

Criminal Justice Committee

**11th Meeting, 2023 (Session 6), Wednesday 19
April 2023**

Children (Care and Justice) (Scotland) Bill

Note by the clerk

Background

1. The [Children \(Care and Justice\) Scotland Bill](#) was introduced in the Scottish Parliament on 13 December 2022.
2. The Bill makes changes to the law in relation to the care of children and the involvement of children in the criminal justice system.
3. The changes relate to the children's hearings system and several parts of the criminal justice system. This includes courts that hear cases relating to children and the places where children can be detained.
4. The Parliament's Education, Children and Young People Committee is the lead committee for the Bill, with the Criminal Justice Committee acting as a secondary committee.
5. The Criminal Justice Committee will focus on two provisions in the Bill which fall within its remit; see below.

Remand, committal and detention of children

6. In sections 16 to 18 of the Bill, the Scottish Government proposes removing the ability for children to be remanded or sentenced to detention in young offenders' institutions (YOIs) or prisons, instead requiring that where a child is to be deprived of their liberty this should normally be in secure accommodation¹.
7. The Scottish Government argues that, whilst it is recognised that YOIs have made great improvements, they are not primarily designed to be therapeutic environments, cannot offer the same level of trauma and attachment informed support, nor the high staff to child ratio sometimes necessary to meet the needs of these children.

¹ Policy Memorandum. Available at: <https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/children-care-and-justice-scotland-bill/introduced/policy-memo-accessible.pdf>

8. Ministers are also of the view that the automatic transfer to a YOI when a child turns 18, having been placed previously in secure accommodation via the criminal justice system, whether following remand or sentence, is disruptive and potentially damaging. This transfer from secure care to a YOI when a child turns 18 happens irrespective of the length of custodial sentence that remains, even if this period is very short.
9. The Government argues that a child who is in a facility for children does not need to move to adult provision immediately on turning 18 and continuation of their placement should be possible. However, this should only be permitted if this is in the young person's best interests and is not contrary to the best interests of other children within the secure care facility.
10. In light of the above, the Bill contains the following provisions which will be the focus of the Criminal Justice Committee's scrutiny:
 - Enable children who are remanded or committed for trial or sentence to be detained in secure accommodation (where the court requires) or a place of safety chosen by the appropriate local authority, whether the child has already been subject to compulsory measures via the children's hearings system. It also states that once a person has attained 18 the court may commit the person to a YOI (section 16);
 - Provide that the Scottish Ministers may make regulations relating to children detained in secure accommodation through a criminal justice route, which may include providing that a child may remain in secure accommodation up to a maximum age of 19 (sections 16 and 17);
 - Bring greater consistency to where children convicted of an offence may be detained, in particular a new section 208A is inserted into the Criminal Procedure (Scotland) Act 1995 to provide that for those children convicted on indictment (including for murder) they may not be detained in a prison or a YOI. It is provided instead that the Scottish Ministers may direct that the child be detained in secure accommodation. It is expressly provided that the age limit at which someone can be sentenced to detention in a YOI is 18-21 (section 17 (with the resulting definition changes at section 18));
 - Remove legislative references to remand centres as there are no such facilities in Scotland and no intention to re-introduce them (section 19).

The rights of children in police custody

11. In addition to the above, the Committee may wish to scrutinise the proposals in the Bill relating to the rights of children held in police custody (section 11).
12. Under this Bill, the Scottish Government wants to ensure that there is a more consistent approach to the upholding the rights of all children when in police custody. In its view, all people under age 18 are children and should have enhanced rights when in police custody, with provision made under section 11 of the Bill.

13. The Scottish Government cites research which it says confirms that police stations and cells can be frightening, distressing and traumatising places for children, with by their very nature their ability to be child-centred limited. In the Government's view, children report that it can be difficult to understand what is happening to them, what their rights are and how these can be upheld. Therefore, Ministers argue that it is important that children are only kept in police custody when this is necessary and proportionate.
14. The Criminal Justice (Scotland) Act 2016 provides that every precaution should be taken to ensure that a person is not unreasonably or unnecessarily held in police custody, and in taking a decision as to whether to hold a child in police custody, the wellbeing of the child is a primary consideration. Guidelines issued by the Lord Advocate set out a presumption of liberty, unless factors such as the serious nature of the offence, a significant risk to victims or witnesses and the nature and timescale of further enquiries, justifies police custody.
15. The Bill proposes that if a child who is being prosecuted for an offence is in police custody, and is not being liberated by the police, the place of safety must not be a police station unless it would be impracticable, unsafe or inadvisable for reasons of the child's health to be kept anywhere else. The provisions proposed mean that this will now extend to all children under the age of 18 so that an alternative place of safety is considered for all children and except in limited circumstances, children should not be kept in police stations.
16. The Scottish Government suggests that a local authority will now be informed when any child under 18 is in police custody. In its view, this ensures that the local authority can visit a child if they believe this would best safeguard and promote the child's wellbeing.
17. For a child under 16 in police custody, the Government proposes that their parents will always be informed and asked to attend the police station reflecting parental responsibilities and international human right instruments, unless the local authority advises this would be detrimental to the wellbeing of the child.
18. From age 16, respecting the evolving capabilities of a child, the Government suggests that the child will have the choice to nominate that another adult other than a parent is notified of their being in custody (subject to the local authority being able to give information that intimation should not be sent because that may be detrimental to the wellbeing of the child). The child can also request that no intimation is sent, the adult is not asked to attend the police station, does not have access to them, or for attempts to make contact to cease. In such instances the local authority should be notified. Likewise, in any case, should parental or another adult access to the child be refused or restricted, the local authority should be notified.
19. The aim of the Scottish Government is to ensure every child has an appropriate person notified and no child is left in police custody without being visited by either a parent, another adult or the local authority.

20. Similarly, amendments to notifications to parents/local authority to inform that a child is to be brought before court should enable the child to be supported. In terms of local authority notification, Ministers argue this should provide an additional and earlier means of identifying children who will be appearing at court and potentially afford more time to ensure appropriate support can be put in place for the child as required.

21. In respect of solicitor access, the Scottish Government deem this is an important right and safeguard for children. The Scottish Government therefore do not deem the ability of any person under 18 to waive access to a solicitor to be appropriate, with provisions made in section 11 that no one under 18 can consent to being interviewed without having a solicitor present.

Witnesses

22. The following witnesses will attend today's meeting:

- **Angela Constance**, Cabinet Secretary for Justice and Home Affairs;
- **Natalie Don**, Minister for Children, Young People and Keeping the Promise;
- and,
- Scottish Government officials.

23. The Committee heard previously from the following at its meeting of [29 March](#):

Panel 1

- Linda Allan
- Kate Wallace, Chief Executive, Victim Support Scotland

Panel 2

- Jim Shields, Service Manager, and Professor Lorraine Johnstone, Consultant Forensic and Clinical Psychologist, St Mary's Kenmure Secure Care Centre
- Wendy Sinclair-Gieben, HM Chief Inspector of Prisons for Scotland, HM Inspectorate of Prisons for Scotland
- Gerald Michie, Governor, His Majesty's Young Offenders Institution Polmont, and Sue Brookes, interim Director for Strategy and Stakeholder Engagement, Scottish Prison Service
- Alison Bavidge, National Director, Scottish Association of Social Work

24. Prior to today's formal meeting, the Committee will have spoken informally and privately to two witnesses who have personal, lived experience of being either in a secure care centre or as a young person in a prison. A note of the key points from those discussions will be published in due course on the Committee's [webpage](#).

Recent research

25. Members may also wish to note that the Children and Young People's Centre for Justice (CYCJ) at the University of Strathclyde has recently published a report entitled [*A Comparative Study of Secure Care and Young Offender Institutions in Scotland*](#). This report was prepared by Dr Ruby Whitelaw and Ross Gibson and compares the needs and experiences of children in the secure care population with those of children housed in YOI's.
26. Although the report notes that obtaining adequate has been a challenge, the authors question why two different forms of custody (secure care and YOI's) are needed. They also argue that it is reasonable to state that secure care centres are already providing care and protection for children who have caused the most significant levels of harm.
27. They conclude that the scale, size, remit and person-centred approach to the care and protection of children within secure care settings supports the assertion that they are better equipped to meet children's needs, although they are of the view that further work is necessary to ensure that there is a rethink of the delivery of secure care services
28. The authors also conclude that the current Bill "has the potential to reconfigure the manner in which secure care is used in Scotland, going some way towards achieving the conclusions of The Promise".²

Next steps

29. After today's meeting, the Committee will finalise a report to the lead committee at its meeting on 26 April.

**Clerks to the Committee
April 2023**

² A Comparative Study of Secure Care and Young Offender Institutions in Scotland, CYCJ, page 33.