

# Finance and Public Administration Committee

13<sup>th</sup> Meeting, 2022 (Session 6), Tuesday 9 May 2023

## Children (Care and Justice) (Scotland) Bill - Financial Memorandum

### Purpose

1. The Committee is invited to take evidence in relation to its scrutiny of the Financial Memorandum (FM) for the [Children \(Care and Justice\) \(Scotland\) Bill](#) from the Minister for Children, Young People and Keeping the Promise and the following Scottish Government officials:

- Brendan Rooney, Bill Manager
- Tom McNamara, Head of Youth Justice and Children's Hearings Unit
- Helen Duncan, SG Children and Families Analysis.

2. This session will provide an opportunity to explore the potential costs associated with the measures introduced by the Bill, as set out in the [Financial Memorandum \(FM\)](#), and the extent to which the Committee's previous recommendations for improving clarity and transparency<sup>1</sup> have been reflected in the FM. Annexe A sets out more information on scrutiny of Financial Memorandums.

3. SPICE have provided further background on the FM, which is attached in Annexe B.

### Background

4. The Children (Care and Justice) (Scotland) Bill was introduced by the Scottish Government on 13 December 2022 and makes provision about the care of children (who are not involved in the criminal justice system) and the treatment of children within the criminal justice system, as well as with the interrelationship between the care system and the criminal justice system.

5. The Bill has four main parts. As stated in the [explanatory notes](#),

“Part 1 deals with aspects of the children's hearings system, with the main change being to the meaning of “child” in section 199 of the Children's Hearings (Scotland) Act 2011. This will mean all under 18s will be children for the purposes of the children's hearings system, without any distinction made between children over 16 who are subject to compulsory supervision orders

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<sup>1</sup>See the Committee's reports on [post-legislative scrutiny of the Children and Young People \(Scotland\) Bill FM](#) and on the [Financial Memorandum for the National Care Service \(Scotland\) Bill](#).

“CSO”) and those who are not.” This part also makes other changes which include offering more guidance for children who turn 18.

“Part 2 deals with children who are dealt with by the criminal justice system when suspected or accused of offences or as involved as victims or witnesses” and makes a number of changes, including the kind of accommodation and safeguarding that is used, such as stopping children under 18 from going to a young offenders institution (YOI) or prison. It adds restrictions on what information can be reported about a child suspected of a crime. It also makes changes to court and custody arrangements for children and includes a regulation making power around extending secure accommodation until the age of 19 in certain circumstances.

“Part 3 [...] is mainly aimed at reforming the legislative landscape around the provision of secure accommodation and the approval and regulation of those who provide it. That also includes changes around cross-border placements into accommodation in Scotland from other parts of the UK, as well as changes in relation to the recognition in Scotland of orders made in other UK jurisdictions. [...]

Part 4 [...] changes the meaning of “child” in the Antisocial Behaviour etc. (Scotland) Act 2004 so that it covers under 18s (except in the case of parenting orders, where it will remain as under 16s). It also repeals Parts 4 and 5 of the Children and Young People (Scotland) Act 2014.”

6. The [SPiCe briefing](#) on the Bill provides a short narrative of what the Bill seeks to do, along with a brief overview of the children’s hearing system and the wider policy context.
7. The [Education, Children and Young People Committee](#) has been designated as lead committee in relation to scrutiny of the Bill. That Committee ran a call for views and survey on the general principles of the Bill, as well as taking oral evidence from external stakeholders, the Scottish Government Bill team and the Minister for Children, Young People and Keeping the Promise. In addition, the [Criminal Justice Committee](#), as secondary committee, is also undertaking scrutiny of specific aspects of the Bill at Stage 1.
8. The Parliament agreed, on 8 February, that consideration of the Children (Care and Justice) (Scotland) Bill at Stage 1 be completed by 23 June 2023. As required by [Standing Orders](#) (Rule 9.6, 3A), the lead Committee will publish its report on the Bill no later than five days before the Bill’s Stage 1 debate on the Bill, taking into account the views submitted by any other Committee, including those submitted by the Finance Committee on the Financial Memorandum.

9. The FM sets out the overall costs of the Bill per annum as follows—

<b>Costs Borne</b>	<b>Amount (p/a)</b>
Scottish Government	£5.31m-£5.38m
Local Government	£5.36m-£6.56m
By Total	£10.67m-£11.94m

10. The FM explains that—

“The Bill covers a wide range of topics. Therefore, the financial implications for each element have specific considerations particular to those measures and the bodies involved with delivery. The Bill does display some common themes and interlinked measures. But due to the distinctive nature of the costs associated with each section, this document is structured to explore the cost implications in line with the Bill’s policy areas – rather than the legislation in its entirety...”

11. It further states that, due the measures in the Bill being interlinked in terms of policy and delivery, “considering their financial implications according to the sequencing of Bill sections does not make sense for costing purposes”. The FM highlights that “the costs associated with Bill implementation should also be seen against wider trends indicating effective early intervention and whole system approaches in Scotland having a positive effect. Over the last 12 years, this move to a more preventative approach has delivered a 75% reduction in children referred to the Children’s Reporter on offence grounds, an 85% reduction in the number of children and young people prosecuted in Scotland’s courts, and a 93% reduction in 16- and 17-year-olds being sentenced to custody. These positive reductions, with their benefits for children and their communities, are emblematic of an early intervention approach and the results of a sustained collective commitment by key partners across a range of sectors, professions and disciplines.”

## Written submissions

12. The Committee ran a call for views on the FM between 25 January and 2 April 2023. The call for views included the following standard questions that the Finance and Public Administration Committee asks on all Financial Memorandums:

- Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?
- If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the financial memorandum (FM)?
- Did you have sufficient time to contribute to the consultation exercise?
- If the Bill has any financial implications for you or your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.
- Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?

- If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?
- Does the FM accurately reflect the margins of uncertainty associated with the Bill's estimated costs and with the timescales over which they would be expected to arise?

13. The call for views received a total of 15 responses, which are available on the Parliament's [Call for Views](#) site. The written submissions received, including from local authorities and COSLA, point to potential underestimates in the FM, which are further explored in the attached SPICe briefing.

14. The Education, Children and Young People Committee concluded its evidence taking on the bill on [3 May](#), when it heard from the Minister for Children, Young People and Keeping the Promise and the Scottish Government Bill team.

15. Issues relating to the FM were also explored by the lead Committee during previous oral evidence sessions, particularly at its meeting on [26 April](#), when that Committee heard from Children's Hearings Scotland, the Information Commissioner's Office, COSLA, Social Work Scotland and the Care Inspectorate. During that evidence session, witnesses emphasised the importance of effective implementation of the bill in the context of severe pressure faced by front-line staff, both in terms of financial resources as well as recruitment and training. During oral evidence, Ben Farrugia of SWS argued that—

“The financial memorandum could do better on that front.[...] For instance, the financial memorandum projects savings from transfers of money between social work teams. That is highly unlikely because of the reality of demand, but it is also just not how funding works, because of legislation. Funding for justice services is ring fenced, so any perceived savings that are accrued there—there will not really be any savings—could not be transferred to children's services. Those points could be unpicked better and a stronger case could be made through the financial memorandum. [...] There are the right aspirations and goals, but there is a lack of confidence about our ability to deliver.”

## Next steps

16. The Committee will report its views to the lead Committee by 19 May, in order that they can inform the lead Committee's Stage 1 report.

Committee Clerking Team  
May 2023

## Scrutiny of Financial Memorandums

17. [Rule 9.3 of Standing Orders](#) states in relation to Financial Memorandums that: “2.A Bill must on introduction be accompanied by a Financial Memorandum which sets out best estimates of the costs, savings, and changes to revenues to which the provisions of the Bill would give rise, and an indication of the margins of uncertainty in such estimates. The Financial Memorandum must also include best estimates of the timescales over which such costs, savings, and changes to revenues would be expected to arise. The Financial Memorandum must distinguish separately such costs, savings, and changes to revenues that would fall upon—

- (a) the Scottish Administration;
- (b) local authorities; and
- (c) other bodies, individuals and businesses.

18. The accompanying [Guidance on Public Bills](#) notes that:

“the Financial Memorandum should explain how these costs, savings, and changes to revenues arise, and what the implications are for the Scottish Consolidated Fund. For example, provision for a new or modified tax raising power could, assuming the power is used, significantly increase or reduce the amount of revenue paid into the Scottish Consolidated Fund. The discontinuation of a service or dissolution of an organisation could present potential savings to budgets and the Financial Memorandum should set out best estimates for these savings.”

## Finance and Public Administration Committee

### Children (Care and Justice) (Scotland) Bill: Financial Memorandum

#### Themes paper

#### Background

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 is considering the Bill alongside the Criminal Justice Committee.

The Bill makes changes to the law in relation to the care of children and the involvement of children in the criminal justice system. This includes courts that hear cases relating to children and the places where children can be detained. A [SPICe briefing](#) considers the Bill in detail.

The Bill has four main parts:

- The first part changes the definition of “child” in the children’s hearings system from someone under 16 to someone under 18. This part makes some other changes which include offering more guidance for children who turn 18.
- The second part makes changes to criminal procedure in relation to children, including the kind of accommodation and safeguarding that is used. This includes stopping children under 18 from going to a young offenders institution (YOI) or prison. It adds restrictions on what information can be reported about a child suspected of a crime. It also makes changes to court and custody arrangements for children.
- The third part of the Bill makes changes relating to the regulation of secure accommodation and how it is used. It also alters regulatory requirements around Scottish care placements for children from other parts of the UK.

- The fourth part of the Bill is about antisocial behaviour orders, named persons and child's plans.

The [Financial Memorandum](#) (FM) outlining the estimated costs of the proposed legislative changes was published alongside the Bill. The Finance and Public Administration Committee issued a call for views on the FM for the Bill and received [15 responses](#). Seven of these were from individual councils and two were from Health and Social Care Partnerships. Other responses were from:

- COSLA
- Social Work Scotland
- Care Inspectorate
- Police Service
- Crown Office and Procurator Fiscal Service (COPFS)
- The Good Shepherd Centre (a secure accommodation provider)

Issues raised in these responses are highlighted in this paper.

## **What costs does the Financial Memorandum cover and what gaps are there?**

The FM sets out estimated costs in relation to the various aspects of the Bill. The FM is presented in line with policy areas, rather than strictly following the order of the legislation, due to the cross-cutting nature of some of the cost areas. Discussion on costs is presented under the following headings:

- Parts 1 and 2 – Raising the age of referral to the principal reporter / criminal justice procedure
- Sections 12, 13, 14 – Children at court
- Section 15 - Remittal to the children's hearings system
- Parts 2 and 3 – Children deprived of liberty – ending under-18s being kept in young offenders institutions/secure accommodation
- Sections 24 and 25 – Cross border care placements

However, actual financial estimates are only presented for two of these areas:

- Parts 1 and 2 – Raising the age of referral to the principal reporter / criminal justice procedure
- Parts 2 and 3 – Children deprived of liberty – ending under-18s being kept in young offenders institutions/secure accommodation

For the other areas, the potential implications of the proposals are described but actual costs are not presented. The reasoning for the absence of any cost estimates is given as follows:

- Sections 12, 13, 14 – Children at court: This aspect of the Bill provisions introduces new arrangements for handling children in court settings. The FM states that “The fact that courts will of course maintain discretion as to whether they put in place certain measures, means that it is not possible to make specific forecasts on the regularity by which such considerations will be implemented. Therefore, no specific funding assumptions can be drawn and any attempt to do so may be misleading and seen to cut across judicial discretion.” There are also proposals relating to anonymity for children involved in court proceedings, and associated rights of appeal. However, the FM states that these provisions could generate both costs and savings for the court processes, but that “these are challenging to quantify given the lack of established data-sets concerning the ages of all those involved in court cases across Scotland.”
- Section 15 - Remittal to the children’s hearings system: This aspect of the Bill increases the opportunities for children to be remitted to the children’s hearings system when they have been found, or pled, guilty in the courts. However, no estimates of the cost implications of this are presented in the FM, which states that: “given the level of discretion to the court and lack of data upon which to forecast how often the remittal framework will be used no direct costs have been derived. The Scottish Government commits to monitoring any evidence from third parties during parliamentary scrutiny concerning possible forecasts for remittal and any resulting cost implications.”
- Sections 24 and 25 – Cross border care placements: This aspect of the Bill introduces measures regarding children and young people placed in care settings in Scotland from other UK jurisdictions. The FM presents some modest cost implications for the Care Inspectorate (one off costs of £5,000 to update digital systems and ongoing costs of £15,000 per year), but these are not included in the overall Bill costs. However, in relation to wider costs, the FM notes that “detailed assessment of impacts and costs will only be possible when secondary legislation is developed”.

Although some (but not all) of these costs will be included in relation to the secondary legislation in due course, these would not be subject to the same level of Parliamentary scrutiny as if they had been presented in the FM. Also, while the Scottish Government has committed to monitoring costs, there is no formal mechanism for scrutinising the outcome of any such monitoring of costs. It would normally be expected that the FM should include at least some indication of likely costs, even where these are uncertain.

[Rule 9.3.2 of Standing Orders](#) states in relation to Financial Memorandums (FMs) that:

“A Bill must on introduction be accompanied by a Financial Memorandum which sets out best estimates of the costs, savings, and changes to revenues to which the provisions of the Bill would give rise, and an indication of the margins of uncertainty in such estimates.”



## Overall costs and general considerations

For those areas of the Bill for which costs have been estimated, the total costs of the relevant Bill provisions are estimated at between £10.7 million and £11.9 million per year. However, given that several areas of the Bill provisions have not been costed, it is not possible to fully assess the total possible cost implications of the Bill.

A breakdown of those cost areas that have been estimated is shown in Table 1. The FM provides a range of estimates; both lower end and upper end estimates are shown in the table.

In line with standard practice for FMs, the costs are set out separately in relation to:

- The Scottish Administration (which includes Scottish Children's Reporter Administration (SCRA), Children's Hearings Scotland (CHS) and the Scottish Legal Aid Board (SLAB))
- Local Authorities

No costs are anticipated for Health Boards, other public bodies, businesses and third sector organisations or individuals.

**Table 1: Estimated costs of Children (Care and Justice) (Scotland) Bill provisions**

<b>Lower end cost estimates</b>	<b>Scottish Administration</b>	<b>Local Government</b>	<b>Total</b>
Parts 1 and 2 – Raising the age of referral to the principal reporter / criminal justice procedure	3.96	1.3	5.26
Sections 12, 13, 14 – Children at court		Not estimated	
Section 15 – Remittal to the children’s hearings system		Not estimated	
Parts 2 and 3 – ending under-18s being kept in young offenders institutions/secure accommodation	1.35	4.06	5.41
Sections 24 and 25 – Cross border care placements		Not estimated	
<b>Total</b>	<b>5.31</b>	<b>5.36</b>	<b>10.67</b>
<b>Upper end cost estimates</b>	<b>Scottish Administration</b>	<b>Local Government</b>	<b>Total</b>
Parts 1 and 2 – Raising the age of referral to the principal reporter / criminal justice procedure	4.03	2.5	6.53
Sections 12, 13, 14 – Children at court		Not estimated	
Section 15 – Remittal to the children’s hearings system		Not estimated	
Parts 2 and 3 – ending under-18s being kept in young offenders institutions/secure accommodation	1.35	4.06	5.41
Sections 24 and 25 – Cross border care placements		Not estimated	
<b>Total</b>	<b>5.38</b>	<b>6.56</b>	<b>11.94</b>

Source: [Financial Memorandum](#)

More detail on the estimates provided is set out below. Before looking at the detail, some general points raised by respondents to the Committee’s call for views on the FM are highlighted.

While COSLA and SWS were both supportive of the Bill’s intentions, they were concerned around the reliability of estimated costs.

[COSLA](#) noted that:

“...we believe that the FM under-estimates the cost implications for local authorities. There are issues with the robustness of the figures being used to

inform the costings set out in the FM – many of the costs are based on estimates and so the assumptions may be fundamentally flawed.”

In its response, [Social Work Scotland](#) (SWS) noted:

“While there is acknowledgement in the Financial Memorandum that the Bill involves additional duties and demands on local authority children and families social work services, Social Work Scotland does not consider that the Financial Memorandum sufficiently appreciates the scale and financial costs of those changes.”

SWS particularly noted that existing costs could not necessarily be scaled up to reflect increased workload, as the new workload would be increasingly complex, requiring additional resources and workforce capacity to ensure successful implementation of the Bill provisions.

Similar concerns were raised by other respondents to the call for views:

[East Ayrshire Health and Social Care Partnership](#) said:

“...we do not consider the estimated costs and savings are reasonable and accurate. A framework from Scottish Government and CoSLA would need to be provided to advise on how best to quantify. The costs are from pre-pandemic so there has been no reflection of the implications of increased cost and demand.”

[Dumfries and Galloway Council](#) stated:

We do not believe that the FM adequately reflects the additional resources that will be required by local authorities and have significant concerns that the figures used in the FM, are based on unrealistic and flawed estimates which have led to inaccurate and miscalculated conclusions and there is also no allowance for pay inflation, to ensure sustainability.”

[Stirling Council](#) noted that:

“Information within this FM reflects the initial consultations and information provided by Social Work at the time. There are high level proposals, with clear messages throughout that indicate an inability to predict some aspects, therefore more robust work might be required to more accurately reflect the cost and time implications or savings for agencies.”

[Aberdeen City Council](#) stated that the costs “seem to be an under estimation at every level and we would urge further detailed scoping be undertaken”. Aberdeen City Council also noted that “the Financial Memorandum gives no account for the resource required to upskill/train staff on the legislation and new duties. The Bill will require a resource lift and shift as well as a significant culture change.”

[South Lanarkshire Council](#) also noted that training costs would need to be factored in to the FM.

[West Lothian Council](#) noted that it “would expect margins of uncertainty to be higher than those reflected in the FM”.

[Police Scotland](#) and [COPFS](#) noted that the legislation had potential cost implications for the organisation that are not reflected in the FM, but did not give an indication of their scale.

## **Parts 1 and 2 – Raising the age of referral to the principal reporter / criminal justice procedure**

### **FM analysis**

This aspect of the Bill will allow for 16 and 17 year olds to be referred to the children's hearing system, with the expectation that more cases will be dealt with through this route as a result. The FM notes that, due to the time to progress cases through the children's hearing system, this in practice means that those aged 16 to 17.5 will potentially be referred to the children's hearing system, with older children likely to be dealt with as at present.

The FM notes:

“There are a significant number of variables which make the resource and cost impacts of this change difficult to forecast with a high degree of precision. The constitutional independence of the Lord Advocate and Procurators Fiscal to pursue criminal proceedings and to prosecute children in court are obviously not affected by the Bill. Therefore, whilst the overall objective of the Bill is to create a framework whereby more children are able to be referred to the children's hearing, prosecutorial discretion means the legislation can make no direction in this regard.”

Based on consultation with SCRA, CHS and SLAB, and on data on existing numbers of cases dealt with through the children's hearings system and the courts, estimated additional costs have been calculated. The FM notes that further uncertainty arises due to the unpredictability of outcomes of referrals which “could range from no further action taken, to a hearing being convened which subsequently leads to a number of continued, deferred or review hearings”. The FM also notes that changes in working practices could result from the new arrangements, but these are not directly mandated by the Bill and so are not costed.

The FM also notes that, while numbers of children in the criminal justice system would be expected to reduce as a result of this Bill, any resulting savings are not considered to be material. According to the FM “any savings purportedly identified would not represent a net overall saving, given the overall scale of the court programme and ongoing and general costs arising for those involved in the criminal court process in terms of staffing costs, court building costs etc.”

Increased referrals to children's hearings will have implications for local government, as a result of social work support (meeting with children and families; providing evidence and reports to the hearings processes; attending hearings; liaising with others involved in the care of the child; implementing orders; and providing aftercare and support). But the FM notes any additional costs associated with this support

need to be set against savings through reduced support for children in the criminal justice system.

The Financial Memorandum forecasts there will be 3,900–5,300 additional referrals which require between 39,000 and 59,000 hours of social work support, while the 730–1,350 additional hearings will require between 23,725 hours and 43,875. Combining the support required for referrals and hearings, this is a total of between 62,725 hours and 102,875 hours.

Using an average £52,000 cost of a full-time social worker (including employer costs), combined with the above estimate of additional hours, the Scottish Government estimates the implied additional cost of social work support to local authorities would be between £1.8 million and £3 million per year. Savings of £0.52 million are expected as a result of reductions to social work support in the criminal justice system. Therefore, the net cost to local authorities for social work services around Parts 1 and 2 of the Bill is estimated to be between £1.3 million and £2.5 million per annum. Social Work Scotland (SWS) provided input to the costs developed in this area, recognising a potentially wide range in the intensity of support required for individual cases.

In relation to local authority costs, the FM also notes that:

“It is recognised the Bill could generate extra capacity implications for local government regarding any increases in the number of compulsory orders as more children are channelled via the hearings system, rather than criminal courts. And likewise, any increase in aftercare entitlements. However, given the number of variables it has not been possible to give forecasts. The Scottish Government commits to monitoring any evidence from third parties during parliamentary scrutiny concerning possible forecasts and any subsequent cost implications.”

The estimated costs from this aspect of the Bill provisions are set out in Table 2.

**Table 2: Estimated costs from Part 1 and Part 2: Raising the age of referral to the principal reporter / criminal justice procedure**

Body/organisation	Nature of costs	Estimated costs per annum (£m)
SCRA	Increase in referrals to the Reporter	2.40
CHS	Increase in children's hearings	0.45
SLAB	Legal aid and assistance	1.03
Scottish Government	Advocacy	0.03 - 0.06
Scottish Government	Safeguarding	0.05 - 0.09
<b>Total Scottish Administration</b>		<b>3.96 - 4.03</b>
<b>Local authorities</b>	Social work support for increase in referrals/hearings	1.3 - 2.5
<b>Total costs</b>		<b>5.26 - 6.53</b>

Source: [Financial Memorandum](#)

## Stakeholder views

In their response to the Committee's call for views on the FM, [COSLA](#) raised concerns over the estimated costs to local government of these provisions:

"We have significant concerns that the figures used in the FM [in relation to raising the age of referral to the Principal Reporter]... are based on estimates and in some cases are very out of date. The assumptions made could therefore be seriously flawed. We understand that Social Work Scotland had highlighted that the figures provided were based on very rough estimates and that more robust work would need to be undertaken. This further work was not carried out and the FM costs are informed by the estimated figures provided. Associated funding for local authorities must be based on a more robust assessment of cost implications and must be kept under review."

[COSLA](#) also noted that the cost estimates set out are based on the lower end of the range of potential extra children's hearings presented in paragraph 15 of the FM and that, if the upper end range was used instead, costs would be higher. COSLA also noted that the assumptions around additional social worker hours did not take account of annual leave/public holiday entitlements. According to COSLA, these two factors could increase estimated costs by between £0.9 million and £1.7 million. COSLA also noted that no allowance had been made for pay inflation.

[Glasgow City Health and Social Care Partnership](#) also stated in its response that the assumptions around social care pay were not accurate and did not reflect the impact of inflation or allow for time required for annual leave and staff training. [South Lanarkshire Council](#) also noted that the assumed social care pay rates were not accurate of the current position.

COSLA also noted that the assumptions underpinning the assumed reduction in costs for social work support for children in the criminal justice system are not clear in the FM. COSLA and other local government respondents also stressed that it is not currently possible for local authorities to transfer funding between criminal social justice and children's services due to ring-fencing of current criminal social justice funding. COSLA said:

“The potential proposal to offset costs is not as simple as the FM implies and does not reflect the current funding landscape and pressures in both areas within Local Government... There are different funding arrangements for Children's Services and Criminal Justice social work. Children's Services are funded through councils' core budgets... Justice Social Work (JSW) funding is made up of a number of ringfenced components.”

[SWS](#) also noted that, although it had provided some data to inform the cost estimates, these calculations were “not based on a robust theoretical approach”. SWS also highlighted that, when it had provided the data to the Scottish Government, it had recommended that “a more robust piece of work be carried out to accurately provide a basis for calculation of costs in this area”, but notes that this more in-depth analysis has not been undertaken.

SWS also noted the estimates set out are based on data that is not recent and added:

“..we suggest that this work is undertaken with recent and more accurate data around both provision costs and pay to ensure that the bill is adequately funded, and local authorities and other providers more able to meet the policy intent.”

In particular, SWS notes that the impact of much higher inflation needs to be taken into account in the estimates.

[South Lanarkshire Council](#) also noted that the FM took no account of the potential for increased complexity of cases, which could result in a higher average cost per case.

The FM notes that Movement Restriction Conditions (MRCs) can be placed on a child by a hearing as part of a Compulsory Supervision Order (CSO) or Interim CSO. MRCs are measures which can be included in CSOs in order to restrict a child's movement, monitoring the child by use of an electronic monitoring device (commonly known as an 'electronic tag'). MRCs also involve giving a child intensive support, with implications for local authority social work support.

In relation to MRCs, the FM states that:

“The Bill does not make specific direction as to such decisions and therefore it is not deemed appropriate or useful to hypothesise any cost implications. The Scottish Government commits to monitoring any evidence from third parties during parliamentary scrutiny concerning possible forecasts for MRC usage and any resulting cost implications.”

However, [East Lothian Council](#) noted that “While [increased use of MRCs] may not be the intention, all possible consequences need to be thoroughly considered. As recognised in the financial memorandum, there will be a cost associated with the support around MRCs”. [South Lanarkshire Council](#) also raised this point.

## **Parts 2 and 3 – ending under-18s in young offenders institutions/secure accommodation**

### **FM analysis**

Provisions under Part 2 of the Bill relate to ending the practice of under-18s being kept in custody in young offender institutes (YOIs) in Scotland. Under the Bill’s provisions, secure accommodation would be the most likely alternative where detention is required. This involves a change of responsibility and re-direction of costs, as Scottish Ministers fund placements for young people remanded in YOIs, whilst local authorities fund young people remanded in secure accommodation.

In respect of the reduced numbers of children in YOIs, the FM notes:

“There may be some notional savings to the SPS [Scottish Prison Service] budget if children are no longer held in YOIs but it is not possible to provide an estimate of those savings, separate from wider work to consider the management of the regime and the available accommodation. Any notional savings would be absorbed in the costs of running the wider prison estate, including YOIs for those aged 18 and over.”

The FM estimates that, as a result of increased use of secure accommodation, there will be additional annual costs to the Scottish Government of £1.35 million per year, and additional annual costs for local government of £4.06 million per year. This is based on an average weekly cost of £6,500 for secure accommodation. However, the FM also notes that secure accommodation costs vary depending on the provider, so it is unclear what the lower and upper ranges of this cost estimate might be.

### **Stakeholder views**

In their response to the Committee’s call for views on the FM, [COSLA](#) noted that:

“The FM also includes additional cost to Scottish Ministers to place an additional 4 under 18s in secure care following sentence, that would otherwise be in YOI (£1.35m). It would be helpful if there could be further clarity that the intention is that these places would be funded by Ministers directly.”



The estimates for local government costs are based on an assumption of 12 additional children being placed in secure accommodation. The FM notes that “The number of children under 18 in YOIs in Scotland fluctuates”, so it is not clear why a range of costs has not been given to reflect the potential for variation in numbers. [COSLA](#) also noted that “Given that numbers will vary from council to council, and that numbers may change, there will need to be careful consideration on how this funding will be distributed.”

[SWS](#) noted the lack of available secure accommodation and that costs of provision could therefore exceed the current costs:

“Also of note is that pending the review of secure accommodation, alternatives to Young Offenders Institutions for 16 and 17 year olds who have committed offences which indicate that some level of restriction of liberty is required, are limited. Provision in a secure unit cannot be guaranteed, and bespoke alternatives are likely to be costly.”

[West Lothian Council](#) raised similar concerns around existing secure accommodation capacity in its response to the call for views:

“There are limited beds in secure accommodation resources which could lead to alternatives needing to be found for other vulnerable young people, possibly at extremely high cost for bespoke packages with associated continuing care implications.”

The [Good Shepherd Centre](#), which provides secure care for young people noted the need for “a coherent, fully funded and sustainable resource model” for secure care accommodation, if it is to replace the use of YOIs for young people. The current model is based on “spot purchase” arrangements, which the Good Shepherd Centre said offered no certainty or predictability, and did not support a sustainable provision.

Duties relating to secure transport lie principally with the local authority responsible for the child’s placement. Transport is purchased by individual authorities on a spot purchase basis. In its submission, COSLA noted that:

“The FM also does not recognise the transport costs for those on remand to hearings. Given the proposed changes within the Bill and a possible increase in secure accommodation given the removal of YOIs for 16 and 17 year olds, due consideration must be given to improving secure transport for children and young people. There are historic and long-standing issues around the funding, provision and availability of secure transport across Scotland. Recent work has shown minimum costs to local authorities of £250-300k per year. This will increase with additional children and young people in secure care.”

[South Lanarkshire Council](#) raised similar concerns regarding secure transport costs, noting that:

“Nationally, no solution has yet been provided for secure transport and as such these costs would need to be reflected. Where it is not possible for social work to transport a child, private transport providers e.g Wrixon continue to be spot purchased. This is being reviewed nationally and an

options appraisal is being developed. Transport to court, hearings and health appointments would all require to be costed.”

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

Specifically in relation to secure transport, in evidence to the [Education, Children and Young People Committee on 3 May](#) (Official Report not yet available), the Minister confirmed that provision of secure transport was being considered as part of this Bill.

**Nicola Hudson, Senior Analyst, Financial Scrutiny Unit, SPICe Research  
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