

# Education, Children and Young People Committee

**13<sup>th</sup> Meeting, 2023 (Session 6), Wednesday 3 May 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—

- Natalie Don, Minister for Children, Young People and Keeping the Promise,
- Brendan Rooney, Bill Manager,
- Deborah Nolan, Bill Team Professional Adviser,
- Hazel Crawford, Head of Children's Residential Care Unit and
- Barry McCaffrey, Solicitor, Legal Directorate, Scottish Government.

### Supporting information

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

Children's Hearings Scotland, COSLA and Social Work Scotland have all submitted supplementary evidence, following their participation in the meeting on [26 April](#). COSLA and Social Work Scotland have also included their responses to the Finance and Public Administration Committee's call for views on the Financial Memorandum for this Bill. These are included at [Annexe B](#).

Rossie Young People's Trust has also provided additional information. This is included at [Annexe C](#).

### 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 18<sup>th</sup> birthday.

**Education, Children and Young People Committee Clerking Team**  
**28 April 2023**

## Annexe A

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

**The Information Centre**  
An t-Ionad Fiosrachaidh

# Education, Children and Young People Committee

**Wednesday 3 May 2023 (Session 6)**

## **Children (Care and Justice) (Scotland) Bill- Stage 1 Scrutiny: Minister for Children, Young People and Keeping the Promise**

### **Introduction**

This briefing has been prepared to support the Committee in its Stage 1 scrutiny of the Scottish Government's Children (Care and Justice) (Scotland) Bill. At this week's meeting members will take evidence from the Minister for Children, Young People and Keeping the Promise, Natalie Don.

This briefing sets out information about the provisions of the Bill and the changes it will bring about if implemented. It also highlights key points from responses to the Committee consultation on the Bill at Stage 1 and evidence heard by the Committee as part of its scrutiny so far.

### **Overview of the Bill**

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.

## Part 1: Children’s Hearing System

The children's hearings system was introduced by the [Social Work \(Scotland\) Act 1968](#) and recently updated by the [Children's Hearings \(Scotland\) Act 2011 \(the 2011 Act\)](#). Hearings are organised and administrated by [Children's Hearings Scotland](#) and children are referred to the hearings via the [Scottish Children's Reporters Administration \(SCRA\)](#).

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.”

Further information about the Children’s Hearings system is set out in the [SPICe briefing for the Committee’s 26 April meeting](#).

The Promise Scotland is currently facilitating a project to develop proposals around the redesign of the Children’s Hearings System. This work is being led by Sheriff David Mackie and will be published in early May and shared with the Scottish Government. In evidence to the Committee on 22 March, Sheriff Mackie said the work will look at strengthening the children’s hearings system to: avoid young people having to repeatedly tell their story; bring continuity to who chairs hearings; recognise the expertise that has already been involved in working with a family and making the Child’s Plan central to the hearing; and bring greater oversight of the implementation and conduct of orders.

### **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.

### **Age of referral**

Currently, in the context of the children’s hearings system, while all under 16s will be children for the purposes of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”), some 16- and 17-year-olds will also be children if they are already involved with the children’s hearings system. The Bill will amend the definition of “child” in the 1995 Act meaning that “child” will now mean the same in both the children’s hearings system and the criminal justice system, namely a person under 18.

Part 1 of the Bill increases the age at which a child can be referred to the SCRA Principal Reporter from 16 to 18, removing restrictions on eligibility for 16- and 17-year-olds. The Scottish Government Policy Memorandum states this will:

“...enable more children to benefit from the protection, guidance, treatment or control that can be afforded via Scotland’s unique age-appropriate, welfare-based children’s hearings system.”

This proposed change will apply to those referred on both welfare and offence grounds. The Lord Advocate and Procurators Fiscal will continue to have the discretion to prosecute children in court in relation to offending behaviour.

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 has 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.

## **Views on change to the age of referral**

This move has been broadly welcomed by stakeholders and the Committee has heard that Bill will remove some of the current inconsistencies which can see two young people accused of the same crime being treated differently. The Committee has heard one such example in which one young person was eligible for the children’s hearing system while another’s case went through the courts.

The Committee has also heard the proposed increase in age of referral will bring Scotland into line with the United Nations Convention on the Rights of the Child (UNCRC) and the European Convention on Human Rights (ECHR).

A number of stakeholders have stated that the increase in referral age does not go far enough, due to increased knowledge around brain development up to age 25.

A number of witnesses have questioned whether the age of a young offender should be raised beyond 21, given sentencing guidelines go up to age 25 and the Bill proposes to remove 16- and 17-year-olds from young offenders institutions.

The impact of children being kept in secure care on welfare grounds alongside those who have committed serious offences has also been highlighted as a concern by some stakeholders.

The need to ensure there are resources in place to support the likely increase in referrals on offence grounds resulting from raising the age of referral was highlighted in consultation responses and in evidence to the Committee by a number of organisations including Together Scotland and Social Work Scotland.

In evidence to the Committee on 26 April, Ben Farrugia of Social Work Scotland said while the Bill had the “right aspirations and goals” there is “a lack of confidence about our ability to deliver” due to resource issues impacting social work. He added:

“There is also the knowledge, from experience, that the reality is that, ultimately, what happens is a criticism of the professions, workforces and systems that are required to deliver the bill. It looks like failure rather than a healthy appreciation at this stage of the system’s ability to deliver what it is being asked to do.”

Concerns around the impact of the Bill on the children's hearings system were highlighted by a number of stakeholders. In evidence to the Committee on 22 March, Sheriff Mackie said 16- and 17-year-olds coming into the system would challenge capacity. He noted that the length of time taken to process a referral is currently about eight and a half months, stating:

“...far too many children are lingering in the children's hearings system for longer than necessary, and sometimes for years.”

Sheriff Mackie called for greater capacity and early support for the hearings system and for social work.

In their response to the committees call for views Children's Hearings Scotland also expressed 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.

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.

In evidence to the Committee, Stephen Bermingham of Children's Hearings Scotland said his organisation believed panel members could be recruited in order to cope with increased demand, however he also said that volunteer numbers had fallen in recent years. He estimated around 270 additional panel members would need to be recruited, with support teams around them.

## **Compulsory Supervision Orders**

Children's hearings can decide whether or not to make a [Compulsory Supervision Order \(CSO\)](#). Introduced by the Children's Hearings (Scotland) Act 2011, CSOs can contain conditions of residence stating where the child must live, in addition to other conditions such as contact with family members. A CSO is a legal order that means the local authority is responsible for implementing the child's care plan and promoting their welfare. Becoming subject to a CSO is one of the ways in which child can become 'looked after'.

CSOs can have conditions attached, 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.

Section 2, 3, 4 and 5 of the Bill proposes changes to CSOs:

- Sections 2 and 5 amend section 83 of the 2011 Act to make clear that an authorisation to the person in charge of a place in which a child is required to reside does not include an authorisation to deprive the child of their liberty.
- Section 3 extends the list of measures that can be included in a CSO, adding measures to prohibit a child from entering a specified place or type of place.
- Section 4 amends section 83 of the 2011 Act to apply a new set of conditions for the including a movement restriction condition (MRC) in a CSO.
- Section 5 amends the secure accommodation authorisation criteria.

## Prohibitions

Section 3 extends the list of measures that can be included in a CSO, adding measures to prohibit a child from entering a specified place, type of place or area. This is intended to give children's hearings a greater choice when deciding on which measure or combination of measures to include in a CSO.

The Bill's Explanatory Notes state these measures could be used:

...to protect someone who is considered to be at risk of harm or harassment from the child by, say, prohibiting the child from entering the person's home or place of work. Alternatively, it may be used to prohibit the child from entering an area or premises where the child is at risk of being exploited – p4

While these changes would not be subject to monitoring arrangements in the same way as MRCs, any breach of prohibitions would lead to a review of the CSO.

## Movement restriction conditions (MRCs)

Movement Restriction Conditions (MRCs) are measures which can be included in CSOs in order to restrict a child's movement, monitoring the child by use of an electronic monitoring device (commonly known as an 'electronic tag'). MRCs also involve giving a child intensive support.

Currently, an MRC can only be included in a CSO when 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 changes proposed in Section 4 of the Bill would amend section 83 of the 2011 Act to:

- Remove the prerequisite of absconding;
- Move to a consideration of ‘harm’ rather than ‘injury’; this can be applied where it is necessary to help the child avoid causing physical or physiological harm to others;
- Enable an MRC to be included in a CSO where a child’s physical, mental or moral welfare is at risk.

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).

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.

The criteria for including an MRC is currently the same as the criteria for including a secure accommodation authorisation in a CSO. The changes to MRCs proposed by Section 4 of the Bill would decouple the MRC criteria from that of secure accommodation.

The Committee has heard evidence that MRCs are currently not widely used. Most recent Scottish Government figures show that for all children up to the age of 18, an average of 26 MRCs per year – 2 per month – over the past 4 financial years have been in place.

Costs in relation to the electronic monitoring are currently met by the Scottish Government. Internal Scottish Government figures show average annual costs of £13,719 for electronic monitoring. However, the costs associated with MRCs are likely to rise if their use increases as a consequence of this Bill. The requirement to provide 24-hour support as part of an MRC is also likely to have cost implications for local authority social work.

The Financial Memorandum accompanying the Bill does not estimate costs associated with changes to MRC criteria and states the intention is “not to promote wide-scale use”.

## **Secure accommodation authorisations**

Section 5 of the Bill amends the secure accommodation authorisation criteria.

The 2011 Act sets out the conditions and requirements that must be met when including a secure accommodation authorisation in a CSO. These include a requirement for the children's hearing or sheriff to be satisfied that a secure accommodation authorisation is necessary, having considered all the other options available.

The changes proposed in Section 5 of the Bill would adjust these conditions in order to take into account the likelihood of a child causing physical or physiological harm to another person. Psychological harm is defined in the Bill as including "fear, alarm and distress".

## **Views on proposed changes to CSOs**

Social Work Scotland's consultation submission underlined the importance of attention to the implementation process of MRCs, along with the need to ensure decision makers receive the right training on the use of the new powers.

The Commissioner for Children and Young People's view is that the Bill proposals around MRCs are not compatible with children's human rights, stating:

"...electronic monitoring should only be used where absolutely necessary and only as an alternative to secure care. We are therefore concerned that in fact the proposals contained within this Bill considerably broadens the criteria for imposing MRCs, allowing them to be imposed in situations where there is a risk (as opposed to a substantial or serious risk) to the child's "physical, mental or moral welfare" or a risk of harm, including psychological harm (defined as causing fear, alarm or distress) to another person. We would be extremely concerned if this resulted in an increase in the number of children subject to MRCs unless there is an equivalent reduction in children placed in secure care."

The Commissioner goes on to note that when MRCs were first introduced, they came with a package of intensive support but that this was no longer the case:

"Our understanding is that this intensive support has fallen away in many cases. Any proposal to extend the use of MRCs should also take this into account."

The need to ensure MRCs are accompanied by intensive support was raised by a number of witnesses including Includem, Who Cares? Scotland and The Promise.

In evidence to the Committee on 22 March, Laura Pasternak of Who Cares? Scotland expressed concern about MRCs:

"How do we know that a tag will not just cause further harm? How do we know that the places where a child can go with that tag on are safe for that child? For example, they might not feel safe if they have been told to stay at home."

She later added:

“We do not want an order that has only monitoring and does not have support, so that people end up going into secure care because of a lack of an alternative measure. There should be mention of the care and support plan either in the bill or in the statutory guidance, in order to address the root of the problem, which goes back to the contextual safeguarding approach that I mentioned earlier.”

At the same session, Meg Thomas of Includem said there needed to be recognition that MRCs restrict children’s liberty and can breach their privacy. She noted that the Bill does not currently provide for children going to a children’s hearing in relation to an offence or MRC to have legal support.

Meg Thomas also stated that the Bill did not adequately define the criteria for ‘psychological harm’ in relation to MRCs being applied:

“There needs to be a real strengthening of the criteria for what that looks like, because there is a danger that, without good legal representation, that fear and alarm will be applied in a way that will have the unintended consequence of far more young people being subject to a movement restriction condition or secure care, because of the way in which that very subjective analysis has been applied and interpreted.”

Together Scotland’s submission to the Committee calls for the Scottish Government to provide reassurances that the changes proposed by Section 3 of the Bill on prohibitions will not create a restriction that is like an MRC but without support and safeguards. Scottish Women’s Aid and Children 1<sup>st</sup> have also called for clarity around monitoring and non-compliance.

In its consultation response, the Commissioner for Children and Young People expressed concerns that Bill would result in conditions for a secure care authorisation being too broad. The submission states:

“We are concerned that the conditions for a secure care authorisation, particularly when amended by section 5, are too broad, and risk non-compliance with Article 5 ECHR, particularly with regard to moral welfare or causing psychological harm (defined as causing “fear, alarm and distress”). This threshold is too low. As with the criteria for MRCs we feel that a qualification such as “significant risk” or “severe harm” would better protect against disproportionate interference in children’s right to liberty.”

The submission from Together Scotland raises similar concerns.

## **Information sharing**

Under the 2011 Act, victims can request information from the Children’s Reporter. Information can be provided if it is appropriate to do so and where it would not be detrimental to the best interests of the referred child or any other child. The victim of an offence (or person harmed by a child’s behaviour) can make a request for information. If the victim is under 16, a relevant person can make a request.

The Children's Reporter can provide information about a final decision on whether to arrange a children's hearing and the final outcome of an arranged children's hearing.

Section 6 of the Bill proposes that, where practicable, the Children's Reporter will be required to inform a victim/person harmed by a child's behaviour or their relevant persons of their right to receive information. The age at which a victim is considered to be a child will also rise from 16 to 18 as a result of the Bill. In cases involving under 18s, the Children's Reporter will write to a relevant person for the child.

This change will not mean a person entitled to receive information will automatically do so; they will simply be advised of their right to the information. In addition, where a victim has expressed they do not wish to be contacted, the Policy Memorandum states that this should be respected.

During the evidence session on 22 March 2023, the Scottish Children's Reporter Administration (SCRA) told the Committee that under current practice the Children's Reporter already writes to victims to advise them of their right to information. The proposed legislation would put this practice into statute.

## **Views on information sharing proposals**

In her evidence on 22 March, Kate Wallace of Victim Support Scotland said there was currently 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 evidence to the Criminal Justice Committee, Kate Wallace commented on concerns which had been raised by 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 Scheme<sup>1</sup> where a child or young person is the offender.

"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."

In evidence to the Committee on 22 March, Sheriff David Mackie of The Promise Scotland stated:

"What will not happen so clearly through the children's hearing system is any form of outright retribution. However, a restorative justice process offers the opportunity to the victims of offending behaviour—those who have been harmed by the behaviour—to engage in the process and, in many cases, to gain some satisfaction from it."

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<sup>1</sup> 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.

In evidence to the Committee on 26 April, Jenny Brotchie of the Information Commissioner's Office said that the Bill would not change the information victims can receive and stressed the need to balance "the rights of the child who has caused harm with the rights of the victim, who might well be a child, too."

## **Supervision or guidance**

Section 7 will raise the age at which a child can be provided with supervision and guidance once a CSO comes to an end from 18 to 19.

Section 138 of the 2011 Act requires a children's hearing to consider whether the child needs continued supervision or guidance and make a statement about these considerations. The local authority has a duty to provide such supervision and guidance if the child accepts it. The Policy Memorandum states the Bill will help to ensure a young person does not 'fall through the cracks' on turning 18.

## **Views on supervision or guidance provisions**

COSLA's submission to the Committee stated that supporting some children up to the age of 19 will add further strain onto children and families social work teams.

Social Work Scotland's submission expressed concerns about applying children's provision to adults and noted there "will always be a need for a point at which a child becomes an adult".

In evidence to the Committee on 26 April, Jackie Irvine of the Care Inspectorate said that in relation to secure care, raising the age to 19 would mean children would not be moved into YOI unnecessarily on reaching the age of 18.

The idea of an age limit being a "cliff edge" of support came up during multiple evidence sessions. At the 22 March meeting, Sheriff Mackie of The Promise Scotland highlighted the challenges of this, stating:

"It is all very well having 16 and 17-year-olds coming into the children's hearings system, but we do not want there to be a cliff edge for people at the age of 18, with services being withdrawn or unavailable. It is difficult to find a legal way for that gap to be bridged."

At the Committee's 26 April meeting, Ben Farrugia of Social Work Scotland said person centred planning was the only way to avoid an abrupt end to support.

## **Part 2: Criminal justice and criminal procedure**

Part 2 of the Bill relates to children in the criminal justice system, provisions have been introduced to reflect the updated definition of a child (ie under 18) in criminal proceedings.

With regard to the prosecution of children, in Scotland, the age of criminal responsibility is currently 12.

Section 42 of the Criminal Procedure (Scotland) Act 1995 currently provides that children aged 12 to 15 who commit an offence may only be prosecuted if the Lord Advocate authorises the prosecution. Children aged 16 or over can be prosecuted without this authorisation, although a child of this age who offends while already subject to a Compulsory Supervision Order imposed by a children's hearing may be remitted back to a children's hearing.

Section 10 of the Bill will amend section 42 of the 1995 Act so that all children over the age of criminal responsibility (all those aged over 12 and under 18) may be prosecuted only if the Lord Advocate authorises it.

## **Safeguards for children involved in criminal proceedings**

### **Children 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, should parental access (or that of another adult) 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.

## **Restrictions on reporting**

The Bill includes provisions which deal with restrictions on the reporting of (a) suspected offences involving children, and (b) proceedings involving children.

With regard to the restriction on reporting of suspected offences involving children, the Bill makes it an offence to publish information that is likely to lead to the identification of a person suspected of committing an offence at a time when they were under 18. The same offence applies with regard to the likely identification of a person under 18 who is a victim or witness to such an offence. The restrictions imposed will only apply if there are no proceedings in a court in respect of a suspected offence. If proceedings are raised at court, the restrictions in the Bill cease to apply and the restrictions contained in the Criminal Procedure (Scotland) Act 1995, as amended by the provisions in the Bill, become relevant.

The Bill also includes provisions which deal with applications to dispense with the restrictions imposed by the Bill. Applications to have the restrictions dispensed with can be made to a sheriff by the police, a prosecutor, the person whose information is the subject of the restrictions, or by a media representative. A sheriff may dispense with the restrictions if they are satisfied that it would be in the interests of justice to

do so. Before dispensing with restrictions, the sheriff must have regard to the wellbeing of the person whose information is restricted and also whether any persons should, as detailed in the Bill, be given the opportunity to make representations.

It is currently an offence under the 1995 Act to include information in a newspaper report, or in a sound or television programme that would be likely to lead to the identification of a child involved in criminal proceedings. The Bill adds other forms of speech, writing or communication which are addressed to a section of the public to this.

The Bill also provides that identifying information about an accused person must not be published if the person was under 18 at the alleged date of the commission of the offence. The restrictions apply until the date on which the person whose information is protected reaches the age of 18 or the proceedings are concluded, whichever is the later, unless the person was the accused, and the proceedings end with an acquittal or are otherwise discontinued. In that case, the reporting restrictions apply for the lifetime of the person.

The Bill also makes provision, with regard to an accused person, that the court must not dispense with restrictions unless it has taken into account a report from a relevant local authority regarding the person's circumstances and only at the conclusion of proceedings. The Bill also provides for appeals against decisions to dispense with restrictions.

## **Remit to children's hearing from criminal courts**

The Bill makes a number of changes to the Criminal Procedure (Scotland) Act 1995, with the main one being that no distinction is made between a child subject to a CSO/ICSO and a child who is not. In this regard, under 18s will now be treated in the same way whether they are subject to a CSO/ICSO or not. Summary cases and solemn cases continue to be treated differently, and solemn cases in the sheriff court are treated differently from High Court cases.

In sheriff court solemn cases, the Bill provides that the sheriff has a choice: to request advice for a children's hearing, to remit the case to a hearing for disposal, or to dispose of the case without remitting it. However, before disposing a case without remitting it, the sheriff must request advice from a children's hearing. The sheriff can move to dispose of the case without requesting advice in two circumstances: (a) either where the sheriff determines that it would not be in the interests of justice to do so, or (b) where the child is within six months of turning 18 and the sheriff considers that it would not be practicable to request advice before disposing of the case.

Due to the Bill provisions outlined above, the Financial Memorandum accompanying the Bill assumes that the majority of summary court cases involving those aged between 16-17.5 could be referred to the hearings system, rather than cases for those between 16-18.

## **Remand, committal and detention of children**

The Bill makes a number of amendments to the 1995 Act in these areas.

Sections 16 and 17 of the Bill make two main changes.

The first, which is consequential to the change made by Sections 8 and 9 to the meaning of 'child' for the purposes of the 1995 Act, is to ensure that the provisions that apply to children apply to all persons under 18, regardless of whether they are subject to a Compulsory Supervision Order or not.

The other main change in the Bill is to provide that a child cannot be held on remand or sentenced to detention in a young offenders' institution. Generally, as a result of these amendments, children will be held in secure accommodation.

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 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 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.
- 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 institutions<sup>2</sup>. 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 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.

## **Scottish Sentencing Council guidelines**

The Scottish Sentencing Council’s guidelines (“the guidelines”) on [Sentencing Young People](#) were approved by the High Court of Justiciary in November 2021. These have been brought up in discussions around the Bill due to their relevance to under 18s.

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<sup>2</sup> [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.](#)

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.

## **Local authority duties in relation to detained children**

Currently, most children in secure accommodation are looked after children and, on leaving secure accommodation, could be care leavers. However, if they are not regarded as care leavers, they would not benefit from such entitlements.

In enabling any child to be detained in secure accommodation, whether on remand or following sentence, it is likely that more children will be placed in secure accommodation who are not regarded as looked after children and therefore would not have corporate parenting or aftercare entitlements. Many of these children will be vulnerable and will, more often than not, have been subject to trauma and adverse childhood experiences. It follows that they will require support at all points in their journey through the criminal justice system whether at the point of remand, sentence and on their return to their families and communities.

To that end, the Bill is seeking to provide parity by enabling any child who is sentenced or remanded to secure accommodation to be treated as if they were a looked after child for the duration of their placement. It also provides that children who are detained will be afforded the same aftercare and support as these apply to former looked after children.

## **Views on changes to criminal justice and procedure**

The Criminal Justice Committee 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.

The Criminal Justice Committee also heard from Linda Allan. Linda's daughter Katie took her own life after being convicted of driving offences and placed in YOI Polmont. 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.”

Sue Brookes from the SPS and a former governor of YOI Polmont, told the Criminal Justice Committee 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, Gerald 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.

Jim Shields from St Mary’s Kenmure 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 the Scottish Association of Social Workers (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.

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

Kate Wallace of Victim Support Scotland stated that while there is “merit” in not having under 18s placed in young offenders institutions, care would need to be taken to ensure the “problems in young offenders’ institutions are not replicated in a different institution.”

In evidence to the Committee on 22 March, Laura Pasternak of Who Cares? Scotland said that while 17.5 years of age is stated in the Bill’s Financial Memorandum as the cut off point for referral to the children’s hearing system, UNCRC comment 24 on child friendly justice states that the relevant date is the date when the harmful behaviour happened:

“Therefore, if the processes are not in place in time for the person to go through the children’s hearings system before they pass 18, they should still be dealt with through the children’s hearings system.”

The Crown Office and Procurator Fiscal’s submission to the Committee also highlighted the limitations of the cut-off of 17.5 years:

“...a child aged 17 years, who may otherwise have been suitable for referral to the Reporter, may require to be jointly reported, and the case retained by the Procurator Fiscal, where there is insufficient time for the Children’s Hearing system to adjudicate on, and respond to, the offending behaviour.”

On the provisions around changes to reporting restrictions, the submission from Dr Andrew Tickell and Seonaid Stevenson-McCabe from Glasgow Caledonian University made a range of recommendations, including a call for greater legal certainty about when reporting restrictions begin to apply to child suspects, witnesses and suspected victims. The submission also stated courts should be able to extend reporting restrictions for child complainers and witnesses – as well as children convicted of crime.

The Commissioner for Children and Young People’s submission to the Committee welcomed the inclusion at Section 12 of the Bill of restrictions on reporting suspected criminal offences involving children, stating: “This addresses the current gap in the law whereby child accused and victims can legally be identified prior to the commencement of formal criminal proceedings.”

The Commissioner’s submission called for clarity on when anonymity protections are triggered before the formal commencement of criminal proceedings, stating:

“Currently, it is not clear when suspicion is crystallised. One approach would be to activate the right when a report is made to a police officer that an offence has been committed.”

Together Scotland’s submission to the Committee expresses concern that the proposals around reporting do not provide lifelong anonymity for people under 18 at the time of their alleged offence, and this should change:

“Our clear view is that those who commit offences aged under 18 should have lifelong anonymity.”

## **Part 3: Residential and secure care**

Children and young people who, for a variety of reasons reflecting the childhood adversity they have faced, pose a risk to themselves or others in the community may be placed in secure care. This is a locked environment where children’s freedom is restricted while they are provided with intensive support. Placing a child in secure care is one of the most serious restrictions the state can impose on them.

Children in secure accommodation are often very vulnerable and have had traumatic experiences in their lives. The care provided is intended to address the child’s

specific needs and behaviours and includes mental health and wellbeing, education, physical health and life skills.

[Social work statistics for 2021-22](#) show there were 149 admissions to secure accommodation, and on average there were 74 residents at any one time. The number of admissions has fallen each year since 2019.

There are currently five secure care centres in Scotland, offering normally 84 but currently 78 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.

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 (although usually 24 places, one 6-bed house is due to be refurbished so temporarily 18 places)
- Edinburgh Secure Service (6 places, primarily for Edinburgh children and young people through the CHS)

Scotland Excel manages the national contract framework for secure care on behalf of local authorities and the Scottish Government. Edinburgh Secure Service is not part of the national contract framework.

As the Scottish Government consultation paper on the proposed Bill explains, secure care operates on a cost recovery basis for the independent centres and this 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.

Local authorities and the Scottish Government currently approach individual centres in order to arrange secure care placements. Often, placements are decided based on where there are vacancies, rather than by the needs of the child. In recent years there has been a rise in cross-border placement of children from outwith Scotland as Scottish usage of secure care has fallen. There are concerns changes proposed by the Bill therefore may lead to demand outstripping supply.

The [Scottish Government stated in the Bill consultation](#) 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.

The Care Inspectorate carries out unannounced statutory inspections of secure accommodation services every 12 months.

In addition, 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. This follows the Children's Commissioner's report "[Statutory Duties in Secure Accommodation: Unlocking Children's Rights](#)" published last June which found some children in secure accommodation may have due process of law. 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.

### **Costs associated with secure accommodation**

The Financial Memorandum states secure accommodation costs vary depending on the provider, with the fees set annually for the coming year in the Scottish Excel contract. It estimates a placement costs an average of around £6,500 per week – or £338,000 per year. It states:

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. – p15, Financial Memorandum

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.

### **Transport to secure accommodation**

The issue of transport to secure accommodation has been of interest to the Committee during scrutiny of the Bill. Standard 14 of the [Secure care: Pathway and standards](#) introduced in 2020 states children and young people should:

'...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.'

However, the Committee has heard experiences of transport to secure care do not always meet this standard. Who Cares? Scotland and Kibble Education and Care recently worked with young people to understand their arrival to secure care. The

young people's experiences included not knowing where they were being taken, being handcuffed during the journey and issues such as being uncomfortable, hungry and not being given toilet breaks were highlighted. The [SPICe paper for the Committee's 26 April meeting](#) covers the findings of this work in more depth.

The Welsh Government's [Reducing Restrictive Practices Framework \(RRPF\)](#) includes specific guidance on secure transportation. [Local authorities in Wales are encouraged to pay due diligence to restraint practices of secure transportation providers when commissioning their services.](#)

### **Duties relating to secure transport**

Duties relating to secure transport lie principally with the local authority responsible for the child's placement. Transport is purchased by individual authorities on a spot purchase basis. Local authorities have long-standing issues associated with secure transport, including the limited availability of Scottish based providers; the combination of planned and unplanned journeys; limited regulation; and the lack of standards and expectations for services.

In correspondence with SPICe, the Scottish Government stated that a sub-group of the National Secure Care Group is exploring how this situation can be improved. This work to develop a service specification that can be used by local authorities has been led by COSLA and sets out the principles and standards wherever secure transport requires to be commissioned. It covers areas such as data gathering and staff training.

A monitoring exercise is underway to gather data on transport demand between 1 March and 31 May. COSLA and CYCJ have been discussing possible routes to use the specification with Chief Social Work Officers, Scotland Excel and the secure centres.

The Scottish Government has a contract with GEOAmeY to provide secure transport for children convicted on indictment and given a custodial sentence. This is an extension of the contract SPS has with them to transport prisoners. Because of the low number of children being sentenced, the number of children being escorted in this way are low:

	2019-20	2020-21	2021-22	2022-23
Total Number of journeys	29	26	14	14
Source: Scottish Government correspondence with SPICe				

The Scottish Government pays an annual fixed price, paid monthly, for up to 80 journeys per year. The cost for 2023-24 is £129,393.

## Meaning of “secure accommodation” and secure accommodation services and regulation of services

The Policy Memorandum explains the Bill amends the existing definition of secure accommodation. Where previously described in the 2011 Act as being for the purpose of *restricting* a child’s liberty, Section 22 of the Bill will make clear that the overarching purpose of secure care is to *deprive* a child of their liberty in a locked setting. Children cannot leave freely and are subject to supervision and monitoring.

Section 22 also clarifies that ‘secure accommodation’ is accommodation provided in a residential establishment by a secure accommodation service. Such accommodation must be approved by Scottish Ministers.

Section 23 replaces the definition of a “secure accommodation service” as set out in the Public Services Reform (Scotland) Act 2010 to give a more detailed description of what the service is. Section 23(4) proposes a new definition which includes the provision of “appropriate care, education and support for the purposes of safeguarding and promoting the children who are accommodated there”.

## Views on residential and secure care

In evidence to the Criminal Justice Committee Linda Allan stated that no child or young person should be sent to prison or YOIs.

“They should be sent to a therapeutic environment that reduces reoffending and keeps them alive. The facts, on reoffending rates and on the number of deaths in custody of young people, speak for themselves. All that we are doing is retraumatising young people. What we are doing just now does not work. We need a model that works.”

Kate Wallace stated that in determining where children and young people should be held, that robust risk assessment would be a key factor and also, a real understanding of the particular set-up in the different institutions. She also stated having adequate resources in place would also be a factor.

Sue Brookes from the SPS pointed out that, by their very nature, prisons are custodial environments and are not purpose-built for young people, and they can also be very busy places. She also stated that the staff to young people ration in secure accommodation is much higher than in prisons and there is a greater depth of skills around child development and attachment. In that regard, she felt that secure accommodation was a more appropriate setting for young people.

Gerald Michie of the SPS talked about the physical environment of prisons which are large, busy, and noisy establishments. He pointed out that YOI Polmont has a design capacity of 800 places which are housed within cellular halls. On the day he was giving evidence, there were seven young people, five males and two females, being detained there. While every effort is made to “soften” the environment for the young people in their care, the physical nature of the establishment makes it incredibly difficult.

Professor Johnstone from St Mary's Kenmure stated that secure care has the potential to do something transformational for children, but it will require the right physical and relational environment, along with procedures that are trauma-informed, child-informed, and family-informed. Professor Johnstone also highlighted the critically important issue of staffing within secure care establishments and stated that the skills and knowledge which staff have with regard to children in their care are essential.

Professor Johnstone also commented on Wendy Sinclair-Gieben's view on individual assessments for children and young people who offend and stated that individualised care planning with a bespoke suite of resources for each child who enters secure accommodation would be the ideal scenario.

Wendy Sinclair-Gieben also 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.”

In their 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.

While COSLA supports the ambition to prohibit in statute the placing of any child in a YOI in any circumstances, their submission said certainty around whether secure care can safely support a child whose behaviour may pose the risk of serious harm to others was needed before they could support an immediate statutory prohibition on placing a child in a YOI. COSLA suggested the move away from placing under 18s in YOIs “should be incremental and sequenced appropriately to meet the needs of all young people”.

In response to concerns raised about capacity, Cabinet Secretary for Justice and Home Affairs, Angela Constance, told the [Criminal Justice Committee on 19 April](#) that she believed the Scottish Government is “starting from a good baseline position” in understanding of secure care demand.

A number of stakeholders and witnesses highlighted the need to balance considerations around safety of young people in secure care on welfare grounds with

the needs of those there for serious offences. When asked how these needs would be balanced, Cabinet Secretary for Justice and Home Affairs Angela Constance [told the Criminal Justice Committee on 19 April](#) that staff in the secure estate were used to dealing with children from a range of age groups, a high proportion of which with the history of assault or brandishing weapons. She added there would be a need to have “contingencies and flexibilities in place”:

“That includes the work in and around secure care plus, which enables us to make arrangements, if necessary, by which we can quickly support and facilitate additional staff or provide other additional intensive measures in a secure environment, or make adaptations to a property. We need to be able to do that.

“Where secure care has an advantage over prison care is in its flexibility and the ability to respond to not only individual needs but individual risks that children present. Staff who work in secure accommodation are well acquainted with addressing the needs of an individual child while considering the context of the other children for whom they also have responsibility.”

On transport, Laura Pasternak of Who Cares? Scotland said her organisation would support mandatory reporting of journeys and highlighted recent examples where young peoples’ experiences had fallen short of expected secure care standards.

Laura Pasternak also said the opportunity had been missed with the Bill to look at ending restraint of children in secure accommodation. Meg Thomas of Includem said a legislative approach must be taken to the issue of restraint in order to protect children’s rights, and Sheriff Mackie also agreed with this.

A number of witnesses highlighted the need to ensure access children in secure care had good access to healthcare provision. In evidence on 26 April, Ben Farrugia of Social Work Scotland described the role of the NHS as a “source of real grievance and challenge” among his organisation’s membership. He added:

“We would love to see this as an opportunity to look fundamentally at the role that the NHS plays in the secure estate and in provision of secure-type options for children and young people who have complex behaviours. We would absolutely welcome the committee’s focus on that and the bill’s attending to what are some real challenges in the current system.”

In [evidence to the Criminal Justice Committee on 19 April](#), the Cabinet Secretary for Justice and Home Affairs Angela Constance said that the Scottish Government want to make sure children can access the right treatment at the right time, and gave a commitment to look closely at the evidence presented to the Committee and the recommendations in the Committee’s report.

The Committee has heard evidence of the need for transition support following a child’s time in secure care. In evidence to the Criminal Justice Committee on 19 April, Cabinet Secretary for Justice and Home Affairs Angela Constance said that proper aftercare arrangements needed to be in place, and planning for their return to the community should begin on their admission in many cases.

## Cross-border placements

As Scottish usage of secure care has fallen, the placement of children from out with Scotland has increased in significance in recent years. These are known as 'cross-border placements' and currently these placements help to sustain Scottish secure care centres.

[Social work statistics for 2021-22 show](#) that there were 74 residents on average in secure care. Of these, 41 were from within Scotland and 33 were from outwith Scotland; the number of residents from outwith Scotland has been rising in recent years.

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.

The Policy Memorandum states various provisions in the Bill aim to ensure greater accountability for authorities outwith Scotland placing children in Scottish residential care and the service providers that seek to accommodate these children.

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.

Section 24 makes further changes to the 2010 Act, adding to the general duty requiring Scottish Ministers to prepare and publish standards and outcomes for care services providing residential accommodation for children subject to a cross-border placement.

Section 25 gives Ministers greater flexibility around the kinds of non-Scottish orders that have effect in Scotland and how they have effect. As a result, Scottish Ministers will be able to impose certain requirements in relation to non-Scottish orders, relating to the provision of information, information sharing, provision of services needed to support a child subject to a non-Scottish order and payment of costs incurred.

## Views on proposals around cross-border placements

In [evidence to the Committee on 29 March](#), Claire Lunday of St Mary's Kenmure Secure Care Centre explained the necessity of cross-border placements:

“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.”

In evidence to the Committee on 22 March, Meg Thomas of Includem acknowledged the complexity of cross-border placements:

“It is hard to support or to see a circumstance in which removing a child from their community, connections and family relationships supports their right to a family life and their other rights. However, it is a really complex landscape. The findings of the care review in England will need time to take effect. In Scotland, the reality is that we do not have a say in the legislative decisions that are made in other home nations in relation to children.

“At Includem, we have first-hand experience of supporting young people from Scotland who have needed a secure bed but have been unable to access one because such beds have been full with cross-border placements. Those young people end up in Polmont instead, in really inappropriate—and, in some cases, tragic—circumstances. As with everything, the problems are about implementation and resourcing.”

Laura Pasternak of Who Cares? Scotland said that if Scotland is serious about keeping the Promise, the Bill must acknowledge that cross-border placements must end. She stated that if the Bill in its current form is passed:

“We will almost be legalising a process that will put us in contravention of the UNCRC. A lot more thought needs to be given to cross-border placements in the bill.”

## Costs associated with the Bill

The [Financial Memorandum forecasts](#) overall costs of the Bill as follows:

- Cost of between £5.31m - £5.38m per annum to the Scottish Government;
- Costs of between £5.36m - £6.56m per annum to local government.
- Total costs of between £10.6m - £11.94m per annum.

A further breakdown of these estimates is given below.

## Parts 1 and 2

For implementation of Parts 1 and 2 of the Bill the [Financial Memorandum](#) forecasts a cost of between £3.96m and £4.03m per annum to national public bodies and between £1.3m and £2.5m per annum for local authorities.

The estimated cost associated with changes to the age of referral is around £2.4m per year for SCRA. CHS estimates they will require an additional £0.45m per year if the existing children's panel model is used. Additional panel members, staff, training and IT will be required.

The Scottish Legal Aid Board and the Scottish Government estimate that around £1.03m will be required for increases in legal aid costs resulting from the proposed legislation.

An increased cost of between £32,850 and £60,750 per year is assumed for independent advocacy, while an increase of £45,000-90,000 in safeguarder fees is estimated.

The Financial Memorandum 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. Savings of £0.52m are expected as a result of reductions to social work support in the criminal justice system. Therefore, the net cost to local authorities for social work services around Parts 1 and 2 of the Bill is estimated to be between £1.3m and £2.5m per annum. This estimate does not consider the cost associated with supporting an increased number of MCRs, or the costs associated with providing supervision and guidance for a young person up to age 19.

## Parts 2 and 3

The Financial Memorandum estimates additional annual recurring costs to Scottish Ministers of £1.35m per year for secure care. This estimate is based on an average of four additional under 18s being placed in secure accommodation, who would otherwise have been in young offenders' institutions.

Local government currently fund remand places for secure accommodation. The Financial Memorandum states there is a daily average of 12 children on remand. Using this figure, a cost of £4.06m per annum is predicted for local authorities to fund the increase of children in secure care on remand.

The costs of affording looked after children status to all children sentenced or remanded in secure accommodation are not estimated as the memorandum states "numbers not previously entitled are forecast to be low".

In evidence to the [Criminal Justice Committee on 19 April](#), the Minister for Children, Young People and Keeping the Promise, Natalie Don acknowledged that stakeholders had raised concerns about resourcing of the Bill. She stated that the Scottish Government was investing in capacity of secure care and a national resourcing and implementation group is due to start work in June this year.

**Lynne Currie, Nicole Beattie and Graham Ross, SPICe Research**

**27 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](http://www.parliament.scot)

## **Annexe B**

### **Education, Children and Young People**

### **Committee**

### **Supplementary evidence from Children's Hearings Scotland**

**28 April 2023**

Children's Hearings Scotland (CHS) is a tribunal that recruits, trains and supports Panel Members who make legally binding decisions in the best interest of the child. Panel Members are recruited annually through a high-profile national campaign using a variety of advertising platforms including social media, radio and local networks. At the same time there is a campaign targeted at employers to encourage them to promote the opportunity among their staff. As children's hearings are statutory tribunals, employees have a right to take reasonable time off their work to take part, as set out in the Employment Rights Act 1996.

A robust selection and recruitment process takes place locally and, where possible, people with lived experience of the hearings system are involved in the selection of Panel Members. When recruiting, we look for a diverse range of applicants that are good listeners, empathetic, compassionate, committed and can relate to children and families. Panel Members need to be over 18 and live and/or work in the local authority area in which they wish to volunteer. Panel Members are appointed for a three-year period.

New Panel Members receive high quality pre-service training which normally takes place over a three-month period. Once they are serving as Panel Members their training continues and, over a period of 18 months on average, they complete a Professional Development Award for 'Children's Hearings in Scotland: Panel Members'. This qualifies them to serve as chairs of children's hearings. The qualification is at level 7 of the Scottish Credit and Qualifications Framework that is verified by the Scottish Qualifications Authority. Optional and mandatory training is provided on an ongoing basis by the CHS Learning Academy.

**Children's Hearings Scotland, April 20**

# **COSLA**

## **Supplementary evidence on secure transport, following committee meeting on 26 April 2023**

To support improvements, COSLA and CYCJ lead a Secure Transport Working Group (a sub-group of the Secure Care Group). This group includes secure care providers, local authorities, Scottish Government, the Children's Commissioner's Office, and Scotland Excel, amongst others.

The primary focus of the working group is to:

- Develop solutions to improve the availability of secure transport in Scotland; and
- Improve the experience of secure transport for children and young people.

A draft 'Secure Transport for Children Service Specification' is being developed. A wide range of stakeholders have been involved in the design, including young people with experience of secure care.

The final use of the specification has not been confirmed. It could potentially be used in the following ways:

- Individually by local authorities looking to contract a provider for their secure transport needs; or
- As a national specification to contract a provider(s) for all local authorities.

The preference of the working group is that future secure transport is provided by secure centres as an extension of secure care provision. Further work is required, including the data work outlined below, to understand what the infrastructure and staffing requirements of this proposal would be.

On designing the specification, the gaps in data collection around secure transport became evident. There is currently no reporting, regulation, or scrutiny of secure transport; therefore, there's a lack of centrally available data around transport.

All secure centres have kindly agreed to gather information and data on secure transport between 1<sup>st</sup> March and 31<sup>st</sup> May 2023 to enable the Secure Transport Working Group to complete the gaps in the specification and fully discuss the most appropriate use of the specification and next steps for transport. The following is a copy of the template that secure centres have agreed to complete.

It is anticipated that the Secure Transport Working Group will meet in June (date TBC) to discuss the data and the next areas of actions. There is no date set for the completion of this work as yet.



# COSLA

## **Response to the *Children (Care and Justice) (Scotland) Bill: Financial Memorandum Call for Views***

### **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 welcomes the Committee's 'Call for Views' on the Children's Care and Justice Bill Financial Memorandum and the opportunity to respond at this stage.
3. 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.
4. As also set out in COSLA's response to the Education, Children and Young People Committee's call for views on the Bill (attached as Appendix A), COSLA 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.
5. Whilst COSLA gives 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 work to 'Reimagine Secure Care', and the 'Bairns Hoose' development programme are interlinked with the proposed approaches within the Bill.
6. 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.
7. The impact of the changes on the Local Government workforce will be significant. As set out in this response we do not believe that the

Financial Memorandum adequately reflects the additional resources that will be required by local authorities.

8. 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.

### **Consultation Questions**

Question 1: Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?

9. Yes, COSLA responded to the Children's Care and Justice Bill consultation on policy proposals in June 2022. There was no specific detail in the consultation on any financial assumptions relating to the proposals and no specific financial or resource questions were asked. However, we were clear throughout our response that there would be resource implications for local authorities associated with the proposals, which would need to be fully considered and costed. We were clear that additional cost burdens should not be met by Local Government without additional resource.

Question 2: If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the FM?

10. We were clear in our June 2022 consultation response that local authorities would require adequate additional resource in order for these proposals to be implemented. As set out in our response to Questions 4 and 5 below, we do not believe that the Financial Memorandum (FM) adequately reflects the additional resources that will be required by local authorities.

Question 3: Did you have sufficient time to contribute to the consultation exercise?

11. There was sufficient time to contribute to the June 2022 consultation, however there was limited information provided in the consultation and so it was not possible to provide detailed answers to each question. COSLA requested further engagement with civil servants on these complex issues following the consultation analysis. Although there was some informal discussion on the Bill following the formal consultation period, there was insufficient engagement with COSLA on the costings to inform the FM.

Question 4: If the Bill has any financial implications for you or your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.

12. There are no financial implications for COSLA as an organisation, however, we believe that the FM under-estimates the resource requirement for local authorities.

13. Although we support the Bill's aims and principles, we have concerns about the resource implications and sector capacity for change, and that there are some critical issues to be addressed around sequencing given the links to secure redesign and Children's Hearing reform agendas.
14. The proposed changes must be fully funded by the Scottish Government, with equal consideration given to the wider staffing needs and capacity of the sector to manage further change. 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 the Promise to which Local Government adheres.

15. Social Work Scotland's [Setting the Bar](#) report is clear that social workers in local authorities and health and social care partnerships are struggling under the weight of their caseloads. The picture that emerges from the research is serious, and requires to be taken into account as part of the scrutiny of this Bill. The report describes an ageing workforce – some 19% are reaching retirement age – and a staff group who are struggling with administrative burdens, fearful of making mistakes, and living with the moral distress of having to work in a way which doesn't align with their professional values. One in 4 social workers graduating doesn't make it to 6 years in the job (Setting the Bar survey, SSSC data, 2022). This includes Children's Services.
16. Our response to the Education, Children and Young People Committee call for views (Appendix A) sets out more detail on our response to the Bill provisions. Our comments on the various cost assumptions in the FM are set out below.

### **Raising age of referral to Principle Reporter**

17. We have significant concerns that the figures used in the FM, particularly in sections 46-51, are based on estimates and in some cases are very out of date. The assumptions made could therefore be seriously flawed. We understand that Social Work Scotland had highlighted that the figures provided were based on very rough estimates and that more robust work would need to be undertaken. This further work was not carried out and the FM costs are informed by the estimated figures provided. Associated funding for local authorities must be based on a more robust assessment of cost implications and must be kept under review.
18. The figures used in relation to additional hearings in section 48 of the FM are based on the lower range projections – 730-1,350 additional hearings rather than the 1,305- 2,415 additional hearings referred to in section 15 of the FM based on SCRA and CHS estimates. Using the upper-level projections, and based on the estimated social worker time required as set out in the FM, shows that an additional 42,412.5 – 78,487.5 social work hours would be required for additional hearings (as opposed to the 23,725 – 43,875 social work hours set out in the FM), and therefore between 81,412.5 and 137,487.5 additional hours in total (rather than 62,725 – 102,875). The costs set out in section 49 are therefore under-stated. This is further explained in the table below. The lower range projections are also used in sections 31 and 36 relating to increased costs to Ministers for advocacy and safeguarders. If there is a clear reason for the use of the lower range figures, it would be helpful for this to be fully explained.
19. The calculations for the Social Worker hourly rate presume a permanent social worker is available 35 hours/52 weeks of the year. This does not take into account holidays/public holidays. The calculations in the FM assume a social worker is available 1,820 hours

per year. *For illustrative purposes*, deducting hours for annual leave and public holidays based on an average 38 days would leave 1,554 available hours per year. This is further explained in the table below. The additional cost of social work support set out in Section 49 is therefore under-stated.

20. Factoring in the upper range projections and recalculating for social worker annual leave (using illustrative example above), the total estimated additional cost for social work time required for additional referrals and hearings would be between £2.7m and £4.6m. The FM is therefore under-stated by at least

**£0.9m - £1.7m.** However, as stated above, given all costings are also based on estimates we would request more robust assessment on all figures used.

Further detail behind these calculations is set out on the table below.

Hours per annum (35 x 52)	1,820			
Deduction of hours for AL & PH (7 x 38)	266			
<b>Available hours</b>	<b>1,554</b>			
	Estimated additional hours based on 730-1350 additional hearings (as used in the FM costings)	<i>Estimated additional hours based on upper range projections (1305-2415 additional hearings)</i>		
Hours	62,728	102,875	81,413	137,488
SW FTE - based on 1,820 hours per annum	34.47	56.52	44.73	75.54
<b>Cost based on 1,820 hrs (£52k annual cost)</b>	<b>£1,792,229</b> (as set out in FM)	<b>£2,939,286</b> (as set out in FM)	<b>£2,326,086</b>	<b>£3,928,229</b>
Hours	62,728	102,875	81,413	137,488
SW FTE - based on 1,554 hours per annum	40.37	66.20	52.39	88.47
<b>Cost based on 1,554 hours (£52k annual cost)</b>	<b>£2,099,006</b>	<b>£3,442,407</b>	<b>£2,724,245</b>	<b>£4,600,628</b>
<b>Additional cost (compared to FM)</b>	<b>£306,778</b>	<b>£503,121</b>	<b>£932,016</b>	<b>£1,661,342</b>

21. There is also no allowance in the FM for pay inflation, which will have an impact on overall costs. It is important to ensure the provisions continue to be fully funded each year, which will mean factoring in inflation.

22. The FM states at section 49 that the additional cost of social work support as a result of the Bill's provisions would be between £1.8m and £3m per year. However, the table at section 51, which provides an overview of costs to local authorities of Parts 1 and 2 of the Bill, states that local authorities will face a cost of between £1.3m - £2.5m per year. The estimated additional costs (£1.8m - £3m) have been offset by the estimated savings for criminal justice social work. We believe this needs to be further explained. This assumes a reduction in social work support in the criminal justice system would lead to savings for local authorities. There are a number of issues with this assumption and with this proposed approach.

- a) Firstly, there is no similar reduction referenced for cost savings in the criminal justice (court) system in sections 40/41. Instead, it is noted that any purported savings identified would not represent a net overall saving given the overall scale of the court programme and ongoing and general costs. As set out below, there are also pressures within the Local Government Criminal Justice system; however it is assumed that savings can be easily taken to offset additional costs required. This is not consistent.
- b) It would be helpful for Scottish Government to clarify if the intention would be for Scottish Government to centrally direct funding away from Criminal Justice social work, or if there is an assumption that funding would be transferred internally from Criminal Justice social work to Children's Services within councils. Neither option is reasonable or practical, for the reasons set out below.
- c) The potential proposal to offset costs is not as simple as the FM implies and does not reflect the current funding landscape and pressures in both areas within Local Government. This also assumes that councils are funded for a certain amount of criminal justice social work reports, which they are not. There are different funding arrangements for Children's Services and Criminal Justice social work. Children's Services are funded through councils' core budgets. Councils' core budgets have been under significant pressure for at least the past decade (as detailed in our response to Question 6). Justice Social Work (JSW) funding is made up of a number of ringfenced components. The funding is paid to councils in monthly instalments with an end of year reconciliation. Both areas of funding are under significant pressure. Any increase in JSW funding in recent years has come with additional duties attached. JSW received a flat cash settlement in 2023/24. In a briefing provided to the Criminal Justice Committee as part of

their pre-budget scrutiny in October 2022, SPiCE [stated](#) that a 'flat cash outcome would represent a significant real-terms reduction in spending across the justice sector if the current trend of high inflationary pressure continues into the medium to long term'. As we highlighted in our [submission](#) to the Criminal Justice Committee's pre- budget scrutiny call for views, resources in JSW are already stretched and we are concerned that this year's flat-cash settlement will only worsen the existing "implementation gap" between national policies and legislation and local capacity to deliver. These views were echoed by Social Work Scotland's [submission](#) to the Committee, which also pointed out that councils "appear to spend more than their funding income on justice social work services".

- d) The estimated savings for JSW are based an estimate of £447 per social work report. We would urge caution with using these figures to assess possible cost implications of the Bill, as they are only indicative. Moreover, the Committee needs to be aware that current JSW unit costs are not necessarily up-to-date. Social Work Scotland explained this clearly in their Stage 1 submission on the Bail and Release from Custody Bill, which highlighted that "the true cost of delivering the full suite of justice social work services is essentially unknown. Where unit costs are used as part of the current funding formula, these are predicated on historical calculations dating from 2016/17 and are calculated by dividing total recorded expenditure on, for example, bail supervision across the 8 now defunct Community Justice Authorities by the volume of those disposals".

23. Fundamentally, the impact of the additional number of individuals coming through the Children's Hearing system is not simply a case of providing an increased number of social work reports. Both the child and family will be supported through the Children's Hearing system and therefore more family support services will be required. There will also be a specific skill base required to accommodate older adolescents in the Children's Services system. Adult Support and Protection sets out specific skills set and supports. Services will need to meet the needs of 16/17 year olds, including accessible youth services. To ensure that the appropriate support is provided, there will be staff skill implications as well as resource and service implications. There may also be an increased demand for kinship, foster and residential care. We had highlighted these cost implications in our June 2022 response to the consultation on policy proposals, but these have not been included in the FM and is

therefore another area where the FM has underestimated the cost of implementation of the Bill. We are also concerned that the system is not yet ready for a blurring of the boundary between adult and children's care (as reflected in our response to the Education, Children and Young People Committee's call for views on the Bill in Appendix A).

24. In addition to the costs for additional social work time, we also set out in our response to the consultation the need for additional resource for the local Area Support Teams, who help arrange Children's Hearings. Cost implications for these teams have not been reflected in the FM. There will also be increased costs for business support staff, who manage the receipt of requests for reports and hearings and send out reports and communications, which again are not reflected in the FM. Although potentially minimal, these costs should be considered.

### **Movement Restriction Conditions**

25. The FM notes that there will likely be additional costs for local authorities around Movement Restriction Conditions (MRCs) but given the Bill does not make specific direction regarding their use, specific cost implications are not estimated. Scottish Government must commit to monitoring this and for any cost implications for local authorities to be honoured.

### **Extending Voluntary Measures Post-18**

26. Section 54 of the FM notes that children on compulsory order will already have care leaver status and aftercare entitlements, and that these are existing duties local authorities provide, and so no additional cost is forecast. However, the Bill provisions would potentially bring more young people into the system who are entitled to support up to the age of 26 years. There will be both financial costs and staffing implications for local authority Throughcare and Aftercare teams. There is already pressure on these budgets and so local authorities cannot pick up increased costs.

Scottish Government must commit to monitoring this and for any cost implications for local authorities to be honoured.

### **Children deprived of liberty – ending u-18s in young offenders institutions/ secure accommodation**

27. Placements in secure care through the Children's Hearings System are currently funded by the placing local authority and those sentenced to detention and detained in Young Offenders Institutes (YOI) through the criminal justice system are funded by Scottish Government. Remand placements in secure care are currently funded by local authorities and in YOI by Scottish Government. The Bill provisions will therefore place additional funding responsibilities on local authorities.

28. The only additional costs for local authorities in the FM related to this part of the Bill are costs associated with additional children placed on remand in secure accommodation, at £4.06m per year. This is based on latest data which estimates there are 12 children per year placed in YOI on remand, currently funded by Scottish Ministers, who would, under the Bill provisions, be placed in secure accommodation. Given that numbers will vary from council to council, and that numbers may change, there will need to be careful consideration on how this funding will be distributed. The FM also includes additional cost to Scottish Ministers to place an additional 4 under 18s in secure care following sentence, that would otherwise be in YOI (£1.35m). It would be helpful if there could be further clarity that the intention is that these places would be funded by Ministers directly.

29. There are no other costs in the FM associated with the additional throughput for secure care as a result of the Bill provisions. It is recognised that it is difficult to model or forecast this but there will be a resource implication for Local Government as a result. More people subject to Compulsory Supervision Order could lead to more potential for young people to be placed in secure care. This could lead to an increase in the volume of secure assessments, reviews and processes. Further work must be carried out to assess these cost implications and this must be kept under review.

Fundamentally, further exploration is required into the future funding model of secure care, ensuring that additional financial demands

# Education, Children and Young People Committee

## Supplementary evidence from Social Work Scotland

### Note on treatment of inflation in the Children (Care and Justice) (Scotland) Bill 2022 Financial Memorandum

The price basis for the cost calculations in the FM is not entirely clear, but appears to be 2021-22 from a passing comment in paragraph 70 “...*in keeping with other baselines used in this Financial Memorandum using financial years, the figure for 2021/22 stands at...*”, and a statement in paragraph 72 “*that the annual average cost of a prison place in 2021-22 was £41,858*”. On the other hand, the average cost of court proceedings (paragraph 43, on page 9), is given at 2016-17 prices and updated for inflation to 2022-23 prices. Presumably the GDP deflator is used, but this is lower than the CPI which guides pay bargaining, which may be a more appropriate measure for public service that are labour-intensive. In any event outturn CPI inflation for 2022-23 is estimated by the OBR at 9.9% above 2021-22 prices, probably at least twice the level forecast when the FM was drafted.

In other calculations the price-basis is not stated. In calculating the cost to local government of diversion from the criminal justice system, paragraph 51 uses the unit cost of £52,000 for a full-time social worker, including employer's costs. This is taken from the FM<sup>3</sup> for the Bail and Release from Custody (Scotland) Bill introduced on 8 June 2022, which states that: “*It is estimated the annual cost of a full time justice social worker amount to £52,000. This equates to an estimated hourly cost of £29 (£52,000/(35 hours per week x 52 weeks))*”. A footnote on page 13 of that FM explains:

In the absence of an established evidence base on what justice social workers are paid, this analysis assumes that a typical salary may be £40,000 per annum. It is further assumed that costs to the employer are 130% of that gross salary. The costs are then pro-rated assuming a 35 hour working week over 52 weeks to give a cost of £29 per hour. This methodology was agreed with representatives of justice social work.

The annual salary of £40,000 seems low. If it was taken from online recruitment websites it is likely to be based on starting salary, rather than the average for social workers in post (who will have benefitted from incremental progression). In additional, most estimates in that FM were based on 2020-

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<sup>3</sup> <https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/bail-and-release-from-custody-scotland-bill/introduced/financial-memorandum-accessible.pdf>

21 prices and Social Work Scotland has already commented in September 2022 on the inflation implications.<sup>4</sup> Social Work Scotland's Workforce & Resources Committee discussed average social worker pay costs for another purpose in 2022, when the consensus was £60,000 (including employer's contributions).

Subsequently, the October 2022 Scottish Local Government Pay Settlement increased the relevant pay grades by around 5%, increasing the estimate to £63,000. That would increase the FM paragraph 51 average costs by £0.5 million.

**The price basis for all unit costs in the FM should be reviewed and uprated to 2022-23 prices based on the updated inflation forecast outturns.**

In a period of high inflation, the failure to specify the price basis is a matter for concern. But of greater concern would be a failure to update the estimates for inflation before the additional funding appeared in the relevant Scottish Budget and local government finance settlement. If that is standard practice then the funding has already been cut in real terms before it is provided. For example, the unit costs used in the FM for the Carers (Scotland) Bill 2015 date to 2013-14, and these went in unchanged over the five-year phased implementation period from 2018-19 to 2022- 23, so by this year the final instalment was missing eight years' worth of price inflation!

**A clear commitment is needed from the Scottish Government to appropriately uprate FM unit costs to best estimates of outturn value for the year in which the funding is actually provided in the Scottish Budget.**

[Mike Brown, 29 March 2023]

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<sup>4</sup> "The increase in inflation and energy costs already render the roughly estimated hourly cost of a social worker (£29) in the memorandum as unreliable. There may also be associated costs to be factored in e.g. space in court buildings is often limited and the increase in staffing that will be required may pose related problems", at: <https://socialworkscotland.org/consultations/bail-release-from-custody-bill/>, page 4.

## Social Work Scotland

### **Call For Views on Children (Care and Justice) (Scotland) Bill by Finance and Public Administration Parliamentary Committee**

*2<sup>nd</sup> April 2023*

#### Introduction:

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 proposals contained in the Care and Justice Bill and this opportunity to respond to the Call for Views by Finance and Public Administration Committee. We also responded to the Education Children and Young Persons Committee Call for Views which provides additional context to this response.

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. We have also consulted with partners.

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<sup>5</sup> and related matters such as deprivation of liberty orders<sup>6</sup> 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 to the Education Children and Young People's Committee Call for Views<sup>7</sup> reflects this support but underlines the equal importance of ensuring that

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<sup>5</sup> [Children's Care and Justice Consultation - Social Work Scotland](#)

<sup>6</sup> [Cross-border placements of children and young people into residential care in Scotland - Social Work Scotland](#)

<sup>7</sup> [Call For Views on Children \(Care and Justice\) \(Scotland\) Bill - Social Work Scotland](#)

attention is paid to the timing and sequencing of implementation, and the area specifically covered by this consultation, funding of such significant changes. 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 which also have financial implications and are 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 Reimaging 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, and both have financial and resource implications for those delivering the services.

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. We reiterate here our comments in the Education Children and Young People Committee Call for View<sup>8</sup>, that 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. In addition to the financial aspects, the expression of this context includes staffing shortages, issues with recruitment of core care givers, 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 wider 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. This pressure is increased by the proposals within the bill.

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 on both finance and wider resources cannot be underestimated – a third of children looked after away from home 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, cannot emphasise enough 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.

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<sup>8</sup> [Call For Views on Children \(Care and Justice\) \(Scotland\) Bill - Social Work Scotland](#)

## Consultation Questions:

1. *Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?*

Social Work Scotland responded to the consultation preceding the Bill in June 2022<sup>9</sup>. Within our response, our members, as the leadership in Social Work underlined the significance of the changes, and the resource and funding implications. Our response highlighted the resources and workforce necessary for successful implementation of the proposals and that without this the policy intent was unlikely to be achieved.

Social Work Scotland note the gap between expectation and legislation, and ability to deliver. We strongly note that any improvements and changes in legislation and guidance around care and justice must be fully funded and resourced in order to ensure that implementation is achievable.

2. *If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the FM?*

While there is acknowledgement in the Financial Memorandum that the Bill involves additional duties and demands on local authority children and families social work services, Social Work Scotland does not consider that the Financial Memorandum sufficiently appreciates the scale and financial costs of those changes. The links with the wider policy agenda and changes are appreciated, but the assumption that this means that local areas are already funded to cover aspects of the addition duties, is not considered to be soundly enough explored or represented – though it is noted that this is a complex dynamic.

Social Work Scotland is in agreement with the aim of the bill's proposals to improve care to young people. We note however that section 7 assumes that implementation of these more welfare focused proposals will result in savings to local authorities.

Social Work Scotland would note that the proposals are about improving care to young people who are in need, and providing for them through the children's system rather than the adult system. It would be inaccurate to assume that this means that care is cheaper to deliver – and indeed many forms of care for children is significantly more expensive than that for adults eg residential care.

Our response to the pre-bill consultation<sup>10</sup> outlined the importance of resourcing the necessary supports to make the vision a reality eg support to those subject to harm, additional report requirements and support packages.

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<sup>9</sup> [Children's Care and Justice Consultation - Social Work Scotland](#)

<sup>10</sup> [Children's Care and Justice Consultation - Social Work Scotland](#)

The detail in the Bill provides a more specific framework around the changes which, while very welcome and in line with a UNCRC approach, do have resource implications which must be properly scoped. Aspects of this is challenging to determine as provision of care will often be bespoke. The increase in age of referral to the Reporter and removal of placement of 16 and 17 year olds in Young Offenders Institutions will lead rightly to those individuals being managed within the Children's Hearing System. This means additional demand not only for additional reports, but also provision of support services to meet the needs of this older age group. While attention in the Bill is given to those who have offended, our response to the Call for Views by Education, Children and Young Peoples Committee<sup>11</sup> also noted the additional demand which will arise around those who may be referred on welfare ground, and specifically those who may be a risk of harm to themselves or suffering from mental health issues. This is an area which is already underfunded within health services, resulting in young people. The interface between children and adult services in this area is complex and the needs of those young people often require resources which are unavailable resulting in pressures on social services. This is not reflected in the financial memorandum.

Also of note is that pending the review of secure accommodation, alternatives to Young Offenders Institutions for 16 and 17 year olds who have committed offences which indicate that some level of restriction of liberty is required, are limited.

Provision in a secure unit cannot be guaranteed, and bespoke alternatives are likely to be costly.

We would also note that while there has been a reduction in referrals to the Reporter over recent years, this is alongside greater provision to meet need at an early point, in line with GIRFEC and Promise. The current of cost of living increase and poverty is likely to lead to an increase in need, and this is anecdotally already reflected in our member's feedback.

We acknowledge the many variables and complexity in calculating the costs of implementing the bill's proposals, but would underline that experience of other policy initiatives is that the real costs is usually much greater than that suggested eg continuing care, and suggest that this is taken in to account.

### *3. Did you have sufficient time to contribute to the consultation exercise?*

The Finance and Public Administration Committee Call for Views overlapped with the Call for Views from the Education and Young People's Committee. This came alongside a range of other consultation related to adult and justice services. For a small organisation this is a significant demand which while met, is done at the cost of other pieces of work. Longer periods of consultation would always be welcome.

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<sup>11</sup> [Call For Views on Children \(Care and Justice\) \(Scotland\) Bill - Social Work Scotland](#)

4. *If the Bill has any financial implications for you or your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.*

Social Work Scotland is not an organisation which hold statutory social work duties but rather supports those who do, and particularly the leaders across Scotland. As such there are no direct financial implications for Social Work Scotland, but significant implications for our members.

5. *Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?*

We note the calculations the figures in relation to additional hearings has been taken. We suggest, noting the comment in 4 above, that the higher estimates are utilised, particularly as we are unclear about the assumption that all road traffic offences will be retained by courts. The work around a report to the Children's Hearing and that provided to a court is not equivalent there being a significant number of additional requirements and process – especially if a child is already looked after – required around the Children's Hearing system.

Social Work Scotland provided some rough indicative costing on the likely social worker time required to undertake the estimated additional 4000 reports on offences grounds and 1000 on welfare grounds. These calculations were not based on a robust theoretical approach, but on discussion with those currently undertaking this work, conscious that the time involved varies depending on specific circumstances such as whether the grounds are accepted, an interim order is in place, or the child is looked after away from home. Despite this, our estimation was that this one aspect of the Bill will require an additional 37 social workers, based on a 35 hour week, not including administrative aspects, or the provision of the service to the child and family.

In addition to the above there are requirements around the increase in aftercare and support which require to be costed.

We would also note that the assumption of transfer of funding from Justice and Adult services is at best unlikely. All services are under unprecedented pressures, and unless funding is specifically allocated, it cannot be assumed that it will be provided.

Our members also expressed concern 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 is available and the right support is large change. There are staff skill implications and training costs, 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 provision and funding in relation to the resource and skill base required.

We are primarily restricting our comments to our area of expertness around social work, but would also note that:

- In relation to advocacy, where referrals of 16 and 17 year olds are related to care rather than offending, and particularly mental health issues, then advocacy is a particularly skilled area, and reference to advocacy in this field may be of assistance in determining both what provision is required and the financial implications.
- Safeguarding figures are taken from pre-pandemic periods, and the skill level of safeguarders will require to be increased given the likely complexity of older young people being referred.
- The assumption that young people who would usually be remanded or placed after sentencing in a Young Offenders Institution brings with it significant costs. Secure provision in Scotland is acknowledged as currently not fit for purpose, and is under review. Placement in secure requires availability of spaces, and the agreement for both the CSWO and the secure unit. This means that provision cannot be assumed, and that where not available, will require alternatives which are bespoke and costly, as this cohort of young people are assessed as a danger to themselves or to others. While supportive of alternatives these are not as yet well developed or tested, and where put in place are costly. Sequencing of provision must be considered alongside potential costs of those alternatives, alongside the costs of secure provision. Again inflation and cost of living must be factored in.
- Alongside this, while capacity in secure accommodation currently exceeds Scottish demand, the secure establishments can on average see half the places taken up by English young people. Acknowledging the work going on in this area, we also note that this means it cannot be assumed that there is capacity in terms of availability of beds where this is required for Scottish young people whether those currently accessing this provision or those who may as a result of implementation of the bill, be placed there rather than in a Young Offenders institution. Thus while affecting only a small number of young people and local authorities, the costs related to any alternatives noted above would be significant and may increase.

Finally we note that given the links between poverty and need/demand, the cost of living crisis and increase in inflation must be accurately reflected in the costing and funding provided for the implementation of this Bill. We note that the figures used to estimate costs are in some areas from some time ago eg sections 46 – 51. Thus the cost of living crisis is likely to be of even greater impact and we suggest that this work is undertaken with recent and more accurate data around both provision costs and pay to ensure that the bill is adequately funded, and local authorities and other providers more able to meet the policy intent.

6. *If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?*

As noted Social Work Scotland does not directly provide services but rather supports those who do.

7. *Does the FM accurately reflect the margins of uncertainty associated with the Bill's estimated costs and with the timescales over which they would be expected to arise?*

Social Work Scotland consider that the figures used in the Financial Memorandum require further consideration. As noted, we provided very indicative costing in conjunction with CoSLA, for the additional demand around social work time for reports and the involvement of the social work sector in costings was appreciated. These figures though were very indicative, with a recommendation that a more robust piece of work be carried out to accurately provide a basis for calculation of costs in this area. We note that this has not been undertaken, and that since those figures were provided in autumn 2023, inflation has increased, and there have been pay increases across the sector not reflected in the Financial Memorandum. We would be happy to work further with Scottish Government in this area.

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 note in our response to the Education Children and young People's Committee Call for Views<sup>12</sup>, 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. The Financial Memorandum proposals 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 is not realistic. There is an additional risk of increased delay in transfers to adult services where this is appropriate, with resultant additional costs. We have already noted that any proposed resource transfer from justice to children services is likely to be difficult if possible 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. Recognising the

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<sup>12</sup> [Call For Views on Children \(Care and Justice\) \(Scotland\) Bill - Social Work Scotland](#)

uncertainty of what this would involve, it is acknowledged that it is impossible to gauge what may be involved, but also that the additional demand is noted, but not reflected in the Financial Memorandum.

The Financial Memorandum notes that children who are looked after already have access to aftercare provision and that no additional costs are therefore anticipated. Social Work Scotland would dispute this as the increase in numbers of older young people accessing the Hearing system will also result in additional numbers being eligible for aftercare. While some young people would already be in the system, the estimated additional 5,000 reports will translate in to additional compulsory supervision orders, and therefore more young people eligible for after care. This must be reflected in the Financial Memorandum, as the sector does not have any spare capacity to absorb such costs.

As noted in our response to the Call for Views by the Education Children and Young Peoples Committee<sup>13</sup>, ongoing aftercare 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 requires investment and ongoing attention to funding, staffing and knowledge/skills’, This also cannot sit in isolation, but 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.

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. This underlines the importance of attention to 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.

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.

#### Conclusion:

Social Work Scotland note the complexity of calculating the financial implications of the Children (Care and Justice) (Scotland) Bill. We reiterate that we are supportive of the human rights approach reflected in the bill, and the alignment with the commitment of the Promise. However alongside this we underline the criticality of implementation timescales and resources, taking account of both the

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<sup>13</sup> [Call For Views on Children \(Care and Justice\) \(Scotland\) Bill - Social Work Scotland](#)

costs required to make the bill a reality, the importance of appropriate sequencing of the bill's provisions with other policy initiatives and changes, and of the bill being fully funded with conscience of both the uncertainties of certain area and the cost of living crisis. Social Work Scotland are committee dot improvement and willing to continue to work with Scottish Government this area.

**Annexe C****Rossie Young People's Trust**

**The Scottish Parliament Education, Children and Young People  
Committee Visit to Rossie Young People's Trust- Monday 24th April**

**Items for Discussion****1. Ending the use of Polmont**

We have been working closely with the Scottish Government for several years, through the Secure Care Strategic Board, the Independent Care Review and via contributions to the Secure Care Pathway and Standards. This evidences our long- term and on-going commitment to the current change programme captured in the Child Care and Justice Bill.

We fully support the inclusion of all those under the age of 18 as being defined as children, and that there should be an end to their placement in Polmont VOi. This is not a negative reflection on Polmont in any way\_, as we know staff are committed and dedicated to the welfare / best interests of young people. However, Polmont's design is that of a prison, and not a child care facility and consequently this will impact on the options available to staff to provide trauma informed care.

**The Committee is asked to note our support of this action****Issues**

We have asked repeatedly for data on the profile of young people currently in Polmont, the types of offences for which they are on remand- or sentenced, and this has not been provided to date. We are very keen to be part of a working group on the planning for services for young people who currently are placed in Polmont, and have made this know at Government level. We are seeking this information to enable us plan, develop and design:

- our services to meet the needs/risks / vulnerabilities of this cohort. Research indicates that. there is a high degree of violence amongst young people in a young offender or prison setting
- our education / skills provision for older young people - while there will of course be a focus on numeracy, literacy and health / wellbeing we know there should also be a focus on vocational skills, and getting young people "work- place ready"
- .. the configuration/ reconfiguration of our facilities e.g. we have a 4 t>edded house, which could be reconfigured to accommodate 2 young people safely - particularly those young people who may have committed a serious crime (murder/rape) and where there a particularly keen public profile interest. Last year, we reconfigured one corridor in one of our secure care houses to support a very vulnerable young girl i.e. this meant that only one bedroom was occupied, with the bedrooms on either side vacant and used for education/leisure etc.
- we are delighted with the arrangements the Scottish Government have put in place regarding payment for the "last bed", and excited about the

possible opportunity to have this extended to 4 places to March 2024, as this will build in development capacity and time for our staff to prepare for the implementation of the Child Care & Justice -Sill

- we have visited Polmont YOI and plan further visits - we would welcome the opportunity of having our operational staff spend a period of time with prison officers to understand their approach to working with young people there. We would also be most happy to arrange reverse visits for Polmont staff to spend time in Rossie to share knowledge/skills.

**We ask the Committee to take note of these points and consider appropriate future action.**

## **2. The Promise**

We are fully signed up to *The Promise* and recognise that this is a 10 year programme. We have been actively working on the key elements of:

- (i) Voice/Participation of young people - we have increased the number of hours in our SLA with Who Cares? Scotland
- (ii) Workforce Development - we have invested heavily in developing a trauma informed workforce, and two of our staff have attended/benefitted from the national "training the trainer" programme which can be rolled out across Rossie.

### **Unintended Consequences of *The Promise***

- We think it is essential to highlight to the Committee some unintended consequences which we have witnessed over the past 18 months. These relate to some young people who would previously met the secure care criteria, but are now being referred to our residential care service. We are unable to safely place these young people in our residential service, and consequently they are not benefitting from appropriate and timely care, education, health and specialist interventions. They are often subsequently referred to, and placed in our secure care service a few weeks or months later.

There are other young people who are on the "edges of secure care", and would benefit from the security and containment offered in a secure environment but in line with the policy agenda local authorities are committed to retaining them in the community, without having all of the required community services in place to support these young people. This is understandable, and *The Promise* is a 10-year programme, but some focal authorities are attempting to operate as though at the latter stage of the programme and at its inception.

**Issue:** we have asked repeatedly for a mapping exercise to be carried out by COSLA and Local Authorities regarding the community provision which is in place to support these young people across Scotland. We believe it is essential for this mapping work to take place so that the intention and spirit of *The Promise* can be achieved, safely.

**We ask the Committee to take note of this point and consider / advise on appropriate action**

**Issue:** we recognise and accept the importance of having a key focus on what constitutes "restrictions of liberty" in a care setting, and know this is a priority for the Children's Commissioner, the Care Inspectorate and Education Scotland as regulatory bodies. However, there is no clear legal guidance on what is permitted under restriction of liberty, and as a Charity and care provider we are now being told to get legal advice to ensure we are not breaching children's rights. We believe that this should be done at national Government level to ensure appropriate benchmarking / standards and that what is legally permissible is set by the State and not individual Charities or legal firms.

**We ask the Committee to take note of this point and consider / advise on appropriate action**

### **3. Secure Transport**

Rossie has actively participated in the development of a service specification for secure transport, led by COSLA and CYCJ. This engagement included input from our young people and staff. We are currently contributing to the collection and provision of data regarding the use of secure transport, frequency, distances, purposes etc. to the lead bodies. It is unclear whether the intention for secure transport is for COSLA or the Scottish Government to commission a national service, or providers to bid for this work at national level, or perhaps the setting up of a regional arrangement.

**We ask the Committee to take note of this point and consider / advise on relevant updates.**

### **4. Scotland Excel (SXL)**

Rossie has entered a rigorous tendering/ competitive process to achieve a place on the secure care framework agreement. The most recent tendering process took place in 2019, with the contract awarded from March 2022 for two years, and the option for extension for a further 2 years. We are delighted that the contract was extended up until 30th March 2024. We are advising the Committee that given the programme of change associated with the Care and Justice Bill, and the to date, lack of knowledge re when the Bill will receive Royal Assent given its complexities, we are advising that the secure care contract be further extended until March 2025. SXL has already set a precedent for this in the residential care, education, and short breaks tender in 2022 when an extension of 6 months was given.

**We ask the Committee to take note of this point and consider appropriate action**

### **5. Redress Scotland**

We appreciate that this is not directly related to your visit today, however we want to highlight some information for you, which may impact future signatories, as the Committee will have reviewed the legislation *Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021*.

Rossie is the only secure care provider to have signed up to Redress Scotland and we are proud to be on the list of first contributors. We have agreed a payment schedule over a ten-year period, and have now made 3 payments, submitted our first Annual Report and received our *Contribution and Allocation Statement* highlighting allocation of £14,496.67 (which is a very small sum) during this timeframe. We have asked for anonymised information as set out below:

- The number of former residents who have received an allocation
- The value of the allocation made to each claimant
- If any claimants have been refused an allocation
- The nature of the claims made against Rossie
- . -Gender -of claimants
  
- Age of claimants

We are seeking this information to ensure we can be best prepared when called to give evidence to the Scottish Child Abuse Inquiry in the autumn. Regrettably, we have not been furnished with this information lest claimants can be identified. There is no intent on our part to attempt to identify any claimants and we believe this will be a factor in other care providers determining whether or not to sign up to Redress Scotland.

**We ask the Committee to take note of this point and consider / advise on appropriate action**

**Mary Geaney / CEO**

**Carole Richardson /Chair**