years. Lack of parental care or care and protection grounds is more complex, given parental rights beyond the age of 16 years relate to advice and guidance. The bill does not explore or take in to account how this interface will be managed, or whether referral grounds should exclude those related to parental care. A child of 16 is also able to determine many aspects of their lives, and is considered able to consent to matters previously the preserve of their parent.

A further possibility is that separate grounds may be considered to take in to account the different rights of a 16 year old not already in the system. In this area, there is a question to be addressed around the overlap between the child and adult systems particularly where Adult Support and Protection and Child Protection systems may be in play. For a small number of young people e.g. those with significant mental health issues, the adult system may be more appropriate, carry more 'clout' and result in better support than a system focused on children's security and safety.

Social Work Scotland acknowledge that the proposed change in relation to age of referral seems, and is, sensible where offence grounds are involved. Where there are care and protection concerns however more consideration and attention to detail is required. These cases are likely to be primarily related to mental health, exploitation and vulnerability situations which can often be complex, concerning, difficult to manage and complicated by the parental rights position. The interface with wider legislation such as guardianship, and adult support and protection is therefore critical, and the bill as it stands does not address this.

Criminal Justice and Procedure

14. The Bill makes several changes to existing Criminal Justice and Procedure. These are related to raising the age at which young people can be referred to the Children's Hearings System. Do you have any comments on these proposals?

Social Work Scotland support these changes.

It is critical, and in line with UNCRC incorporation, that all children in police custody are granted the same protection as under 16 year olds, and 16/17 year olds already on a supervision order. The provision that allows for the local authority to be notified as well as a parents is welcomed. We take the opportunity to further highlight existing discussions around children in custody, and the importance of attention to and resourcing of alternative approaches.

We would note that the bill could usefully extend restrictions in reporting, an issue which has arisen in the course of implementation of the age of criminal responsibility legislation. In particular provision should cover restrictions in reporting where the Children's Hearing or court are not involved but where there is a police investigation involving a child. This would minimise the risk of children being identified on social media platforms.

15. The Bill changes the law so that young people aged 16 and 17 who are accused of or found guilty of an offence can no longer be sent to a Young Offenders' Institution or a prison. What are your views on these proposals?

This is a change which is supported by Social Work Scotland members, underpinned as it is by sound developmental knowledge, and understanding of trauma. It is also aligns with the commitments of the Promise, and is a welcome opportunity to significantly influence for the better the lives of young people

The challenge resulting from this change, is what alternatives to custody for 16 and 17 year olds need to look like, and how that capacity can be developed - capacity in secure care, in the community, and in the staff group who would provide and support that care. Associated with this are the costs of that care, and what secure care and the secure care system, needs to look like to accommodate a wider range of needs than it does currently, and to be able to meet and manage all the needs of the small but complex group of young people whose liberty requires to be restricted in this way

The Scottish Government has commence a redesign of secure care in Scotland, Reimagining Secure Care. Children and Young People's Centre for Justice (CYCJ)

has been tasked with and has commenced this wide ranging work, and are due to report in spring 2024.

We note the reduction in numbers of young people aged 16 and 17 years of age placed in Young Offenders Institutions over recent times but also that secure care, which is often the only alternative for young people accused of high risk crimes, is already acknowledged as not fit for purpose. This is reflected in the Promise, and underpins the CYCJ work. We work currently with a model which remains as it was several decades ago and which it is accepted needs updated and reimagined. Secure units operate within that model and despite improvement in staffing skills and knowledge, the current system restricts scope for improvement, and is maintained by providing almost half the available placements to children from south of the border.

There is a real danger in ceasing availability of YOI places to 16 and 17 year olds before new provision is in place. We would argue that this move should be undertaken incrementally, allowing the secure care redesign to complete and provision to be developed and updated to meet current need change secure before the YOI route is fully closed to 16 and 17 year olds. Acknowledging the damage incarceration can do to young people, and the critical importance of a more trauma informed and child centred approach to care for those young people Social Work Scotland would offer to work with others to consider how the existing system could be adapted as an interim measure to provide more child centred care e.g. exploration of what systems could be developed around Electronic Monitoring for young people, or how care within the current YOI structure could be adapted.

There is therefore a timing and sequencing issue which should be given attention to enable the intent of this change to be effective, and meet the often complex needs of this small but significant group of young people. This covers not only the secure care redesign but also the children's hearing redesign work which is due to report in end April 2023.

Residential and Secure Care

16. The Bill changes the way in which secure accommodation is regulated. It would also introduce regulation for cross-border placements (for example, a child placed in Scotland as a result of an order made in England). What are your views on the proposed changes?

We agree with moves to bring in greater regulation around cross border placements and have been supportive of this in earlier consultations and discussions with Scottish Government and Competition and Marketing Authority . Understanding of the importance of local care, and how distance can affect critical relationships for children underpins this (reference Promise and the voice of children and young people on this matter) and means it is hard to see many situations where a young person should be placed in a cross border placement.

We would also note that there is no imperative to develop the appropriate and much needed resources in England while we facilitate easy access to placements in Scotland.

Anti-social Behaviour Order, Named Person and Child's Plan

17. What are your views on the proposals set out in Part 4 of the Bill?

Social Work Scotland is in agreement with the proposals to amend the age of a child for antisocial behaviour orders to align this with changes made elsewhere in the Bill and to repeal the named person and child's plan provisions the Children and Young People (Scotland) Act 2014.

Impact Assessments

18. Do you have any comments on the impact assessments accompanying this Bill?

We were unable to source the impact assessments but would note that they are critical to enable properly inform decisions about the practicalities and potential consequences of the bill, particularly in relation to rural and island authorities.