



SPICe Briefing

Pàipear-ullachaidh SPICe

Children (Care and Justice) (Scotland) Bill: Consideration prior to Stage 3

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This briefing sets out Parliamentary scrutiny of the Children (Care and Justice) (Scotland) Bill ahead of Stage 3. It recaps on Stage 1 Committee scrutiny and provides a summary of amendments moved at Stage 2.



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Overview of the Bill

The Children (Care and Justice) (Scotland) Bill (the Bill) makes changes to the law in relation to the care of children and the involvement of children in the criminal justice system.

The overall aim of this legislation is to introduce trauma-informed, age-appropriate support for children involved with care and justice services. This is part of the [Scottish Government's work toward implementing the recommendations of the Independent Care Review](#), often referred to as 'the promise'.

The Bill proposes raising the age a child can be referred to the children's hearings system from 16 to 18. It also proposes an end to the placement of under 18s in Young Offenders Institutions (YOIs) and makes changes to the definition of and services provided by secure accommodation services.

The Bill has five Parts, summarised below:

Part 1 changes the age of referral to a children's hearing from 16 to 18 years old, removing the statutory barriers to 16- and 17-year-olds being referred to the Principal Reporter and enabling them to access the children's hearings system on both welfare and offence grounds. It also makes changes to the protective and preventative measures available through the system.

Part 2 relates to children in the criminal justice system, including restrictions around media reporting of criminal proceedings involving children, remittal between the courts and children's hearings and treatment of children in police custody. It also includes provisions to end the placement of under 18s in YOIs or prisons, and 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 and legislates on the support, care and education that must be provided to children accommodated there. It also 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. This is where children from elsewhere in the UK are placed in secure accommodation services within Scotland.

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

Part 5 makes necessary measures in relation to issues such as ancillary provisions, interpretation and commencement.

At Stage 2, amendments to the Bill included:

- the introduction of a new section on standards and reporting on secure transportation
- additional proposals for the provision of information and support to victims, including the establishment of a single point of contact

- maximum penalties for breaching reporting restrictions around children's hearings cases increased to include a prison sentence
- regulation-making power for Scottish Ministers on cross-border placements.

Key terms used in this briefing

The Bill - Children (Care and Justice) (Scotland) Bill

The 1993 Act - Prisoners and Criminal Proceedings (Scotland) Act 1993

The 1995 Act - Criminal Procedure (Scotland) Act 1995

The 2010 Act - Public Service Reform (Scotland) Act 2010

The 2011 Act - Children's Hearings (Scotland) Act 2011

ECYP Committee - Education, Children and Young People Committee

YOI - Young Offenders Institution

MRC - Movement Restriction Condition

CSO - Compulsory Supervision Order

SCRA - Scottish Children's Reporter Administration

Scrutiny summary

The [Children \(Care and Justice\) \(Scotland\) Bill](#) was introduced to Parliament on 13 December 2022 by then-Cabinet Secretary for Education and Skills, Shirley-Anne Somerville MSP.

The [Policy Memorandum](#), [Explanatory Notes](#) and [Financial Memorandum](#) were published alongside the Bill. Further information about the Bill can be found on the [Scottish Parliament website](#).

A [SPICe briefing on the Bill as introduced](#) provides information about changes the Bill proposes to make to:

- the Children's Hearings System and the measures it can make;
- the treatment of children within the criminal justice system, including available safeguards;
- and secure accommodation approval and regulation.

The Education, Children and Young People (ECYP) Committee led [scrutiny of the Bill at Stage 1](#). [Stage 1 reports](#) were produced by the Criminal Justice Committee and ECYP Committee. The Finance and Public Administration (FPA) Committee scrutinised the Bill's accompanying Financial Memorandum.

The [Stage 1 debate](#) was held on 22 June 2023 and the general principles of the Bill were agreed to.

[Additional evidence sessions at Stage 2](#) were held by the ECYP Committee in October and November 2023.

Stage 1 scrutiny: Committee Evidence

Stage 1 scrutiny of the Bill was led by the Education, Children and Young People (ECYP) Committee. The Criminal Justice Committee was a designated secondary Committee on the Bill and held evidence sessions on provisions relating to children in custody and proposals around ending the placement of under 18s in YOIs.

The Delegated Powers and Law Reform Committee scrutinised the delegated powers within the Bill and the Finance and Public Administration Committee scrutinised the Financial Memorandum.

Education, Children and Young People Committee

The ECYP Committee ran a call for views, a short survey and a BSL version of the survey. The call for views and the surveys closed on 17 March 2023. There were [53 published responses](#) to the call for views, [18 for the survey](#) and three for the [BSL survey](#).

Three evidence sessions were held with stakeholders. These took place on [22 March](#), [29 March](#) and [26 April 2023](#).

An evidence session with the Minister for Children, Young People and Keeping the

Promise and Bill Team officials was held on [3 May 2023](#).

Details of further evidence sessions held at Stage 2 can be found in the '[Stage 2 scrutiny](#)' section of this briefing.

Criminal Justice Committee

The Criminal Justice Committee held two evidence sessions on the Bill. These took place on [29 March 2023](#) and [19 April 2023](#). The Committee focused on two provisions in the Bill: Remand, committal and detention of children and the rights of children in police custody.

The Committee also held an informal session with people with lived experience on 19 April 2023. A note of this session is [available on the Scottish Parliament website](#).

Finance and Public Administration Committee

The Finance and Public Administration (FPA) Committee held one evidence session on the Financial Memorandum of the CCJ Bill, taking evidence from the Minister for Children, Young People and Keeping the Promise, Natalie Don MSP. This took place on [9 May 2023](#).

Delegated Powers and Law Reform Committee

The Delegated Powers and Law Reform Committee discussed the CCJ Bill in private at meetings on [21 February 2023](#) and [14 March 2023](#).

Stage 1 scrutiny: Committee reports

Criminal Justice Committee Stage 1 Report

The [CJ Committee Stage 1 Report](#) scrutinised provisions concerning children in custody and use of secure care rather than YOIs. The Committee concluded:

- in relation to provisions to raise the age young people can be placed in secure care to 18, there is a case for a more flexible system rather than one based on age alone
- Bill provisions around the rights of children held in police custody were welcome
- the Scottish Government should give further consideration to the needs of victims of crime/those harmed by a child's behaviour
- the Scottish Government must ensure sufficient resources are in place to implement the Bill.

Education, Children and Young People (ECYP) Committee Stage 1 Report

Ahead of the publication of the ECYP Committee's Stage 1 Report, the [FPA Committee wrote to ECYP Committee Convener, Sue Webber](#) MSP, to highlight concerns around a lack of financial information contained in the Financial Memorandum accompanying the Bill.

The ECYP Committee [published its Stage 1 report on the Bill](#) on 13 June 2023. The report agreed to the general principles of the Bill as Stage 1.

Conclusions and recommendations in the report included:

- A note of the strong support amongst stakeholders for raising the age of referral to a children's hearings to 18 and ending the placement of under 18s in YOIs.
- Concern that the Bill would result in the age of referral to the hearings system effectively becoming 17.5 years of age rather than 18, due to proposed cut off-dates. This has since been addressed by the Scottish Government.
- An urgent call for the Scottish Government to set out how the Hearings System Working Group (HSWG) recommendations will affect timescales for implementation of the Bill.
- A call for the Scottish Government to ensure resourcing and training challenges the Bill poses for local authorities, SCRA, Children's Hearings Scotland and others are addressed.
- Agreement with the FPA Committee's call for more detailed and transparent financial information to accompany the Bill.
- A call for the Scottish Government to analyse how the Bill provisions may interact with existing legislation concerning children and young people.
- A call for further information from the Scottish Government on how the extending list of measures the Bill proposes for inclusion in Compulsory Supervision Orders (CSOs) will be implemented, monitored and reviewed.
- A call for amendments at Stage 2 to ensure a child has access to a solicitor at the point where an Movement Restriction Condition (MRC) is being considered as a measure in a CSO.
- Support for victims, witnesses and their families having 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. The Committee also 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.
- A call for Stage 2 amendments to the proposed threshold for secure accommodation authorisation to ensure secure care is a necessary and proportionate response to the risks posed to or by the child.
- Recognition of 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.
- A welcome for Bill provisions ensuring 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) was highlighted.
- Agreement with the CJ Committee that those seeking to exploit young people must be prevented from being contacted as the appropriate adult for any young person over 16 in police custody.

- A call for further consideration to be given to cross-border placements in relation to children's rights and 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.
- An urgent call for the Scottish Government to ensure secure transport operators are sourced locally, staff are trained in trauma-informed practice and fully regulated.

[Responding to the ECYP Committee's report](#) in June 2023, 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 provided updated costings to the Committee](#) in October 2023.

The Scottish Government response to the Stage 1 Report stated:

- 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.
- 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.
- Any legislative change needed in respect of the HSWG 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, children are offered advocacy workers who can access Clan Childlaw’s Legal Assistance Helpline in cases where a child might need legal representation.
- Guidance around and use of MRCs will be monitored following the implementation of proposed changes.
- The Scottish Government is working with partners to explore what more could and should be done around victim 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 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 and 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.

Stage 1 Debate

The [Stage 1 debate was held on 22 June 2023](#) and the general principles of the Bill were agreed to.

Opening the debate, the Minister for Children, Young People and Keeping the Promise, Natalie Don MSP, thanked the ECYP Committee for its scrutiny, detailed report on the Bill at Stage 1 and support for the general principles of the Bill.

The Minister outlined the Bill's overall aims of providing age-appropriate systems and settings for children coming into contact with the law. She stated the Bill also advances rights under the United Nations Convention on the Rights of the Child.

During her opening speech, the Minister:

- underlined the constitutional independence of the Lord Advocate, highlighting that Procurators Fiscal will retain discretion to prosecute under 18s in court where it is deemed to be in the public interest
- set out the belief that YOIs were not suitable environments for children and secure accommodation provided an age-appropriate, trauma informed alternative that "can, and already does, provide care for children aged 16 and 17 who pose the greatest risk of serious harm."
- said that concerns around the capacity of secure care were being addressed by a national implementation group looking at costs, workforce issues and system readiness.

During the debate:

- ECYP Committee Convener, Sue Webber MSP, stated that while the Committee supported the general principles of the Bill, full costings and commitment to resources will be required to ensure successful implementation.
- The failure of the Financial Memorandum accompanying the Bill to adequately set out the costs was raised numerous times, including in points of order from Martin Whitfield MSP and Stephen Kerr MSP.
- Megan Gallagher MSP raised the issue of the age at which a child becomes an adult varying across different areas of the law.
- Megan Gallagher MSP and Ruth Maguire MSP called for greater consideration to be given to the needs of victims and how they can be met in the Bill.
- Pam Duncan-Glancy MSP stated that the Bill's focus on a child's age at the time they are dealt with by the system, rather than their age at the time of an incident failed to take account on UNCRC stipulation that the date of the incident should be the focus.
- Willie Rennie MSP stated that alternatives to putting children up in police cells must be found.
- Willie Rennie MSP and Ross Greer MSP said the Bill at Stage 1 failed to address the issue of secure transport.
- Ruth Maguire MSP raised concern that a young person accepting offence grounds in the children's hearing system might not understand the implications of doing so. One such implication is the disclosure of this information in protection of vulnerable groups checks years later. She expressed support for calls for automatic legal representation for children being presented with offence grounds.
- Bill Kidd MSP stated consideration at Stage 2 should be given to mental health and wellbeing support for children coming into contact with the hearings system.

During her winding up speech, the Minister said that work on re-imagining secure care and profiling the needs of children currently in YOIs is underway. Work is also underway to address issues around secure transport.

At [Decision Time](#):

- the Children (Care and Justice) (Scotland) Bill was agreed to at Stage 1 unanimously
- the financial resolution on the Bill was agreed to (For 84, Against 0, Abstentions 28).

Stage 2 scrutiny

Ahead of the Stage 2 amendments being taken at Committee, the ECYP Committee agreed to take further evidence on the financing and resourcing of the Bill and also on provisions in the Bill relating to victims/persons harmed by a child's behaviour.

Further evidence sessions were held on [25 October 2023](#) and [1 November 2023](#).

Additional evidence at Stage 2

On 25 October 2023, the [ECYP Committee held an evidence session](#) with the Convention of Scottish Local Authorities (COSLA), Scottish Children's Reporter Administration (SCRA), Social Work Scotland (SWS), Children's Hearings Scotland (CHS), Victim Support Scotland (VSS), Scottish Women's Aid (SWA) and domestic abuse advocacy service ASSIST.

On the financing and resourcing of the Bill:

- COSLA, SWS, CHS and the SCRA all welcomed the [Scottish Government's revised costings for the Bill](#) and highlighted the need to ensure the implementation of changes proposed by the Bill is sequenced.
- CHS and SCRA stated that 12 to 18 months between the Bill's Royal Assent and commencement date of the legislation would give time to ensure the children's hearing system had the required capacity.
- COSLA highlighted there were areas such as secure transportation, family support and administration and managerial time that had not been factored into updated costings.
- SWS raised concerns around whether there would be the people and capacity within social work to deliver the changes proposed by the Bill, and a plan to address recruitment and retention issues was needed. COSLA also raised concerns about capacity and funding.
- SCRA stressed the need for funding to be in place to ensure the success of the Bill.
- CHS highlighted challenges with recruiting and retaining volunteers for the children's hearings system, stating the latest recruitment campaign had not attracted enough applicants and other campaign was planned.
- SCRA said it was difficult to predict the number of cases that will come to the children's hearings system as a result of changes proposed by the Bill, highlighting the independence of the Lord Advocate.

On provisions in the Bill relating to victims/persons harmed by a child's behaviour:

- ASSIST stated that taking 16-and-17-year-olds out of the criminal justice system could remove protective measures currently available to victims. They proposed the introduction of measures replicating non-harassment orders currently available to victims of cases being dealt with in criminal courts.
- SWA said there was a need to ensure cases dealt with in the children's hearings system provided risk assessment, appropriate information and action on non-compliance with orders.
- VSS, ASSIST and SWA all stated the lack of information provided to victims on MRCs was a significant problem. VSS stated that more detail was needed on how MRCs will be monitored, and highlighted the need for information about MRCs to be shared to allow victims to plan for their safety.
- VSS raised concerns about support packages around MRCs, stating this is decided

on a case-by-case basis without clear guidance.

- COSLA called for the costs of MRCs to be kept under review, as these were relatively unknown.
- SWS said that in some areas of the country, the intensive support packages required to be in place around MRCs were not available, and this may be one reason why they are currently rarely used.
- VSS suggested a three-tier approach to information shared with victims via a single point of contact, would better enable them to plan for their safety.
- SWA and ASSIST highlighted the need for risk assessment to be domestic abuse and coercive control competent.
- COSLA and SWS highlighted difficulties with costing aftercare support for children over the age of 16 leaving secure care.
- VSS highlighted that victims lose their anonymity upon death, and this can lead to re-traumatisation of family members. VSS called for automatic anonymity for deceased victims, which could be waived by way of court order if a family wished to do so.
- VSS and SWS said they would like to see more detail on how the move of serious offenders to secure care would be managed to secure the safety of other children placed there.

On [1 November 2023](#), the ECYP Committee held a second evidence session with the Minister for Children, Young People and Keeping the Promise, Natalie Don MSP. The Minister could not give details of Scottish Government Stage 2 amendments, however she stated that:

- The Scottish Government will work with partners to consider commencement and sequencing of the future Act. Consideration will also be given to the timescale between the Bill receiving Royal Assent and the commencement date of the legislation.
- Work to redesign the children's hearings system is being taken forward separately to work on the Bill, as both were at different stages.
- While recruitment and retention is a matter for social work, work to help with recruitment and retention issues was underway and this included consideration of workforce planning and vacancy data and cross-portfolio development of a workforce improvement plan.
- Information about further costings, including costings for secure transportation, was not yet available but the Minister stated she was "confident that we will have what we need to see the bill through".
- She believed there was enough time to recruit sufficient numbers of Panel Members needed for the children's hearings system to implement changes proposed by the Bill.
- Ongoing engagement with victim support organisations was informing considerations around how the Bill could be strengthened to provide further protection for victims and ensure the rights of child victims are upheld in the hearings system.

- The use of non-harassment orders was under consideration, as was provision of anonymity for deceased victims, and the establishment of a single point of contact for victims seeking information about cases being dealt with by the children's hearings system.
- A commitment to "rigorous monitoring and evaluation" of the decision-making process around MRCs to ensure their use, the costs involved and the support in place around them was known.
- The costs of providing aftercare support will be monitored due to concerns raised about local authorities being unable to absorb the potential costs involved.
- Concerns about the safety of vulnerable children being placed in secure care alongside children who had committed serious offences would be monitored.

Committee members raised concerns about the pace of work to address workforce issues within social work. Evidence from stakeholders regarding concerns around the sequencing of changes proposed by the Bill and the redesign of the children's hearings system was also highlighted.

Stage 2 amendments

Consideration of Stage 2 took place at meetings of the Education, Children and Young People Committee on 24 January, 31 January and 7 February 2024.

The [Bill as amended at Stage 2](#), a [Supplementary Financial Memorandum](#) and [Revised Explanatory Notes](#) were subsequently published on the Parliament's website.

This section of the briefing covers the main amendments debated and moved at Stage 2. It does not attempt to deal with all the Stage 2 amendments lodged. Please note, generally, amendments withdrawn or not moved are not covered in detail.

The Marshalled Lists and Groupings of amendments can [viewed on the Parliament website](#).

The results of all amendments can be viewed in the Education, Children and Young People Committee Minutes:

- [24 January 2024](#)
- [31 January 2024](#)
- [7 February 2024](#)

The Official Reports for each meeting can be viewed at the links below:

- [24 January 2024](#)
- [31 January 2024](#)
- [7 February 2024](#)

Part 1: Children's Hearings System

This section of the briefing summarises amendments to Part 1 of the Bill that were moved in Committee at Stage 2.

A number of amendments were withdrawn/not moved. These covered areas including:

- children's hearing support for transition to adulthood;
- neurodevelopmental assessment
- referral of all offences required to be prosecuted on indictment to Lord Advocate
- domestic abuse support
- considerations of cases where a CSO has not been made
- the transfer of 16 and 17 year olds to YOIs
- reporting on victims of children referred to children's hearings system

- reporting on movement restriction conditions
- assessment of risk to victims where cases are not prosecuted.

Purpose of the Act

Martin Whitfield MSP's amendment 164 proposed the addition of a new section addressing the purpose of the Act; to promote wellbeing and rights of children in the children's hearings system and criminal justice system. The Minister stated this amendment was not necessary as it would not add to provisions already set out in the Bill.

Amendment 164 was disagreed to (For 4, Against 6, Abstentions 0).

Emergency placement in secure accommodation

Amendment 1 in the name of the Minister would amend the Children's Hearings (Scotland) Act 2011 (the 2011 Act) to set out the circumstances in which a place of safety to protect a child from serious harm may include secure accommodation. This was intended to promote legal certainty and consistency with other routes to secure accommodation, such as Compulsory Supervision Orders (CSOs). It also provided further regulation-making power to regulate such placements in order to safeguard a child's wellbeing.

Amendment 1 was agreed to without division.

Children's hearings system: rights and welfare issues for the child

Pam Duncan-Glancy MSP's amendment 172 proposed a duty on the Principal Reporter of a children's hearing to refer a young person who has carried out domestic abuse, or has close connections with a person who has, to a provider of specialist domestic abuse support. The intention of this was to provide targeted intervention to children and young people in situations of domestic abuse.

Willie Rennie MSP stated support for amendment 172, but highlighted he did not want this to result in a "higher bar" for access to domestic abuse support already provided by local authorities. While the Minister agreed with the need to provide appropriate access to domestic abuse support, she stated she did not agree that placing a referral duty on the principal was the right way forward.

Amendment 172 was disagreed to (For 4, Against 6, Abstentions 0).

Children's hearings system: victims

Pam Duncan-Glancy MSP's amendment 168 provided for a children's hearing or sheriff to allow a victim to express their views and to have regard to those views when making a decision on whether to impose an MRC or CSO.

Amendment 173, also in the name of Pam Duncan-Glancy MSP, proposed that, where a

CSO is imposed, consideration must be given to the concerns and safety of the person affected by a child's behaviour. This intended to ensure victim impact was built in to considerations. The Minister said this was unnecessary as victim impact is considered by the children's hearing.

Amendment 168 was disagreed to (For 4, Against 6, Abstentions 0).

Amendment 173 was disagreed to (For 4, Against 6, Abstentions 0).

Amendments 13 and 15 in the name of the Minister concerned the information sharing arrangements in place regarding CSOs.

Amendment 13 would amend the 2011 Act to enable the Principal Reporter to share information on whether a CSO has been made, terminated, varied or continued. Information about the measures contained in the CSO (for example, whether it includes a secure accommodation authorisation) and details of how the referral was otherwise discharged can also be shared.

Amendment 15 set out that the Principal Reporter could provide information about the details of a CSO measure as it related to the person impacted by the child's behaviour.

Amendment 13 was agreed to (For 9, Against 0, Abstentions 1).

Amendment 15 was agreed to (For 9, Against 0, Abstentions 1).

Amendment 178 in the name of Pam Duncan-Glancy MSP also proposed expanding the information a victim can request to include whether a CSO has been issued and, if so, what conditions are in place. The Minister stated amendments 13 and 15 address these issues.

Amendment 178 was disagreed to (For 4, Against 6, Abstentions 0).

Pam Duncan-Glancy MSP's amendment 175 would ensure victims can be informed when a CSO includes an MRC, and what the arrangements around this are. Information could also be withheld where it was deemed not to be in the best interests of the child. The Minister stated amendments 13 and 15 address these issues.

Amendment 175 was disagreed to (For 4, Against 6, Abstentions 0).

Amendment 180, also in the name of Pam Duncan-Glancy MSP, would enable victims to be notified if the conditions of a CSO have not been complied with and if any reviews have been carried out as a result. The Minister stated the belief that the Government amendments dealing with information sharing would give victims the information they needed.

Amendment 180 was disagreed to (For 4, Against 6, Abstentions 0).

Amendment 17 in the name of the Minister would place a duty on Scottish Ministers to provide a support service to victims, via secondary legislation. The Minister acknowledged the Bill consultation had found 97% of respondents supported a single point of contact for victims, but said the amendment provided for a support service "not restricted to a single point of contact".

Amendment 17 was agreed to (For 9, Against 0, Abstentions 1).

Willie Rennie MSP's amendment 122 proposed the establishment of an information-sharing system via a single point of contact. The degree of information provided to a victim would depend on the level or risk, as determined via assessment. A three tier system was proposed to enable safety planning and recovery:

- The first tier is information all victims will be entitled to, including information advising of no referral to a children's hearing.
- The second tier would provide case-specific information, particularly in relation to CSOs. This would include how they work, dates, conditions in place and what would happen if these were not complied with. Information about support in place for the child subject of the CSO would not be shared.
- The third tier would see victims notified when a child was released from secure accommodation or transferred to an adult prison.

For each of the three tiers, victims or those harmed by a child's behaviour can opt out of receiving information.

The Minister said she could not support the amendment as it might "go beyond what would be appropriate to share with victims" and, in some cases, would enable the sharing of information detrimental to a child's welfare and privacy.

Amendment 122 was agreed to (For 6, Against 2, Abstentions 2).

Terminology

The Minister's amendment 7 proposed updates to the language of risks to child welfare. New terminology of "health, safety and development" would replace existing references to "risk to moral welfare" where referring to the test of whether a CSO should include an MRC.

Amendment 7 was agreed to without division.

Amendments 8, 9 and 10 in the name of the Minister also proposed updating the language of risk to child welfare to "health, safety and development":

- Amendment 8 would update the language in respect of CSOs including secure accommodation authorisations.
- Amendment 9 would do the same in relation to medical examinations ordered by children's hearings.
- Amendment 10 would also do this in relation to the test for a warrant to secure attendance of a child.

Amendments 8, 9 and 10 were agreed to without division.

Attendance at children's hearing

Amendment 179, in the name of Russell Findlay MSP, proposed opening up children's

hearings to members of the public, except where the chair believed this to be detrimental to the interests of the child. The Minister urged Committee members to reject the amendment, stating that this approach would disregard the child's wellbeing, rights and best interests.

Amendment 179 was disagreed (For 1, Against 9, Abstentions 0).

Reporting restrictions: offences and penalties

Amendment 16, in the name of the Minister, would increase the maximum penalties for a breach of reporting restrictions in relation to a children's hearing case. The maximum penalty on summary conviction would be increased to include imprisonment for up to 12 months, while the maximum penalty on conviction on indictment would be increased to up to two years. In both cases, the penalty could also be a fine. This might be in addition to or instead of imprisonment.

This amendment would provide consistency with amendments to Part 2 of the Bill increasing maximum penalties for reporting restrictions before, during or after court proceedings.

Martin Whitfield MSP asked the Minister whether the amendment allowed a breach on social media to be investigated. The Minister said this might need to be monitored.

Amendment 16 was agreed to (For 8, Against 2, Abstentions 0).

Legal aid

Amendment 186, in the name of Pam Duncan-Glancy MSP, proposed a statutory right to access legal aid for all children undergoing proceedings in the children's hearing system. The Minister highlighted the availability of a national advocacy scheme. She also stated that the amendment would result in SCRA having to notify the Scottish Legal Aid Board (SLAB) of every hearing. SLAB would then have to arrange a duty solicitor where a solicitor was not in place. The Minister stated this would be a "logistical impossibility given the number of hearings".

Amendment 186 was disagreed to (For 4, Against 6, Abstentions 0).

Ways of working and training

Pam Duncan Glancy MSP's amendment 187 requires Children's Panel members to have training on child development, children's rights and domestic abuse. The Minister stated this was not necessary as measures to ensure necessary training are already in place. She added it was not clear why the subjects in the amendment required legislation above others.

Amendment 187 was disagreed to (For 4, Against 6, Abstentions 0).

Martin Whitfield MSP's amendment 188 proposed a duty on Scottish Ministers to promote

a multi-agency approach to supporting children referred to the children's hearings system. The Minister said that this could undermine existing shared responsibility for implementing the Getting it Right for Every Child (GIRFEC) approach.

Amendment 188 was disagreed to (For 4, Against 6, Abstentions 0).

Part 2: Criminal justice and procedure

This section of the briefing summarises amendments to Part 2 of the Bill that were moved in Committee at Stage 2.

A number of amendments were withdrawn/not moved. These are not included in the amendment summaries.

Amendments withdrawn/not moved covered areas including:

- restrictions around publication of information about deceased victims aged under 18
- power to retrospectively require removal of report of suspected offences
- power to reinstate restriction on report of suspected offences
- victim statements in cases remitted to the Principal Reporter
- detention of 16 and 17-year-olds in YOIs where charged or convicted of an offence on indictment
- duty on Ministers to promote restorative justice
- alternatives to detention and rehabilitation of children found guilty of offences
- and a duty on Ministers to promote a multi-agency approach.

Prosecution of children: appropriate system

Russell Findlay MSP's amendment 189 proposed a right for victims to be informed of the decision not to prosecute a child and to instead refer them to the Principal Reporter. The Minister said that the amendment was not clear on how the victim would be identified.

Amendment 189 was disagreed to (For 4, Against 5, Abstentions 1).

Amendment 190 in the name of Russell Findlay MSP proposed the introduction of a right for families to request a review of a decision to refer a child to a children's hearing rather than prosecute them. The Minister said that this risked interfering with the independence of the Lord Advocate.

Amendment 190 was disagreed to (For 1, Against 7, Abstentions 2).

Reporting restrictions: self-identification

The Minister's amendment 20 would enable a victim or person harmed by a child to be

exempt from reporting restrictions. Therefore, a victim or witness publishing information about themselves would not be breaking the law.

Amendment 20 was agreed to without division.

The Minister's amendment 24 would enable a child victim or witness to self-identify prior to any court proceedings for the alleged offence when a court has not already dispensed with reporting restrictions.

Amendment 24 was agreed to without division.

Amendment 48 would enable a child victim or witness to self-publish information that can identify them at any stage, once court proceedings have been raised, without seeking permission from the court. This aligns with provisions in the Victims, Witnesses and Justice Reform (Scotland) Bill. Consequential amendments 49 and 50 set out the conditions in which reporting restrictions apply for child accused and child victims or witnesses apply unless the child self-identifies.

Amendments 48, 49 and 50 were agreed to without division.

Reporting restrictions: powers and public interest test

The Minister's amendment 42 would amend the Criminal Justice (Scotland) Act 2016 (the 2016 Act) to enable an application dispensing with reporting restrictions to be made in relation to the publication of information relating to a child victim or witness to a suspected offence when no court proceedings are already under way. This mirrors provisions in the Victims, Witnesses, and Justice Reform (Scotland) Bill and would enable a person other than a child victim or witness to apply to a court for an order to dispense with a restriction and publish information.

Granting of a dispensation order would be subject to safeguards, and the best interests of the child would be the primary consideration. The court would also need to be satisfied that the child understands the effect the granting of the order may have. This would enable a child victim or witness to consent to a third party publishing the information.

Amendment 42 was agreed to (For 9, Against 0, Abstentions 1).

The Minister's amendment 21 is consequential to amendment 42 and would provide that information published by way of a dispensation order would be exempt from reporting restrictions.

Amendment 21 was agreed to (For 9, Against 0, Abstentions 1).

The Minister's amendment 60, along with consequential amendments 44 and 45, also dealt with reporting restrictions. Amendment 60 would insert sections 47ZA and 47ZB into the Criminal Procedure (Scotland) Act 1995 (the 1995 Act), enabling an application to be made to the court to dispense with reporting restrictions relating to a child victim or witness during or after completion of proceedings, or a child accused after completion of proceedings. Amendments 44 and 45 would provide that reporting restrictions would not apply where the court has granted an order to dispense.

Amendment 60 was agreed to (For 9, Against 0, Abstentions 1).

Amendment 44 was agreed to (For 9, Against 0, Abstentions 1).

Amendment 45 was agreed to (For 9, Against 0, Abstentions 1).

The Minister's amendment 51 would remove Scottish Ministers' power to dispense with a reporting restriction upon completion of court proceedings and provide that only a court will have this power. Amendments 61, 68, 69, 72, 76 and 81, also in the name of the Minister, are consequential to amendment 51.

Amendment 51 was agreed to (For 9, Against 0, Abstentions 1).

Amendment 61 was agreed to (For 9, Against 0, Abstentions 1).

Amendment 68 was agreed to (For 9, Against 0, Abstentions 1).

Amendment 69 was agreed to (For 7, Against 2, Abstentions 1).

Amendment 72 was agreed to (For 7, Against 2, Abstentions 1).

Amendment 76 was agreed to (For 7, Against 2, Abstentions 1).

Amendment 81 was agreed to (For 7, Against 2, Abstentions 1).

The Minister's amendments 54 and 55 would enable child victims or witnesses to appeal any decision to extend or not extend reporting restrictions in the same way as a child accused.

Amendment 54 was agreed to (For 9, Against 0, Abstentions 1).

Amendment 55 was agreed to (For 9, Against 0, Abstentions 1).

The Minister's amendment 62 provides greater clarity on the ability of victims and witnesses to appeal a court's decision to dispense with reporting restrictions.

Amendment 62 was agreed to (For 9, Against 0, Abstentions 1).

Amendment 65 would amend the 1995 Act to enable the power of the court to extend reporting restrictions to apply to child victims and witnesses as well as a child accused where court proceedings have been raised. Amendments 66 and 67 are consequential to 65, with amendment 67 providing that the court might make an order of its own accord or on the application of a child accused or of a child victim/witness, each in relation to their own data only.

Amendment 65 was agreed to (For 9, Against 0, Abstentions 1).

Amendment 66 was agreed to (For 9, Against 0, Abstentions 1).

Amendment 67 was agreed to (For 9, Against 0, Abstentions 1).

Amendments 70, 71, 73 to 75, 77 to 79 and 82 would further amend provisions in the 1995 Act around the application of the public interest test in relation to reporting restrictions. In particular, amendment 73 sets out that the best interest of the child accused must be regarded as a primary consideration. Amendments 75 and 79 concerned decisions about child victims or witnesses, with amendment 79 providing that where a child victim or witness is under 18, the court should regard the best interests of the child as a primary

consideration, and should have no regard to the length of time until the child will turn 18.

Amendments 70, 71, 73, 74, 75, 77, 78, 79 and 82 were each agreed by separate votes. The result of each of these votes was For 9 and Against 0, with one abstention.

Reporting restrictions: time restrictions take effect

Amendments 22 and 46 in the name of the Minister provide for reporting restrictions to apply from the point that a child aged under 18 becomes a victim of or witness to a suspected offence. The restrictions continue to apply until the disposal of any criminal proceedings, even where the victim or witness has since turned 18. This provides parity with the provisions for child suspects and accused.

Amendment 22 was agreed to without division.

Amendment 46 was agreed to without division.

Reporting restrictions: identity of workplace

Amendments 23 and 47 in the name of the Minister would amend provisions on relevant information within the scope of reporting restrictions to include information identifying a person's place of work.

Amendment 23 was agreed to without division.

Amendment 47 was agreed to without division.

Reporting restrictions: offences and penalties

The Minister's amendment 25 would remove sections of the 2016 Act setting out offences and penalties for breaking reporting restrictions. Amendment 43 in the name of the Minister would replace these, introducing imprisonment, alongside a fine, as a potential penalty. It would also add new sections (106BB, 106BC and 106BD) into the 2016 Act which would apply to reporting restrictions prior to court proceedings and defences for breaches of reporting restrictions. Amendment 84 would make similar changes to the 1995 Act in relation to a reporting restriction once there are proceedings in court in respect of an offence.

Amendment 25 was agreed to without division.

Amendment 43 was agreed to without division.

Amendment 84 was agreed to without division.

Amendment 52 in the name of the Minister is a consequential amendment, repealing existing offence provisions for breaching reporting restrictions.

Amendment 52 was agreed without division.

Reporting restrictions: minor and technical

Amendments 53 and 56 were consequential amendments, applying where a court either decides to dispense with a reporting restriction or not to make an order to extend a restriction. The amendments provided that, where an appeal is lodged, the restriction applies until the appeal is heard (or beyond this if the appeal is not upheld).

Amendment 53 and 56 were agreed without division.

Amendment 57 in the Minister's name would amend the 1995 Act to ensure consistent definitions around reporting restrictions on reporting of court proceedings involving children. Amendments 58 and 59 make changes to the definition of 'publication' in relation to the 1995 Act.

Amendment 57, 58 and 59 were agreed to without division.

Rights and welfare of children involved in criminal proceedings

Amendment 193 to 204 in the name of Martin Whitfield MSP dealt with safeguarding the welfare and safety of children involved in criminal proceedings. They included provisions to consider the rights of young people, and to take better account of their views.

The Minister said that the Government could not support the amendments. She said 193 to 197 were already realised in existing legislation, while 198 to 202 would roll back on flexibilities provided in the Bill to decide on a case-by-case basis where it should sit. 200 and 203 appeared to give unequal weighting to the rights of a co-accused person, while 204 concerned considerations that can already be made by a court.

Amendments 193, 194, 195, 197, 198, 200, 203, and 204 were each disagreed to in separate votes. The result of each vote was: For 4, Against 6, Abstentions 0.

Pam Duncan-Glancy MSP's amendment 205 proposes that, where a child who is subject to proceedings is living with a person who has committed domestic abuse, or has been witness to domestic abuse, a referral must be made to a special support provider. The Minister said that while she agreed with the fundamental principle of access to domestic abuse support services, this was not an appropriate responsibility for the court. She added that the existing Victim Information and Advice Service can refer victims to information and advice services.

Amendment 205 was disagreed to (For 4, Against 6, Abstentions 0).

Remit to children's hearing from criminal courts

Amendment 206, in the name of Russell Findlay MSP, proposed that, where a court remits a case to the children's hearings system, the Principal Reporter must give victims the opportunity to make a victim statement. Speaking on behalf of Russell Findlay MSP, Liam Kerr MSP told the Committee this would give victims of children in the hearings system the same opportunity to be heard as those in the criminal justice system.

The Minister said the Government could not support the amendment, stating that in cases

where it would be possible for such a statement to be provided, it might have been received and considered by a court before the case was remitted. She added that the amendment did not specify which offences it would apply to, and as a result went wider than measures in place in the criminal justice system.

A number of Committee members raised points related to this amendment, with Michelle Thomson MSP asking the Minister to give further consideration as to how the voices of victims can be heard in the hearings process. The Minister said this could be explored, though the impact of a child's behaviour on a victim is a current consideration of the hearings system. She added that Parliament must be careful not to transform the ethos of the hearings system, and that measures to safeguard and promote the referred child are the panel's key consideration.

Amendment 206 was disagreed to (For 4, Against 5, Abstentions 1).

Amendments 89 and 91 in the name of the Minister would enable courts to make a non-harassment order where the court was satisfied it was appropriate to do so to protect a victim, or where a child had been convicted of an offence under domestic abuse legislation. The non-harassment order would remain in place where a case was remitted to the children's hearings system, and a breach of the order would be dealt with by a court.

Amendments 89 and 91 were agreed to without division.

The Minister's amendment 90 provided that a court could impose driving disqualifications through the 'totting-up' provision in section 35 of the Road Traffic Offenders Act 1988 and still remit the case to the children's hearing to disposal, if this was deemed appropriate.

Amendment 90 was agreed to without division.

Measures for children who have committed an offence

The Minister's amendment 105 would extend a court's ability to make hospital direction in respect of all children aged 12 to 17 with a mental disorder who have been convicted on indictment and sentenced to detention. Currently, a court cannot make such a direction where a child is subject to a CSO or is under the age of 16.

Amendment 105 was agreed to without division.

Ways of working and training

Pam Duncan-Glancy MSP's amendment 210 would require training for criminal justice agencies and the children's panel on child development, children's rights and domestic abuse. Amendment 211 proposed a duty on Scottish Ministers to promote a multi-agency approach to supporting children involved in criminal proceedings. The Minister stated while 210 was well-intentioned, the amendment was not clear about who the training would apply to or what it would entail. In addition, the Minister found that it would not be "constitutionally appropriate" for Scottish Ministers to arrange training for the police, prosecutors and judiciary. On 211, the Minister said creating a legal duty on promoting a multi-agency approach could undermine the existing Getting It Right for Every Child approach and also create duplication.

Amendment 210 was not agreed to (For 4, Against 5, Abstentions 0).

Amendment 211 was not agreed to (For 4, Against 5, Abstentions 0).

Secure transportation

Ross Greer MSP's amendment 212 proposed a new section of the Bill - after section 21 - to address standards and reporting requirements around secure transport.

Proposed new section 90A of the Children and Young People (Scotland) Act 2014 would place a duty on Scottish Ministers to create national standards for service providers. An illustrative and non-exhaustive list of matters that might be covered by the standards was set out in section 90A(2). There would be a requirement for these standards to be developed in consultation with stakeholders. Such an approach is already taken with secure accommodation and other services. Ross Greer stated that setting the standards through secondary legislation would give Parliament the opportunity to scrutinise them.

New section 90B would create a duty on providers of secure transportation services and those commissioning such services to ensure the standards are being met.

The list of matters that may be covered in the standards includes the circumstances in which the use of restraint may or may not be appropriate.

Proposed new section 90C would place reporting requirements on local authorities and Scottish Ministers, with a consolidated report prepared by the Scottish Ministers. This would enable information to be gathered about service provision and the extent to which the standards were met during the reporting period.

The Minister stated that Ross Greer had worked with the government on this amendment, and she expressed her support for it.

Miles Briggs MSP told the Committee he would not move amendments 162 and 163 as amendment 212 achieved what he wanted.

Amendment 212 was agreed to without division.

Part 3: Residential and secure care

This section of the briefing summarises amendments to Part 3 of the Bill that were moved in Committee at Stage 2.

A number of amendments were withdrawn/not moved. These are not included in the amendment summaries.

Amendments withdrawn/not moved covered areas including:

- proposal for regulations requiring secure accommodation segregated by sex for children who have committed an offence
- mandatory training on the use of restrictive practice, de-escalation techniques,

learning disabilities and complex needs

- a duty on providers to ensure provision of appropriate services for children in secure care
- duty to provide services for children on cross-border placements.

Secure accommodation

Section 23(4) of the Bill updates the definition of 'secure accommodation service', providing more detail about the purpose and features of secure accommodation. This includes the provision of appropriate care, education and support in order to safeguard and promote the welfare of children placed there.

Amendments 110 and 111 in the name of the Minister make further changes to the definition, adding reference to the need to take into account trauma children may have experienced. This is intended to bring the definition into line with the Promise recommendation that therapeutic, trauma-informed support should be the underlying principle of secure care.

Amendment 110 was agreed to (For 7, Against 2, Abstentions 0).

Amendment 111 was agreed to without division.

Martin Whitfield MSP's amendment 213 related to the provision of services in secure accommodation, proposing all children accommodated there must have access to a range of support including advocacy, education, emotional and mental health support, support to maintain contact with family, and transition and aftercare support. The Minister stated that much of this was already included in the core purpose of secure care services, and added that the needs of each child were individual and could not be prescribed in legislation. She also noted that the amendment could cause confusion as to where responsibilities for supporting children lie and compel secure accommodation services to ensure support is provided, even when a child is no longer accommodated by them.

Amendment 213 was disagreed to (For 4, Against 5, Abstentions 0).

Cross-border placements

Amendments 112 and 113 in the name of the Minister relate to the further regulation of cross-border placements of children into Scotland. This is where children from elsewhere in the UK are placed into a residential establishment in Scotland to be accommodated there.

Amendment 112 would extend the power of the Scottish Ministers under section 190(1) of the Children's Hearings (Scotland) Act 2011 to regulate cross-border placements of children into Scotland which are underpinned by a non-Scottish court order which appears to them to correspond to a CSO.

Amendment 113 would provide a new power in section 33A of the Children (Scotland) Act 1995 for the Scottish Ministers to regulate cross-border placements from England, Wales and Northern Ireland which are legally authorised in that jurisdiction under statute or a court order. Ministers are empowered by this to impose conditions in respect of these

placements, to provide for a mechanism for monitoring adherence to these and to set out consequences of breaching them.

The Minister said that having "tailor-made powers on the statute book" would help to ensure the welfare of children placed in Scotland via cross-border placements could be safeguarded.

Amendment 112 pre-empted Michael Marra MSP's amendment 214.

Amendment 112 was agreed to (For 6, Against 0, Abstentions 3).

Amendment 113 was agreed to without division.

Schedule: Amendments

There were a number of amendments made to the Schedule of the Bill.

These concerned terminology and minor and technical details. This section of the briefing summarises these amendments.

Terminology and Minor and technical

The Minister's amendments 114, 115, 116, 117 and 118 proposed amendments to the Schedule of the Bill.

Amendment 114 amended sections 73 and 103 of the 2011 Act concerning a child's attendance at a children's hearing updating the language of risk to child welfare.

Amendment 115 is a consequential amendment. It would amend the Social Work (Scotland) Act 1968 (the 1968 Act) to ensure that local authorities provide supervision, advice, guidance and assistance to a child subject to a Restriction of Liberty Order (RLO) under the 1995 Act up to the age of 18, rather than the current age of 16.

Amendment 116 and 117 related to early release provisions. 116 is minor and technical and 117 is consequential to 116.

Amendment 116 would amend section 7(2C) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 to clarify early release provisions. The amendment provides that, if while children are detained under section 208 of the 1995 Act they are sentenced to another term of four or more years and, by virtue of section 27(5) of the 1993 Act, these periods of detention or imprisonment are treated as a single term, they would be subject to the same early release provisions.

The change made in amendment 116 would also remove the reference to remand centres, so amendment 117 would delete a paragraph that is no longer required.

Amendment 118 would make minor consequential amendments to local authority duties under the 1968 Act regarding children detained under the 1995 Act. It gives Scottish Ministers oversight of the discharge of local authority duties regarding children detained under the 1995 Act in terms of summary conviction, on remand while awaiting trial or sentence and for fine default.

Amendment 118 would also amend the Public Services Reform (Scotland) Act 2010 to repeal reference to section 51 of the 1995 Act from the list of enactments in schedule 13 on social work services functions. This is because by virtue of other changes made in the Bill, the functions are covered separately in the 2010 Act and this reference is no longer needed.

Amendments 114, 115, 116, 117 and 118 were agreed to without division.

Stage 3 timetable

The deadline for Stage 3 amendments was 12 noon on Wednesday 17 April.

Stage 3 Proceedings will be held on Wednesday 24 and Thursday 25 April 2024 in the Parliamentary Chamber.

Details of proposed amendments lodged can be [viewed on the Parliament website](#).

Ahead of Stage 3 proceedings, the [Minister wrote to the ECYP Committee](#) to inform members that the Scottish Government intended to lodge amendments removing Bill sections 12 and 13 on Reporting Restrictions.

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