

Education, Children and Young People Committee

26th Meeting, 2023 (Session 6), Wednesday 25
October 2023

Children (Care and Justice) (Scotland) Bill

Introduction

1. The Education, Children and Young People Committee led Stage 1 scrutiny of the Children (Care and Justice) (Scotland) Bill, publishing its [Stage 1 report](#) on 13 June 2023.
2. The [Stage 1 debate was held on 22 June](#) and the general principles of the Bill were agreed to.
3. In its report the Committee supported the general principles of the Bill, however, it called for more clarity, information and improvements in relation to some sections of the Bill, including support for victims, the resourcing of the Bill and the capacity of organisations to deliver the changes envisioned by the Bill.
4. The Committee therefore agreed to take further evidence on these issues, ahead of Stage 2 which is expected to take place later this year
5. In its [Stage 1 Report](#), the Committee was firmly of the view that full costings should be provided ahead of the Stage 1 debate.
6. In [response](#) to the Committee's Stage 1 report, the Scottish Government stated that it proposed "to publish the supplemented Financial Memorandum during Stage 2" and that this will allow it to factor in how the Bill may be amended and the consequent impact on costs.
7. The Minister provided these [updated costings](#) on 6 October 2023.

Committee meeting

8. At its meeting today, the Committee will take evidence from stakeholders, in two panels.

Panel One - Impact on victims of crimes committed by children and young people

- Fiona McMullen, Operations Manager, ASSIST
- Dr Marsha Scott, Chief Executive, Scottish Women's Aid

- Kate Wallace, Chief Executive, Victims Support Scotland

Panel Two – Finance and resource implications

- Stephen Bermingham, Head of Practice & Policy, Children's Hearings Scotland
- Jillian Gibson, Policy Manager – Children and Young People Team and Joanna Anderson, Policy Manager – Local Government Finance, COSLA
- Alistair Hogg, Head of Practice & Policy, Scottish Children's Reporter Administration
- Ben Farrugia, Director, Social Work Scotland

Supporting information

9. Written submissions have been received from Scottish Women's Aid and the Children and Young People's Commissioner Scotland. These are included at **Annexe A**.
10. A SPICe Briefing, prepared for the session, is included at **Annexe B**.

**Education, Children and Young People Committee Clerks
20 October 2023**

Annexe A

Scottish Women's Aid submission of 16 October 2023

Children (Care and Justice) (Scotland) Bill

Scottish Women's Aid (SWA) is the lead organisation in Scotland working to end domestic abuse. We are a national intermediary, and as such we act as a critical friend to Parliament and engage in research and campaigning. We are also the umbrella organisation for a 34 local Women's Aid organisations across Scotland; each organisation providing front-line, grass-roots services that deliver specialised practical and emotional support to women, children and young people who experience domestic abuse, acting in partnership with national and local stakeholders. The extensive range of services offered by members include crisis intervention, advocacy, counselling, outreach, follow-on support and temporary refuge accommodation.

We welcome the opportunity to provide written and verbal evidence ahead of Stage 2 of the Children (Care and Justice) (Scotland) Bill. SWA recognises the important role the Children's Hearing system plays in its approach to protecting the wellbeing and upholding the rights of children. In a recent letter¹ to the Education, Children & Young People Committee, the Minister for Children & Young People and Keeping the Promise stated that the Bill '*proposes enhanced protections for victims.*' However, SWA alongside colleagues in the victim support sector remain concerned that the Bill falls short in upholding the rights of victims, particularly young victims of domestic abuse within their own relationships.

Our key points outlined within this submission:

- It is a significant omission that the Bill does not propose provisions to protect victims in response to the increase of the maximum age of referral. Given the likely increase in serious cases, including domestic abuse cases, being rerouted from the Criminal Justice System to the Children's Hearings System we urge the Scottish Government to acknowledge the significant gap in support pathways for victims affected by a child's offending behaviour.
- Appropriate resources and investment are needed to ensure that the Children's Hearing system and related workforce are equipped to respond to an increase in domestic abuse related offences as a result of amending the age of referral. The most recent projected financial costs provided by the Minister do not demonstrate a commitment to ensure the Children's Hearing system workforce is resourced, skilled and domestic abuse competent.
- Greater clarity is needed, through additional or amended guidance on how Compulsory Supervision Orders (CSOs) and Movement Restriction Conditions (MRCs) will be appropriately risk assessed, implemented and monitored to ensure victim safety. In particular detail is needed on how non-compliance will be robustly dealt with.

¹ <https://www.parliament.scot/chamber-and-committees/committees/current-and-previous-committees/session-6-education-children-and-young-people-committee/correspondence/2023/children-care-and-justice-scotland-bill>

- The Bill must go further in ensuring the availability of accessible child-friendly information for victims. Information should seek to support victims to understand what to expect, timeframes, potential implications and where necessary onward referral to appropriate support agencies.
- It is disappointing to note that within both the Children (Care and Justice) (Scotland) Bill and the Victim, Witnesses and Reform Bill that the principles of victim centred trauma informed practice do not extend to Children's Hearings. The impact of domestic abuse on young women is no less traumatic than that experienced by adults, yet young victims are offered limited information, support and protection when their case is referred to a children's hearing.
- Further, the lack of substantial provisions to protect victims is disappointing given the Scottish Government's commitment to eradicate violence against women and girls through the Equally Safe Strategy². This Bill fails to demonstrate how it aligns with a whole system approach of tackling gender-based violence, and fails to consider the provisions needed to protect young women affected by domestic abuse.

Ensuring system readiness and domestic abuse competence

Proposed age changes

SWA notes the Bill's proposed increase in the maximum age of referral to the Principal Reporter to 18 years old as an important step in Scotland's compliance with the UNCRC. This increase also marks a shift towards addressing the current inconsistencies in the system, as access to age-appropriate justice is fundamental to protecting children's rights.

However, raising the age of referral will likely result in more children and young people being referred to the Children's Hearings System on more serious offence grounds, including domestic abuse-related offences. We note the updated projections from SCRA³ estimating an additional 3,900 – 5,100 children referred to the Children's Hearing System as a result of the age extension, with approximately 1,850 – 3,435 leading to a hearing.

It is imperative that the system is equipped with the investment and skills to respond to an increase of offence-based referrals, including domestic abuse related offences. Data from the Police Scotland Domestic Abuse Scotland Statistics 2021-22^{4 5} show that there were 302 domestic abuse incidents recorded by Police Scotland where both the victim and the accused were aged 16 or under. This figure increases to 1,105 where both the victim and the accused are under the age of 19 years old. Further, statistics relating to domestic abuse and stalking charges in Scotland for 2022-23⁶ indicate that there were 445 charges with a domestic abuse identifier where the age of the accused was 17 and under, with 1,493 similar charges where the accused was aged 17- 20 years.

As a result of provisions within this Bill, it is likely that domestic abuse cases will be rerouted from the Criminal Justice system to the Children's Hearings system. Whilst the Children's Hearing System is equipped to provide wrap around support for the subject child, there is a significant gap in support available to young victims of domestic abuse.

² <https://www.gov.scot/policies/violence-against-women-and-girls/equally-safe-strategy/>

³ [Minister for Children, Young People and Keeping the Promise \(parliament.scot\)](https://www.parliament.scot/Minister-for-Children-Young-People-and-Keeping-the-Promise)

⁴ <https://www.gov.scot/collections/domestic-abuse-in-scotland-statistics/>

⁵ <https://www.cycj.org.uk/wp-content/uploads/2023/02/February-2023-Children-in-conflict-with-the-law-and-data.pdf>

⁶ <https://www.copfs.gov.uk/about-copfs/news/domestic-abuse-and-stalking-charges-in-scotland-2022-23/#:~:text=In%202022%2D23%2C%2030%2C139%20charges.of%20charges%20in%202022%2D23.>

Children's Hearing System and the Criminal Justice system

We echo concerns raised at stage one by Rape Crisis Scotland and Victim Support Scotland regarding how well equipped the Children's Hearing System is to deal with the likely increase in serious offences without mechanisms to safeguard victims. In criminal cases prosecuted within the criminal justice system, there is access to support from the dedicated COPFS VIA service and provision of special measures when giving evidence, in addition to the availability of information from the Victim Notification Scheme for a relevant custodial offence. However, no such provisions exist within the Children's Hearings system.

The support available to a victim is often offered within the parameters of the system the case sits within, which leads to inconsistent and disjointed approaches within, and between, the criminal, civil justice systems and Children's Hearings. We note concerns raised during stage one⁷ that provisions around victim safeguarding are out with the remit of the Children's Hearings system, due to the fact that its primary role is meeting the welfare needs of the subject child. With this in mind, we urge the Scottish Government to acknowledge the significant gap in support pathways for victims affected by a child's offending behaviour. Steps must be taken to build robust protections for victims of domestic abuse regardless of which part of the system they engage with.

To bridge the gaps in victim support and protections it is imperative that this Bill aligns with the Victims, Witnesses and Justice Reform (Scotland) Bill. We have noted, in our written submission, some of the inconsistencies within the proposed provisions seeking to extend existing vulnerable witness provisions, including the duty to adhere to trauma informed principles only applying to a limited group and not extending to Children's Hearings. For both Bills, provisions around embedding and extending trauma-based practices require strengthening, with clarification on the detail of how this will happen; monitoring and enforcement processes and provision of training and domestic abuse is required.

Resourcing

We welcome the recent recommendations from the Hearing System Working Group redesign report⁸ calling for an evidence-based understanding of domestic abuse throughout the Children's Hearing system, including Chairs and panel members who have had training on the dynamics of domestic abuse. The report includes consideration on the importance of safety planning and consistently protecting the rights of victims as they navigate the system from the point of referral onwards. As well as this, the report provides a useful indicator on the level of resource needed to ensure the system supports all children, particularly when one has caused harm to another.

It is disappointing to note that the updated financial projections do not detail forecasted training costs for reporters, panels members and the wider workforce associated with Children's Hearings to ensure system readiness. The paper outlines some expected costs for social work training and secure care but does not demonstrate a clear commitment to embedding trauma and domestic abuse informed practice into the system. Anticipating the increase of offence-based referrals to the Children's Hearings system should be matched with thorough planning to consider the provisions needed to fully support the victims

⁷ <https://digitalpublications.parliament.scot/Committees/Report/ECYP/2023/6/13/74e6e33e-cf67-4711-8f94-7de62ac54595#13ec465f-4301-4173-a8bd-f51695a05193.dita>

⁸ <https://thepromise.scot/the-promise-scotland/what-the-promise-scotland-does/change-projects/hearings-system-working-group/>

affected by a child's offending behaviour. This foresight to uphold a child's right to recovery (Article 39 of the UNCRC) as well as a victim's rights under the Victims Code Scotland⁹ is not visible within this Bill and accompanying memorandums.

Clear governance and practical monitoring arrangements for CSOs and MRCs to enhance victim protection and recovery. Welcomed proposals

We welcome proposals within section 3 of the Bill that set out a greater range of measures for protection of victims that could be included in a CSO, including a prohibition on the offending child or young person entering a specified place. In addition to this, we welcome the prohibition on the subject child communicating with victims to prevent harassment, which explicitly includes communicating with a victim via social media.

Non-compliance governance, protocols and arrangements

As reflected in our evidence submission¹⁰ we have concerns about how conditions within CSOs and MRCs will be assessed and imposed. The Bill lacks detail on how non-compliance with CSOs and MRCs will be dealt with. We note a consensus from stakeholders at Stage one that successful MRC implementation requires an intensive support package to be in place for the subject child. We would therefore ask that there is further consideration of how the development of a support package will consider the safety needs of victims as well as inclusion of appropriate governance, protocols, and practical arrangements for monitoring compliance to avoid unnecessary risk or harm.

In cases of domestic abuse, the accused child should not be made aware of where the victim is living or frequenting (e.g. a school or college) as part of their conditions, as this could heighten the risk to the victim. On the other hand, however, the victim must know precisely where the offender can and cannot go and restrictions on contact and actions they cannot take in relation to the victim. This reinforces the need for a system that cognisant of domestic abuse and builds in robust safeguard provisions for victims. It is also unclear if and how a victim would be able to report a suspected breach of conditions.

Imposing a non-harassment order

Colleagues in the Scottish Government Bill team have informed partners within victim support organisations that they are exploring amendments where in some instances a court could impose a non-harassment order under the Criminal Procedure (Scotland) Act 1995 whilst also being able to remit to a Children's Hearing. This would allow for a bespoke approach to child's offending in cases of domestic abuse. We welcome the consideration into the different protective orders that could be imposed to safeguard victims of domestic abuse. In any approach to enhancing victim safety, domestic abuse informed practice must be in place. This will be particularly important for young victims of domestic abuse. Currently, to obtain a civil non-harassment order a victim must apply to the court via a solicitor. Extending this current system to young victims of domestic abuse would require a commitment to develop trauma informed child-friendly pathways.

⁹ <https://www.gov.scot/publications/victims-code-for-scotland/>

¹⁰ <https://womensaid.scot/wp-content/uploads/2023/03/170323-SWA-Childrens-Care-and-Justice-Bill-call-for-views.pdf>

We will continue to engage with the Scottish Government and partners in victims support organisations to explore what this provision would look like and how it could be implemented to enhance victim's rights.

Improve the provision of information to person(s) affected by a child's offence or behaviour

Victim's Safety

During Stage one, the Committee heard from various stakeholders relating to the complexity of information sharing when one child has caused harm to another. In particular, concerns were raised about protecting the privacy of the referred child whilst offering information to a victim.

Survivors routinely highlight the importance of having access to information about what to expect when reporting domestic abuse, why something is happening, who is involved, reasons for the decisions made, and how they will be implemented.¹¹ They also want to have information as early on as possible in the process, a finding supported by Lady Dorrian's Review into the management of sexual offence cases.¹²

Access to information is particularly important when the child who has caused harm lives in close proximity to the victim. For children and young people who have experienced domestic abuse in their own relationships, it is highly likely they live in the same community and attend the same school as the child who has harmed; information on the outcome of a Children's Hearing or any subsequent orders made are essential to support victim's day-to-day safety planning.

The Policy Memorandum paragraph 315 states that '*The provisions in respect of information sharing by the Children's Reporter; bolstering the ability for measures to be placed on a child through compulsory orders where necessary for the protection of the child and others.*' However, as it stands the terms of the CSO are not disclosed to the victim. This undermines a victim's day-to-day safety planning and risks prolonging the impacts of fear as a consequence of abuse they may have faced.

We echo concerns raised by Victim Support Scotland and Rape Crisis Scotland that the current process does not support victims' understanding of, or engagement with, the Children's Hearings system. The information currently available for victims, whose case is likely to proceed in the Children's Hearings system, is limited and often not child-friendly.

We have welcomed recent dialogue with colleagues in Scottish Government on how to support more contextualised information sharing as well as developing robust referral pathways to relevant victim support agencies including local Women's Aid services, Rape Crisis, Children 1st. To be trauma informed, processes must be in place to ensure victims of a child's offending can access the support they need when they need it.

¹¹ Everyday Heroes Justice report (2018) <https://everydayheroes.sps.ed.ac.uk/wp-content/uploads/2018/11/everyday-heroes-briefing2-Justice.pdf>

¹² Improving the Management of Sexual Offence Cases: Final Report from the Lord Justice Clerk's Review Group. (2021) <https://www.scotcourts.gov.uk/docs/default-source/default-document-library/reports-and-data/Improving-the-management-of-Sexual-Offence-Cases.pdf?sfvrsn=6>

Within the recent financial projections paper¹³ the Minister references positive conversations with organisations in victim support organisations with regard to how best to approach information sharing, however the Minister also states “*we do not consider statutory provisions is required*”. It is important that protections for victims are fully considered within the context of their right to recovery and not simply an add on to the existing structures. Without clear processes and guidance on information sharing within the context of the Children’s Hearing System we are concerned that victims will continue to be overlooked and denied the vital information that could support their safeguarding and recovery.

Proposals ahead of stage 2:

One of our key concerns regarding the appropriateness of the Children’s Hearing System to manage serious offences is that the system does not have the appropriate mechanisms to effectively safeguard victims. We ask that the Committee considers the following ahead of stage 2:

- The financial memorandum must fully consider the necessary workforce investment and resource to respond to the anticipated increase in referrals to the Children’s Hearings system, in particular the likely increase of domestic abuse cases within young people’s relationship. Greater scrutiny on the budgets is needed to ensure that resources are dedicated to domestic abuse and trauma informed training that would benefit all children referred and victims of harm when navigating the Children’s Hearing System.
- We ask that the Bill be amended at Stage 2, placing a more robust duty on the Principal Reporter to proactively ensure that victims have access to information relevant to their safety and recovery, particularly around protective conditions imposed in CSOs and MRCs.
- We would welcome a Scottish Government Stage two amendment addressing the concerns on how CSOs will be monitored. We also call for a commitment to introduce refreshed guidance and training in response to the amendments in the MRC criteria. It is paramount that the Bill, and subsequent guidance, reflect the impact and rights of victims at risk of harm.

¹³ <https://www.parliament.scot/-/media/files/committees/education-children-and-young-people-committee/correspondence/2023/children-care-and-justice-scotland-bill-financial-projections.pdf>

Children and Young People's Commissioner Scotland submission of 18 October 2023 Supplementary Evidence on the Children (Care and Justice) (Scotland) Bill

Established by the Commissioner for Children and Young People (Scotland) Act 2003, the Commissioner is responsible for promoting and safeguarding the rights of all children and young people in Scotland, giving particular attention to the United Nations Convention on the Rights of the Child (UNCRC). The Commissioner has powers to review law, policy and practice and to take action to promote and protect rights. The Commissioner is fully independent of the Scottish Government.

This evidence supplements our previous written evidence to the Education, Children & Young People Committee in March 2023¹⁴.

Rights of children involved in judicial proceedings

In our response to the Scottish Government's consultation on Improving Victims' Experiences of the Justice System¹⁵, we outlined the importance of strengthening the realisation of the rights of child victims and witnesses, including the right to an effective remedy, the rights to recovery (Article 39 UNCRC) and privacy and family life (Article 16 UNCRC and Article 8 ECHR).

In both that consultation response and in our Stage 1 evidence to this Committee, we highlighted the Guidelines of the Committee of Ministers of the Council of Europe on Child Friendly Justice ("CoE Guidelines")¹⁶ which provide a comprehensive analysis of children's rights when they engage with the justice system. The guidelines' fundamental principles are participation; best interests of the child; dignity; protection from discrimination and rule of law.

In the section on Protection of Private and Family Life, the guidelines outline the comprehensive protections required to protect the privacy rights of **all** children involved in judicial or non-judicial proceedings, without discrimination - whether they are victims, witnesses or in conflict with the law and whether they are involved civil or criminal proceedings. These include protections against the publication of information that could lead to a child directly or inadvertently being identified in the press. However, we agree that these protections have not always adequately been afforded to child victims and witnesses and welcome the improvements proposed in both this bill and the Victims, Witnesses and Justice Reform (Scotland) Bill. However, there is a need to consider holistically the different supports that a child victim and/or witness will require throughout their contact with the justice system. That will require culture change and leadership across the justice system, supported by adequate resourcing. Whilst we

¹⁴ CYPCS, 2023. *Children (Care and Justice) (Scotland) Bill Stage 1 evidence*.

<https://www.cypcs.org.uk/resources/children-care-justice-scotland-bill/>

¹⁵ CYPCS, 2022. *Improving Victims' Experience of the Justice System*.

<https://www.cypcs.org.uk/resources/victims-consultation/>

¹⁶ Council of Europe, 2010. *Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice*. https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016804b2cf3 page 22

welcome the development of the Bairn's Hoose model in Scotland, this must be accompanied by sufficient funding to ensure all children can access support.

Anonymity

We have been in discussions with Victim Support Scotland and Scottish Government over ensuring the protections offered are as broad as necessary, including alternative means of protecting the privacy of child siblings after the death of a child victim. This would more explicitly recognise siblings as secondary victims and go some way to mitigating the harm that can be done by continued press attention to parents and surviving siblings.

Information Sharing

It is important to consider the possibility of provision of information to victims on a confidential basis, where a child has caused harm to another child or an adult, separately from general measures around anonymity. Information sharing inevitably engages with the need to balance the rights of victims – to effective remedy, to recovery and to be safe - with the rights of the child in conflict with law to rehabilitation and re-integration (Articles 37 and 40 UNCRC) as well as the right to privacy of all involved (Article 16 UNCRC and Article 8 ECHR).

Our view is that it may, in some situations, be appropriate to share information about outcomes with the victim, confidentially, for example to facilitate safety planning. However, any decisions to do so must be carefully considered, taking into account the individual circumstances as well as the rights of both children. Information should only be shared, where lawful, necessary and proportionate, with the victim and those involved in their support on a limited basis. It should be made clear to anyone receiving such information that they should not share this information further and that to do so would potentially be a criminal offence.

As we said in our response to the Scottish Government and to this committee¹⁷, it is not appropriate to attempt to replicate victim notification schemes which are in operation for adult offenders, as children are entitled to additional protections which recognise their rights as a child. This would be at odds with the Kilbrandon principles and international human rights law.

We have provided detailed information on our position on sections 12 and 13 of the Bill, including an analysis of the relevant human rights framework, on pages 5-8 of our Stage 1 evidence on this bill¹⁸.

Age of referral to Children's Hearings

We would like to take this opportunity to reiterate our support for the changes made by section 1 of the bill, which introduces the possibility of any child up to the age of 18 being referred to a Children's Hearing. We note that this does not preclude a child being referred

¹⁷ CYPCS, 2023. *Children (Care and Justice) (Scotland) Bill Stage 1 evidence*.
<https://www.cypcs.org.uk/resources/children-care-justice-scotland-bill/>

¹⁸ CYPCS, 2023. *Children (Care and Justice) (Scotland) Bill Stage 1 evidence*.
<https://www.cypcs.org.uk/resources/children-care-justice-scotland-bill/>

to COPFS for prosecution in the courts. However, as CYCJ point out in their evidence on this bill, in the vast majority of cases are for offence types already routinely dealt with by the Children's Hearing System¹⁹.

Remand, Committal and Detention of Children

We likewise support the changes made by sections 16-19 (detention of children in prisons). This will prevent any further children being remanded or sentence to prison in Scotland. This is a major step forward in realising the rights of children in conflict with the law to rehabilitation and re-integration in society. We would, in particular, draw the Committee's attention to Claire Lightowler's report *Right's Respecting? Scotland's approach to children in conflict with the law* which comprehensively outlines the risks, to the child and to the community, of imprisonment of children²⁰.

Over the last 6 months we have engaged with secure care providers across Scotland, as part of the follow up to our investigation on children's rights in secure care²¹ and as part of our engagement on this bill. Our view is that although individual providers may face particular issues, the sector as a whole have reassured us of their capacity to accommodate the small number of additional children placed in secure care and we therefore call for this provision to be brought into force immediately upon royal assent. We note that this would not require the immediate transfer of children already in prison, but in any case this needs to be carefully planned on an individual basis.

¹⁹ CYCJ, 2023. <https://www.cycj.org.uk/wp-content/uploads/2023/03/CCJ-Bill-evidence-from-CYCJ.pdf> page 6

²⁰ Lightowler, C. *Right's Respecting? Scotland's approach to children in conflict with the law* <https://www.cycj.org.uk/resource/rights-respecting-scotlands-approach-to-children-in-conflict-with-the-law/>

²¹ CYPCS, 2021. *Statutory Duties in Secure Accommodation: Unlocking Children's Rights*. <https://www.cypcs.org.uk/investigation-secure-accommodation/>

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

Education, Children and Young People Committee

25 October 2023

Children (Care and Justice) (Scotland) Bill: Stage 2 Scrutiny

Introduction

This briefing has been prepared to support the Committee's Stage 2 scrutiny of the Children (Care and Justice) Scotland Bill.

The Committee will take evidence from two panels:

- With Panel 1, the Committee will further explore the impact of the Bill on victims of crimes committed by children and young people. Members will hear evidence from: domestic abuse advocacy service ASSIST; Scottish Women's Aid (SWA); and Victim Support Scotland (VSS).
- With Panel 2, the Committee will further explore the financing and resources needed to implement the changes proposed by the Bill. Members will hear evidence from: Children's Hearings Scotland (CHS); Scottish Children's Reporter Administration (SCRA); the Convention of Scottish Local Authorities (COSLA); and Social Work Scotland (SWS).

This briefing contains a summary of the Bill, details of the Committee's Stage 1 scrutiny and report and a summary of issues relevant to Panel 1 and Panel 2. This briefing also references a written submission received from Scottish Women's Aid ahead of this session. No other submissions had been received at the time of writing. A summary of the ECYP Committee's report recommendations and Scottish Government response can be found at Annexe 1.

Background

Overview of the Bill

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

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

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

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

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

“Children also deserve extra care and protection in our justice system. The Children’s Care and Justice Bill will help us Keep the Promise by ensuring that children who come into contact with care and justice services are treated with trauma-informed and age-appropriate support and will put an end to placing under 18s in young offenders’ institutions. The Bill aims to improve experiences and outcomes for children in Scotland who interact with the children’s hearing and criminal justice systems, as well as care settings and those who are placed across borders in exceptional circumstances.”

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

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

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

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

Stage 1 Scrutiny

The Education, Children and Young People (ECYP) Committee led Stage 1 scrutiny of the Bill, and the Criminal Justice (CJ) Committee was designated secondary Committee. The

[CJ Committee Stage 1 Report](#) scrutinised provisions concerning children in custody and use of secure care rather instead of young offenders' institutions.

The Bill was also considered by the [Delegated Powers and Law Reform \(DPLR\)](#) Committee and the Finance and Public Administration (FPA) Committee. The [FPA Committee wrote to ECYP Committee](#) to highlight concerns around a lack of financial information contained in the Financial Memorandum accompanying the Bill.

A summary of the [ECYP Committee Stage 1 report](#) recommendations and the Scottish Government response to these can be found at **Annexe 1** at the end of this briefing.

The [Stage 1 debate was held on 22 June](#) and the general principles of the Bill were agreed to.

Developments since Stage 1

In the months since the Bill was passed at Stage 1, there have been two reviews published that are of relevance. These are the [Hearings System Working Group Hearings for Children Redesign Report](#) and the [Care Inspectorate's Secure care pathway review](#).

Hearings System Working Group: Hearings for Children Redesign Report

The Hearings System Working Group (HSWG) was set up in response to the Independent Care Review recommendation calling for the underlying structures of the Children's Hearing System to be reviewed. The HSWG was a partnership between The Promise Scotland, Children's Hearings Scotland (CHS) and the Scottish Children's Reporter Administration (SCRA). The Scottish Government was there in an observatory role. It was chaired by Sheriff David Mackie.

The group heard from children, families and those working alongside them about their experiences of the Children's Hearing System. Its report, [Hearings for Children](#), was published in May 2023. The report sets out what changes will look like for children and families involved in the system. Proposals include:

- Grounds will be agreed in a separate process before attending a hearing (this means there will be no more 'grounds hearings'). There will be no long waits while grounds are being established.
- Hearings will not feel confrontational, there will be a consistent, highly qualified and skilled Chair of the Panel and two Panel members. The Chair will be salaried, and the Panel members remunerated at a daily rate. This moves away from the volunteer model currently used.
- Restorative Justice and Family Group Decision Making will be available across Scotland and offered routinely.
- People working alongside children and families will have time to get to know them and be skilled and supported. Children and families will know their rights and how to access them.

- Decisions will be made with children and their families, listening to their voices. The system will understand children and their needs and language used in hearings will be non-judgemental.
- Sheriffs will be specially trained to work alongside children and their families, meaning experiences in the Sheriff Court should feel similar to a hearing.
- Every child attending a hearing should have a Child's Plan, and these will be at the heart of the Children's Hearing System.
- The Children's Reporter will be more involved with the referral process, listening to the views of children and their families. Advocacy support will be offered at the point of referral and children will be fully informed of their right to legal representation.
- Children and families will understand why they are being referred and the good things in their lives will be talked about as well as the reasons for their referral.
- Children and families should meet the same Sheriff in court where possible.
- The Chair will become a familiar face for the child, and the child and their family will not need to keep retelling their story at every hearing. Before a hearing, children will be able to meet the Chair. Letters will be sent out in the name of the Chair and will be easy to understand.
- During a hearing, everyone in the room will be supported to share their views, everyone will have a clear role and Children's Reporters will only attend where they have a meaningful contribution to make and where possible they will be familiar to the child.
- Children will be encouraged to attend their hearings and make their voices heard, and the views of younger children will also be captured in appropriate ways. Children will be supported to understand what was discussed and what decisions were made.
- Children and families will receive help and support outlined in the Child's Plan and this will be linked to the child's order. The order will be more specific about the support needed.
- Wherever possible, children should remain with consistent caregivers when it is not possible for them to live safely at home.
- Children will not be in the hearings system for longer than needed and children, their families and the people working alongside them will understand what needs to happen for the child to leave the system.
- Review hearings will be supportive places for honest conversations about progress and challenges.
- A plan for change will be led by the Scottish Government.

Secure care pathway review 2022-23

The [Care Inspectorate's Secure care pathway review](#) was published in September this year. This looked at the experiences of 30 young people in and on the edges of secure care following the implementation of the [Scottish Government's Secure Care Pathways and Standards](#) in 2020.

The review found that while in secure care, the support and education received by young people taking part in the review was generally good. The young people had good connections with key members of staff. However, the support for young people at risk of going into secure care and for those coming out of secure care was often lacking. Recruitment and retention of social workers was identified as an issue.

The report found that:

- **Before secure care**, those in the review who were on the edges of secure care in adoptive care arrangements found it difficult to access support. There were some examples of intensive support being delivered within community settings and these were successful but posed challenges to deliver. Not all Children's Services Planning Partnerships were using formal processes to identify and support young people before and after secure care.
- **While in secure care**, young people taking part in the review who were in secure care benefitted from intensive support, education, healthcare, and legal advice. There was found to be progress in reducing the use of restraint, but this differed across providers. Understanding of the reasons for being in secure care varied and was identified as an area for further work. When in secure, many of the young people in the review sample were moved around more than once and found this difficult and upsetting. Young people did not always know staff moving them, and this was also upsetting.
- **After secure care**, five of the young people in the review sample experienced homelessness and four more were at significant risk of homelessness. There was a lack of interim support and young people often returned to the same risks they left going into secure. Good transitions planning was found to be crucial for moving on, and continued involvement of secure care staff was an important part of this. A multi-agency approach to planning was not always in place, especially in cases where young people were no longer classed as 'looked after'. Young people generally found it hard to access therapeutic, health and wellbeing support and education once out of secure care. Some young people faced a drop-off in support; these young people were most at risk of harm. There was not always clarity around which social work team was responsible for a young person on leaving secure.

Panel 1: Victim provisions in the Bill

The Committee will explore the impact of the Bill proposals on victims with the first panel of witnesses.

The Committee's Stage 1 report highlighted areas in which stakeholders raised concerns with or sought further on provisions in the Bill relating to victims of crimes committed by children. These are explored in further detail under the headings below.

Compulsory supervision orders

Section 3 of the Bill adds to the list of measures that can be included in a compulsory supervision order (CSO) made by a children's hearing. The Bill proposes the addition of measures to prohibit a child from entering a specified place, type of place or area.

The Bill's Explanatory Notes state one of the intentions of this is to offer protection to a person at risk of harm or harassment from the child by prohibiting the child from entering the person's home or place of work. It may also be used to prohibit a child from entering an area or premises where they risk exploitation.

During evidence, Includem, Good Shepherd Centre, Aberdeenshire Criminal Justice Social Work Service and Victims Support Scotland all raised concerns about CSOs being applied to young people at risk of exploitation or harm. The organisations stated this measure would place the onus on victims to avoid places they may be harmed and failed to deal with those perpetrating the harm. In addition, failure to comply could result in more restrictive measures.

The Children and Young People's Centre for Justice (CYCJ), Scottish Women's Aid, Rape Crisis Scotland, Includem and Aberdeenshire Criminal Justice Social Work Service welcomed the power to prohibit a child who had harmed from a particular location. However, Rape Crisis Scotland, Scottish Women's Aid and Children's Hearings Scotland questioned the enforcement of these provisions and how non-compliance would be dealt with.

The Scottish Children's Reporter Administration (SCRA) said in written evidence that CSOs can already include such a measure under existing legislation (section 83(2)(h) of the Children's Hearings (Scotland) Act 2011.

The Committee's Stage 1 report asked the Scottish Government to set out how the new CSO measures would be implemented, monitored, and reviewed and how they would protect children at risk of harm.

In its response, the Scottish Government said that, as with any CSO, compliance would be monitored by the implementation authority and in cases where the measure was not being complied with, the Principal Reporter would be notified. The CSO would then be reviewed or varied at a further children's hearing.

The Scottish Government response also stated that where a child would not cooperate with a CSO prohibition, a children's hearing could consider a Movement Restriction Condition (MRC) as a measure.

Concerns about the onus being on children at risk of harm and subject to CSOs containing prohibition measures to avoid people and locations that may be harmful to them were not addressed in the Scottish Government response.

Compulsory supervision orders: Movement restriction conditions (MRCs)

Section 4 of the Bill proposes changes to criteria for movement restriction conditions (MRCs), decoupling the authorisation criteria from that of secure care and removing the current prerequisite of absconding. The Bill proposes two conditions for imposing an MRC:

- The child's physical, mental or moral welfare is at risk;
- The child is likely to cause physical or psychological harm [defined in the Bill as "fear, alarm and distress"] to another person.

An MRC may be applied by a children's hearing or Sheriff if one of the above conditions applies and it is considered necessary to do so.

During Stage 1 evidence, the Committee heard concerns from Who Cares? Scotland that the proposals would "not be effective in protecting a young person who is at risk to themselves". Who Cares? Scotland stated that the onus was on the child to remove themselves from harmful or exploitative situations rather than the system addressing the harm.

The Committee's Stage 1 report stated:

"Clan Childlaw and CYPCS stated that the subjective nature of the new test would only be verified by the victim, as there was no caveat of an objective measure as to what might equate to 'fear, alarm and distress'." – [Committee Stage 1 Report](#)

The broadening of the test was welcomed by Scottish Women's Aid and Victim Support Scotland, though they called for clearer guidance around what would constitute 'physical or psychological harm'.

Several stakeholders called for an automatic right to legal representation where MRCs are being considered.

A child cannot breach an MRC; it is down to the implementation authority to decide whether they are not complying and give notice to the reporter requesting a review. Victim Support called for clear guidance on how the conditions of an MRC will be communicated to victims and how compliance will be monitored. Scottish Women's Aid and Rape Crisis also raised concerns about a lack of clarity around the breach process, highlighting these uncertainties as unhelpful in relation to the need for victims to be able to plan for their own safety.

The Committee's Stage 1 report contained a number of conclusions related to MRCs. In relation to their impact on victims, the Committee called on the Scottish Government to add an objective test:

"...for instance a qualification of "significant risk" or severe harm" or the test applied when determining harassment which is that a consideration has to be made as to what a reasonable reaction to the behaviour would be." – [Committee Stage 1 Report](#)

The Committee also called for use of MRCs to be monitored following the changes.

In its response to the Committee report, the Scottish Government said that the test for an MRC is designed to strike a balance between potential impact on a victim and the referred child's welfare.

The Scottish Government did not "consider that any subjective element of the test has been changed", and that children's hearings have always had to decide what impact a child's behaviour has had on others.

The Scottish Government said the use of the term 'psychological harm' was intended to enable consideration of distress or fear caused by a child's behaviour, rather than focusing on physical impacts such as injury. The response gives the below example:

"If considering that an MRC best meets the child's needs, [panel members] would need to be satisfied that the child's behaviour was likely to cause physical or psychological harm to another person before they could find that the criteria were met. For example, established grounds that a child has committed an offence under section 1 of the Domestic Abuse (Scotland) Act 2018 could mean an MRC is considered, if necessary, to protect the victim from any repeat of such an offence." – [Scottish Government Response to Stage 1 Report](#)

The response stated the Scottish Government will work with stakeholders to consider whether further clarification around the proposed new test for MRCs is needed in the Bill.

In a written submission to the Committee ahead of this evidence session, Scottish Women's Aid called for greater clarity through guidance on how CSOs and MRCs will be risk assessed, implemented and monitored to ensure victim safety.

Compulsory supervision orders: secure accommodation authorisations

Changes proposed in Section 5 of the Bill would adjust the conditions and requirements that must be met when including a secure accommodation authorisation in a CSO to take into account the likelihood of a child causing physical or physiological harm to another person.

Concerns raised were similar to those raised around changes to the test for MRCs. Stakeholders said the criteria for secure referrals could be too broad, and the test and the test too subjective. The Committee's Stage 1 report again called for an objective test to be added.

In its response, the Scottish Government cited existing safeguards around consideration of necessity and proportionality of measures and the welfare of the child. However, the government stated this would also be included in consideration around whether further clarification is needed in the Bill.

Provision of information to person affected by child's offence and behaviour

Under the 2011 Act, victims can request information from the Children's Reporter. Information can be provided if it is appropriate to do so and where it would not be detrimental to the best interests of the referred child or any other child. The victim of an

offence (or person harmed by a child's behaviour) can make a request for information. If the victim is under 16, a relevant person can make a request.

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

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

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

During the evidence session on 22 March 2023, the Scottish Children's Reporter Administration (SCRA) told the Committee that under current practice the Children's Reporter already writes to victims to advise them of their right to information. The proposed legislation would put this practice into statute. Last year, more than 2,500 letters had been sent to victims or their relevant person last year, however, only 13-14% of people requested information.

Under the proposals in the Bill, a person entitled to request information will be advised of that right but will not automatically receive the information. Where a victim has requested not to be contacted, this should be respected.

In her evidence on 29 March 2023, Kate Wallace of Victim Support Scotland said there was currently a "lack of information sharing" and that "people who have been harmed by children or young people do not get any information at all about the case". In evidence to the [Criminal Justice Committee, also on 29 March](#), Kate Wallace stated as there is no Victim Notification Scheme²² where a child or young person is the offender, people harmed by children are not entitled to the same information as those harmed by adults. Kate Wallace said:

"Under the proposals in the bill, more children may be placed in secure care. Because there is no victim notification scheme, victims who have been subjected to a serious sexual assault are not told when someone is being released from secure accommodation, which therefore means that they cannot effectively plan for their own safety." – [Official Report, 29/03/23](#)

In evidence to the Committee on 29 March, Sheriff David Mackie of The Promise Scotland stated:

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

²² The Victim Notification Scheme provides eligible victims with information about offenders including the date of the offender's temporary or permanent release, if an offender escapes, and whether an offender is being considered for parole or release with an electronic tag.

behaviour—to engage in the process and, in many cases, to gain some satisfaction from it.”- [Official Report, 29/03/23](#)

The need to balance these rights was highlighted by multiple stakeholders, including CYCJ, Includem, The Promise, Who Cares? Scotland, CYPSC and the Information Commissioner's Office. In [evidence to the Committee on 26 April](#), Jenny Brotchie of the Information Commissioner's Office said that the Bill would not change the information victims can receive and stressed the need to balance “the rights of the child who has caused harm with the rights of the victim, who might well be a child, too.”

The Law Society of Scotland stated that, given such information is available to witnesses if a child or young person is prosecuted in the criminal courts, "it is reasonable for information to be given about conditions to keep the child away from specific persons or places or to restrict the child to a property during specific times."

Police Scotland also stated that the information available to a victim in the criminal justice system should also be available to a victim whose case is dealt with in the Children's Hearings System, where possible and appropriate.

In evidence to the Committee on 26 April, Ben Farrugia of Social Work Scotland said it was likely to be possible to reach a place where appropriate information is shared with victims to enable them to plan for their safety.

In a written submission to the Committee ahead of this evidence session, Scottish Women's Aid (SWA) urged the Scottish Government to acknowledge there is a gap in support pathways for victims affected by a child's offending behaviour. SWA also stated the Bill should go further in providing child-friendly information for victims, and expressed disappointment that the principles of victim centred trauma informed practice do not extend to children's hearings. SWA said the Bill does not currently demonstrate how it aligns with wider work to tackle gender-based violence.

Children 1st stated families wanted clear information about the system and how it works for them. It highlighted its work on the Bairns' Hoose model that brings together justice, health, social work and recovery support under one roof to meet the needs of child victims and witnesses. However, Children 1st stated it was not clear how the work on Bairns' Hoose aligned with the Bill.

CYPSC and Police Scotland expressed support for a single point of contact for children and their families to provide information and support.

In its Stage 1 report, the Committee stated its support for the Criminal Justice Committee's request for the Scottish Government to consider how the wider needs of victims can be met including on information sharing - in this Bill or, possibly, the Victims, Witnesses and Justice Reform (Scotland) Bill.

The Committee also called for the Scottish Government to clarify how the Bairns' Hoose work aligns with the Bill, and highlighted stakeholder support for a single point of contact.

In its response the Scottish Government said SCRA would undertake research to understand why the percentage of victims requesting information was low. The Scottish Government also said it was considering the conclusion of a [recent independent review of the Victim Notification Scheme \(VNS\)](#) and will update the Committee when this is published. Consideration of what learning can be taken from the review in relation to the

provision of information to victims in the children's hearings system will be given. In addition, the response stated learning will also be taken from the work of the Victims Taskforce.

On Bairns' Hoose, the response stated:

"Scottish Ministers have agreed the following scope of Bairns' Hoose eligibility. This recognises the evolving policy context and issues associated, to include:

- all children in Scotland who have been victims or witnesses to abuse or violence, which has caused or likely to cause significant harm
- children under the age of criminal responsibility whose behaviour has caused significant harm or abuse.

It will be a matter for professional judgement for practitioners as to whether the behaviour carried out by the child has caused or is likely to cause "significant harm or abuse" requiring the intervention of a Bairns' Hoose." - [Scottish Government Response to Stage 1 Report](#)

The Scottish Government highlighted that children displaying and/or carrying out harmful behaviour are often victims themselves and the Bairns' Hoose model offers holistic intervention and support.

Restrictions on reporting

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

The [SPICE briefing on the Bill](#) states that the identification of a child witness or accused is "relatively rare" in line with a child's general right to privacy under the United Nations Convention on the Rights of the Child (UNCRC). This right is given additional attention where a child is in conflict with the law.

Currently, provisions in the Criminal Procedure (Scotland) Act 1995 govern reporting restrictions where proceedings involve children where a child (under 18) is the accused. In such cases, there is an automatic prohibition on newspaper reports or sound and television programmes revealing the identity of the child or any other child involved in the proceedings. These restrictions also apply to a witness under 18 years old where the accused party is a child. However, where the accused is not a child, the reporting restrictions apply to any other child involved in the proceedings only if directed by the court.

The court currently has the power to dispense with reporting restrictions at any point in the proceedings, and Scottish Ministers have the power to dispense with restrictions only when proceedings have concluded.

Section 12 of the Bill amends the Criminal Justice (Scotland) Act 2016. The Bill makes the following provisions in relation to victims and witnesses:

- Make it an offence to publish information likely to lead to the identification of a person suspected of committing an offence when they were aged under 18 at the time of the suspected offence.

- Also make it an offence to publish information likely to lead to identification of a person under 18 at the time of publication as being a victim or witness in relation to a suspected offence.

Section 13 of the Bill amends the Criminal Procedure (Scotland) Act 1995. The Bill makes the following provisions in relation to victims and witnesses:

- Add other forms of media to the current offence of including information likely to lead to the identification of a child (accused, victim or witness) involved in criminal proceedings in a newspaper report, sound or television programme. Taking into account advances in technology, the Bill adds other forms of speech, writing and communication addressed to members of the public (such as on social media).
- Change the threshold to look at whether the information is likely to lead to the identification of the child rather than having to be calculated to have led to it (as is currently the case).
- Make it an offence to publish information likely to lead to identification of a victim or witness under 18 at the date of commencement of proceedings. Restrictions apply until the person whose information is protected turns 18 or the completion of the proceedings, whichever date is later. A power remains for the court or Scottish Ministers to dispense with the restrictions on their disposal if this is in the public interest. Before dispensing with restrictions, the sheriff must have regard to the wellbeing of the person whose information is restricted and also whether any persons should be given the opportunity to make representations.
- An appeal may be brought against a decision to dispense with restrictions within seven days of the decision being made.

During Stage 1 evidence, Together Scotland, Social Work Scotland and CYPCS welcomed the reporting restrictions proposed by Section 12 as they address a current gap in the law whereby children accused, victims and witnesses can be legally identified before formal proceedings begin.

However, Together Scotland and CYPCS both stated courts should be able to extend reporting restrictions for child complainers and victims.

In a written submission to the Committee, co-founders of the Campaign for Complainer Anonymity Dr Andrew Tickell and Seonaid Stevenson-McCabe of Glasgow Caledonian University stated the need for clear and workable thresholds for anonymity laws. They suggested the Bill could be improved to:

- Provide greater legal certainty about when reporting restrictions begin to apply.
- Ensure that children and young people can realise their right to waive their anonymity, without committing a criminal offence.
- Allow courts to extend reporting restrictions for child complainers and witnesses – as well as children convicted of a crime.
- Remove the Scottish Government's power to dispense with reporting restrictions.

- Review the maximum penalty for violating these reporting restrictions, which is currently £2,500.
- Update reporting restrictions in civil as well as criminal cases which involve children, to bring greater consistency to the law.

In its Stage 1 report, the Committee noted the recent introduction of the Victims, Witnesses, and Justice Reform (VWJR) (Scotland) Bill which will provide lifelong anonymity for victims of certain sexual offences (subject to waiver by the victim or the court in certain circumstances). The VWJR Bill provisions on anonymity therefore go considerably further than what is proposed in the CCJ Bill.

In addition, except for cases such as perjury, the VWJR Bill proposes that a court can only dispense with reporting restrictions if the child consents to the publication of the information. The child also has the right to withdraw that consent up to the time of publication.

Responses to the Scottish Government consultation on the VWJR Bill highlighted that forcing anonymity on a victim could be seen as further control and silencing them. Though when specifically talking about children concerns were raised about them lacking the capacity to make these decisions and understand the consequences. Generally, respondents felt there should be judicial oversight of this decision being made by children.

The [Policy Memorandum for the VWJR Bill](#) states that the criminalisation of breaching anonymity does not cover victims who wish to publish information identifying themselves. The intention is not to prohibit child disclosures through criminalisation but to respect autonomy "...and to encourage through non-legislative means children to engage with specialist support services if they are considering making their experiences public."

Giving evidence to the Committee on 3 May 2023, the Minister for Children and Young People and Keeping the Promise Natalie Don stated the Scottish Government would assess potential differences between this CCJ Bill and the VWJR Bill, highlighting:

"It should be noted that the provisions governing restrictions on the publication of identifying information, in so far as they extend to victims of those offences in this bill and certain other limited offences, are subject to change in the future, given the planned provisions on automatic anonymity for complainers." – [Committee Stage 1 Report](#)

In its response to the Committee, the Scottish Government set out that the VWJR Bill proposes an automatic and lifelong right to anonymity for all victims of sexual offences, offences with a significant sexual element and certain other offences where similar questions of vulnerability and privacy arise (e.g. human trafficking and modern slavery). The provisions in this Bill will also apply to children.

The response also states that reporting restrictions apply for children suspected of committing an offence, child victims and child witnesses "as soon as a child is suspected of committing an offence". This is not restricted further within the Bill in order to provide the maximum possible benefit of the restrictions.

The Scottish Government response also states the stakeholder views outlined above will be considered ahead of Stage 2.

Detention of children involved in criminal proceedings

Sections 16 and 17 propose changes to arrangements for detention of children involved in criminal proceedings either on remand before trial, or after conviction but before sentence, or on sentence. They do so by amending sections 51, 44, 205, 207 and 208 of the Criminal Procedure (Scotland) Act 1995.

The changes will mean that a child under 18 years of age can no longer be detained in a young offenders' institution.

The Committee heard evidence from stakeholders looking at how these changes might affect other young people in secure care settings, particularly those there on welfare grounds for their own protection. Managing the risks posed by young people convicted of serious offences to those in secure care on welfare grounds was flagged as a concern.

In her evidence, Kate Wallace of Victim Support Scotland stated young people in secure care on welfare grounds wanted to know what measures would be put in place to safeguard them.

Alison Gough of Good Shepherd Centre, Kevin Northcott of Rossie Young People's Trust and Claire Lunday of St Mary's Kenmure all stated that risk assessments are undertaken of each child placed with them, and secure care providers have a great deal of experience in balancing the needs of the children in their care.

The Care Inspectorate highlighted concerns around secure care practice, as services will need to admit children referred to them, rather than assessing whether they can meet a child's needs before taking the decision to admit them, as they do currently.

Secure care providers agreed extra training and support would be required in order to ensure a well-supported, remunerated and trained staff team providing a high-quality environment.

In its response to the Committee's report, the Scottish Government said that the Reimagining Secure Care project led by the CYCJ will look at longer term funding and commissioning arrangements for secure care and the secure estate, and this work will inform considerations and cost implications of the Bill.

The response highlighted:

- 36% of children in secure accommodation centres were aged 16 or over.
- [Recent CYCJ research](#), which considered the needs of children placed in YOIs and secure accommodation and found them to be similar.
- A [2021 report from the UK Government Department of Education](#), which found no evidence to support concerns that placing children from the justice and welfare systems in mixed secure settings increased the risk of sexual abuse.

Panel 2: Finances and capacity

The Committee will further explore the financing and resources needed to implement the changes proposed by the Bill with the second panel of witnesses.

During Stage 1 scrutiny, the ECYP Committee and the FPA Committee both raised concerns about the financial projections in the Financial Memorandum (FM) accompanying the Bill.

The FPA Committee took evidence from the Minister for Children, Young People and Keeping the Promise Natalie Don and officials on 9 May 2023. Following the evidence session, the [FPA Committee wrote to the ECYP Committee](#) setting out its findings.

The FPA Committee concluded it was “concerned at the lack of financial information contained in the FM in relation to all areas covered by the Bill”. It noted that while some of these costs would be included in secondary legislation, they would not be subject to the same level of scrutiny as they would have if presented in the FM. It stated that an updated FM should be provided ahead of the Stage 1 debate on the Bill.

The ECYP Committee highlighted the FPA Committee’s conclusions in its Stage 1 report. While the Scottish Government did not produce an updated FM ahead of the Stage 1 debate, updated financial information has now been provided to the Committee in a [letter from the Minister on 6 October 2023](#). These are detailed below, along with a summary of the issues raised by the ECYP Committee in its Stage 1 report.

The updated costings have been updated to 2024-25 prices to reflect the expected commencement date of the Bill.

Updated costings: Summary

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

- Cost of between £5.31m - £5.38m per annum to the Scottish Administration (including SCRA, CHS, Scottish Legal Aid Board and the Scottish Government);
- Costs of between £5.36m - £6.56m per annum to local government.
- Total costs of between £10.6m - £11.94m per annum.

The [updated financial information](#) now estimates the following costs:

- £11m for the Scottish Administration. This is largely due to the Scottish Government clarifying it will fund secure accommodation places for children on remand with local authorities at an updated cost of £5.4m per year. The FM accompanying the Bill placed these costs with local authorities.
- £6.97m for Local Government.
- Total costs of £17.97m per annum. This is at least a 50% increase on the costings contained in the FM.

Further exploration of these updated costings is provided under the headings below.

More effective outcomes: Impact on social work teams

During Stage 1 evidence on the Bill, the Committee heard concerns regarding a lack of resources within local authority social work teams. SCRA called for a significant allocation of resources for all elements of the Children's Hearings System, citing Children's Hearings Scotland, SCRA and local authority social work in particular. SCRA said that without this, the goals of the Bill would not be met.

The Care Inspectorate highlighted the need to support the increased number of children referred to the Children's Hearing System:

“At present local authority social work departments are under intense pressure. The sector will need considerable investment and support to ensure the proposals are effective and make a positive difference to children. This investment should complement resources to provide early and preventative support to children and young people.” – [Care Inspectorate consultation response](#)

Local authorities, COSLA and Social Work Scotland told the Committee that the Bill's FM did not reflect the costs of delivering interventions and support set out in the Bill. Social Work Scotland highlighted the pressure currently facing social work teams. Ben Farrugia of Social Work Scotland said:

“The local authority will, appropriately, have increased responsibility, but the question is whether we are in a position to meet that requirement properly. We will want to match our pace of improvement to what we can actually do—and even this will stretch us. At the moment, we have children and families social work teams at 60 to 70 per cent capacity, so this will be a stretch.” – [Official Report, 26/04/23](#)

Pressure on local authority social work was also highlighted in the Care Inspectorate's Secure Care Pathway Review, published in September 2023:

“The national recruitment and retention issues in the workforce made it very challenging for those in charge to provide young people with consistent staff to work with them. This requires further attention from policymakers across the sector to improve the recruitment and retention of skilled and experienced staff to work and keep on working with young people.” – [Secure Care Pathway Review, Care Inspectorate, 2023](#)

The Scottish Government response to the Committee's Stage 1 Report acknowledged the pressures facing social workers and agreed to provide updated costings recognising the importance of social workers in implementing the Bill provisions.

“We have introduced measures to address the acute recruitment and retention challenges facing the Social Work profession through the development of an Improvement Plan in collaboration with COSLA and other key stakeholders. This plan includes initiatives such as maintaining a Reserve List of social workers, reviewing pay disparities aligned with a framework that renumerates [sic] qualifications and experience, international recruitment and improving access to social work education.” – [Scottish Government response to Committee Stage 1 Report](#)

The updated financial information provided by the Scottish Government now finds:

“...the 5,200 to 8,000 additional referrals will require between 65,000 and 100,000 hours of social work support. Using the upper hearings estimate (of 3,435) an additional 58,395 hours of social work support will be required for initial and substantive hearings, and a further 57,536 hours of support will be required for continued and review hearings. Combining the support required for referrals and hearings, this is a total of 215,931 hours.

The average cost of employing a full time social worker is now estimated to be £57,631 per year (this includes salary plus employment on-costs). This equates to an estimated cost of £31 per hour (36 hours per week x 52 weeks). Combining the information above, the implied additional cost of social work support would be £6.69m per year in 2024-25 prices.” - [Scottish Government updated financial information](#)

The revised cost of £6.69m per year is more than double the original estimate of between £1.8m to £3m per year.

The updated costings no longer include proposed savings from criminal justice social work. These were included in the original FM, but the Committee heard in evidence that savings could not be transferred as criminal justice social work funding is ring-fenced.

Capacity to cope with increased referrals to the Children’s Hearing System

Section 1 of the Bill changes the age of referral to a children’s hearing to 18. The Committee noted in its Stage 1 report that the costings provided in the FM were based on a lower estimated number of hearings provided by SCRA. In her evidence to the FPA Committee, the Minister accepted that the higher figure should have been used and said this would be used in updated costings.

SCRA initially forecast there an additional 3,900 – 5,300 referrals of between 2,600 – 3,400 children. The Scottish Government’s updated costings document states SCRA now estimates an additional 5,200 – 8,000 referrals of between 3,900 – 5,100 children as a result of extending the age of referral as proposed in the Bill.

Previous SCRA forecasts estimated an additional 80 to 150 hearings on offence grounds and 650 to 1,200 on non-offence grounds (between 730-1,350 additional hearings per year). This has now been updated to between 1,850 – 3,435 additional hearings per year. The updated costings state this is:

“...an increase of 42% from the Financial Memorandum. This increase is partly due to extending the age range for all referrals up until the child’s 18th birthday and including new data in the modelling.” – [Scottish Government updated financial information](#)

In its evidence at Stage 1, Children’s Hearings Scotland estimated it would need to recruit an additional 270 children’s panel members and 50 volunteers to support the panel members because of changes introduced by the Bill. Upskilling of current panel members and staff will also be required.

Currently, panel members and most staff are volunteers. It should be noted that the Hearings System Working Group (HSWG) report has recommended salaried Chairs and

remuneration for panel members in future. At the time of writing, the Scottish Government response to the HSWG recommendations has not been published.

Stakeholders including COSLA, Social Work Scotland and Police Scotland stressed the importance of ensuring the hearings system had sufficient capacity to deal with the increased number and range of cases as a result of the Bill.

The Committee's Stage 1 report concluded that there were "significant risks associated with these recruitment, resourcing and training challenges not being met", called on the Scottish Government and Children's Hearings Scotland to work together to set clear targets and timescales for recruitment, training and planning.

The Committee also urged the Scottish Government to set out how planned reform of the Children's Hearings System following the recommendations of the HSWG would impact timescales for implementing the measures contained in the CCJ Bill.

In its response to the Committee's Stage 1 report, the Scottish Government said the CHS recruitment campaign began in September 2023 and has a target of recruiting and training between 500-800 panel members. While acknowledging there is pressure on volunteer recruitment, the response stated that mitigations including "live monitoring, the option of cover between areas, flexibility in the new legislation for mixed gender panels and the agility to bring forward scheduled recruitment campaigns if required" are in place.

The Scottish Government also said it is considering:

- Funding multi-disciplinary training in respect of the Bill.
- Sequencing and prioritisation of developments running alongside the Bill, including the recommendations of the HSWG. This work will be informed by the multi-agency implementation group, with any legislative change introduced in 2025.

17.5 years rather than 18?

In its Stage 1 report the Committee raised concern about the FM for the Bill setting 17.5 years as the likely effective cut-off date to children's hearings on offence grounds. The FM states this would primarily be due to the length of time taken to process a referral, rather than any factors relating to the child's best interests.

The Committee concluded it was unconvinced that the age of 17.5 is:

"...compliant with the age-appropriate justice provisions set out in the UNCRC, which state that it is the age at which the alleged offence took place that should be used to determine how the child's case is disposed of." – [Committee Stage 1 Report](#)

In its [response to the Committee, the Scottish Government said](#) that 17.5 years had been used in the FM as a "practical consideration aimed at arriving at the most accurate possible costings" and the Bill "is clear that all children under age 18 should have the opportunity for their circumstances to be considered for access to age-appropriate justice."

In the [updated financial information](#), the Scottish Government reiterated this and stated that the updated forecasts are based on assumptions of referral up to the age of 18, rather than 17.5. This had led to an increase in the number of projected referrals.

Compulsory Supervision Orders: Movement Restriction Conditions

Movement Restriction Conditions (MRCs) are measures which can be included in CSOs to restrict a child's movement using an electronic monitoring device (commonly known as an 'electronic tag'). MRCs also involve giving a child intensive support. Changes proposed by Section 4 of the CCJ Bill would change the criteria for MRCs, decoupling them from the criteria for secure care authorisation and potentially increasing their use. Use of MRCs is currently low.

The Committee's Stage 1 Report concluded that for Movement Restriction Conditions (MRCs) to be successful, they must be accompanied by a package of intensive support from social work. In evidence, the Children and Young People's Commissioner Scotland (CYPCS) stated:

"Our understanding is that this intensive support has fallen away in many cases. Any proposal to extend the use of MRCs should also take this into account." – [CYPCS evidence to Committee](#)

Laura Pasternak of Who Cares? Scotland also told the Committee:

"...the provision of intensive support packages is patchy across local authorities—how good that support package is depends on where you are." – [Official Report, 29/03/23](#)

The Committee raised concerns that a cost for intensive support accompanying MRCs was not included in the FM.

The Scottish Government response to the Committee's Stage 1 Report stated that costing intensive support for MRCs involves complexities due to the differences in the packages provided. In the [updated financial information](#), the Scottish Government used the three year average of children with a secure authorisation, which is 22. The average cost of electronic monitoring equipment is £14,000. Support costs were worked out assuming average costs of £1,000 per week for three months for 22 children on MRCs.

The updated projections estimate:

- A cost of £0.32m per year to the Scottish Government for MRCs.
- A cost of £0.29m per year to local authorities.

The document also states the Scottish Government plans to monitor MRCs under "any new statutory framework in line with policy intent moving forward".

Supervision or guidance post-18; and Aftercare for those leaving secure care

Section 7 of the Bill raises from 18 to 19 the age at which a child can be provided with supervision and guidance when a CSO comes to an end.

Section 21 of the Bill also provides that a child detained by the order of a criminal court is treated as a looked after child and therefore eligible for aftercare support.

During Stage 1 evidence on the Bill, the Committee heard that there was a need to ensure young people did not face a “cliff edge” of support at age 18. Ben Farrugia of Social Work Scotland told the Committee that the cliff edge could only be addressed with “person-centred planning”.

In its Stage 1 Report, the Committee recognised that extending supervision and guidance for young people will put pressure on local authority budgets. It called for resources to be allocated to local authorities for this as these costs had not been factored into the original FM. The Committee also noted that costs of providing aftercare support for children leaving secure care had not been factored into the original FM.

The [updated financial information](#) estimates a cost of around £200,000 per year for providing aftercare support to children over the age of 16 leaving secure care. This figure is based on estimates provided by Social Work Scotland for a team of social workers supporting around 30 children. The document states that, given the small number of children expected to be impacted, these costs could be absorbed into existing aftercare services.

Custody of children before commencement of proceedings

Section 11 of the Bill raises the age of existing provisions for children arrested and taken into police custody from 16 to 18. This will ensure that under 18s are treated as children with the right to local authority notification, to be kept in a suitable place of safety, and will not be able to waive their right to legal advice.

During Stage 1 evidence, the Committee heard concerns from stakeholders around:

- Infrastructure to provide young people with a place of safety that is not a police station.
- The capacity of local authority social work teams to deliver support.
- A lack of suitable solicitors to advise young people in some areas of Scotland.

In its [Stage 1 Report](#), the Committee urged the Scottish Government to work with relevant agencies to identify gaps and address these ahead of the Bill’s implementation. The Scottish Government response to the report states that there are plans to work with stakeholders to identify gaps in planning around places of safety.

On access to suitable solicitors, the Scottish Government response states:

“We will work with partners including Police Scotland and SLAB to gain a better understanding of any current challenges with solicitor access for children and how the implications of the Bill can be met to ensure every child in police custody has solicitor access. However, initial discussions with SLAB have highlighted they have not heard of young people being denied legal advice in custody owing to shortages in solicitors.” – [Scottish Government Response to Stage 1 Report](#)

In the updated financial information, the Scottish Government estimates an additional £564,000 per year would be required to provide a solicitor for around 1,952 16 and 17 year olds.

Detention of children involved in criminal proceedings

Sections 16 and 17 of the Bill make provision about the detention of children involved in criminal proceedings, on remand before trial, after conviction but before sentence, or on sentence.

The changes will ensure that the relevant provisions that apply to children apply to all people under 18. They will also mean that a child can no longer be held on remand or sentenced to detention in a young offenders' institution. Children under 18 will generally be held in secure accommodation instead.

The Committee's Stage 1 Report on the Bill noted strong stakeholder support for these changes but highlighted the "essential" need to ensure that secure care providers have resources in terms of staff, training and stability of funding to provide the therapeutic care, rehabilitation, protection and reintegration services needed.

The report also stated the Committee's concern about the financial stability of secure accommodation services and their dependency on high occupancy rates to be viable. The Committee asked the Scottish Government to provide interim findings on the financial sustainability of the sector ahead the publication of the ongoing secure care review.

The Committee also suggested the Scottish Government should include potential capital costs in the updated financial information for the Bill.

In its response, the Scottish Government said sustainability of secure provision was an "absolute priority" and the Scottish Government has extended the pilot of paying for one bed in each of the four secure care centres to cover up to 16 beds. This number reflects the average number of children in young offenders' institutions in 2021-22 (though recent numbers have been lower).

The response states that the funding now being provided for 16 beds should reduce reliance on cross-border placements and the need to have occupancy rates of 90%.

The Scottish Government also stated that longer term funding and commissioning arrangements were being looked at as part of the CYCJ Reimagining Secure Care project. This work will also inform considerations around costings of the Bill, including additional resources needed for accommodation arrangements, training, security and staffing.

The [Scottish Government's updated financial information](#) found the cost of a secure care placement is now around £7,000 per week (£364,000 per year). The Scottish Government will fund (as it does now) placements for children who have been sentenced, at an estimated cost of £1.1m per year.

The approach in the FM accompanying the Bill placed the costs of funding secure accommodation places for children on remand with local authorities. The updated costings document states these costs would be met by central government, at an updated cost of £5.4m.

Lynne Currie, Senior Researcher (Further and Higher Education, Children's social work, child protection and adoption), SPICe Research

17 October 2023

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Annexe 1: ECYP Committee Stage 1 Report and Scottish Government response

The ECYP Committee's Stage 1 Report agreed to the general principles of the Bill.

In its [Stage 1 Report](#), the Committee:

- Recognised the importance of social work teams in providing support to young people referred to the Children's Hearing System and noted concerns raised during evidence about social work staffing and resources being already stretched.
- Recognised the Scottish Children's Reporter Administration's (SCRA) forecasts an additional 3,900 – 5,300 referrals to the Children's Hearings System as a result of the increase to age of referral.
- Acknowledged the "significant" resourcing and training challenges posed to agencies such as SCRA, Children's Hearings Scotland and local authorities by implementing the Bill.
- Called for the Scottish Government to work with Children's Hearings Scotland to set clear timescales and targets on recruitment and training of panel members.
- Agreed with the FPA Committee's call for more detailed and transparent financial information to accompany the Bill, calling for this to be made available ahead of the Stage 1 debate.
- Found strong support amongst stakeholders for raising the age of referral to the Children's Hearing System, though highlighted concerns that the Bill would result in an effective increase to 17.5 years rather than 18 due to proposed limits on the cut-off dates for referral on offence grounds.
- Found concerns among stakeholders on timescales from referral to children's hearing being too long, and called for exploration of how these might be reduced.
- Called for the Scottish Government to analyse how the provisions in the Bill may interact with existing legislation concerning children and young people.
- Highlighted the need for children's panel members to receive appropriate training to respond effectively to an increase in referrals of 16- and 17-year-olds on both offence and welfare grounds.
- Recognised stakeholder concern that young people accepting offence grounds were not always aware of the implications of their decision. The Committee supported the Hearings System Working Group recommendation to explore whether current mechanisms for accessing legal aid and legal support is sufficient. If the current mechanism is found to be insufficient, the Committee supports a move to provide all children attending a hearing on offence grounds with legal support.
- Called for more information from the Scottish Government on how the extended list of measures that can be included in Compulsory Supervision Orders (CSOs) will be implemented, monitored and reviewed.

- Raised concerns about proposed changes to criteria for Movement Restriction Conditions (MRCs), highlighting the need to ensure their use is monitored and evaluated. The Committee called for amendments at Stage 2 to ensure a child has access to a solicitor at the point where an MRC is being considered.
- Called for Stage 2 amendments to the proposed threshold test for a secure accommodation authorisation to ensure secure care is a necessary and proportionate response to the risks posed to or by the child.
- Recognised the need for victims, witnesses and their families to have ready access to information and support when going through the hearings system, acknowledging that a single point of contact was cited by stakeholders as a means of doing this.
- Called for clarity around how the Bairns' Hoose model for child victims and witnesses will work with the Bill.
- Noted stakeholder calls for a victim notification scheme to operate within the Children's Hearings System.
- Recognised the need to avoid a "cliff-edge" of support for young people older than 17.5 years but under 18 when their CSO comes to an end, and called for resources to be made available to ensure local authorities can provide support.
- Recommended that the views of the young person should be factored into the Procurator Fiscal's decision-making process when identifying a) if a prosecution is in the public interest and b) whether a case should be disposed of via the courts or via the Children's Hearings System. [Note: the Lord Advocate has [since written to the Convener](#) to state it was not appropriate for the Committee to make this recommendation due to the independence of the Lord Advocate.]
- Welcomed the provisions in the Bill that ensure young people up to age 18 are treated as children when arrested and taken into police custody, however the need to ensure access to a) suitable solicitors and b) alternatives to police custody (places of safety) is provided was highlighted.
- Highlighted the need to prevent those seeking to exploit young people are prevented from being contacted as the appropriate adult for any young person over 16 in police custody.
- Welcomed the Scottish Government's commitment to closely align reporting restrictions proposed by the Bill with provisions in the Victims, Witnesses and Justice Reform (Scotland) Bill. Clarity on a number of aspects related to these provisions was called for. This is explored in further detail under the 'Panel 1: Victim provisions in the Bill' section of this briefing.
- Highlighted the need to ensure all under 18s have access to age-appropriate justice.
- Agreed with Bill provisions that will end the placement of under 18s in young offenders' institutions, with those deprived of their liberty held in secure accommodation instead. The Committee asked Health and Social Care partnerships to scope out the possibility

of formal arrangements ensuring timely access to services for young people in secure care.

- Asked the Scottish Government to consider publishing monthly data on the capacity of secure care, and ensure appropriate costings for changes to secure care are provided.
- Asked the Scottish Government to ensure the definition of secure accommodation reflected its need to provide care, education, healthcare, support and safeguarding to children and young people living there.
- Called for further consideration to be given to cross border placements in relation to the rights of children and young people, standards and outcomes for units providing these placements and a need to ensure advocacy support, legal advice and rights representation for young people on cross border placements.
- Urged the Scottish Government to ensure secure transport operators are sourced as locally as possible, staff are trained in trauma informed practice and fully regulated.
- Highlighted Police Scotland's concerns that extending the definition of "child" to under 18 in relation to antisocial behaviour orders may increase homelessness for young people.
- Asked the Scottish Government when refreshed child's plan guidance will be published.

Scottish Government response

In its [response to the ECYP Committee's report](#), the Scottish Government noted the concerns of the Committee and the FPA Committee and stated that a number of areas had been highlighted as needing further consideration for inclusion in financial calculations. The Scottish Government also committed to using the higher-end projection of children's hearings demand for the updated costs.

The Scottish Government has since provided updated costings to the Committee, and these are explored in more detail under the 'Panel 2: Finances and Capacity' section of this briefing.

The Scottish Government also stated:

- A communications strategy for the Bill is under consideration by the multi-agency Implementation Group, with links being made with the Victims and Community Confidence Workstreams.
- It does not plan to review the definition of "child" across Scots law, but the legislative framework relating to the care system will be looked at as part of work to implement The Promise by 2030.
- Any child up to age 18 may still be dealt with by a referral to the Principal Reporter in some circumstances; the suggestion of 17.5 was intended to assist Parliamentary scrutiny. The Procurator Fiscal will have options on how to deal with a case, and may remit a child within 6 months of their 18th birthday to a children's hearing.

- Where a young person is over 18, the Procurator Fiscal will also take into account the age they were when an offence was committed. However, those over 18 cannot be referred to the children's hearings system for offences committed before turning 18.
- Relevant partners will work to identify how timescales from referral to hearing can be made more efficient, and this is a key recommendation of the Hearings System Working Group.
- Children's Hearings Scotland have previously advised the Committee they are confident of dealing with increased demand on the system, and plan to make training on the Bill and its implications mandatory.
- Consideration is being given to Scottish Government funded multi-disciplinary training on the Bill.
- Any legislative change needed in respect of the Hearing System Working Group report is expected to be introduced in 2025 and considered toward the end of the Parliamentary term.
- Decoupling MRC criteria from that of secure care recognises that MRCs are less restrictive measures and can prevent a child's liberty being deprived as it would be in secure care. The Scottish Government considers the threshold to be rigorous, however consideration is being given to whether further safeguards are required to ensure an MRC is the most appropriate measure and to ensure a child can express their views in relation to the recommendation.
- In relation to legal representation where MRCs are being considered, the Scottish Government states in its response that children are offered advocacy workers who can access Clan Childlaw's Legal Assistance Helpline in cases where a child might need legal representation.
- The intention is not to promote MRCs "but to add to the suite of options for decision makers, by providing an option for a child's liberty to be restricted by use of an MRC, where to do so is necessary and proportionate, and as a lesser intrusive measure than secure care, and these safeguards support that intent."
- Current guidance states that the implementation authority should request an Early Review, ideally within six weeks, when an MRC is imposed. The MRC should not last more than six months. This guidance will be reviewed as part of implementation plans for the Bill and usage of MRCs will be monitored.
- The test for an MRC is designed to ensure that it "recognises the potential impact on a victim, and the provisions are designed to strike a balance between their need for protection and the referred child's welfare as identified in the children's rights and wellbeing impact assessment."
- The Scottish Government is working with partners to explore what more could and should be done around victims provisions in the Bill.
- The Bairns' Hoose model will be used in future for children who are involved in the Children's Hearings System as victims, witnesses or the referred child.

- Regarding concerns around preventing adults being able to exploit children, the Scottish Government said the Bill strengthens safeguards and protections for children in police custody. The Bill provides for a constable to delay sending for an appropriate adult for someone over 16 years of age in order for a local authority to give advice on whether a person should be contacted and, if not, who should be contacted in their place.
- On reporting restrictions, the Scottish Government said it will give further consideration to the views heard at Stage 1.
- Financial sustainability of secure accommodation services to meet Scotland's future needs is an absolute priority. The Scottish Government stated that "the pilot of paying for one bed in each of the 4 independent secure centres has been extended to cover up to 16 beds".
- There is no intention to extend secure accommodation beyond the age of 18.
- Amendment to the definition of secure care will be considered as necessary.
- Further monitoring of cross-border placements will be explored with the Care Inspectorate. The Bill will enable safeguarding the rights of children placed in secure care in Scotland from elsewhere.
- A national service specification for secure transport is being developed by the joint Scottish Government and COSLA led Secure Care Group. This specification states restraint must only be used in line with guidance.
- Further consideration is underway on secure transport, including looking at who is best placed to provide it in future, whether it should be regulated and if so how. The Scottish Government agreed the Care Inspectorate does not have jurisdiction for transport, particularly from outside of Scotland.
- An interim position statement on Child's Plan will be published by Autumn 2023.