

Education, Children and Young People Committee

11th Meeting, 2023 (Session 6), Wednesday 29 March 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 is available online.

Committee meeting

The Committee will be taking evidence from two panels at its meeting today.

Panel One

The Committee will take evidence from representatives from—

- The Good Shepherd Centre
- Rossie Secure Care
- St Mary's Kenmure
- Polmont YOI

Panel Two

The Committee will then take evidence from representatives from—

- Includem
- Who Cares? Scotland
- The Promise
- Victim Support Scotland

Supporting information

A SPICe briefing covering both panels is included in **Annexe A** of this paper.

The Committee has received submissions from the following Panel 1 witnesses: Good Shepherd Centre and St Mary's Kenmure. These are included at [Annexe B](#).

In relation to Panel 2, the Committee has received submissions from Includem, The Promise and Who Cares? Scotland. These are included in **Annexe C** of this paper.

Further submissions from stakeholders, relevant to these panels, are set out at **Annexe D** of this paper.

Work by other Committees

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

The Finance and Public Administration Committee is currently undertaking a [Call for Views](#) on the Bill's Financial Memorandum. This is due to close on 2 April 2023.

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

Education, Children and Young People Committee Clerking Team
24 March 2023

Annexe A

The logo for SPICe, featuring the letters 'SPICe' in a white, sans-serif font on a dark purple background.The text 'The Information Centre' and 'An t-Ionad Fiosrachaidh' in white, sans-serif font on a dark purple background.

Education, Children and Young People Committee

Wednesday 29th March 2023 (Session 6)

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

Introduction

The [Children \(Care and Justice\) \(Scotland\) Bill](#) was introduced on 13 December 2022. The Education, Children and Young People Committee is the designated lead committee and will be looking at the Bill alongside the Criminal Justice Committee.

This briefing is to support Members' second evidence session considering the Bill by providing a short narrative of what the Bill seeks to do, a brief overview of the children's hearing system and the wider policy context.

The briefing also summarises written evidence which has been received from witnesses at the time of writing.

Definition of a child

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

This would provide the opportunity for children to be referred or remitted to a children's hearing up to 18 and also covers non offence referrals too. The Crown Office and Procurator Fiscal Service will however continue to have discretion to prosecute.

However, the policy memorandum states that 17.5-years-old is likely to be the practical cut-off for offence referrals as this will allow time for grounds to be accepted or established where required, any order to be made and services put in place.

Who Cares Scotland in their evidence asked for clarity around the 17.5-year-old cut off, saying:

“While on the face of the Bill children can be referred up to 18, this last 6 months should not be discarded as lost time, as the child is a child under the UNCRC during this time and the relevant date in human rights standards is the date the alleged offence was committed.”

Young Offenders Institutions

HMP/YOI Polmont is Scotland’s national holding facility for young people aged between 16-21 years of age. According to the Scottish Prison Service, sentences served at Polmont range from 6 months to life with an average sentence length of between 2-4 years.

HMP/YOI Polmont holds a complex mix of cohorts; young men across the full remand and convicted sentence range, young female offenders, and adult female offenders. The design capacity of the establishment is 758 with 607 single room spaces.

A [full inspection of HMP/YOI Polmont](#) was undertaken by Her Majesty’s Inspectorate of Prisons in Scotland in 2018. That inspection found that an impressively wide range of external partners engaged with the establishment in the delivery of services. The inspection report concluded:

“HMP/YOI Polmont is a leading-edge prison, clearly demonstrating the Scottish Prison Service investment in attempting to break the cycle of offending at an early stage, through evidence-based practice”.

The inspection also found that over recent years, efforts had been made to ensure that both the activity and living environments for young people were less institutional and more welcoming. However, a review on deaths in custody carried out in 2015¹ recognised that:

“Prisoners experience a worsening of health problems, anger, frustration and anxiety sleep disturbance fatigue, and depression as situational factors. The nature of imprisonment itself does real harm to people”.

The Scottish Prison Service (SPS) are committed to ‘unlocking potential and transforming lives’ and specifically in HMP YOI Polmont to working with the youngest in their population.

¹ [The Harris Review: Changing Prisons, Saving Lives 2015](#).

Since 2012, HMP YOI Polmont has been working with strategic partners such as Education Scotland to create a 'Learning Environment' for young people, based around the underpinning principles of GIRFEC and the key capacities identified in Curriculum for Excellence, (Successful Learners, Confident Individuals, Responsible Citizens and Effective Contributors).

The SPS Vision for Young People in Custody, December 2014) has as a key aim: 'Using the time a young person spends in custody to enable them to prepare for a positive future'.

HMP/YOI Polmont recognised, early in its developmental journey the need to support learning by developing a broad underpinning range of health and wellbeing supports, in recognition of the levels of childhood trauma experienced by the young people being admitted².

The SPS has previously commissioned research³ to better understand the vulnerabilities of young people accommodated within HMP/YOI Polmont. That research highlighted the comparatively high levels of Adverse Childhood Experiences (ACEs) amongst young offenders in the establishment:

- 33% were looked after and accommodated as a child;
- There was significantly higher experience of traumatic bereavement (murder, suicide, or drug overdose) in their family or close friends;
- There was also significant exposure to multiple types of trauma;
- Over a third of the population had experienced at least one head injury;
- Half displayed learning difficulties; and
- There was a high number of school exclusions.
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In a [report on the provision of mental health services](#) at HMP/YOI Polmont, it was found that the provision of mental health had many examples of good local practice and inspectors particularly welcomed the approach to substance misuse, the screening assessment by trained mental health staff and the rapid referral to psychiatry if required.

There were however a number of areas identified for improvement. Concerns included:

- Staff shortages leading to inadequate support and supervision compounded by senior staff shortages;
- non-standardised assessments which reflects the national picture, in mental health and reception screening; and
- lack of a multi-disciplinary approach to mental health.

² [HMIPS Report on An Expert Review of the Provision of Mental Health Services, for Young People Entering and in Custody at HMP/YOI Polmont](#). 2019

³ Cesaroni C, and Kaitlan F (March 2019) A Comparative Study of Incarcerated Young Adults in Scotland and Canada Part 1: Scotland, University of Ontario Institute of Technology.

Many of the challenges, in particular staff recruitment and retention experienced by NHS Forth Valley in HMP YOI Polmont, were a reflection of national themes experienced in many prisons across Scotland.

With regard to young people being held on remand, there was a cultural acceptance that remand prisoners need not be proactively encouraged to attend purposeful activities and wellbeing opportunities available. This meant that opportunities were being lost to address social, criminogenic, and community barriers to living a crime free life. Unintended isolation from this approach was a key concern for inspectors. As part of the work undertaken at Polmont, inspectors were asked to draw directly on the views and lived experience of young people, their families, and staff of those with identified mental health and wellbeing needs.

The issues that attracted most attention or the greatest level of debate included the need to:

- Place greater emphasis on the provision of therapeutic interventions and wider wellbeing supports to address underlying issues for young people;
- Ensure quality time and ready access to build and maintain relationships with staff, families, and peers; and
- Build staff confidence with trauma informed, gender, and 'age and stage' specific training.

There were similarities of view between the groups of young people consulted, raising sensitive subjects such as trust, confidence to disclose and the impact of drugs. Young women tended to place slightly greater emphasis on access to services.

Some of the other issues emerging from discussions with young people included:

- There was recognition that mental health problems were widespread amongst the population;
- The experience of being sent to HMP/YOI Polmont was worrying and scary for all young people;
- It could be difficult to spot those at risk of attempting suicide as they may always look "absolutely fine";
- some processes, especially those during the reception process could feel like a 'tick box' exercise. Being asked repetitive questions about self-harm and suicide was unhelpful. Speaking to the nurse in private in reception was reassuring. Some young people were concerned about confidentiality in relation to mental health disclosure;
- 'practical support like an admission pack mattered and made you feel better. Admission was often difficult to remember because of being under the influence. Being given clothes of poor quality or that did not fit you properly affected how you felt about yourself';

- safety was a concern, which was felt to be mediated by the young person's perceived status. Some young people felt at risk from staff, others felt intimidated and bullied by other young people;
- 'a room to yourself was generally better than cell sharing, unless you already had a close relationship with the person you were sharing with, and it was jointly agreed to be supportive';
- access to activity and some services when held on remand was limited and unhelpful. There was a lack of access to services such as addictions until the point of sentence, which could leave young people held on remand for several months without much needed support;
- access to family is critical, especially on arrival, when feeling low, and out-of-hours.

A number of themes also emerged from engagement with families of those who were in Polmont.

Some discussions highlighted the need for early intervention and support services responsive to the immediate needs of young people, at all stages of their life journey. With regard to mental health, information can be difficult to access, and the mental health of the young person concerned means that they are often not able to explain clearly what is happening, which leads to confusion and concern.

The social isolation of being locked up for anything up to 23 hours a day was mentioned by several families and perceived to be affecting the mental health of their young men, who were increasingly withdrawn and suffering low mood. With regard to emotional support, some families felt that the HMP YOI Polmont family help hub staff and organisations, like 'Families Outside', had been really helpful.

One young man's mother felt that her son was being emotionally supported and had confidence that some staff would be able to pick up when something was not right but was worried that others who did not know him so well would not recognise that his mental health was deteriorating. A 'traffic light' system in young people's rooms so that they could flag up that they wanted to talk to someone without having to ask for help directly was suggested.

Despite some frustrations, one family commented that overall, the access to development opportunities in HMP YOI Polmont had been positive for their son; *"Being in here has been really good for him and the education programme has been really positive for him"*.

Less positively, others suggested that the key concerns for families of prisoners in HMP YOI Polmont are drug use and possible bullying, which were a constant worry that contributed to their own stress.

It's clear that if children are to be held in secure accommodation rather than a YOI, that many of the issues set out above will need to be addressed within that setting. Issues such as resources, specific staff training and the ability to provide young

people with all of the care and support that they need will no doubt be in focus as the Bill progresses.

Secure Care

The following paragraphs provide some brief background information on the secure accommodation estate in Scotland, including some of the issues for children who are held there, and summarise key points from some of the written evidence which has been submitted by witnesses.

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

The centres are:

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

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

Secure care is a form of residential accommodation which restricts the liberty of children and young people. This type of care provides intensive support and safe boundaries that enable highly vulnerable children to re-engage and move forward positively with their lives and within their communities. Secure care is intended to be a nurturing environment that is able to address specific needs and behaviours whilst providing care, including health and education.

According to a [survey produced for the Centre for Youth and Criminal Justice \(CYCJ\) in 2015](#), there are significant levels of mental ill-health to be found within the secure care estate in Scotland. Its survey indicated that, amongst the Scottish population, 35% of children had attempted suicide in the year prior to admission, with 53% experiencing suicidal ideation; 22% had received a trauma diagnosis over that timeframe and 45% had experienced sexual exploitation; an issue that may require specialist counselling and support.

Furthermore, staff within secure care noted that in 24% of cases, there was a suspected, undiagnosed mental health concern which they believed - based on

symptoms and presentation - may include depression, Post Traumatic Stress Disorder (PTSD), violent fantasies and personality disorders. Despite this, only 36% of children within secure care had received support from the NHS's Child and Adolescent Mental Health Service (CAMHS) and 4% from Forensic CAMHS in the year prior to admission.

Alison Gough of The Good Shepherd Centre - one of Scotland's secure care units – has said that for her facility, half of the children arriving at the unit had expressed thoughts about ending their lives and a third of young people had actually attempted to end their lives in the year prior to coming into secure care. A high proportion of young people in her unit had been diagnosed with a mental illness either previously or were receiving treatment, and exposure to and involvement in interpersonal violence was a significant feature. Suicidal thoughts, or suicidal ideation, means thinking about or planning suicide⁴.

As with young people held in HMPO/YOI Polmont, social isolation can be a significant issue for those children held in secure accommodation. This can be exacerbated by factors such as being held some distance away from families. As noted above, Scotland has five secure care units in Scotland: Good Shepherd in Bishopton, Kibble in Paisley, Rossie in Montrose, St Mary's in Bishopbriggs, and Edinburgh Secure Services unit at Howdenhall in Edinburgh. This means that there are still significant areas of Scotland where travelling distances for family and friends are substantial, making visits more difficult for some thereby increasing the risk of social isolation.

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

Looking at the registration details for all 5 centres: Good Shepherd, Rossie, Kibble and St Mary's all have one emergency bed that is used when the service is at capacity, in line with the Care Inspectorate's protocol and procedures. The statutory provisions within the Bill do not include the provision of an emergency bed. The Scottish Government is funding the pilot from January until the end of March 2023, where funding of one bed in each centre is provided, unless the bed is required by a child who normally resides in Scotland. This pilot was set up to allow some flexibility and capacity and financial stability to secure care providers and help ensure capacity for children in Scotland. The Scottish Government have said that agreement in principle for this to continue has been reached, and the Scottish Government expect it to do so and to be expanded, however this is still subject to final budget ratification.

⁴ [Written evidence to the Justice Committee Inquiry into secure care and prison places for children and young people in Scotland 2019.](#)

Compulsory Supervision Orders

A CSO is a formal order made by a Children's Hearing or less commonly by a sheriff for children who need additional protection or support.

When a CSO is made, it means a child's local authority must perform duties in relation to the child's needs and supporting their family as set out in section 83 of the 2011 Act. It also means there are certain rules the child may have enforced, such as living in secure care or a children's house, away from their family.

Children have the right to attend court, though the sheriff may decide they do not have to. The child or young person and their parents or carers have the right to have a lawyer represent them in court.

The Policy Memorandum to the Bill states that the measures in part 1 of the Bill does not affect the constitutional independence of the Lord Advocate and Procurators Fiscal who will retain the discretion to begin criminal proceedings and to prosecute children in court, where appropriate. The Bill takes forward measures to enhance the ability for protective and preventative measures to be made available through this system, as well as promote information to those who have been harmed.

Section 2 and 5 amends section 83 of the 2011 Act to make it clear that an authorisation to the person in charge of a place in which a child is required to reside, to restrict the liberty of the child, does not include an authorisation to deprive the child of their liberty.

One of the measures currently in a CSO is a requirement that the child reside at a specified place. If a CSO includes such an authorisation the Bill clarifies that this does not include deprivation of liberty.

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

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

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

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

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

However, several witnesses have raised concerns that the new criteria could amount to a deprivation of liberty, members may wish to consider whether the Bill adequately upholds the child's rights and if the new criteria for an MRC amounts to a deprivation of liberty.

[Article 5\(1\) of the ECHR](#) states that:

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority".

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

The Policy Memorandum states:

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

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

Section 4 amends section 83 of the 2011 Act to apply a new set of conditions for the purpose of including a movement restriction condition in a CSO where:

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

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

A key consideration will be broadening the definition to include the likelihood of causing psychological harm. In their written evidence to the committee Who Cares? Scotland said:

"We are deeply concerned at the subjectivity which will be required in determining these specified conditions, in particular 'moral welfare'. This order would not be effective in protecting a young person who is at risk to

themselves. These orders put the onus, or punishment, on the child to remove themselves from harmful or exploitative contexts rather than on the child protection system to address the harm in the first place.”

Includem also stated concerns that the definition of psychological harm was “perhaps too broad and may lead to a greater number of children being deemed to have met the secure care criteria than was intended by the Bill.”

The issue of legal aid was also regularly raised, with calls to add the provision of legal aid into the Bill. The Bill also does not specify the surrounding support available to those with an MRC.

The Promise in their submission suggested that when considering support for children on CSOs that a focus should be on recruitment of social workers. They said:

“This includes ensuring that the current crisis with respect to the retention and recruitment of social workers is urgently addressed and that the broader child care, protection and support landscape is ready and prepared for the number of 16 and 17 year olds that will require help and support—and the complexity of the challenges that they are likely to face. Investment and resources must be available with respect to upholding the rights of older children engaged in the Children’s Hearings System (and those accessing support through section 25 of the Children (Scotland) Act 1995) to adequate housing, transport, healthcare and education.”

The use of MRCs within CSOs is currently relatively low (average of 26 per year – 2 per month – over the past 4 financial years). The Scottish Government’s internal figures (over the past four financial years) show average annual costs of £13,719 for electronic monitoring.

However, the financial memorandum notes that while the intention is not for the wide-scale use of MRCs, there will be other costs, particularly for local authority social work, of support around the MRC, not least owing to the requirement that 24-hour support is available as part of an MRC.

The Promise

An [Independent Care Review \(Care Review\)](#) was commissioned in 2017 and reported in 2020. This was a root and branch review of the care system which listened to the voices of over 5,500 people with experience of the care system or who work within it.

The review findings were published in February 2020, setting out the steps toward significant reform to the care system for children and young people. The main findings were set out in the main report [The Promise](#).

The Promise called for a new approach to youth justice, as summarised below:

- A new approach to youth justice is needed that holds true to the Kilbrandon principles
- the rights of children and young people in conflict with the law must be upheld, ensuring they have access to all they need for health, education and participation
- children must be able to participate in all decisions about them in appropriate environments - not traditional criminal courts
- under 18s are children: there should be no 16- or 17-year-olds in YOIs; being placed in prison-like settings is deeply inappropriate for children
- the importance of relationships cannot be overstated - every effort must be made to nurture and sustain positive and important relationships for care experienced children
- there must be a significant, ongoing and persistent commitment to ending poverty and mitigating its impacts for Scotland's children, families and communities
- there must be more universal and intensive support for families who are struggling, whatever issues they face
- Scotland must improve support for children affected by parental imprisonment, ensuring wraparound support for families
- more must be done to avoid imprisoning pregnant mothers, and better support provided to those who are in prison.

The Promise found that:

“There is no evidence that care experienced children engage in more offending behaviour than their peers, but the consequences of their behaviour whilst in care are much more likely to result in criminalisation. It is the settings of care and workforce responses to behaviour that drives the criminalisation of care experienced children. Scotland must stop that criminalisation by supporting the workforce to behave and treat children in a way that is relational rather than procedural and process driven.” (The Promise, p.91, 2020).

The Promise also recommended that the principles that underpin The Children’s Hearing System, that children who engage in offending need care and protection rather than punishment, must be restated and understood across Scotland’s services. The impact of early criminalisation is life long and can make it profoundly difficult for young people to access future opportunities.

On secure care The Promise recommended that there is absolute clarity that the underlying principle of Secure Care is the provision of therapeutic, trauma informed support. Being placed in prison like settings is deeply inappropriate for children. It also recommended that there are far more alternatives for community-based support and monitoring and that the planning and provision of Secure Care must reflect the needs of children in Scotland to ensure there are sufficient places for those that need them.

The Promise also said:

“Young Offenders Institutions are not appropriate places for children and only serve to perpetuate the pain that many of them have experienced. There are

times where it is right for children to have their liberty restricted, but that must only be done when other options have been fully explored and for the shortest time possible and in small, secure, safe, trauma informed environments that uphold the totality of their rights.”

Whole System Approach

In 2011 the Whole System Approach (WSA) to offending by young people was rolled out across Scotland. The approach is underpinned by GIRFEC principles, and is focused on prevention and early intervention, addressing the needs of young people as well as their behaviours.

WSA commits to alternatives to custody and secure care with the view of keeping young people out of formal systems as far as possible, together with an understanding that where detention is necessary, this should be within a care rather than custodial setting, wherever possible.

In 2015 the Scottish Government published the Youth Justice strategy ‘Preventing Offending: Getting it right for Children and Young People’. The strategy focused on a preventative, early intervention approach involving multi-agency partnerships.

The strategy also focused on the on-going need for good quality secure care to improve outcomes for children with highly complex needs and aimed to improve outcomes for children in secure care. It also highlighted the need for effective transitions for those moving to secure and moving on from secure care particularly around education and health.

Victim Support

The Bill creates a statutory obligation for the Children’s Reporter to inform a person entitled to receive information of their right to that information subject to certain exceptions.

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

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

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

In [consultation the Scottish Government](#) considered whether a single point of contact to offer support should be introduced for a person who has been harmed. The consultation said:

“All people who have been harmed who come into contact with the Police should receive a Victim Care Card with details on how to access support from Victim Support Scotland.”

[Independent research on consultation responses commissioned by the Scottish Government](#) found that the proposal to offer a single point of contact to a person who has been harmed received one of the highest levels of support across the consultation, at 97%. Only two respondents did not support this proposal, both of whom were individual young people.

Of those who agreed that a single point of contact should be introduced, a majority felt that this should be available for 'all' people harmed. A key rationale given for why a single point of contact should be introduced for a person who has been harmed was that it would reduce the number of times they would need to repeat and re-live often-traumatic experiences to various agencies. It was seen as being preferable therefore by many respondents, for a person who has been harmed to receive information and support from a single source, through which trust and rapport can be established.

However, a key concern raised by Children's Rights organisations, along with many Delivery Organisations, related to the potential barriers to implementing a single point of contact in the current information sharing landscape, whilst it was also noted that robust information sharing agreements that respected data protection laws would need to be in place for whichever agency was appointed as a single point of contact.

Victim organisations also stressed the need for more consultation and development regarding a single point of contact. Here, whilst this proposal was supported by victim organisations, to limit the re-traumatisation of victims and coordinate information, there was concern that this proposal was being steered by efficiency needs, rather than the best interests of persons who have been harmed.

Cross Border Placements

Whilst fewer children and young people from Scotland have been placed in secure care, there has been a significant increase in the numbers of cross border placements from England, since 2015. In 2016 an English High court case ruled that cross-border placements from England to Scotland were unlawful without specific new authority. Amendments were made to the [UK Children and Social Work Act](#)

[2017](#), with the consent of the Scottish Parliament, which enabled local authorities in England and Wales to continue to be able to place children in secure accommodation in Scotland. Some care settings gain financially by accepting cross border children.

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 transported to an unknown place with no connections or relationships. Such placements can result in children and young people being separated and distanced from their families, peers, community support networks and services. This impacts on planning for the child and on their ability to maintain meaningful relationships. There were also concerns that this may impact on their human rights.

The Promise is also clear that current commercial practices regarding cross-border placements, whereby they are purchased by a local authority in another UK jurisdiction, must end.

Giving evidence to the Committee on cross border placement regulations on [25th May 2022](#) the Minister for Children and Young People said:

“The regulations improve on the status quo and represent an interim step that will allow us to get to longer-term solutions as part of the proposed children's care and justice bill, which is the space where we can consider more fully and fundamentally how to address cross-border placements. That is why, in the consultation for the bill, we are seeking views on regulation, scrutiny and monitoring and on the Care Inspectorate's role in relation to 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 amend the powers of the Care Inspectorate to have an increased role in relation to the registration, regulation, and oversight of care settings where cross-border children are accommodated.

On secure placements, the published [Social Work Statistics](#) show there were a total of 60 placements from outwith Scotland in 2020/21. The Scottish Government expect this number to have reduced, with the next Social Work Statistics to be published in the coming weeks.

In the period between June 2022 and March 2023, since regulations came into force, a total of 18 initial DOLs notifications were received. Six of these cases have subsequently since been confirmed closed either by notification or advocacy intelligence. As of 8 March, there were a total of 12 live DOL order placements notified to Scottish Government. All live placements for this period have been contacted with an offer of advocacy.

Children's Hearing System

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

While Who Cares? Scotland in their written evidence said:

"Panel members in the CHS, Reporters and any service providing advocacy and legal advice and services must all receive adequate specialist training and upskilling to support young people referred, who would currently be tried via the Scottish criminal courts. This is especially important for offences which result in the longest sentences, or which are the most serious in risk and harm."

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

The Children's Hearing System currently requires the same burden of proof on offence grounds as the criminal justice system.

On non-offence (care and protection) grounds, the evidential standard is the civil standard of balance of probabilities.

For offence grounds, the Children's Hearings System operates on the same evidential standard as the criminal justice system (beyond reasonable doubt) therefore, if there is insufficient evidence, the matter cannot be taken further by the Reporter.

If there is sufficient evidence, the Reporter has a duty to examine the child or young person's circumstances to allow them to determine the best course of action for the individual child or young person. This includes obtaining reports from schools, social work or other agencies involved with the child or young person or their family, such as doctors and health visitors.

St Mary's Kenmure in their written evidence said:

"Carefully considered criteria for adjudging when a case might not be suitable for the Children's Hearing system should be devised. For example, low base rate and unusual presentations, young people whose profile resembles those that correspond to 'persisters' and high-risk."

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

In their evidence The Promise noted:

“It is important that there are clear connections between children’s and adult services so that children do not experience a ‘cliff edge’ when they turn 18 and that children are not left in limbo at age 17 and a half due to a concern that there is not enough ‘time’ for them to engage with the Children’s Hearings System. The duty for the Principal Reporter to provide supervision and guidance after children turn 18 up to age 19 is welcome and The Promise Scotland would welcome further clarity about how this will be operationalised, including how it will be monitored, and how much resourcing is being allocated to this duty in practice.”

**Nicole Beattie and Graham Ross, Senior Researchers, SPICe Research
24th March 2023**

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

Annexe B

Written submission from the Good Shepherd Centre

The Good Shepherd Centre (GSC) greatly appreciates the Committee's invitation to submit written evidence and participate at the Committee meeting planned for 29 March 2023.

About the GSC

The GSC is an independent charitable organisation. Our purpose is to provide a positive, life changing experience for young people through individual care, education, and skills development. The GSC offers a safe and nurturing environment in secure care for eighteen young people in Lyle, Kilpatrick, and Nevis houses and intensive support which is less restrictive than secure care (referred to as close support) for six young people in Lomond House. We also offer open/semi-independent care currently through Hillview Cottage, for up to three young people. Our extensive campus has a fully equipped school and education facility, and many spaces for relaxation and recreation, holistic therapies, spending time with family and visitors, and gardens including a growing area, a wildlife trail, and an outdoor sports pitch. As one of only five Centres currently approved by Scottish Ministers to deliver secure care in Scotland, we are one of the four of those Centres run by independent charities and commissioned (effectively by the state) via a national contract framework managed By Scotland Excel to deliver secure care on behalf of the Scottish local authorities and Scottish Government. Young people are referred to the GSC through the Children's Hearing System (CHS) or adult Justice System (the Courts) and in the relatively recent past and currently, we often have a small number of young people in our care from other UK jurisdictions, i.e. England, placed by the Welfare Courts on Care and Protection grounds.

Since the GSC secure care Centre opened its doors in 2006, we have cared for young people who have been secured from either Scottish route, i.e. young people on orders from the CHS or on remand or on sentence via the Courts. The Good Shepherd Centre ethos and active values of being rights-respecting, kind, nurturing, resilient and hopeful, drive what we do alongside and for children and young people impacted by adversity, trauma, and loss in their lives.

We understand that relationships are nearly always at the Centre of the difficulties - including physical and emotional harm, trauma, and situations of conflict - which have led to young people's intensive support needs. But we also know that safe, trusting, and caring relationships are the key to healing and recovery from relational trauma and for all of us as people to grow and move forward, so our approach puts relationships at the Centre of everything that we do.

As we support children (i.e. the majority of young people living on campus are under 18 years of age and will be defined as children through this Bill) our model of practice is underpinned by wellbeing and GIRFEC principles and for over 18s in continuing care/Throughcare at GSC this continues to be the case.

The GSC is fully committed to Scotland's incorporation of the UNCRC and to Keeping The Promise in relation to the national policy direction shaped by the findings and recommendations of the Independent Care Review in Scotland and you can read and see more about the GSC and our values, ethos and future plans on our website:

[The GSC Promise - Good Shepherd Centre](#)

The GSC welcomed the Scottish Government's proposals and the principles and aims of the Children's Care and Justice Bill and broadly welcomes Stage 1 content. The GSC submitted a response from the organisation and undertook a consultation with young people and we submitted their response in its own right alongside the responses from the GSC Senior Staff Team, in June 2022.

The GSC has submitted comments in relation to Stage 1 and this written submission for Committee includes those comments.⁵

Stage 1 Pillars: **Children's Hearings System**

Age of referral

The Bill widens access to the Children's Hearings system to all 16 and 17 year olds and the GSC welcomes this. The GSC is fully committed to a future vision where Scotland has fully incorporated the UNCRC and to Keeping The Promise in relation to the national policy direction shaped by the findings and recommendations of the Independent Care Review in Scotland.

The workforce and young people at GSC have contributed previously to numerous reviews, research and consultations in relation to the Children's Hearings System and responses to children and young people involved with the system of care. The Chair of the Board of Directors (our Charity Trustees), the GSC's Director and Head of Secure Care were all involved with the work of the Secure Care Strategic Board and sub-groups and have long championed ambitions in relation to a fairer and rights-based approach to care and justice responses for all children.

At GSC, we have experienced several situations where children have come to GSC through the Justice system, as due to their age/circumstances they have been dealt with through the Courts, not through the CHS. We support raising of the maximum age for referral to the Principal Reporter, so that 16 and 17 year olds who are not subject to a CSO can also access Scotland's wellbeing focused CHS. We believe that the two-tier approach which exists in the system at present is not aligned with Scotland's ongoing commitment to the Kilbrandon Principles or the UNCRC, as the current adult Justice system does not provide for the developmental, language and communication differences that should be taken into account for children and young people.

We believe that what that means is the current arrangements are not rights respecting.

⁵ As this submission includes the content of the Good Shepherd Centre's initial response to the Committee's call for views, and expands upon this, the Committee has only published this version, to avoid duplication.

The Bill suggests that the law should be changed so that most offences committed by 16 and 17 year olds will be dealt with through the Children's Hearings system in future and we support this. We believe that all children should be responded to by the CHS, for the CHS and Scotland's responses to young people who offend to be UNCRC compliant.

However, we think that there are challenges with the Children's Hearings System and in particular in relation to the 'ask' of volunteer Panel Members who may lack experience, and/or the depth of understanding that is needed to equip them to make life changing decisions about and with young people accused of a serious crime. Our experience of the CHS at GSC is variable - as is that of our young people. The age and social profile of the Children's Panel does not reflect the communities of children and their families who are involved with the CHS. We also noted with some alarm in the CYCJ analysis of the Published Responses during the pre-Bill consultation, the attitude of some Police and Justice agencies towards the CHS. We believe these showed a lack of both understanding of the functions of the CHS and lack of confidence in relation to how the CHS responds to prevent further harm and protect victim's rights when a young person is accused of seriously harming others. GSC colleagues have experienced these attitudes at points, with comments made by some Justice agencies or professionals, for example that "nothing is being done" to deal with situations where young people's behaviours have caused harm and disruption in the community.

The GSC has also encountered some unhelpful and often gendered attitudes from some professionals, in relation to older young people (16 plus) where there seems to be a lack of understanding about the vulnerabilities of the majority of young people, of whichever gender identity, who themselves have been accused of an offence. i.e. some sense that once young people reach a certain age, particularly boys, that they do not 'deserve' a welfare-based approach and that an element of punishment is necessary to reduce the risk of further harm/offending. The GSC does not agree with that position, and instead strongly align ourselves with the evidence shared by Together, (Children's Rights alliance) and CYCJ and others during the pre-Bill consultation.

We believe that an appropriate programme of training and ongoing mentoring and quality assurance would need to be built into every stage of the CHS, for both SCRA colleagues and Panel Members to equip the system to respond in a rights based and informed way to the complexity of such situations.

We think that specific provision could be made for a focused type of Hearing in situations where children have been accused of serious personal crime. There would need to be legal and structural connectivity (in effect learning from the Bairn's Hoose principles) so that everyone around both the young person accused of causing harm and the victim experience help and support which minimises re-trauma and further harm and promotes recovery.

We consider that part of this process of change should include a review of the language applied to young people in conflict with the law, as the concepts of

'rehabilitation' and 'recidivism' can at times be unhelpful when agencies are involved in the lives of children in this context.

We also consider that within that, specific arrangements should be made where young people are accused of the most serious personal harm, including murder.

Changes to CSO and ICSO

The GSC has mixed views in relation to the changes to CSO within the Bill.

Directions Authorising Restriction of Liberty - The GSC assumes that the intention of this provision is to ensure that children are only deprived of their liberty when absolutely necessary, and that by 'tightening' this area of law, the risks of children being deprived of their liberty in a place not equipped or regulated to deprive their liberty will be lessened?

However, the GSC believes that this provision - coupled with the Scottish Government's revised registration process for services seeking to register as fit to care for children in deprivation of liberty settings – which absolutely re-enforce the nature of 'secure accommodation' may have unintended consequences and a) present a 'missed opportunity' in relation to least restrictive approaches to care and protection. b) result in young people continuing to face a 'cliff edge' following a period of secure care.

This is because there is currently no 'bridging' mechanism for young people described as 'on the edges of secure care' i.e. either you are fully secured in a building which requires to have air locked doors and windows etc, or you are living in an open setting, MRC or not. There is no legal definition of 'Close Support' or 'Intensive Support' residentially, where young people who benefit for a period of time from close adult supervision and some restriction on freedom of movement etc. (as would happen where a parent was seeking to keep a child safe or provide appropriate levels of supervision and support to a child in crisis or danger) can build personal and emotional and relational skills, coping strategies, and move forward from this safe, stable environment with continuity of relationships and Education. A recent inspection of the GSC's Close Support services highlights how helpful this 'Bridging' support can be: [InspectionReport-314271 \(1\).pdf](#)

Whilst reference to services which may have an element of 'restricted liberty' is contained in the Bill, within changes to the conditions attached to CSO and ICSOs, the GSC would be keen to understand what this will mean in reality in relation to the role of the regulatory bodies and model of commissioning and practice.

Prohibitions - The GSC has very mixed feelings about the introduction of measures which whilst clearly intended to be protective and supportive for victims of harm and for young people who are being harmed by others, may be experienced as stigmatising and punitive. Initial reactions from GSC colleagues were that young people who are being criminally, sexually, financially, and emotionally exploited should not be made subject to legal orders which put the onus on them and limit their freedoms and movement, rather than limiting the rights of those accused of harming them.

However, as with all legislation, these provisions, if introduced, regulated and monitored within a rights-based framework, could potentially support young people at

risk or who have experienced serious harm, and empower the adults caring for them to and trying to keep them safe. In relation to MRC and secure authorisations, we would need to understand more about the operationalisation of these provisions. The GSC fully supports the principles of least restrictive practice and we welcome changes to the 'secure authorisation' provisions.

However, we believe that there should be legal provision which recognises (in the same way that DOLS orders may be applied for young people in England) that many young people benefit from this 'bridging' approach (Close Support) as restrictions of liberty are relaxed at a pace which is centred on the needs and circumstances of the individual young person. This is available in other arenas, for example if a young person is subject to detention under mental health legislation, but it is difficult to ascertain whether the new provisions in relation to secure care will allow for this.

Impact on children who have been harmed (and children who harm others)

The GSC considers that young people who have been harmed by another child will have better access to information and the new provisions may provide increased safety and support for young people (prohibitions etc). However, as above this will require a very clear practice framework and the resources to ensure that services and practitioners are well equipped and that young people whose actions have caused harm to others are not themselves put at risk.

We know from research and the accounts of people with lived experience of the CHS, Justice systems and secure care, that young people are still often labelled and 'othered' and that a sense of shame and stigma is still associated with secure care experience. That needs to change.

There are many examples of successful restorative approaches in community settings, residential care and secure care settings and these should be taken into account as the guidance and practice resources to support implementation of this change are developed.

The Bill makes changes to the current law around when information should be offered to a person who has been affected by a child's offence or behaviour which the GSC doesn't feel we can give a detailed opinion on. However as above, we behave in line with our values and Nurture and Restorative principles, and suggest that to be effective, the changes made by the Bill if enacted would need to be delivered through that lens. The aim surely is to support recovery from harm and prevent and minimise further harm for all involved.

Changes to Criminal Justice and Procedure

The GSC welcomes the changes to existing Criminal Justice and Procedure. These are related to raising the age at which young people can be referred to the Children's Hearings System.

The GSC particularly welcomes raising the inclusion of all children as children and raising the age of referral as previously outlined. The GSC also believes that no child in Scotland should be placed in a prison setting/Young Offenders Institution. The GSC fully embraces the commitments of The Promise and as an organisation is working to keep our own Promise with goals across the pillars of Voice, Family,

Care, People and Scaffolding. All children who need to, should have access to safe, nurturing, welcoming and homely spaces where caring, skilled, trauma sensitive adults support and help them, and care, education and health and wellbeing supports which meet the Pathway and Standards for Secure Care are offered. GSC has been striving to offer truly trauma responsive care, education, health and wellbeing support and advice and guidance to young people who experience secure care and we believe that the language, terminology and legal definitions of what we do are part of the process of transforming that experience.

Secure Care and Residential Care

GSC previously commented on the current definition of 'secure accommodation' which is outdated and fails to reflect the significant learning and work and changes that have already happened across the current CHS, Children's care and secure care residential school sectors. The Secure Care Strategic Board developed a vision of secure care as a place of safety, nurture, and recovery and we believe that all children under the age of 18 should be able to be placed in secure care where this has been deemed necessary, proportionate and in their best interests.

We also believe that for a very small number of young people where violence towards others is a significant factor, and the protection of family, carers, and the wider community from serious harm is a concern, consideration should be given to the type of secured care which can meet their needs and balance those risks and rights.

Responses to young people who pose a risk of significant harm to others need to be tailored, and may have to include greater levels of restriction of movement and freedoms, but it should be noted that the current secure care centres in Scotland have been caring for young people placed on remand and sentence alongside those placed via the CHS and for young people who have been harmed and caused harm, for some considerable time. This Bill should seek to build on best practice, and certainly not lead to any sense of secure care being asked to function as a version of prison.

The Bill changes the way in which secure accommodation is regulated. It would also introduce regulation for cross-border placements (for example, a child placed in Scotland as a result of an order made in England). The GSC hopes that the eventual legislation will do more than change the way in which secure care is regulated - we hope that it will change definitions of *what secure care is*.

It clarifies that secure accommodation is accommodation which is provided "for the purpose of depriving children of their liberty" (rather than for the purpose of restricting the liberty of children). But in the accompanying notes and all of the emerging Policy statements, including the vision developed by the Secure Care Strategic Board and The Promise, the purpose of secure care is defined and described as a place of safety, nurture, and recovery to deliver care, education and health and wellbeing supports which will promote children's rights and meet their needs and longer term potential positive outcomes.

If the definition in law is to solely focus on deprivation of liberty, this jars for us.

The GSC is concerned that, whilst fully supporting greater clarity in relation to deprivation of liberty, this definition, and the regulatory changes within the Bill, could have the unhelpful impact of further 'othering' and stigmatising children in need of secure care and enforcing the association between secure care and punishment - in contradiction with the UNCRC and The Promise.

[secure-care-strategic-board-report-to-scottish-ministers.pdf \(careinspectorate.com\)](#)
[keepthepromise-secure-care.pdf](#)

The explanatory notes accompanying the Bill state that secure care "provides a locked setting for children who are placed there for welfare reasons as well as for children who are ordered to be detained there through the criminal justice system". If all children (i.e. everyone aged under 18 years) are to be regarded as children, then all children have welfare needs which must remain the primary focus of their care. The Bill ensures that the system for placing and keeping children in secure care builds in the necessary procedural safeguards, and clear legal basis and review process, to ensure that the terms of deprivation of liberty are compatible with Article 5 of the European Convention on Human Rights. However, as has been highlighted in several reports from the Secure Care National Project, through the Secure Care Strategic Board, CYCJ research and The Promise, there are inherent contradictions and tensions here, especially if all young people cared for in secure care are to be regarded as looked after children - which is a provision the GSC welcomes, despite these complexities.

The GSC believes that the records show that secure care is currently highly regulated and that there are robust safeguarding arrangements in place due to the intensity and frequency of inspection by the regulatory bodies. The GSC welcomes any strengthening of these arrangements, particularly ensuring clearer mechanisms for ensuring that authorities and Corporate parents are acting to uphold the rights and monitor the wellbeing of all children including those from England.

The GSC has previously provided written comment and contribution about cross border placements and the commissioning framework for secure care services in Scotland and will make further comment in relation to the Financial Memorandum for the Bill. We have since 2018 always had a small number of young people from England in our care, since the legislative action in 2016 following the so-called Mumby Judgement, and as a charity we have been placed in a position where at points Scottish need for our secure care services has fallen to the extent where we have had to consider referrals from England to ensure sustainability – and in the face of English Authorities desperate to find a secure care placement which can meet the needs of their young person.

[CYCJ study highlights concerns over cross-border secure care placements - Children and Young People's Centre for Justice](#)

We know from research including the census of children's backgrounds in secure care in Scotland completed in 2018, that the life experiences of children who are placed in secure care are characterised by poverty, exclusion, violence, abuse and exploitation with a high incidence of mental illness and psychological distress. More than a third of children who were in our care in 2018 had actively tried to end their lives in the year before they arrived at GSC. The census completed in the following year noted increased levels of trauma impact.

We also know about the vital importance of ensuring young people have access to consistent, rich and holistic Education opportunities. We know this from research including learning from the Edinburgh Study of Youth Transitions and Crime and papers such as Children's lives, education, and secure care in Scotland.

And we know that in terms of outcomes, the promotion of hope, self-belief and agency is crucial when supporting young people to move forward from settings where their liberty is restricted.

But the current legislative and operating (governance and funding) structures and mechanisms, rather than supporting and encouraging compassionate, trauma sensitive, cohesive responses to young people in crisis who may have been in contact or conflict with the law, consistently undermines our capacity to Keep The Promise and fulfil the vision of secure care and intensive support as outlined in the Secure Care Strategic Board: report to Scottish Ministers.

The impact of the 'spot purchase' nature of the commissioning and national governance arrangements is exacerbated by the current lack of flexibility within the legal framework and 'secure care criteria' and the way in which the adult Justice system functions. There is no individual person, body or mechanism acting as a meaningful and mandated connecting point in relation to access, governance and young people's pathways through secure care. This includes a disconnect between the planning, delivery and regulation of NHS including mental health supports for children in and on the edges of secure care. This is a children's rights issue previously well documented in relation to both equity of access to mental health supports, equity of access to treatment and recovery support (Section 39 rights) and the realisation of rights when authorities are seeking to restrict a child's liberty – as there are such differences between the processes, representation and safeguarding mechanisms around secure care placements and detention under Mental Health law.

Children are nearly always placed with GSC on an acute emergency basis. Whilst it is right that this is for the shortest time possible in line with the UNCRC principles of 'last resort' in relation to intensive residential care and secure care; The reality is that the current 'pathway' experience for most children is at best fragmented and often leads to further trauma and harm.

Children are still reporting to us the types of experiences that were reported to CYCJ during the secure care national project and published in Secure Care in Scotland: Young People's Voices in relation to not being informed or involved in the decisions around them coming to secure care.

Similarly, when young people are moving on from secure care, they often face great uncertainty about where they will be living next. The GSC can report several situations within the last year where children who have been in secure care for a period of months have been told by their local authority the day before or on the day of their Children's Hearing where they will be moving on to next. We offer young people support through our Staying Connected approach, but have current and recent experience of local authorities denying funding for GSC to continue directly supporting young people who have strong bonds and have asked for that continuing

care in their community. This has also included decisions by Corporate Parents to disrupt or end therapeutic treatment programmes which had been begun whilst a young person was living at GSC. We therefore welcome the possibility of young people being able to experience continued care in secure care when appropriate for them beyond the age of 18. We have witnessed 'cliff edge' scenarios when young people on sentence have been moved to Polmont YOI the day before, or on the day of their 18th Birthday when they had a short period of time to complete a sentence.

We are regulated by Care Inspectorate and Education Scotland as a residential school care and secure accommodation service, and an independent school. The Inspection Frameworks under which our School is expected to operate How good is our school? - HGIOS 4 and the Care Inspectorate's Quality framework for secure accommodation services set expectations of the GSC which mirror mainstream schools and residential care settings which young people should experience as home from home.

But the reality is that the average length of time young people live at GSC is between three and four months, with some children staying with us for a much longer time but others for a shorter time and occasionally less than a week. For all these reasons, we welcome the significant changes outlined in the Bill to both the commissioning of - and the routes and pathways in to and on from - secure care.

We hope that as the Bill progresses, there will be ever greater clarity in relation to the operationalising of the legislation – the structural changes that will be required to ensure that the sector is equipped to meet the needs of all young people up to 18 and potentially beyond.

St Mary's Kenmure response to the call for views

St Mary's Kenmure is a secure care setting for children and young people aged 12 to 18 years.

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

We support the widening of access to the Children's Hearings system to all 16- and 17-year-olds.

The most obvious outcome with this proposal would be more children and young people impacted by adversity and trauma, and those who externalise their distress and difficulties in offending behaviours, would be able to be supported by the children's hearing system.

This proposal would also alleviate the anomaly of 16 and 17 year olds, who are not subject to a compulsory supervision order, currently not being remitted for advice and disposal despite clear vulnerabilities and therefore given no opportunity for professional exploration of problem behaviour causation.

The proposal would however result in a significant increase in young people who required attendant assessment and support which would have an associated impact on resources and capacity.

However, we also still see a role for jointly reported cases for the most serious or persistent concerns involving young people who cause harm. Shared oversight and decision making will be important in those cases and there should be knowledge exchange and sharing.

We believe there is a need for investment into the training, support, and understanding of the panel members to enable them to identify the critical few and those with forensic needs. This could function like a triage process whereby serious, rare types of, or persistent offences are informed by specialist risk assessments by specially trained professionals with the requisite skills and competencies to understand the heterogeneity of the group, different trajectories of different subtypes of children with conduct problems, and who are able to hold in mind the realities of the case.

In other words, ensuring agencies can recognise and respond to the risks whilst also meeting the needs and addressing vulnerabilities of children. Anecdotally, it seems that organisations are vulnerable to particular learnings whereby a person is seen as 'victim' OR 'victimiser'.

To make competent and meaningful decisions and to deliver meaningful interventions, to meet the needs of those harmed and those perpetrating harm, these tensions must be reconciled so that all parties have confidence in the system and people's needs are properly recognised and responded to.

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

Widening access would potentially mean children's reporters receiving referrals for significant harms committed by older children. Enhanced measures, including training in risk assessment and risk management, for panel members considering disposals would be required to ensure the safety and protection of victims.

There is a tension here in that CHS has traditionally been founded on welfare principles and enhancement of more punitive measures would need to align with the essence of current system. Wider and more embedded use of the Framework for Risk Assessment, Management and Evaluation (FRAME) and Care and Risk Management (CARM) should provide the required practice frameworks alongside the use formulations to understand children.

Therefore, we would emphasise that whilst this is a positive change, it will only be effective if there is sufficient investment in the system whereby all associated agencies and partners are properly resourced and competent across the process of assessment, formulation and care management.

Carefully considered criteria for adjudging when a case might not be suitable for the Children's Hearing system should be devised. For example, low base rate and unusual presentations, young people whose profile resembles those that correspond to 'persisters' and high-risk. The operationalisation of the Bill should draw from a broad range of research including developmental psychopathology - not just delinquency research - and the longitudinal studies (e.g., Cambridge, Dunedin and Pittsburgh Youth Studies) that help identify risk factors for persistence of serious offending. It is important that multi-theoretical perspectives are utilised and that legal decision making incorporates evidence-based as well as rights-based approaches to ensure interventions are actually matched to need.

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

There already exists significant statutory aftercare support up to the age of 26 years old albeit it is inconsistently applied or provided. Some of the proposed changes including the provision of a report and summary of the CHS involvement would assist adult services managing the transition. This is helpful as much of the current systems are predicated upon unhelpful chronological benchmarks which fail to recognise individual differences in the developmental needs of young people arising from trauma and adversity.

However, to make these changes effective, adult services need to be there to continue the progress made. It is often the case that children and young people simply cannot access the necessary continuity of care. Acting to remove the 'cliff edge' of care/support being removed at the end of supervision orders is entirely

consistent with another aspect of the Bill namely the intention to permit young people remain in secure care beyond 18. This will require case by case determination based on developmental needs and underscores the importance of working with and embracing these complexities. It also underscores the need for investment at all levels.

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

There must be a careful and compassionate balancing of the needs and rights of the child who has caused the harm and those impacted by those harms.

All victims, their families and communities should have access to appropriate supports whereby they can be confident that their needs are being met, their views are being heard, and any supports made available. This must be built upon the underlying principles of fairness, proportionality and achieving the outcomes for all.

The implementation and operationalisation of this Bill will require to be carefully done. We would be concerned that if this is not done in a balanced manner, victims might feel that the system is unbalanced and feel unjustly treated. This could be further traumatising.

Alongside this, we would also advocate that the notion of victim should be more broadly defined and binary categorisations avoided. Families, (often including siblings), peers, schools and communities, can be impacted significantly by harmful events and incidents. There are often many secondary victims associated with those who perpetrate as well as those who suffer the harm. We believe the Bill has the opportunity to recognise and respond to the wider need.

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

The overriding consideration for the reporter and CHS decision making is the referred child not the person affected. In addition CHS is predicated on being welfare based and non punitive – the referred child has existing rights to privacy.

This is not to suggest (as above) that persons affected do not have a need for support or information. A return to decisions made in relation to the case being communicated to those affected would be helpful. Persons who have been harmed should have a single point of contact and this will require thought about how it could work and where it would be based. The Bairns Hoose model may prove to be a suitable resource where the victim is a young person.

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

We wholeheartedly support the proposal on the proviso that there is adequate investment in achieving best practice standards and knowledge to ensure evidence-based, rights based, and the creation of accessible, meaningful supports. All of these are essential ingredients to ensure outcomes are realised for children who engage in harm and those who suffer as a result. We also need to emphasise our concerns about the need for investment. There are serious challenges in relation to capital investment, funding, and workforce capacity issues. Each of these impact on all aspects of care and its associated services. Resourcing issues are critical and to achieve the aspirations of this Bill, equity across the care pathway needs to be ensured.

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

Our position is that the age range should be raised and children should be referred to the CHS.

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

We are in full agreement with this. However, we wish to emphasise that to realise the aspirations of the Bill, considerable investment, clarity and commitment will be required if children and young people are to be cared for in secure care.

The profile of need for children who find themselves in YOIs and secure is more often than not one where they have acted in a harmful manner as a result of acute stressors and/or underlying neurodevelopment impairments and/or multiple ACES and/or other individual and systemic disadvantage.

Thus, it is essential that the secure settings where the young people are cared for provide a therapeutic milieu whilst having access to specialist interventions that go beyond the secure perimeter - family and community based interventions must also run alongside.

We believe that settings must provide a high standard of environmental facilities (living, education/occupational, recreational, health and therapeutic) alongside a multidisciplinary team approach to care that can produce multi-theoretical

assessments, formulations and specialist interventions that equips the team to meet both the vulnerabilities and risk needs.

The staff also need to be supported to competently manage risk as well as being responsive to different underlying needs that young people present with (attachment, behavioural, cognitive, trauma, emotional, mental health and family systems). We also need to remunerate the staff appropriately so we can recruit and retain the right people, to provide the right care, in the right place and at the right time.

Furthermore, where there might be high profile cases e.g. where a child harms another child or other person and this might have been identifiable through media reports or even the young person disclosing themselves, or where there is acute and frequent high risk behaviour (e.g. aggression towards staff), the environment must be positioned to accommodate this to ensure that there is a very strong sense of safety, care and compassion but where risk to and from the young people is properly managed to ensure that no event occurs where there is any level of retraumatisation or further stigmatisation.

All that said, there is an even more fundamental issue impacting on secure care. The provision is one that is uncertain, underfunded, and largely undermined. For those working in secure care, notwithstanding determined and committed efforts to deliver what works, it is a provision that is often maligned and misunderstood. The future of secure care has been the subject of much speculation over many years and recently, the Scottish Government has referred the matter again to the CYCJ seeking an opinion. This is despite many opinions, reports and papers being produced over many years, with excellent recommendations, but with little resolution achieved. This means that the purpose and sustainability of the provision is continuously in question - not only in terms of to whom it is permitted to provide a service (welfare children, those who perpetrate offences, and cross border referrals) but also how it does so.

Key challenges include the following:

- (1) The units are funded through the Scotland Excel Framework but for several years, the budgets have not been a match to the costs;
- (2) The demand from Scottish Government and local authorities are in broad terms, less than 50%;
- (3) The demand for children who would otherwise be placed in YOI is relatively low;
- (4) The remaining beds are from cross border authorities who are willing to pay more than the Scotland Excel rate but this means that these referrals are 'subsidising' the bed rate and, as detailed elsewhere, such placements must be carefully considered;
- (5) There are concerns related to the lack of capital investment in the secure estate. The buildings are reaching the end of their lifespan (25 years) but only minor capital expenditure is accounted for in the bed rate; and finally,
- (6) At a more general level, we face rises in the cost of living, inflation, inequity in salary costs for the same role (third sector not being able to compete with local authorities), and a workforce crisis in health and social care.

All of the aforementioned problems impede on the development and delivery of what these services exist to achieve. As an organisation driven to achieve a high standard of provision on the essentials, desirable and aspirational aspects of caring

for children who need secure care, it is vital that this consultation exercise provides for an accurate appraisal and response to all the complexities detailed herein.

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

Polarised thinking and practice is rarely helpful. With criminality diversifying as it does -such as serious and organised crime, gangs, child criminal exploitation and child sexual exploitation - the use of cross-border placements can be critical to ensuring safety, breaking associations, and affording children, young people and their families a 'new and safe start'. Thus, in some cases there is a very clear and compelling argument for interrupting their community ties, peer and criminal networks. Our experience of working in secure care has revealed many examples where young people recognise this and explicitly request to be supported to remain in Scotland.

Against this context, we believe there is a place for cross border placements but these must be regulated properly. We agree that the host authority should be responsible for the financial costs of the placement and intervention. However, we also believe that care planning should be needs led and responsive to the child's particular circumstances as opposed to "who is responsible" for them per se.

There should be scope for care planning that optimises outcomes and then decisions about where, when and how this is achieved with robust commissioning arrangements in situ with clarity about the respective roles and responsibilities for the child, to ensure that decisions are child-centred and rights based, and not contaminated by other factors per se.

This may mean converting DOLS to CSOs with children having access to advocacy and appropriate legal representation. However, this will have considerable resource implications, and practically, could be very challenging so there might need to be some pragmatic decisions and processes to follow to ensure this realistic and achievable (e.g. if a child is to remain for 6 weeks or more then the legal status and jurisdiction is changed).

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

The definition of a child should be changed to cover under 18s. We agree that children who are deemed vulnerable should have a child's plan and a named person. We do not believe every child requires a plan or named person. We advocate for careful use of resources and needs led decisions drive the care plan.

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

The Impact Assessments are broad-ranging and acknowledges that there will be an impact on children's care and justice services.

In general terms, we would want to see more consideration of the impact on education, employment and health services. There is also very little consideration to third sector or other services (e.g. we would want to provide recreational and community links' services). There are also likely to be significant impacts on adult services where children require long-term, continuity in care planning that is properly resources.

At least two other impact assessments need more work, in our view. First, for children who come to secure care and particularly placements for those who have caused serious harm, there is an associated impact on other children. Given their profiles, some children will be distressed, and potentially retraumatised by being housed alongside those they know have caused particular harms or present with a level of risk.

This is an extremely difficult tension to manage and is not sufficiently addressed by taking a view that "they are all children" and that is sufficient justify a "one size (or setting) fits all". Real success in meeting children's needs requires carefully considered placement decisions and, in some extreme cases, this might require a level of dissociation - at least for a period of time - to ensure their physical and psychological safety.

A second, impact assessment relates to family needs. The Bill is very much focussed on the young person and is lacking in explicit statements of consideration or how to support families. For example, to have a child who's liberty is restricted or who have been known to have caused serious harm, are tremendous - and this can, at times mean that the child who has perpetrated the harm and the child who has suffered the harm, might be in the same family. Sometimes the parents may too will have needs to be addressed. As services exist, there is no parallel journey - queues are different for different services. For example, vulnerable families might need supports for mental health, substance use, economic, housing or their own traumas. If wider systems remain destabilised and unable to meet the young person's needs, interventions delivered as part of C&J Bill might be undermined.

Annexe C

Includem response to the call for Views

Includem welcomes the Scottish Government's introduction of the Children (Care and Justice) (Scotland) Bill. Includem is a children, young people and family support charity that works with people to help them transform their lives. We provide intensive, bespoke support to children, young people and families in challenging circumstances. Our model of support is based upon building solid relationships of trust. Through this approach we can help children, young people and families make positive life choices and progress towards the type of future they want to live. Includem works with children, young people and families in their own communities, planning support where and when they need it most. As a result, we frequently support young people in conflict with the law across the spectrum of offending behaviour from those at risk of offending to those leaving the secure estate or young offenders' institutions. Most young people are referred by Social Work, Police or Education and many are at risk of coming into conflict with the law regardless of why they have been referred. We consider that we are well placed to comment on the Bill.

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

Includem welcomes this element of the Bill as respecting and promoting all children's rights and resolving current disparities in how these rights are realised for young people depending on their legislative status. We support this measure for a variety of reasons, namely: Compliance with United Nations Convention on the Rights of the Child and in particular would honour Article 1 which defines a child as anyone under the age of 18. Includem recognises that this is one way Scotland can meet its obligations under the UNCRC to afford everyone under the age of 18 the rights associated with childhood.

Justice, fairness and rights

In 2008, the United Nations Committee on the Rights of the Child underlined the importance of ensuring that all children in conflict with the law are always dealt with within the juvenile justice system and never prosecuted and tried as adults. It is therefore unfair that the support mechanism of the Children's Hearing system is currently only available to some children, and that their peers who encounter identical situations, scenarios and risks are left in a far more precarious situation through the adult courts.

Not only is the current scenario inequitable, unjust and unfair, but it fails to honour the rights of the child based on their age when they enter the system.

In the revised 'General Comment No 24 (2019) on children's rights in the child justice system, the United Nations Committee on the Rights of the Child reinforced the requirement for all children under the age of 18 to be treated as children.

While welcoming the widening of access to the Children's Hearing system, Includem are concerned about the new cut-off presumes that those over 17 and a half years of age will not be referred.

The justification based on the time taken at the procedural level – including referral to the Principal Reporter, time to convene a hearing and then put meaningful measures in place to have effect – appears to prioritise what is suitable for the processes of institutions.

While we understand the importance of maintaining the hearing system as a model for children, this justification fails to put the best interests of the child as the primary consideration. We are concerned that the reasoning that this is to protect their rights as future adults does not reflect their current rights as a child under the United Nations Convention on the Rights of the Child, which exists in recognition of the special protections needed by children.

Given the Bill builds in opportunity for the Hearing to recommend continuation of support into a child's 18th year, we do not understand why this presumption has been made for referrals and strongly support its removal. Premature creation or terminations of Compulsory Supervision Orders

Includem have experience of supporting children who have both had the premature termination of their Compulsory Supervision Order (CSO) prior to their 16th birthday due to their involvement in the adult court system but also young people placed on CSOs just prior to their 16th birthday or had them continued beyond their 16th birthday 'just in case'.

This situation arose because of the current inability for a child to be referred to the Principal Reporter after their 16th birthday. We believe that this decision does not meet the principle of minimum intervention and in some cases the level of intervention exceeds the need and results in increased risk for the young people of further involvement in the system.

Research has consistently demonstrated that the biggest risk factor in continuing offending behaviour is contact with the criminal justice system. A change in legislation will support children accessing the support and protection of the Children's Hearing System when they need it and for as long as they need it without the current practice of premature terminations or preventative orders being put in place.

16 and 17 year olds in court

Includem recognise that the widening of the age range in the Children's Hearing System is for all children, whether they are being referred under care or justice grounds, however we welcome the probability that it will result in far fewer 16 and 17 year olds appearing in court. Includem recognise that children get a faster and more supportive response when their offending behaviour is addressed through the Children's Hearing system than through the courts. This faster and more supportive response increases the likelihood of children moving away from offending behaviour

and ensures that their contact with the criminal justice system is holistic and child-centred.

Includem also recognises that the Children's Hearing system responding to children in conflict with the law more quickly than the court system will have benefits for those who have been harmed by children.

Those who have been harmed are less likely to have to give evidence in court and it could increase the use of Restorative Justice practices.

Also given that the majority of those harmed by children are children themselves, it ensures that both those harmed and those whose behaviour causes harm are responded to in a child-centred way and outwith the adult justice system.

Legislative and Policy Alignment

The legislative and policy framework that defines childhood is complex and contradictory. Maximising the use of the children's hearings system would therefore go some way towards realising Article 1 on the United Nations Convention on the Rights of the Child, but would also reflect the spirit and content of the 2014 Children and Young People (Scotland) Act and Getting It Right For Every Child.

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

Includem welcome the intent within the bill for children in conflict with the law to have less contact with the adult justice system. We agree with the response to the flaws in this question as outlined in the response by the Children and Young People's Centre for Justice.

In particular we echo their call for an adjustment to the Lord Advocate's guideline in relation to Early and Effective Intervention (EEI) to ensure where possible children in conflict with the law enter neither the Children's Hearing system or the adult courts.

Includem welcome this approach for the reasons outlined in question one, in that it will be a timelier and child-centred response for children whose behaviour has caused harm and those harmed by their behaviour. We also reiterate our earlier argument that the Children's Hearing system supports better outcomes for children in conflict with the law than the adult courts.

Maximising the use of the Children's Hearings System is a step towards providing a more trauma-responsive approach to episodes of harmful behaviour, recognising that this cohort of children experience vulnerabilities due to significant childhood adversities and experiences.

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

Includem welcome the changes that the bill will make to Compulsory Supervision Orders.

Compulsory Supervision Order

Includem welcome the power to prohibit a child to enter a particular location or to make communication with an individual as it could be beneficial in protecting others from harm and also support the child's decision making.

We expect that these measures are most likely to be used when a child has been accused of targeting another person or persons.

It may provide greater confidence amongst the public in the Hearings system's ability to respond to children and young people who would otherwise be subject to Bail conditions.

We also recognise that these steps could have some benefit in assisting children who are being exploited or are at risk of being exploited by others. We are concerned however that the measures may place the responsibility to remain safe on to the child and failure to adhere to the measures may have the unintended consequence of increased contact for the child with the Children's Hearing system, which we have already highlighted is the greatest risk of continued contact with the justice system over the course of their life.

These measures need to be supported by robust guidance for social workers and panel members to ensure the measures are used cautiously and specifically, informed by a thorough risk formulation which considers the child's life in its entirety.

Movement Restriction Condition

Proposed changes to the criteria surrounding a Movement Restriction Condition (MRC) could enable more flexible and tailored support, including whole family support, which allows a holistic response to the child and family. We particularly welcome the use of MRCs to limit the use of secure care.

Includem are of the view that where possible children should be supported in their families and communities as it both respects their rights and results in better outcomes.

Includem support the call by CYCJ that an MRC must only be considered where there is a clear assessment and evidence as to how its intended use is proportionate to manage the level of potential harm, and interrupt or minimise the opportunity for the serious harm to occur.

Such provision must be accompanied by robust wraparound and individualised support for the child and their family that scaffolds them whilst addressing risk of harm, building on strengths, creating capacity and providing developmental

opportunities. In relation to using an MRC where a child is at significant risk of being harmed or exploited, we welcome the measure within the bill which support creative use of MRCs.

We reiterate our earlier point about ensuring that these measures do not inadvertently place the burden of safety on the child and failure to comply to not result in more punitive measures which serve to blame the victim.

Any use of MRCs in these circumstances need to be complemented by robust activity by services to disrupt those causing the harm to the child. The intent to protect the child needs to be carefully balanced with their rights to privacy, family life and access to education and play.

Regardless of whether MRCs are being used to support children whose behaviour is causing harm or those at risk of harm it should meaningfully meet the needs and manage the risks identified, and always alongside meaningful robust wraparound support.

It is widely recognised that MRCs are most effective when accompanied by a robust and flexible support package which addresses the underlying challenges and risk factors in the child's life. Includem supports CYCJ's suggestion that this Bill could be strengthened, and the rights of children could be better protected, by making specific provision for legal representation to be made available whenever an MRC was under consideration by a Hearing.

Includem believe that children should always have access to legal representation when a decision is being considered that will restrict their liberty in anyway and also in recognition that the data generated by MRCs impinges on their right to privacy. Secure authorisation Includem welcome the measures within the bill which allow for the continuation of secure care for those children who display very few signs of vulnerability or of posing a risk to themselves or others, but for whom the situation drastically deteriorates immediately upon, or soon after, leaving the secure environment.

We support CYCJ's reflection that the existing definition of psychological harm is perhaps too broad, and may lead to a greater number of children being deemed to have met the secure care criteria than was intended by this Bill.

The Bill's proposal to include "fear, alarm and distress" as a feature of psychological harm could be interpreted in an overly liberal manner, particularly given the language associated in this clause and the wording of Section 38 of the Criminal Justice and licensing Act of 2010, which replaced the common Scots law offence of Breach of the Peace. Consideration needs to be given to defining this clearly within the Bill to prevent this unintended consequence.

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

Includem believe that the Bill could have a beneficial impact upon children who have been harmed by another child in two ways. Firstly, by widening access to the Children's Hearing system, it is more likely that the incident that has caused harm to the child will be responded to by the Children's Hearing system rather than the courts. This will benefit children who have been harmed by other children through avoiding having to appear in court to give evidence, as well as a quicker response.

The swifter process of the Hearings system should support recovery from trauma in a quicker manner than is currently possible. Secondly, raising the upper age of referral will grant children aged 16 or 17 access to the Children's Hearing System when they have been harmed and require additional care and support to recover, whether by an adult or another child. This could be episodes of sexual abuse, physical abuse, child exploitation in all its forms and other adverse circumstances and vulnerabilities.

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

Includem supports the strengthening of current measures for information sharing in making it a duty for the Principal Reporter to inform people of their right to request information. We believe that this will go a long way to reassure the public and those harmed that the Children's Hearing system is not 'soft justice'.

We also believe that receipt of appropriate and proportionate information will support greater uptake of Restorative Justice processes through greater transparency of the process. Fundamentally, we believe that any changes made to existing provision must achieve a rights-respecting solution for both the person who has been harmed, and the child who is believed to have caused that harm and lead to better outcomes for both.

Any sharing of information needs to be proportionate and rights respecting, ensuring a balance between only sharing information when absolutely necessary when responding to episodes of harm (in compliance with The Beijing Rules) and ensuring those who have been harmed can exercise their rights where there are protective measures directly involving the person harmed, for example where there is a condition for the child not to approach the harmed person's house.

As with all legislation, the effectiveness of this bill will be in its implementation.

Includem believes that the successful implementation of the bill requires clear decision-making matrix within the regulation that provide clarity on the circumstances within which information is shared or withheld, who is informed or not informed.

The bill for example allows for the Principal Reporter to inform just the child who has been harmed, a relevant adult or both. The regulations should make it clear how this decision is arrived at, ensuring the child's right to information is carefully balanced with their right to protection.

Includem is also mindful of the implications of increased information sharing in light of GDPR, Data Protection legislation and existing protections relating to personal information.

Mechanisms should also be created to ensure that the frequency, volume and nature of information is shared and patterns analysed on an annual basis to ensure that the system is appropriately upholding the rights of all involved.

Includem agrees with CYCJ's call for a general, illustrative account of the difficulties and experiences children who cause harm have often experienced themselves, and what types of responses help them to recover from this and not harm others in the future, to be made available to those who have been harmed by a child. This will support their understanding of why certain information is not disclosable, and to aid their understanding of the children's hearings system. As already stated we believe that additional information, where appropriately and proportionately shared would support increased opportunities for Restorative Practices to be used. These practices are shown to improve understanding of the context behind harmful behaviours and supports the healing process for the person who has been harmed. Consideration of these practices on all occasions where a child has caused another person harm should be built into Scotland's response to such behaviour.

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

No.

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

Includem supports any actions which ensures that children whose behaviour has caused harm is responded to in accordance with The United Nations Committee on the Rights of the Child General Comment No 24, which states that "every person under the age of 18 years at the time of the alleged commission of an offence has the right to be treated in accordance with the rules of juvenile justice, in a specific and specialized system, different from the criminal one applicable to adults" (2019, paragraph 37).

Raising the age of referral into the Children's Hearing System will allow Scotland to meet its international obligations and own policy initiatives. Research consistently

shows that for children and young adults to meaningfully participate in the justice system, an approach is needed that is child-centred.

Includem believe that this best place for this to happen is the Children's Hearing System. This call for evidence does not ask specific questions about the safeguards proposed for children involved in criminal proceedings. Includem would like to address these in this answer.

We welcome the safeguards as proposed and believe it is important that all children are protected from the consequences of their actions into adulthood, recognising their brain development and levels of maturity impacting on their decision making capacity. Broadly, and on a point of principle, includem believe that the identity of children who cause harm whilst under the age of 18 should remain undisclosed through that individual's lifetime.

As such includem believes that there are no circumstances where naming a child would serve the interests of the child or the community above the child's long-term prospects of desistance, which is supported through maintaining anonymity. As mentioned previously, the effectiveness of this legislation will be through its implementation.

There are measures within Sections 11 – 14 that would benefit from a clear decision-making matrix within the regulations. For example, what is the threshold for disclosure to be in the interest of justice. Accepting the independence of the judiciary, it would be helpful to know what constitutes "not reasonably practicable" when it comes to taking measures to facilitate children's participation in court proceedings, what mechanisms will be in place to review decision making on a local and national level, is there a duty to provide remedial action once barriers have been identified so that they do not continue to be barriers for other children?

Where a child is co-accused with an adult, the court is required to have regard to the rights of the adult to ensure they can participate effectively in the proceedings. It would be helpful for the regulations to define how much regard and what has priority where the realisation of both parties rights might be in opposition to each other. Includem however cannot envisage a scenario whereby the adult would not also benefit from the measures taken to ensure a child's participation.

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

Includem are fully supportive of this proposal. We have first-hand experience of supporting children in a Young Offenders' Institution (YOIs) and have witnessed the poor and sometimes tragic outcomes that result. Should a child be deprived of their liberty, it is imperative for their immediate and long-term wellbeing that this happens in a secure care environment. We agree with The Promise who concluded that "being placed in prison like settings is deeply inappropriate for children"

(Independent Care Review, 2020: 82), and who called for all children to be removed from Young Offenders' Institutions by 2024.

However, we strongly believe that secure care should not be the only and direct alternative to a Young Offenders' Institution. There is significant evidence which shows that the most rights respecting approach would be to support the child within their community through robust and intensive support for them and their families.

There needs to be greater provision of community-based services, faster and greater access to mental health support, including forensic mental health and access to universal support that diverts children away from harmful behaviour.

Structural responses are needed to address barriers such as poverty, recognising that those who experience entrenched poverty are at greater risk of coming into conflict with the law.

Includem were disappointed that the financial memorandum only considered the cost to Local Authorities for the provision of social work reports and representation at Children's Hearings.

UK and national austerity have seen a significant decrease in Local Authority funded third sector provision of youth services and whole family support. Failure to account for the significant positive impact third sector support has in supporting children away from harmful behaviours in the financial memorandum may result in less effective implementation of the aspirations of this bill.

To support children to remain within the community when they have caused the most significant levels of harm, Scotland must develop a sector within which risk is fully embraced, understood and addressed, and more important sufficiently resourced.

Where it has been assessed that the risks can only be managed by depriving a child of their liberty then includem strongly believes that this must only be through secure care. Secure care, as implied by its name, provides care, access to education and provision of therapeutic support to make the changes necessary to keep them and other safe, which is not available with YOIs.

Includem also believe that secure care is best able to support the successful reintegration of a child into the family and community after a period of deprivation of liberty. Given that most children return to their families after a period of care, including secure care, it is important that these relationships are promoted, and opportunity given to restore any fractured relationships. Secure care better supports the child's right to family life as it has greater scope to support regular and meaningful visits, phone calls and other means of communication with family members.

This supports continuation and restoration of the relationship key to a child successful reintegration into the community and known to support desistance from offending behaviour.

Includem believes that secure care centres are far better equipped to respond to the needs of children in a trauma informed way. Secure care provides higher staff to child ratios, specialist training on childhood development, a smaller and more home-like environment ensuring a more trauma-responsive experience for children.

Secure care centres are better able to provide the targeted interventions which seek to address the factors that have led to the harmful behaviour in a timely manner.

They will also be available to all children, including those on remand, unlike YOIs who do not offer such supports for remanded children. Secure care therefore provides the best opportunity to support change in areas of a child's life, even for those who only experience short periods of deprivation of liberty.

Adherence to children's rights is another factor that should be considered when legislating over the use of secure care. YOIs continue to use pain-based restraint techniques, although are in the process of reviewing the suite of techniques and interventions that they utilise. Such measures are not employed within secure care, and as such the use of secure care rather than a YOI can help to protect children from experiencing episodes of harm.

Includem welcomes the provision within the bill which ensures that there is no distinction between those on a CSO and those who are not. Work is required to secure adequate capacity for Scottish children requiring secure care in Scotland; according to figures provided by CYCJ on 12 March 2023 there were only three available beds within the four independent secure centres. Continued use of Scottish secure provisions by English and Welsh local authorities plays a role in this.

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

The proposed amendments to the way in which secure care is regulated appear to enhance the level of care that is provided to children in secure care in Scotland.

Understanding the importance of local care, and how distance can affect critical relationships for children and the way in which it breaches children's right, makes it hard to see many situations where a child should be placed in a cross-border placement.

Again the impact of this bill on cross-border placements, will be seen in its implementation. It could be that more children will be placed across the border as the legislation allows for more legal orders than CSO-equivalent orders to be accommodated in Scotland, providing the financial costs are met by the sending Authority.

Without a change to the way in which secure care centres are funded, there is a risk that secure care beds will not be available to Scottish children when they need them. Includem would encourage consideration for how the regulations can support the decision making when consideration is being made to accepting a cross-border placement.

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

Whilst alteration to the definition of a child within the Anti-Social Behaviour Order (ASBO) legislation will lead to greater harmonisation across the legislative landscape, includem hope that the change to the legislation will not result in greater use of ASBOs. Includem have seen first-hand the consequences of ASBOs on the families we support. They experience them as stigmatising and serves to excluded them even further from their communities. It penalises children and families for the impact of structural disadvantage such as poverty and community deprivation which has known links to anti-social behaviour and places undue responsibility on children for circumstances they have little influence or control over. There is little evidence to show that the use of ASBOs is effective, particularly if they are not supported by robust whole family support which mitigate structural inequalities.

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

No

The Promise Scotland response to the call for views

The Promise Scotland is the organisation set up to support Scotland in its delivery of the implementation of the findings of the Independent Care Review, the [promise](#). The promise was guided by the stories, views and experience of children and families. The Care Review heard a variety of experiences from children, their families, care experienced adults and members of the paid and unpaid workforce about how the Children's Hearings system currently operates. The Children's Hearings System and Looked After Child Reviews were mentioned frequently and referenced as pivotal moments in the care journey, where children and their families should be involved, listened to and able to participate and engage in important decisions about their lives.

The promise was clear that the principles that underpin Scotland's unique Children's Hearings System must be upheld, but there must be a more active consideration of underlying structures so that the Children's Hearings System is best placed to truly listen and uphold the legal rights of children and their families. It also stated that the disproportionate criminalisation of care experienced children and young people must end and that 16- and 17-year-olds must no longer be placed in Young Offenders Institutes for sentence or on remand. Children who do need to have their liberty restricted must be cared for in small, secure, safe, trauma- informed environments that uphold their rights.

The Promise Scotland is facilitating a project to develop proposals around the redesign of the Children's Hearings System. That work will be published in early May and shared with the Scottish Government. If the recommendations are accepted and implemented, will represent a step change not only for the Children's Hearings System but for how we work alongside children and families across Scotland. As set out below, this implementation should be fully sequenced with the commencement of the Children (Care and Justice) (Scotland) Bill so that the Children's Hearings System is better able to support the introduction of an additional number of 16- and 17-year-olds, and their families, into the system and ensure that it upholds and helps them to access their rights.

In its response to the promise, the Scottish Government committed to fully implement the conclusions of the Independent Care Review and this Bill forms an important building block in taking forward that commitment. **The Promise Scotland is strongly supportive of the intent and ambition within the Bill and makes submissions on a number of points set out below based on the implementation of the promise and the work to redesign the Children's Hearings System.**

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

Increased access to the Children's Hearings System for 16- and 17-year-olds is clearly in line with the original intentions of the Kilbrandon Committee and with the definition of a child as under the age of 18 years, in accordance with the UNCRC

ahead of the planned move to incorporate the UNCRC into Scots Law. The Promise Scotland is therefore strongly supportive of the changes set out in Part 1 of the Bill. This is a welcome change and allows the special protections and approach of the Children's Hearings System to extend to all children. It allows teenagers in need of care and protection, who had not been previously known to the Children's Hearings System, to be supported in a way that addresses their underlying needs.

It is critical that the Children's Hearings System is understood and supported to be a place where children's rights are upheld and that those organisations and authorities who refer and provide support to children and families are well placed to facilitate the support they require. Many of the children who will be referred to the Children's Hearings System under the changes will require help and support due to adversities that they have experienced in their early life. Increasing access to earlier help and support for these children and—where appropriate—their families is a core preventative measure that will help to keep the promise. If provided with holistic, trauma-informed emotional, practical and financial support at an earlier stage The Promise Scotland is of the view that it is much more likely that these children will grow up to be safe, happy, healthy and loved in their own families and communities.

In order to meet the anticipated significant increase of 16- and 17-year-olds referred to the Children's Hearings System—regardless of the grounds on which they are referred—preparation will be required to ensure all decision-makers are fully equipped and trained to understand the complexities of the circumstances of older children and to uphold their rights.

Structural change to referrals is important and there is much of this Bill that is in line with the promise and the UNCRC. However, it is critical that the lens of enquiry is not simply on how the Children's Hearings System itself will accommodate these changes, but how implementing authorities, who will be charged with facilitating the support specified in Compulsory Supervision Orders (CSOs) and a Child's Plan, will make sure 16- and 17-year-olds are able to access adequate help and support to uphold their right to care and protection. This includes ensuring that the current crisis with respect to the retention and recruitment of social workers is urgently addressed and that the broader childcare, protection and support landscape is ready and prepared for the number of 16 and 17 year olds that will require help and support—and the complexity of the challenges that they are likely to be face. Investment and resources must be available with respect to upholding the rights of older children engaged in the Children's Hearings System (and those accessing support through section 25 of the Children (Scotland) Act 1995) to adequate housing, transport, healthcare and education. There should also be access to mental health support, substance use services and consideration of the pervasive impact of poverty on many of the children who will be entering the Children's Hearings System. They must have a Child's Plan, which should clearly set out how their needs are met, and their rights are upheld.

There should also be adequate provision to uphold children's right to aftercare and continuing care support and to ensure their needs are fully reflected by corporate parents and in the work on meeting the child poverty targets and Children's Services Plans. Some of these children may be parents themselves, and that should be taken

into account as the Children's Hearings System engages in their lives. The specific needs of unaccompanied children should be taken into account, including resources to facilitate interpretation and translation and there should be a laser- sharp awareness and understanding of the impact of grooming, trafficking, child criminal exploitation and child sexual exploitation on children.

The Promise Scotland is leading the Children's Hearings System Working Group, Chaired by Sheriff David Mackie that is due to report to children, families and care experienced adults and to the Scottish Government in May 2022.

The Group was set up to address the concerns raised by children, families and care experienced adults with experience of the Children's Hearings System and shared with the Independent Care Review. This work will fundamentally redesign the Children's Hearings System, in line with the ambition set out in the promise. The report will outline out a number of changes to the way in which the Children's Hearings System should operate and the way in which children and families experience the system. In October 2022, the HSWG published an [Emerging Themes Report](#), which set out the initial thinking of the Group, and gave the first indications of the themes and issues that were emerging following the information and evidence that they have heard. This report may be a useful indication to the Committee of the issues that the Group is considering prior to the final report being published later this year.

As the Committee begins to hear evidence on the Children (Care and Justice) (Scotland) Bill, the draft recommendations of the Hearings System Working Group are being finalised and tested through a series of engagement and information sessions with children and families, care experienced adults, foster carers, kinship carers and those working alongside and as part of the Children's Hearings System, including social workers, police officers, family support workers, legal representatives and Safeguarders.

As stated above, The Promise Scotland is strongly supportive of the intention behind this Bill and is committed to working closely alongside the Scottish Parliament and the Scottish Government to ensure that there is clear cohesion and collaboration between the commencement of the duties in the Bill and the implementation of recommendations (if accepted) relating to the redesign of the Children's Hearings System. The Promise Scotland does not wish to pre-empt the conclusions of the Hearings System Working Group, but the report is likely to include specific recommendations with respect to the consistency of Panel members, the recruitment and administration of Children's Hearings, the need for help and support for children and their families and the need for stronger, more robust and rights- based decision making processes. The commencement of the duties in the Bill should be coordinated closely with the implementation of these recommendations so that there are clear strategic oversight mechanisms in place and a thoughtful and measured plan for commencement to reduce and prevent confusion, duplication and overlap.

The child protection, care and support workforce should not be overwhelmed by the initiation of new measures at a time when they are already being asked to implement the promise and prepare for a new National Care Service, the incorporation of the UNCRC and the relatively new Child Protection Guidance. Additionally, the

Committee will be aware of the interlinked commitments to commence the duties in the Children (Scotland) Act 2020, to ensure all children have access to a Bairnshoose by 2025, to implement the findings from [Lady Dorian's Governance Group](#) overseeing the recommendations of the report into Improving the Management of Sexual Offences Cases, and to redesign Secure Care in line with the promise.

The implementation of the Bill and the recommendations from the Hearings System Working Group should therefore be streamlined alongside these other important policy commitments and there should be clear communication to help children, families, care experienced adults and those working alongside them that the changes are part of broader work to keep the promise and will be sufficiently resourced. Sequencing and prioritisation, including with respect to commencement of the duties, should be considered in full. In particular, although The Promise Scotland cannot foresee any changes required to the Bill following the publication of the recommendations from the Hearings System Working Group it is important to note that there may require to be changes to the Financial Memorandum and to the way the proposed changes to the Children's Hearings System brought forward by the Bill will be realised and administered in practice.

Most certainly the Group will set out recommendations that will impact on the *experiences* of all children within the Children's Hearings System, including 16 and 17 year olds. If these recommendations are accepted this will need to be taken into account as the duties commence.

Finally, it should be noted that the Children's Hearings System should not be seen as a gateway to accessing help and support. The Promise Scotland is aware of the tight financial constraints facing local authorities at the moment and is mindful that referrals to the Reporter might increase based on a need to secure resources. The Scottish Government should therefore ensure that there are adequate resources to provide help and support to 16- and 17-year-olds working alongside the local authority on a voluntary basis and should ensure that all children who need it are able to access support via section 25 of the Children (Scotland) Act 1995.

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

The Promise Scotland is strongly supportive of the proposed change that most offences committed by 16- and 17-year-olds be dealt with through the Children's Hearings System. The promise was clear that the disproportionate criminalisation of care experienced children must end. It states that when children are before the courts on offence grounds, they must be dealt with in a way that is appropriate, proportionate, recognises their age and is trauma informed and responsive. It was clear that to ensure that all children benefit from the Kilbrandon approach to youth justice, there must be more efforts to keep children within the Children's Hearings System and calls for a more progressive, rights- based youth justice approach.

Ensuring more children who are in conflict with the law are engaged with the Children's Hearings System allows them to be supported in a way envisaged by the original Kilbrandon approach (needs not deeds). As set out above, a preventative, inquisitive approach that seeks to understand the root causes of children's offending behaviour, the adversities and challenges in their lives and the help and support that they need is welcome and in line with the promise. It should, however, be clear that the Children's Hearings System is not a 'light touch' option for children who are in conflict with the law—rather that the Children's Hearings System is the most robust, appropriate decision-making legal tribunal for children.

Inclusion of this group of children and young people will mean a significant change to the way in which the Children's Hearings System operates. This change in the law is likely to bring a large increase of children into the Children's Hearings System, and to increase both the complexity of circumstances and the seriousness of offences heard by the Panels.

It is important to note that although the Lord Advocate's Joint Referral Guidelines are not within the scope of this Bill, they will likely determine the numbers of 16 and 17 year olds referred and the types of offences that the Children's Hearings System is able to manage. It is vital that all guidelines and processes, including the Lord Advocate's Guidelines, are child rights compliant and also reflect the policy intention as set out in this Bill, Scotland's broader commitments to the promise and the recommendations (if accepted) of the Hearings System Working Group.

The specific needs of 16- and 17-year-olds in conflict with the law should be taken into account with respect to an increased need for evidence-based help and support such as community justice social work, peer support and community justice measures alongside a potential increased need for restorative justice services. All decision-makers in the Children's Hearings System and those working alongside them should be fully trained in trauma, child development and communication and the needs and rights of children in conflict with the law.

All children going through the Children's Hearings System should be fully informed of their right to legal representation and to advocacy support and should understand how they can access these rights. This means that children should be informed of their right to legal representation and to advocacy support and that they should be entitled to access legal aid. The Promise Scotland refers to the submission from Clan Childlaw which sets out the details of access to legal aid, and the changes that will be required to ensure children can access legal aid when the duties in the Bill are enacted. There must be no unintended consequences for children in terms of their ability to instruct a lawyer and access their right to legal representation when they are engaged in the Children's Hearings System as opposed to the criminal Courts.

It should be fully understood that some children's behaviour while engaged with the Children's Hearings System may be due to their previous experiences and their heightened sense of fear and anxiety. While this does not in any way excuse or mitigate offending behaviour—including the extremely serious offences that some children may have been accused of—there must be a clear connection between what has happened to a child in the past and the reasons for their referral into the Children's Hearings System should be discussed and considered in order to

understand the most appropriate help and support that they need. These discussions and considerations should take place alongside children rather than around them.

The consequences and implications of children accepting offence grounds should be fully explained and understood, given the significant implications that this can have in terms of criminal record checks.

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

The changes to Compulsory Supervision Orders gives the Children's Hearings System greater choice in determining which measure or combination of measures is most likely to meet the needs of the child and to manage any relevant risks. The Promise Scotland welcomes the broader scope and flexibility that the Children's Hearing System will have in dealing with the facts and circumstances that surround the lives of children and the circumstances under which they will appear before a Panel.

Particular care must be taken in relation to ensuring specific legal safeguards are in place when aspects of a CSO restrict or deprive a child of their liberty. Movement Restriction Condition (MRC) should be carefully utilised and further work is required to ensure that they are only in place when necessary and in ways that do not infringe on children's rights. It is particularly important to consider the use of MRCs with respect to child victims of trafficking, child sexual exploitation and child criminal exploitation and to ensure that the Children's Hearings System has fully explored the reasons behind offending behaviour and what help and support a child might require. The enforcement and monitoring arrangements relating to the new provisions must be clear.

The Promise Scotland refers to the submissions from the Children and Young People's Commissioner for Scotland, Together Scotland (Scottish Alliance for Children's Rights) and Who Cares? Scotland for further detail on the implications with respect to children's rights. Imposition of an MRC, whilst may be necessary to protect the child and/or others and prevent the need to place a child in Secure Care, represent a restriction on the child's liberty. It is therefore important that if they are considered as a likely part of a CSO then the child has access to legal representation and is fully informed of and aware of their rights and how to access them.

The most significant restriction that can be applied is the approval to place a child in Secure Care. As aligned with the decision to restrict liberty it is critical that young people have access to legal advice and representation.

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

Scotland's Children's Hearings System has been built on the premise that children who harm are in as much need for care and protection as those who are harmed by

others. It was ahead of its time in taking an approach that understood that the deeds of a child were best understood through a framework of their needs.

Having increased options in relation to what can form part of a CSO will allow the Children's Hearings System a higher degree of flexibility of approach, ensuring that the best interests of all children are upheld, and relevant risk is managed.

As 16 and 17 year olds begin to appear before the Children's Hearings System it is important to ensure, and for Panels to question, the levels of support that children and young people receive as part of a CSO. Restrictions and expectations placed on children must be married with high levels of support and care to facilitate recovery rehabilitation.

The rights of victims, including where there are other children involved, should be fully considered by the Committee as the Bill progresses. In particular, it is important to note that the Scottish Government has committed to ensuring that all children have access to a Bairnshoose by 2025. This important commitment should align closely with the commencement of this Bill, including in relation to the specific protections for child victims and witnesses that a Bairnshoose will bring.

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

The changes set out in Part 1, Section 6 give more discretion to the Principal Reporter in relation to the provision of information to persons affected by a child's offence. These are important changes that align the information framework more clearly with Article 17 Article 40 and Article 3 of UNCRC. It may not always be in a child victims' best interest to be informed about a referral to the Reporter of the child who harmed them and providing the Reporter with a level of discretion is critical in ensuring an overall child rights and wellbeing approach to provision of information. The exercise of the discretion to provide information must be supported by strong guidance that reflects the complexity of these decisions and views them through a child rights lens. These provisions should be aligned with the work to implement a Bairnshoose and the broader changes in protections and provisions for child victims and witnesses.

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

Please refer to the responses above, and to the Emerging Themes Report from the Hearings System Working Group.

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

In line with above, The Promise Scotland supports the policy intent around the increased engagement of 16- and 17-year-olds in the Children’s Hearings System. These changes should be carefully considered in relation to the recommendations of the Hearings System Working Group and adequate resourcing must be provided not only for the administration of the system itself but the broader child protection, care and support landscape for children and their families so that it meets the needs and upholds the rights of older children in the system.

16- and 17-year-olds should not merely be placed in a holding pattern until they are old enough for adult criminal justice processes, but rather the engagement of the Children’s Hearings System should mean a broader, more holistic assessment of their needs. In order to prevent children from entering into the adult system once they reach 18 some children will require significant levels of help and support, including with respect to housing, employment and financial security and sustainability. Many of these children will have significant challenges and complexities in their lives and require mental health, substance use and trauma recovery support. These needs should be met within the context of the engagement of the Children’s Hearings System and in the spirit of keeping the promise. An order for MRCs or Secure Care should, therefore, link much more closely to the overall needs of older children.

There must be creative ways to uphold children’s right to be heard in ways that make sense to them and to ensure that they understand the systems and processes of the Children’s Hearings System.

Additionally, it is important that there are clear connections between children’s and adult services so that children do not experience a ‘cliff edge’ when they turn 18 and that children are not left in limbo at age 17 and a half due to a concern that there is not enough ‘time’ for them to engage with the Children’s Hearings System. The duty for the Principal Reporter to provide supervision and guidance after children turn 18 up to age 19 is welcome and The Promise Scotland would welcome further clarity about how this will be operationalized, including how it will be monitored, and how much resourcing is being allocated to this duty in practice.

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

This is a vital step in upholding the rights of children in Scotland and in keeping the promise, which is clear that Young Offenders Institutions (YOIs) are not appropriate places for children and only serve to perpetuate the pain that many of them have experienced.

There has been demonstrable progress over the last few years to reduce the numbers of children who are remanded and sentenced to YOI provision. The Bill provides an important full stop on a practice that is not in line with UNCRC and with the overall Kilbrandon approach that Scotland has championed for generations. Secure Care must be a last resort for children and there should be safeguards and mechanisms in place to ensure that all other options have been fully explored and exhausted. This may require the Panel working closely alongside the implementing authority and the child's social worker. It also requires considerable investment in early help and support for families to ensure that children are safe and secure within their families and communities, where possible.

There will, however, be some young people who do need to be deprived of their liberty in order to protect themselves and others, and Secure Care providers must be supported to ensure that young people and relevant risk is managed in a supportive, trauma informed way.

[Plan 21-24](#), which is a set of outcomes in place to reach by 2024, has made clear that there must be thorough planning and support to take forward the way in which Secure Care and other places where children live is managed. The Promise Scotland is supportive of the work that the Scottish Government is undertaking to redesign Secure Care and to ensure that providers and the workforce are ready for the changes that the Bill will bring. Clear leadership, strategic oversight of the various different moving pieces which represent this welcome change and sufficient resourcing is vital to ensure that the operationalisation of these duties are smooth and streamlined. As this work progresses The Promise Scotland is mindful that further legislative changes may be required with respect to Secure Care, which must be included in the forthcoming Promise Bill in 2026.

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

The conclusions of the Independent Care Review made clear that cross border placements must end. However, this has been difficult due to the problems of availability of residential placements in England. This has led to increased demand and increase in the numbers of applications of children being placed in residential and secure care in Scotland.

The Committee has previously approved Regulations to change the way in which orders made in England and Wales have effect in Scotland. These changes make clear that a 'non-Scottish order' should be considered in Scotland in the same way as a CSO or ICSO.

The recent Care Review in England recommended the development of regional collaboratives that can plan and provide for homes for children. The Promise Scotland has been clear that this should be implemented urgently.

In the meantime, a clear plan cross- Governmental plan should be prioritised alongside the provisions set out in this Bill to reduce the numbers of children being placed away from their homes and communities across the border. There needs to be strong cross-border working between the Scottish and the UK Governments as the duties in this Bill are enacted to ensure that the following is in place for children and young people who do need to come to Scotland for care and support:

- Help and support beyond the bricks and mortar of the ‘placement’ itself. That means that any consequent help and support for the child that is required from Scotland’s Local Authorities and Health Boards is clear and specified and can be reviewed. For example, mental health or trauma recovery support beyond the placement itself.
- Information about the child’s support need and plans are properly shared with the implementing authority in Scotland so there can be collaborative and joint working and the child’s rights can be upheld.
- Provisions are robust to ensure that the places children are asked to live are well regulated and supported to manage the specific needs of children who are living far away from their family and communities.

The provisions set out in Section 25 of the Bill should support improved information sharing and clarity over the legal status of children who are moving between England and Scotland. No child should be left in limbo, far away from their family and community while administrative and bureaucratic processes prevent the help and support that children need from being put in place.

In addition, the promise was clear that Scotland must strive to become a nation that does not restrain its children. The Promise Scotland supports the calls for the legislation on restraint to be consolidated and clarified and considers that the Committee may wish to explore this issue further as the Bill progresses.

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

The Promise Scotland is supportive of changes to the Antisocial Behaviour etc. (Scotland) Act 2004 to bring the Act in line with the UNCRC.

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

The Child Rights and Wellbeing Impact Assessment demonstrates areas of the Bill where there is a required balancing of rights. It is welcome that the impact assessment demonstrates the risk that “changing tests for MRC and secure

accommodation could result in more children having their liberty restricted or deprived.” However, it is also made clear that is not the intended policy intent.

Children should only be engaged in the Children’s Hearings System if the legal support that the system offers (including MRC and Secure Care) is necessary. Help and support must be in place to prevent unnecessary restriction and deprivation of a child’s rights. Critically, in order to ensure individual children’s rights are upheld in the context of restriction and deprivation of liberty it is important that children have ready access to legal advice and representation and advocacy support.

Who Cares? Scotland response to the call for views

Who Cares? Scotland is Scotland's only national independent membership organisation for Care Experienced people. Our mission is to secure a lifetime of equality, respect, and love for Care Experienced people in Scotland and we currently have nearly 4000 members.

At the heart of our work are the rights of Care Experienced people, and the power of their voices to bring about positive change. We provide individual relationship-based independent advocacy and a range of participation and connection opportunities for Care Experienced people across Scotland.

We work alongside Corporate Parents and various communities to broaden understanding and challenge stigma faced by Care Experienced people. We work with policy makers, leaders, and elected representatives locally and nationally to shape legislation, policy and practice. We do this collaboratively to build on the aspirations of The Promise and secure positive change.

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

We agree. As an experienced independent advocacy provider for over 40 years, we know that these options are most likely to safeguard and support Scotland's children towards positive outcomes and destinations. As we set out in our [response](#) to the public consultation on this issue in October 2020, 'this proposed change to the age of referral has the potential to shift culture and practice increasingly towards one which recognises the importance of providing support, guidance and legal protection for as long as possible in a child's life.'

However, the Scottish Government must provide sufficient resource to support the expansion of the Children's Hearings System to ensure policy aspirations can be delivered fully.

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

We agree. In order to keep The Promise, we support the move away from adult criminal courts for children who come into conflict with the law, with the CHS as an alternative arena to support children.

However, in order to uphold the UNCRC, the Bill requires amendment to ensure specific provision of independent and relationship-based advocacy, and to clarify children's rights to legal representation.

As the Children and Young People's Centre for Justice (CYCJ) made clear in their [response](#) last year to the Scottish Government's public consultation on these legislative proposals, the CHS has a greater range of options available to support children who commit offences and means all children in these positions will have their welfare considered as a priority in any decision-making about their futures in line with the Kilbrandon principles which underpin the CHS.

In line with the Scottish Government's implementation plan to Keep The Promise and Sherriff Mackie's review of the Children's Hearings System, any move towards children who come into conflict with the law being referred to the Reporter instead of tried in a criminal court must also include clear legislation that supports the realisation of Article 12 of the UNCRC to participate in decision-making processes.

For every child being referred to the CHS for an offence, we must ensure they understand the process and that their views are included and listened to explicitly in hearings about offending behaviour. The provision of the right to independent, relationships-based advocacy by skilled advocacy workers, alongside skilled legal professionals who specialise in criminal and human rights law, will be key in realising children's Article 12 rights.

As an advocacy provider, we have extensive experience of working closely in collaboration with legal professionals to provide high quality support to uphold the rights of young people in the CHS. With the CHS expanding, we expect the need for the national children's hearings advocacy scheme to grow, created by the Scottish Government in 2020 and since expanded to support siblings' participation rights and children and young people placed in residential settings in Scotland under Deprivation of Liberty Orders (DOLs).

In an adult criminal court, although not child-friendly, there is a clear right to legal representation for every young person. We would expect the same standard of 'guarantees for a fair trial' as set out in General Comment 24 (pp. 8-12) for children in the CHS, and the right to a fair trial (Article 6 of the European Convention on Human Rights / ECHR) as protected by the Human Rights Act 1998.

This access to legal advice and representation must also include clear access to legal aid and funding. This should be made available via the Scottish Legal Aid Board, who are also a named Corporate Parent in Scotland. We have [previously submitted evidence](#) on the importance of legal aid to be considered in legal processes which children interact with.

As raised previously by Clan Childlaw, when children and young people try to gain legal representation for a hearing, the legal aid process currently requires lawyers to demonstrate there is a legal issue before aid will be granted. This assumes that children's hearings are not equivalent legal decision-making bodies and that their decisions have less legal status than decisions about adults made in the court system.

These are legal decisions which have a lifelong impact and the option to access the right to child-centred legal support should always be made available and affordable

for those that want it: <https://www.clanchildlaw.org/news/clan-childlaw-calls-for-a-child-friendly-legal-aid-system/>

Panel members in the CHS, Reporters and any service providing advocacy or legal advice and services, must all receive adequate specialist training and upskilling to support young people referred, who would currently be tried via the Scottish criminal courts.

This is especially important for offences which result in the longest sentences, or which are the most serious in risk and harm. We also have knowledge of past practice where children who have been referred to the Reporter on offence grounds have not understood that decisions made via the CHS can result in a criminal record.

All children and young people must have an understanding that convictions received at a children's hearing can result in a long-term criminal record that could appear on a Disclosure check.

All professionals involved in the CHS must also be aware of the consequences of dealing with offences via the CHS instead of a criminal court:
<https://www.whocaresscotland.org/wp-content/uploads/2022/06/WCS-response-to-consultation-on-PVG-Remedial-Order-2018-Nov-17-1.pdf>.

The UN Committee on the Rights of the Child recommends the removal of children's criminal records when they reach 18 (see General Comment 24).

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

Expanding the use of (prohibitive orders and) MRCs could undermine the ethos of the CHS, and instead, the provision of community intensive support packages and a contextual safeguarding approach should be made more widely available.
<https://www.cypcs.org.uk/wpcypcs/wp-content/uploads/2022/06/CYPCS-Response-Childrens-Care-and-Justice-Bill-Consultation-Bill-22.6.2022.pdf>

The criteria for the new prohibitions and movement restriction conditions (MRCs) are vague and do not recognise that either of these orders could also amount to a deprivation of liberty, subject to the specific conditions.

Notwithstanding the other significant human rights concerns including the child's right to privacy, advocacy and legal representation. We are deeply concerned that these orders are founded in stigma about children in care, which is rooted in media and literary stereotypes which influence how we think, without us realising. Tagging children is stigmatising and can affect the child's participation in school and play, as well as their ability to recover from trauma and rebuild relationships.
<https://eachandeverychild.co.uk/the-toolkit/>

The criteria for an MRC also lowers the threshold of risk required, for example: 'Absconding, self-harm, causing physical or psychological injury to another person, physical, mental or moral welfare being at risk.' We are deeply concerned at the

subjectivity which will be required in determining these specified conditions, in particular 'moral welfare'.

This order would not be effective in protecting a young person who is a risk to themselves. These orders put the onus, or punishment, on the child to remove themselves from harmful or exploitative contexts rather than on the child protection system to address the harm in the first place.

Our advocates working in secure care said their young people prefer for adults and the law to protect them rather than putting the onus back on them. In contrast, our Adult Support and Protection (Scotland) Act 2007 places banning or 'protection' orders on the person causing the risk, not on the person at risk, but requiring their consent.

Why wouldn't we protect children in vulnerable situations in the same way as we do adults? A breach of prohibitions would result in a review of the CSO which could result in additional or more restrictive measures (like a MRC or secure care order being imposed).

There is no mention of any support or care plan that would be put in place to address the root of the problem. A contextual safeguarding approach would instead consider how child protection systems can address the harm young people face beyond their families by making people and places safer.

This can be by expanding intensive support packages (which increase young people's use of education, employment and health agencies: <https://dera.ioe.ac.uk/9517/1/0064165.pdf>), by design, community safety, situational crime prevention, as well as targeting places or people for a child protection assessment and intervention.

This approach should be built into the legislative framework, and relevant partnerships should be encouraged for social work and the police with other adults in the extra-familial contexts that use or own places and spaces where young people might encounter abuse, who can be part of contextual intervention planning. Clear contextual outcomes would be set and monitored: https://www.contextualsafeguarding.org.uk/media/zfrngyhd/the_principles_of_contextual_safeguarding-720p.mp4

However, if these orders are kept in the Bill, the legal safeguards for the child's protection, and special procedures (which will now apply to the new way secure care is defined as a deprivation of liberty and regulated by the Bill) will not equally apply to the new CSOs.

In practice, the rights to advocacy and legal representation are not consistently upheld in the CHS unless a secure care order is being considered, and there will be no automatic availability of legal aid.

The Bill also lacks legal safeguards such as determining whether the order is necessary, whether less restrictive options have been considered, and a review

process to ensure compatibility with Articles 5 and 6 of the ECHR as protected by the Human Rights Act 1998.

Therefore, the criteria would need to be amended to ensure these legal safeguards and special procedures are in place so that these orders are properly considered measures of last resort, and an advocate and a lawyer are available on the same basis as they are for a secure care CSO.

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

We are concerned that the financial memorandum states that 17.5-years-old 'is likely the practical cut-off for offence referrals as this will allow time for grounds to be accepted or established where required, any order to be made and services put in place.' (para. 13) <https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/children-care-and-justice-scotland-bill/introduced/financial-memo-accessible.pdf>

While on the face of the Bill, children can be referred up to 18, this last 6 months should not be discarded as lost time, as the child is a child under the UNCRC during this time and the relevant date in human rights standards is the date the alleged offence was committed.

The [Council of Europe's Guidelines on child-friendly justice](#) emphasise the importance of dealing with cases involving children expeditiously, recommending 'minors are treated more rapidly, avoiding undue delay, so as to ensure effective educational action.'

We note the duty of the Principal Reporter in Part 1, to provide supervision and guidance after children turn 18 up to age 19. The reference to a cut-off at 17.5 should be clarified as the Bill receives parliamentary scrutiny to address these concerns under the UNCRC.

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

We welcome these proposals, but want to reiterate our call to the Scottish Government last year to review the minimum age of criminal responsibility as soon as possible.

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

We fully support these proposals which will help to keep The Promise. For example: 'Young Offenders Institutions are not appropriate places for children and only serve to perpetuate the pain that many of them have experienced. There are times where it is right for children to have their liberty restricted, but that must only be done when other options have been fully explored and for the shortest time possible and in small, secure, safe, trauma informed environments that uphold the totality of their rights.' (p.91). <https://www.carereview.scot/wp-content/uploads/2020/02/The-Promise.pdf>

We have extensive experience providing independent advocacy to children living in secure units across Scotland and have specific contracts to provide advocacy for secure settings, such as Kibble, Good Shepherd, and Rossie Young People's Trust.

Our advocates tell us that our members experience secure care environments as better suited than prisons to provide therapeutic support and rehabilitation, supportive relationships and better outcomes, with specific services and child rights-based approaches.

Secure units have mandatory education, a higher staffing ratio and better training for staff on vital areas such as trauma, compared to a YOI. We know that inappropriate detention of children alongside adults in Polmont YOI, for example, has flagged to the UN Committee Against Torture by the CYPCS, and health and wellbeing standards were found to be poor by HMIPS in 2019: <https://www.cypcs.org.uk/news-and-stories/statement-on-hmips-inspection-report-into-polmont-yoi/> However, community-based alternatives to deprivation of liberty must be implemented. We do not want to see this policy change result in a large expansion of the secure care estate in Scotland, or a conversion of former prisons or YOIs into secure care centres.

Any decision to deprive a child of their liberty must be done so in an environment that is nurturing and supports rehabilitation, while protecting and upholding the child's fundamental human rights.

Secure care should be used only as a measure of last resort and for the shortest appropriate period of time. We think secure care is more capable than YOIs of respecting, protecting and fulfilling the rights of children, including implementing Article 37 of the UNCRC, and Article 5 ECHR. Article 37 states that 'every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age.'

The Promise (p.83) recognised that children in secure care must have their rights upheld, including access to healthcare, family time and education. Notwithstanding,

we will set out below that UNCRC and ECHR rights in secure care must be urgently reviewed, as part of this necessary policy change to Keep the Promise.

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

We welcome the re-framing of secure care as being provided for the purpose of depriving children of their liberty, to ensure the necessary procedural safeguards to comply with Article 5 of the European Convention on Human Rights (which concerns the right to liberty). However, paragraph 104. of the explanatory notes states that: 'Existing secure accommodation settings are designed so that the children accommodated there cannot leave freely and can be subjected to continuous monitoring or surveillance.' <https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/children-care-and-justice-scotland-bill/introduced/explanatory-notes-accessible.pdf>

We suggest that any future statutory guidance reflects the reality of 'move on' programmes (eg. at Kibble), where safe implementation of overnight stays at the child's next home are trialled. We also want to see children and young people in secure (or residential) care afforded the same level of protection from physical punishment as children living at home with their parents or carers. The current legislation and guidance on restraint is not explicit enough on how restraint can be used and creates ambiguity in practice (see rights concerns outlined below). This Bill currently misses an opportunity to clarify guidance on restraint.

For more evidence, see our response to the Scottish Government last year: <https://www.whocaresscotland.org/wp-content/uploads/2022/08/Respondent-information-form-WCS-Response-to-Care-and-Justice-Bill-June-2022-1.pdf> Lastly, we recommend that the Bill should be amended in Section 23 to specify:

- That therapeutic services are part of the care, education and support required.
- That the right to advocacy and legal representation must be provided.

We also welcome that children detained by order of court in criminal proceedings will now be treated as 'looked after' by the local authority, including eligibility for after-care, financial support for education or training and case review. We recognise that any inclusion of children in secure care who are serving significant post-18 custodial sentences and/or where behaviour poses the greatest risk means that placements such as secure care must adapt to ensure all children living in the environment are safe and supported.

Our advocacy workers already see practice in secure placements in Scotland where children are housed in different units dependent on the risk factors and behaviours which led to their secure care, to ensure every child feels safe, supported and can thrive.

One advocate said ‘key to this is the secure care ethos of focusing on young people’s level of need, rather than deed.’ Secure accommodation regulation - Standards and regulation.

We welcome the regulation by Scottish Ministers and the Care Inspectorate where services ‘must provide the kind of care, education and support required to meet the health, educational and other needs of the children.’ Our advocates report a lack of consistency across the centres and rights-based action plans with prescribed outcome could improve young people’s rights. Therefore, the Care Inspectorate should work with Scottish Ministers and the CYPCS to urgently review UNCRC and ECHR rights in secure care, without delaying this much needed policy change to Keep the Promise.

There must be inspection against and compliance with the Secure Care Pathway and Standards Scotland (<https://www.securecarestandards.com/>), which articulates what all children in or on the edges of secure care should expect across the continuum of intensive supports and services.

The leading principles for the use of deprivation of liberty of children, as well as the procedural rights and rights about treatment of children and conditions for detention in Article 37 UNCRC must be front and central. The principles include: ‘(a) the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time; and (b) no child shall be deprived of his/her liberty unlawfully or arbitrarily.’ (General Comment 24 p.14).

In June 2021, the Children and Young People’s Commissioner Scotland (CYPCS) carried out an investigation into whether local authorities were complying with laws around placing children in secure accommodation:

<https://www.cypcs.org.uk/investigations/investigation-secure-accommodation/>

It found that some children’s human rights had been breached because there was no evidence those children had been consulted following the decision of a children’s hearing to authorise secure accommodation. There was little communication provided to help their understanding about why they had been detained, and crucially, many had not been told about their right to appeal.

A significant number of these children may have been unlawfully held for at least part of their detention. The Commissioner recommended that local authorities urgently ensure compliance with existing laws, and the Scottish Government reviews the law in light of The Promise and UNCRC Incorporation Bill implementation. Other rights concerns about secure care include:

- Our advocates support some young people being kept in secure care for longer than required due to there being no available placements elsewhere.
- We are concerned about continuing practices in secure care of restraint, placement in a dark cell (lights being turned off as punishment) and solitary confinement – disciplinary measures which violate Article 37 of the Convention (see p.16 of General Comment 24).

- How secure care is used for children who are at risk due to severe mental health issues. Secure care is not a solution to a lack of suitable alternatives, such as therapeutic secure mental health wards.
- We outlined our serious concerns about secure transport in our response to the Scottish Government last year (pp.10-11). <https://www.whocaresscotland.org/wp-content/uploads/2022/08/Respondent-information-form-WCS-Response-to-Care-and-Justice-Bill-June-2022-1.pdf>
- During the Covid-19 pandemic, an advocacy worker supported children in a secure care setting in Scotland who were being forced to isolate alone for seven days upon arrival, as a blanket policy. Enforcing solitary confinement of a child should not be used for any child and any separation from others must be for the shortest possible time as a measure of last resort to protect the child or others, and under the close supervision of a suitably trained staff member (see p.16 of General Comment 24). We raised this rights issue with Scottish Government in April 2021 and the Covid19 Residential Childcare Care Guidance was then not updated to include specific practice for secure care settings until July 2021.
- 'Not all secure Care Experienced Young People in Scotland have outreach access to sexual health care', according to a recent study by Dr Janine Simpson from NHS Scotland. All children have the right to support they need to live and grow (Article 6 of the UNCRC) and the right to good quality healthcare (Article 24 of the UNCRC). [Good quality support for sexual health is a key part of realising these rights.](#)
- Young people on remand who live in secure care can experience difficulties setting up a bank account, impacting on their rights to education (Article 28) and social security (Article 26 UNCRC). One advocacy worker recently supported a young person living in secure care who needed to physically visit a bank with a form of I.D. to set up an account.

However, due to the conditions of their remand, they were unable to leave the safe centre they were accommodated in. This meant the young person was unable to receive their Educational Maintenance Allowance they were entitled to and the advocacy worker discovered this was an issue impacting other young people living in the secure care unit.

Any changes to the use and purpose of secure care must also be co-designed alongside Care Experienced people who have lived in, or still live in, secure settings in Scotland, in line with Article 12 UNCRC. Cross-border placements We are deeply concerned at the practice of English Deprivation of Liberty orders being used to deprive children of liberty in unregulated settings.

We have previously [shared our views with Scottish Government on cross-border placements](#) and reiterate again that in line with Keeping the Promise, cross-border placements must end. As long as they do exist, children in cross-border placements must have timely access to relationship-based independent advocacy, which is specialist in nature.

Formal legal representation and advice must also be made available to children living in cross-border placements, which we know can work well in complement with an advocacy service. While the Promise is clear that lifelong advocacy should be

available for all Care Experienced people, children in cross-border placements in Scotland are not entitled to the same supports or rights as Scottish children.

This runs contrary to the fundamental principle of universality of children's rights. A legal expectation on cross-border providers to commission advocacy is essential to upholding this group's human rights. We have concerns about the continuity of relationships between a young person and their advocacy worker if the young person returns to England or Wales.

An advocacy model for cross-border placements must take into account that Scottish and English advocacy workers building strong relationships with young people living in cross-border placements is key to good outcomes for the young person if they leave Scotland. Scottish advocacy workers commissioned to work in cross border placements will need specialist training on English law that applies to these young people and how some Scottish policy levers and rights they may normally utilise to support other children will not apply.

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

We agree that the age you can get an Anti-Social Behaviour Order from should increase from 16 to 18-years-old, as this is in line with our calls to increase the minimum age of criminal responsibility in line with the UNCRC.

Annexe D

Children's Hearings Scotland response to the call for views

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

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

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

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

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

However, we do have concerns about the timescales for supporting 16 and 17 year olds, particularly with joint referrals. Currently it takes about nine months on average from referral to a children's hearing to a substantive decision being taken, due to the time taken for grounds for referral to be established. Discussions around joint referrals can add further time prior to the referral.

We would welcome further exploration about how these timescales could be expedited, and/or alternative more timely interventions could be made available for a children's hearing. At present, until grounds for referral are established, interim orders are only possible if they are a matter of urgent necessity. This high threshold, coupled with the length of time it can take to prove offence grounds, means that

there may be limited time for the children's hearing to put in place compulsory support before the child turns 18.

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

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

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

- Prohibitions in Section 83: the two new measures of prohibiting a child entering a specified place and being in contact with a specified person or class of person are in effect an articulation of powers that already exist in subsection (h) where a CSO can include "a requirement that the child comply with any other specified condition". The explanatory note refers to a 'breach' of these measures but there seems to be no recourse if a prohibition is not complied with. It would be helpful to further clarify how these new measures will be implemented, monitored and reviewed and how the measures will protect children at risk of offending and/or at risk of harm.
- Movement Restriction Conditions (MRCs) in Section 83 – the proposal to decouple MRCs and secure accommodation authorisation, and the revised criteria for MRCs. We welcome the refinement of the new criteria for MRCs to include wider definitions of 'harm' and 'risk' and the removal of absconding. There seems to be a lowering of the threshold for MRCs which may lead to an increase in their use. Therefore it is important that adequate staffing
- resources, training and clear guidance are put in place to support more children on MRCs.
- The methods for tracking and enforcing MRCs requires further clarification, in particular the use of GPS to track children's movements. We have concerns about how this will be implemented while ensuring that children's right to privacy, as enshrined in Article 16 of UNCRC, is fully protected. Furthermore, there is no provision in the Bill for automatic entitlement for legal representation for children on MRCs (as exists for secure care). Further exploration of this is required to ensure the child's rights are fully protected when they are subject to an MRC.
- The explanatory note also makes it clear that the "key to successful use of MRC will remain the intensive support package that is alongside the electronic monitoring devices". We fully endorse this statement and would like further information on the resourcing of this intensive support package and what it will look like in practice.

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

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

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

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

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

An area that would benefit from further consideration is the definition of relevant person in relation to 16 and 17 year olds referred to children's hearings. Section 200 of the Children's Hearings (Scotland) Act 2011 provides automatic relevant person status to a person who holds parental responsibilities or rights under Part 1 of the Children (Scotland) Act 1995.

This provides automatic rights for a relevant person to respond to the grounds for referral, participate in a child's hearing, receive copies of the reports and appeal the decision of the hearing. It is important to recognise the developing autonomy of a young person who at 16, for example, has the right to live independently, have children, work and vote.

Therefore, there may be situations where the young person would not want a parent to automatically be deemed a relevant person, receive sensitive information and be involved in decisions that affect them. At the very least it would intuitively feel appropriate that, recognising the evolving age and autonomy of the child, due weight should be given to the 'age and maturity' of the child's view in decisions that affect them in line with Article 12 of the UNCRC, including who is deemed a relevant person in their life.

This would require amendments to section 200. It may be that the definition of relevant person should relate only to the parental rights afforded under the Children

(Scotland) Act 1995, not responsibilities. As these rights extinguish when a child turns 16, it would allow for parental rights in children's hearings to mirror the changes to children's rights at 16 and 17.

Further consideration should also be given to the grounds for referral for a 16 and 17 year old. Section 67 (2)(a) of the Children's Hearings (Scotland) Act 2011 outlines the grounds for referral where a child is "likely to suffer unnecessarily ... due to lack of parental care". Similarly, and related to our comments on relevant persons above, section 67 (2)(n) allows a child to be referred to the Children's Hearings System when they are "beyond the control of a relevant person".

Where a young person is living independently and their parent has limited involvement in their life this may not be appropriate, and other grounds relating to criminal exploitation, or sexual exploitation, for example, may be more helpful in providing access to the Children's Hearings System for children who require support and supervision

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

We welcome the raising of the age of new referrals to the Children's Hearings System for 16 and 17 year olds that come into conflict with the law. For children's hearings it will be important that prior to the hearing the panel members are provided with adequate background information from the local authority to make an informed decision about the young person's needs, as well as their deeds. This will be equally important for providing advice to a court and will require intensive support and assessment from the implementation authority in a timely fashion.

It is important to note that we anticipate the majority of new referrals for 16 and 17 year olds will be on non-offence grounds. These young people will likely be experiencing a range of complex vulnerabilities such as poor mental health, persistent poverty, criminal and sexual exploitation, addiction issues and will require early and intensive support.

Therefore, while the focus of the Bill seems to be on those children that come into conflict with the law, further clarification is needed about the resourcing of intensive support packages for those children who have not come into conflict with the law but still require additional care and protection.

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

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

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

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

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

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

Scotland Excel response to the call for views

Scotland Excel was established in 2008 following the publication of the McClelland Review of Public Procurement in 2006. This report recommended the establishment of procurement Centres of Expertise (CoEs) to promote collaboration and develop professional capability.

Since the publication of the report, the CoEs, Scottish Government and local procurement teams have worked together to transform public procurement from a transactional function to a strategic collaborative driver of social value and better public services. While the transformation now required in the social care sector may be far more significant than anything required by McClelland, effective collaboration remains the key to success.

Scotland Excel develops and manages collaborative contracts worth circa. £2bn per annum on behalf of local authorities, health & social care partnerships, housing associations and other third sector associate members. For more than 10 years this portfolio has included national social care arrangements delivered by Scotland Excel in collaboration with the wider sector. National social care commissioning is now a key strategic function for Scotland Excel, covering both adult social care and children's services.

We have a dedicated social care section, comprising three specialist teams staffed by skilled and experienced social care commissioners, supported by other professional disciplines and governance arrangements. With more than a decade of experience in commissioning at a national level, Scotland Excel has developed the skills and knowledge to offer expert stakeholder engagement and collaboration across complex stakeholder groups.

In relation to Children's Services in particular, Scotland Excel has responsibility for national commissioning activity in relation to Secure Care Services, Children's Residential and Education, including Short Breaks, Services and Fostering and Continuing Care Services.

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

Other stakeholders may be in a better position to provide a broader response to the consultation. However, the expertise and experience acquired by Scotland Excel within strategic commissioning of national services enable input to be offered in particular aspects as outlined. Scotland Excel would like to respond in relation to how the proposals may affect service provision.

In particular, consideration should be given to how these changes may impact on providers of secure care services, such as occupancy levels, staffing and training required, changes to infrastructure required and how these changes may interact

with the service specification (for example, changes to staffing required). In addition, it would be relevant to consider the potential financial impact that this (and other proposed changes) may have on providers in the short, mid and longer term, as this is likely to affect any future contracts for these services.

Scotland Excel is already working with partners to ensure that national commissioning decisions support the changes required by the Promise while ensuring continuity of service provision. This includes planning for the transition of children from Young Offenders Institutes into Secure Care centres and forecasting the potential changes resulting from a reduction in cross-border placements. Scotland Excel would be keen to continue this work with partners including the Scottish Government to ensure alignment with the Care and Justice Bill and wider policy direction.

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

Scotland Excel would note the following points in relation to how the proposals may affect service provision: Consideration should be given to how these changes may impact on providers of secure care services, such as occupancy levels.

Consideration should also be given to any potential financial impact that this change (and the other changes proposed) may have on providers in the short, mid and longer term. Any changes may affect current and future contracts for these services, so it is important to give consideration to ensure longer-term financial viability of services and service continuity. For example, the commercial model used for these services may need to be revised to take into account any changes.

Scotland Excel is already working with partners to ensure that national commissioning decisions support the changes required by the Promise while ensuring continuity of service provision. This includes planning for the transition of children from Young Offenders Institutes into Secure Care centres and forecasting the potential changes resulting from a reduction in cross-border placements. Scotland Excel would be keen to continue this work with partners including the Scottish Government to ensure alignment with the Care and Justice Bill and wider policy direction.