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Education, Children and Young People Committee

Stage 1 Report for Children (Care and Justice) (Scotland) Bill



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Education, Children and Young People Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Education and Skills and matters relating to the Historical Abuse Inquiry and redress falling within the responsibility of the Deputy First Minister.



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Membership changes

1. There have been several changes to the membership of the Committee since the call for views for this inquiry was launched in early 2023—

Graeme Dey (SNP) (31 March 2022 – 31 March 2023)

Kaukab Stewart (SNP) (17 June 2021 – 18 April 2023)

Bill Kidd (SNP) (18 April 2023 – to date)

Ben Macpherson (SNP) (18 April 2023 – to date)

Michael Marra (Lab) (17 June 2021 – 25 April 2023)

Pam Duncan-Glancy (Lab) (25 April 2023 – to date)

Introduction

Purpose of the Bill

2. The Children (Care and Justice) (Scotland) Bill was introduced on 13 December 2022.
3. The Scottish Government states that 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.¹
4. The [Programme for Government 2022/23](#) also states—
 - ” 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.

Scrutiny

5. The Education, Children and Young People Committee was designated as the lead committee, however, the Committee acknowledges the work of the Criminal Justice Committee which, as a designated secondary Committee on this Bill, has been scrutinising the provisions concerning children in custody and the proposals around the use of secure care rather than YOIs.
6. The Committee also acknowledges the work of the Delegated Powers and Law Reform Committee and the Finance and Public Administration Committee who are scrutinising the delegated powers within the Bill and the Financial Memorandum respectively.
7. The Committee issued a call for views, a shorter survey and a BSL version of the survey. The responses received to the [call for views](#), the [shorter survey](#) and the [BSL survey](#) have been published.
8. The Committee took oral evidence from organisations including—
 - Scottish Children's Reporter Administration (SCRA);
 - Crown Office and Procurator Fiscal Service (COPFS);

- Police Scotland;
 - Children and Young People's Commissioner Scotland;
 - Children's and Young People's Centre for Justice;
 - Clan Childlaw;
 - Good Shepherd Centre;
 - Rossie Young People's Trust;
 - St Mary's Kenmure Secure Care Centre;
 - HMP & YOI Polmont;
 - Scottish Prison Service;
 - Hearings System Working Group;
 - The Promise Scotland;
 - Includem;
 - Victim Support Scotland;
 - Who Cares? Scotland;
 - Information Commissioner's Office;
 - Social Work Scotland;
 - COSLA;
 - Care Inspectorate; and
 - Children's Hearings Scotland.
9. The Committee also took evidence from Natalie Don MSP, Minister for Children and Young People and Keeping the Promise and Scottish Government officials Brendan Rooney, Bill Manager and Deborah Nolan, Bill Team Professional Adviser.
10. The Committee undertook visits to HMP & YOI Polmont, Rossie Young People's Trust and St Mary's Kenmure Secure Care Centre, to further inform its consideration of the Bill.
11. The Committee is grateful for all those who shared their experiences and insights as part of its scrutiny of the Bill, particularly the young people who spoke to us when we met them in secure care settings.

Part 1

12. The Children's Hearing System was introduced in 1971 following the Kilbrandon Report of 1964 and the Social Work (Scotland) Act 1968. Kilbrandon recommended a welfare-based system to provide an integrated approach to children who had committed offences and children in need of care and protection.
13. In a children's hearing, there is an assumption that the child who has committed an offence is just as much in need of protection as the child who has been offended against. There is a lay tribunal which does not have the formality of the normal courts.
14. The legislation was substantially revised in the Children (Scotland) Act 1995 but the key principles have remained constant. Hearings are organised and administrated by [Children's Hearings Scotland](#) and children are referred to the hearings via the [Scottish Children's Reporters Administration \(SCRA\)](#).
15. Part 1 of the Bill 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 on welfare and on criminal grounds. It also contains some related measures, which are consequential to raising of the age of referral.

Section 1: Age of referral to a children's hearing

16. At present, section 199 of the Children's Hearing (Scotland) Act 2011 defines a "child" as—
 - under 16s
 - those aged over 16, where they have been referred to the hearings system prior to turning 16 and
 - 16- and 17-year-olds if they are already subject to a compulsory supervision order (CSO).
17. Should a child aged 16 or 17, who is not subject to a CSO, be suspected of committing an offence, they are not able to be referred to the hearings system but will be dealt with in the criminal justice system. Some may be diverted from prosecution and/or subject to early and effective intervention, however, others will progress through the courts.
18. It is also not currently possible to refer a child aged 16 or 17 to the hearings system on welfare grounds, unless they are already subject to a CSO. There is therefore a two-tier system in place at present.
19. Section 1 of this Bill will amend section 199 of the Children's Hearing (Scotland) Act 2011, and define a "child" as someone who under 18 years old. As a result, all children aged 16 and 17 will have the opportunity to be referred to a children's hearing, on welfare or offence grounds, not just those subject to a CSO.
20. The Lord Advocate and Procurators Fiscal will continue to have the discretion to

prosecute children in court in relation to offending behaviour. The types of offence that this might cover are very serious in nature and include, but are not limited to, culpable homicide, rape and murder.

21. This change has been widely welcomed by stakeholders on the basis that it would—
- Align with the definition of a child within Article 1 of the United Nations Convention on the Rights of the Child (UNCRC);
 - Ensure all 16 and 17 years olds have the opportunity to be referred or remitted to a children's hearing rather than only those who are already subject to a CSO;
 - Lead to better outcomes for the young people involved; and
 - Ensure that support doesn't come to an abrupt end at their 16th birthday or just before a young person turns 16.
22. These are discussed in more detail below.

Article 1 of the United Nations Convention on the Rights of the Child

23. The four general principles of the United Nations Convention on the Right of the Child are—
- [Non-discrimination \(Article 2\)](#)
 - [Best interests of the child \(Article 3\)](#)
 - [Right to survival and development \(Article 6\)](#)
 - [The views of the child \(Article 12\)](#)
24. Article 2 means that rights apply to all children regardless of colour, class, sex etc. Article 3 means that adults should think about the *best interests* of children and young people when deciding what to do in a given situation. Article 12 means that the opinions of children and young people should be considered when people make decisions about things that involve them. This also means that their opinions should not be dismissed out of hand on the grounds of age, that they should be taken seriously, with their evolving capacities taken into account.
25. [Article 1](#) states that these rights apply to everyone under 18 as, “for the purposes of the present Convention, a child means every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier.”
26. Multiple contributors including the Children and Young People’s Commissioner Scotland (CYPCS), Clan Childlaw, the Centre for Youth and Criminal Justice (CYCJ), Children 1st, Children's Health Scotland and Children's Hearings Scotland explained that raising the age at which a young person could have the opportunity to access the Children's Hearings System would ensure that Scotland complied with Article 1.

27. Children 1st highlighted that under Article 40 of the UNCRC, children have a right to access child friendly justice which means a system response that takes account of their age.
28. Several stakeholders noted that research such as the [Rights Respecting? Scotland's approach to children in conflict with the law Report](#), published in 2020, demonstrated that treating older children as adults under adult systems fails on this measure. They stated that it is therefore right that all children under 18 have the opportunity to be referred from the criminal justice system to the children's hearing system, albeit with the Lord Advocate's Guidelines meaning that some young people will potentially still progress through the adult court system.
29. When giving evidence to the Committee on 3 May, the Minister for Children and Young People and Keeping the Promise, Natalie Don, stated that in raising the maximum age of referral to the reporter, the Scottish Government is advancing rights under the United Nations Convention on the Rights of the Child, noting—
- ” Sixteen and 17-year-olds are still children and have the best chance of being rehabilitated.”²

Ensuring all 16 and 17 year olds have access to the children's hearings

30. The Committee heard from many organisations, including Police Scotland, that there is a close correlation between children coming into conflict with the law who have been impacted by one or more factors such as trauma, poverty or medical conditions.³
31. [Research by the Scottish Children's Reporter Administration \(SCRA\)](#) into children aged 12 to 15 years involved in offending and referred to the Children's Reporter and Procurator Fiscal in Scotland found that—
- 63% of children had home addresses in areas ranked within SIMD5 quintiles 1 and 2 which are areas classified as deprived;
 - 65% were living at home with their parent(s) and over a quarter (26%) were in residential care (including secure accommodation);
 - 32% of children were recorded as having mental health concerns and around a quarter (23%) of children were reported to have self-harmed, attempted suicide and/or displayed suicide ideation;
 - almost half of children (48%) were reported as being victims of parental neglect;
 - a quarter of children (25%) were victims of parental violence and/or aggression;
 - almost a quarter of children (24%) had been bullied;
 - 14% of children were victims of sexually harmful behaviour and/ or sexual abuse. Girls were almost five times more likely to be reported as victims of

sexually harmful behaviour and/or sexual abuse than boys (39% girls; 8% boys);

- 40% had parent(s) who had committed offences. Almost a fifth of children (18%) had a parent(s) who had served a custodial sentence.

32. The vast majority of children referred to the Children's Hearings System are referred solely on welfare grounds. SCRA highlighted that raising the age for referral to the Children's Hearings System will ensure that all children aged 16 and 17 are offered equal protection from abuse, harm and exploitation and have access to the full range of help and supports that are available to children under 16 at the moment. SCRA stated it was concerned that 16 and 17 year olds were prevented from accessing those supports and protections by reason of their age alone, leaving them exposed to potential risk and harm whilst still widely considered to be children.
33. By increasing access to the Children's Hearings System on both offence grounds and welfare grounds, more young people will be able to access the support that they need. In its evidence to the Committee, Children 1st stated that while compulsion should not be seen to be necessary to access services, many older children are often not able to access the support that they should be entitled to without this. ⁴
34. Another individual responding to the Committee's Call for Views, Ellen, agreed, stating "currently there are many children who remain at risk due to the inability to access the Children's Hearing System due to being 16+ this means many children do not get the support they should". ⁵
35. Many contributors including COPFS, Law Society of Scotland, Police Scotland and CYCJ also highlighted that increasing the age at which children can be referred to the children's hearing system would address some inconsistencies in the current system which mean that two young people both aged 16 could commit the same crime but be dealt with differently. For example, at present a 16 or 17 year old subject to a CSO could have their case heard by the children's hearing system in a welfare-based system, whereas the other young person, with no prior involvement in the Children's Hearings System, may need to have their case heard by the courts.
36. As a result, not all children can benefit from the option of remittal to the hearing system, where more age and stage appropriate, welfare-based, and comprehensive support could be provided to meet the child's needs. ⁶
37. Fiona Dyer of CYCJ described the current situation as "inequitable, unjust and unfair". ⁷
38. SCRA stressed that although the changes in the Bill are important, alongside that change in legislation there is a need to ensure effective services are available to all 16 and 17 year olds on both a voluntary and compulsory basis. Adding—

” We are aware of particular gaps in services in some areas for children in this age group, particularly where there are concerns about mental health and sexual offending. ⁸

More effective outcomes

39. The Committee heard that moving to a place where all 16 and 17 year olds could potentially benefit from the Children's Hearings System, would lead to better outcomes for them and for communities, with Barnardo's Scotland highlighting that "young people often end up in the criminal justice system when what they particularly need help with is support with their mental health and wellbeing as well as wraparound supports to help them."⁹
40. Alasdair Hogg, Head of Practice and Policy, SCRA agreed—
- ” There is lots of research evidence that the holistic welfare-based approach is the right one, and not just for the child but for society in general, because the approach is more likely to lead to positive outcomes. We know from research that formal interaction with the criminal justice system might have the opposite effect—it might increase the likelihood of reoffending.”¹⁰
41. He added that "the most effective way of dealing with the vast majority of children who are involved in offending is to comprehensively deal with the factors that underlie their offending."¹¹
42. Fiona Dyer, Director of the CYCJ, concurred, suggesting that making greater use of Children's Hearings System for 16 and 17 year olds would lead to better outcomes for the young people concerned. She highlighted that—
- ” The Edinburgh study of youth transitions and crime gives us a Scottish example of positive outcomes. We have outcomes from children and young offenders who have gone through an adult criminal justice system that can be more detrimental in the cycle of offending. However, in a welfare-based system, where the child's needs and underlying issues are addressed, there are more positive outcomes for the child and society through the child's stopping offending. That means that there are fewer victims and it contributes to the desistance process.”¹²
43. In her evidence, Shannon Valentine reflected on her own experience—
- ” Having my own personal experience of the Children's Hearings System as a teen, to now sitting on the professional side; I have seen first hand, the positive impact children's hearings can have in young people trajectories.”¹³
44. Several contributors argued that it was critical that these benefits, not only for the young people themselves, but also in terms of this wider impact of breaking the cycle of offending, are well understood. The Committee heard that failing to effectively communicate this change, and its potential benefits, to the wider public could undermine confidence in the system.¹⁴
45. Alasdair Hogg of SCRA highlighted how important it is for people to understand and be aware of the rationale for the changes brought about by the Bill as otherwise it could undermine confidence in the system, including for victims of offending, who may themselves also be children.¹⁵
46. It was also noted by numerous contributors, including Dumfries & Galloway Council,

that while children's hearings make decisions in relation to each child's case, they are not responsible for delivering the interventions they recommend. Rather, successful interventions and effective outcomes which address behaviours and improve the life chances of children are delivered by Children's Services teams. ¹⁶

47. The Committee heard repeatedly about the financial pressure that local authorities are currently under, and also the struggle to recruit and retain social workers and social care staff.
48. Given these pressures, and the reliance on these teams to implement the change that the Bill is seeking to deliver, almost every contributor has called for more resources in the context of this Bill, particularly for local authorities.
49. In its evidence, the Care Inspectorate stated—

” It is important to highlight that the increase in the number of children referred to the Children's Hearing System will need to be supported. 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. ¹⁷

50. 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. It stated that, "without this investment we are concerned that the intent behind this expansion on the age of referral will not meet its goals because the current resource arrangements do not have adequate resilience and capacity." ¹⁸
51. Local authorities, COSLA and Social Work Scotland also criticised the Bill's Financial Memorandum, stating that it did not accurately reflect the costs of delivering the interventions and support for young people and their families that are set out in the Bill.
52. Ben Farrugia of Social Work Scotland stated—

” I appreciate that it is very difficult for a financial memorandum to capture all the costs that are anticipated or are likely to arise through the introduction of new legislation, but it is not impossible. The financial memorandum could do better on that front. We could get a better and stronger picture, not through taking a huge amount of time but with investment of resource in attention and conversations. ¹⁹

53. In her evidence on the Committee, the Minister for Children and Young People and Keeping the Promise acknowledged the views that had come forward during the stage 1 process, and that cost estimates would need to be updated.
54. When providing further evidence on the Financial Memorandum, to the Finance and Public Administration Committee, the Minister stated—

” The Government is alert to the need to ensure that forecasts can be refreshed and as up to date as possible. That is why the multi-agency resourcing and implementation group, which starts meeting next month [June], will be crucial to our preparations. We will work with partners to explore individual and combined resource requirements in more depth and report any necessary updates or clarifications to Parliament.²⁰

55. The Committee notes the concerns expressed by the Finance and Public Administration Committee regarding the lack of financial information in the Financial Memorandum for this Bill but also in the Financial Memorandum for the National Care Service (Scotland) Bill.

56. The Committee recognises that it is essential that the public understands the rationale for the changes brought about by this Bill, and the benefits that they are intended to bring, both to children and young people and to communities more generally through a reduction in harmful behaviour and a reduction in re-offending.

57. The Committee recognises that support provided by social work teams to children referred to the Children's Hearing System is critical to them recovering and/or being able to move on from offending behaviour. It notes with concern, however, that resources and time are already stretched.

58. The Committee shares the concerns of the Finance and Public Administration Committee regarding the lack of financial information contained in the Financial Memorandum, in relation to all aspects of the Bill.²¹ While we understand that some of these costs would be included in secondary legislation in due course, these estimates would not be subject to the same level of Parliamentary scrutiny as if they had been presented in the Financial Memorandum. Therefore, the Committee believes that these should all be included in any revised costings.

59. Furthermore, the Committee notes that the Finance and Public Administration Committee was not convinced that the way costs were set out in the Financial Memorandum [in line with policy areas rather than the provisions in the Bill] provides the clarity and transparency necessary for detailed scrutiny. The Committee therefore seeks more information from the Scottish Government regarding its rationale for using this approach on this Bill.

60. The Committee welcomes the reassurance from the Minister that updated costings will be provided, and that these will take account of inflation.

61. However, the Committee agrees with the Financial and Public Administration Committee that the Scottish Government should revisit, for clarity, its formula for calculating the draw on social work resource, given the significant concerns raised in evidence to both Committees.

62. The Committee agrees with the Finance and Public Administration Committee that it is critical that the best possible full and sufficient costings and information is placed before Parliament for scrutiny ahead of Stage 1 votes.

63. While the Committee notes that the Minister indicated to the Finance and Public Administration Committee that updated costings would not be presented until after Stage 1, the Committee is firmly of the view that an updated Financial Memorandum must be provided for scrutiny ahead of the Stage 1 debate.

End of the 'cliff edge' at 16

64. Currently, a compulsory supervision order needs to be in place by a young person's 16th birthday, otherwise the option to make a CSO – and to access the support it offers – ceases to exist.
65. Sixteen is also the age, currently, at which a young person becomes eligible for throughcare and aftercare as a care leaver. This means that local authorities are legally required to provide support until the care leaver turns 19, and to assess any eligible needs for aftercare support until they turn 26 (or beyond in some cases).
66. Some witnesses including CYCJ and Inspiring Scotland highlighted that increasing the age of those who could be referred to the Children's Hearing System would ensure that children approaching their 16th birthday would not have a CSO prematurely imposed (to ensure that any support the child required could continue), or to have it prematurely removed (thereby removing the requirement on local authorities to provide throughcare and aftercare).
67. East Lothian Council Children's Services, however, highlighted potential unintended consequences of defining a "child" as someone under 18, for example, in relation to 16 and 17 year olds who may wish to move out of foster care and into supported accommodation.²²

68. The Committee notes the strong support amongst stakeholders, to raise the age at which a young person is defined as a "child" and can therefore be referred to a children's hearing.

Issues to consider

69. Although the provisions in this section of the Bill have been broadly welcomed, several stakeholders raised potential issues that, they suggest, could be addressed during the Bill's progress or before implementation. These include—
- Whether the maximum age of referral should be older than 18
 - A lack of consistency across the legislative landscape relating to children and young people
 - An effective increase to 17.5 years rather than 18

- More serious offending being considered by the children's hearing
- Automatic right to legal representation for young people ahead of consideration of the offence grounds
- Capacity to deal with increases in the number of young people in the Children's Hearings System.

70. These issues are discussed in more detail below.

Older than 18?

71. Evidence from Professor Elaine Sutherland, CYCJ and Howard League Scotland noted that recent research, including an evaluation of the available evidence from a number of studies, suggested that brain maturation does not take place until later than previously thought, until a person's mid-late 20s. ²³

72. Their evidence explained that 16 and 17 year olds are not biologically equipped to make reasoned decisions at all times. In its written evidence, Howard League Scotland noted that some nations extend youth justice provisions for this reason, citing the example of Austria which has such provisions up to the age of 27. ²⁴

73. Alasdair Hogg of SCRA stated—

” When we look at development, particularly brain development and the ability to make good decisions, the evidence is that a person can be 25 or 26 before their brain is fully mature and developed. ²⁵

74. As a consequence, while welcoming the increase in age to 18, organisations including the CYCJ and the CYPSCS have suggested that it is the minimal acceptable age rather than the maximum age to define as a child within the justice system. ²⁶ In their view, an increase to 18 is seen to be a "good start", rather than the end point.

75. When giving evidence to the Criminal Justice Committee on 29 March 2023, Sue Brookes of the Scottish Prison Service explained—

” there is room for a discussion around what it would mean to go beyond the age of 18, based on the evidence, because the 18 to 21-year-olds have a very similar background to those under the age of 18. Many of them have been in care and they have all sorts of learning difficulties ²⁷

76. The Committee heard from some witnesses who suggested that the Scottish Government could raise the age of referral further, citing research from the University of Edinburgh which concluded that, during adolescence and within normal individual development, there is an imbalanced growth between the regions of the brain governing emotion and mood and those involved in executive functions; the latter is the last to reach maturity, leaving adolescents with immature and compromised core cognitive abilities for much of this developmental period.

77. The research stated that—

- ” This immaturity, when coupled with the increased motivation to achieve rewards observed to coincide with puberty, is thought to be the most likely underlying mechanism contributing to the poor problem solving, poor information processing, poor decision making, and risk-taking behaviours often considered to typify adolescence.²⁸

Consistency with other legislation

78. Although this Bill will define a "child" as a person under 18, for the purposes of the justice system, this definition of a "child" is not consistent across all legislation. As a consequence there are some tensions between this Bill and others in respect of—

- participative vs protective rights
- the definition of a child in relation to parental rights and responsibilities
- duties upon public sector or local authorities when providing adult social care
- housing

79. In their evidence, the Faculty of Advocates,²⁹ Police Scotland,³⁰ Social Work Scotland,³¹ Professor Elaine Sutherland,³² Professor Colin McKay³³ and the Scottish Biometrics Commissioner³⁴ highlighted some of these inconsistencies.

80. These are explored in more detail in the next sections of this report.

Protective vs participative rights


81. In her evidence to the Committee, Professor Elaine Sutherland noted some examples where 16 and 17 year olds are currently considered to be adults in Scots Law, including marriage, registering a civil partnership and voting in elections.³⁵

82. Professor Sutherland goes on to say that maturity is not an “all or nothing” state and that individuals mature at different times for different purposes, something embodied in the concept of “evolving capacity” articulated in Article 5 of the UNCRC.

83. Children's rights in the UNCRC are often divided into groups, including Protection and Participation.

84. Protective rights ensure children are protected from acts of exploitation or abuse, in the main by adults or institutions, that threaten their dignity, their survival or their development; for example:

- protection from abuse and neglect (Article 19)
- the regulation of child labour (Article 32)
- protection and care in the best interests of the child (Article 3).

85. Participative rights provide children with the means by which they can engage in those processes of change that will bring about the realisation of their rights, and prepare them for an active part in society. They include, for example:
- the right to express their views and to be heard in legal proceedings (Article 12)
 - freedom of expression and the right to information (Article 13).³⁶
86. When giving evidence to the Committee, the Minister for Children and Young People and Keeping the Promise acknowledged that there are inconsistencies, but that in and of itself does not mean that there is confusion—
-  in Scotland, there are a number of definitions of a child, and there are age-based laws that allow, for example, 16-year-olds to live independently, but complexity does not necessarily mean incoherence.
- In some instances it can be appropriate to treat young people in the same way as adults, and that will strengthen their rights, but in other contexts, such as diverging from the criminal justice system...treating young people in a different way from adults will strengthen their rights.³⁷

Parental rights and responsibilities

87. In their evidence, the Faculty of Advocates, Professor Sutherland and East Lothian Council Children's Services highlighted potential issues in respect of 16- and 17 year olds referred to a children's hearing on welfare grounds, specifically in relation to the rights and responsibilities of their parents.
88. They noted that section 1 and section 2 of the Children (Scotland) Act 1995 define a child, for the purposes of all parental rights and all but one parental responsibility (that being the responsibility to provide the child with guidance), as a person under the age of 16.
89. These contributors raised concerns that, as result of the change proposed in Section 1 of this Bill, a 16 or 17 year could be referred to the Children's Hearings System "due to a lack of parental care", despite the parents not holding any rights nor any responsibilities that would mean that the child was within their legal care and control.
90. The Faculty's evidence further highlighted that section 74 of the Children's Hearing (Scotland) Act 2011 imposes a duty on relevant persons such as parents to attend a Children's Hearing and makes non-attendance a criminal offence. It noted that this would persist despite parents no longer possessing any parental rights and only one parental responsibility, to provide the child with guidance, over the age of 16.³⁸
91. Section 200 of the Children's Hearing (Scotland) Act 2011 also defines a relevant person as a parent or guardian who holds parental rights or responsibilities. A child's parents retain responsibility for guidance in relation to a child from 16 up to 18 years old. Parents would remain defined as relevant persons for the purposes of the 2011 Act and thus, (as per Rule 26 of the Rules of Procedure in Children's Hearings 2013) would be entitled to receipt of all papers and information to be considered by the Children's Hearing.

92. In its written evidence, SCRA highlighted that there are provisions that enable—
- relevant persons to be excluded from proceedings at a children's hearing or sheriff court, and
 - papers to be withheld from a relevant person.³⁹
93. The Faculty of Advocates suggested that these provisions relate to when a disclosure is likely to cause significant harm to the child. It stated that, should this not be the case, there isn't an opportunity for the child to choose to keep this information private.
94. The Faculty contrasted this with the situation in the criminal justice system, whereby a 16 or 17 year old is able to keep such information from their parents or guardians.

Duties upon public sector / local authorities

95. In their evidence to the Committee, Social Work Scotland, East Lothian Council Children's Services and Professor Colin McKay from the Centre for Mental Health and Capacity Law at Edinburgh Napier University raised questions as to how this Bill would interact with other legislation, including the Adult Support and Protection (Scotland) Act 2007, the Adults with Incapacity (Scotland) Act 2000 and the Mental Health (Care and Treatment) (Scotland) Act 2003.
96. While these Acts cover different aspects of care, they all concern vulnerable adults and define an 'adult' as anyone aged 16 or over.
97. Social Work Scotland stated that there was a lack of clarity as to how all the legislation would interact, and which would take priority. In its written evidence, Social Work Scotland explained—
- ” Adult Support and Protection legislation sets out specific skills and criteria for use of legislation with a vulnerable adult from the age of 16 onwards, including whether a child or adult protection approach is most appropriate. Will the proposals in the bill remove this flexibility⁴⁰
98. Professor McKay highlighted the recent [review of Scottish Mental Health Law](#) and noted that, as a result of the Children (Care and Justice) (Scotland) Bill, 16 and 17 year olds who are at risk could be subject to at least two different protective procedures with different criteria for intervention, different possible measures, and different organisational structures.
99. The Review's final report stated that it was conceivable that, should the Bill become law, a 17 year old could be subject to measures under the Mental Health Act, the Adults with Incapacity Act, the Adult Support and Protection Act, Children's Hearings System and child protection legislation at the same time.⁴¹
100. Professor McKay made clear that this did not mean that the age of referral should not be raised however, he stated that "it does argue for much greater alignment of laws and structures and better management of the transitions."⁴²
101. Professor McKay also noted the finding from the Scottish Mental Health Law Review that a large percentage of the children affected by child protection

legislation or involved in the criminal justice system will also have mental health issues or mental disabilities. He highlighted, however, that the legal and care systems are completely distinct, often leading to children and young people bouncing around the system and meaning that no single judicial body can ensure that the whole system meets the needs of the child in a holistic way.⁴³

102. The review called for the work to develop a holistic and child-centred system of care and support for children, including the implementation of the Promise and the incorporation of the UNCRC, to include a focus on how to better align care and support for children and young people with mental or intellectual disabilities, including where compulsory measures are required.⁴⁴
103. The Review also recommended that the Scottish Government and partners consider a unified tribunal jurisdiction for different compulsory interventions or provisions to enforce the rights of the child.⁴⁵

Homelessness

104. In its evidence, East Lothian Council Children's Services highlighted that new housing legislation proposed 16 and 17 year olds at risk of homelessness, be treated as children and receive assistance from children's social work.
105. The Faculty of Advocates noted that the complexity of legislation was identified as an issue in the Promise and suggested that the Children (Care and Justice) (Scotland) Bill will exacerbate the problem. It therefore advocated a root and branch review of the definition of "child" across Scots law, to ensure consistency and reduce complexity.
106. The Committee recognises the concerns raised by many stakeholders, in relation to how the provisions in this Bill may interact with a range of existing legislation pertinent to children and young people. The Committee believes that, ahead of Stage 2, there should be detailed analysis of all such legislation and consideration of how best to ensure an alignment of approach, which takes into account both children's need for protection and their evolving capacity to participate in decisions affecting them.
107. The Committee also notes the suggestion from the Faculty of Advocates that a root and branch review of the definition of "child" across Scots law be carried out, to ensure consistency and reduce complexity and asks the Scottish Government for its view of this suggestion.

17.5 years rather than 18?

108. In its Financial Memorandum, the Scottish Government states that 17.5-years is likely to be the practical cut-off for offence referrals to the Children's Hearings System as otherwise there would not be enough time for grounds to be accepted (or established where required), an order to be made and services put in place.
109. In its written evidence, Children 1st, Who Cares? Scotland, Clan Childlaw, Together

Scotland and Includem expressed their concerns about this cut-off, with Includem stating—

” The justification based on the time taken at the procedural level – including referral to the Principal Reporter, time to convene a hearing and then put meaningful measures in place to have effect – appears to prioritise what is suitable for the processes of institutions. While we understand the importance of maintaining the hearing system as a model for children, this justification fails to put the best interests of the child as the primary consideration. We are concerned that the reasoning that this is to protect their rights as future adults does not reflect their current rights as a child under the United Nations Convention on the Rights of the Child, which exists in recognition of the special protections needed by children. Given the Bill builds in opportunity for the Hearing to recommend continuation of support into a child’s 18th year, we do not understand why this presumption has been made for referrals and strongly support its removal. ⁴⁶

110. Laura Pasternak of Who Cares? Scotland concurred—

” we know from the United Nations Committee on the Rights of the Child’s general comment 24 on child-friendly justice that the relevant date in human rights standards is the date when the harmful behaviour happened. Therefore, if the processes are not in place in time for the person to go through the children’s hearings system before they pass 18, they should still be dealt with through the children’s hearings system. ⁴⁷

111. In its written evidence, Children’s Hearings Scotland noted that, at present, it takes an average of around nine months from referral to a children’s hearing to a substantive decision being taken, due to the time taken for grounds for referral to be established. Discussions around joint referrals can add further time prior to the referral.


112. Children’s Hearings Scotland called for further exploration about how these timescales could be expedited, and/or alternative more timely interventions could be made available for a children’s hearing. At present, until grounds for referral are established, interim orders are only possible if they are a matter of urgent necessity. This high threshold, coupled with the length of time it can take to prove offence grounds, means that there may be limited time for the children’s hearing to put in place compulsory support before the child turns 18. ⁴⁸

113. In her evidence, the Minister for Children and Young People and Keeping the Promise stated that "Logically, there absolutely has to be a cut-off somewhere." However, she noted that while the Scottish Government is "saying 17 and a half at the moment, but the cut-off date is not yet formalised." ⁴⁹

114. The Committee notes that the Financial Memorandum sets 17.5 years as the likely effective cut-off date for referral to children’s hearings on offence grounds. This decision appears to be based primarily around the length of time it might take for a case to be processed, rather than any factors relating to the child’s best interests.

115. The Committee remains unconvinced that reducing the age to 17.5 years for these purposes is a) in the spirit of the Bill and b) 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.
116. Whilst noting that the most serious offences will continue to be dealt with via the Lord Advocate's Guidelines, and therefore may end up in court, the Committee acknowledges that, in order to be compliant with UNCRC, any young person up to the age of 18, who is accused of an offence, should have access to age-appropriate justice.
117. The Committee is concerned by evidence heard around the timescales from referral to a children's hearing to a decision being made being too long. The Committee therefore calls for further exploration about how these timescales could be reduced.
118. The Scottish Government should also explore how providing support to young people beyond 18 may impact on the Children's Hearings System.

Unintended consequences

119. The Committee heard that 16 and 17 year olds may have needs that younger children do not, such as transport and housing. Some may also have children of their own.
120. Given that 16 and 17 year olds who are subject to a CSO can already be referred, there may already be arrangements in place. However, additional resources are likely to be required at local authority level, to ensure that adequate support is put in place.
121. Chloe Riddell of The Promise highlighted the importance of such resources—
 we need to ensure that the supports are in place to uphold those children's rights; otherwise, we will just be making legal orders in the absence of support.
50

More serious offending and complex cases being considered by the Children's Hearings System

122. [The Rights Respecting? Scotland's approach to children in conflict with the law report](#) stated that, in 2017/18, 1,776 children aged 13-18 were prosecuted in courts in Scotland. 99% of those were aged 16-17.
123. Of those 1,776—
 - 689 were miscellaneous (which includes breach of the peace, common assault,

drunkenness)

- 437 were 'other crimes'
- 195 were crimes of dishonesty
- 206 were motor vehicle offences
- 115 were non-sexual crimes of violence
- 91 were prosecuted for fire-raising or vandalism, and
- 43 were sexual crimes.

124. Most children under 16 who are charged with an offence are not referred to the reporter but are responded to through early and effective intervention, such as a referral to a targeted intervention for instance, a fire service programme, training and employment or substance use service. SCRA envisages that this will remain the case, and will continue to be appropriate, for 16 and 17 year olds, should the Bill be passed.⁵¹ Therefore those young people would not be affected by the provisions in the Bill.
125. In its evidence, Clan Childlaw noted that whilst the Bill might change how the vast majority of children who commit the less serious offences are treated, it would be unlikely to change the response for the small but significant number of children committing more serious offences. Clan Childlaw stated these children would still, in the majority of cases, go to an adult court.⁵²
126. Should there be an increase in the numbers of serious offences referred to the Children's Hearings System, however, several stakeholders, including Scottish Women's Aid, Aberdeenshire Council, Victim Support Scotland and Rape Crisis expressed concerns as to how children's hearings would navigate the complexity of such cases and balance the competing needs and rights of those affected.
127. In its evidence to the Committee, Rape Crisis highlighted its experience of supporting survivors who are victims of serious sexual violence and rape, where those cases have been dealt with by the Children's Hearing System. It is concerned that the Bill, policy memorandum and explanatory notes do not acknowledge victim dissatisfaction with the current system of dealing with those offences or the issues that victims have previously raised.
128. Rape Crisis stated—
- ” At present, we would be concerned about an increase in the number of cases for serious sexual offending being dealt with in this forum because of the difficulties that survivors have experienced and would urge that a focus is given to improving this, especially if there may be an increase in the number of these cases being heard by a hearing.⁵³
129. These organisations stressed that it was critical that appropriate and robust training is given to all those involved in handling such cases via the Children's Hearings System. Kate Wallace of Victim Support Scotland noted—

” One concern that has been raised with us is about the domestic abuse that we are seeing in relation to those we are supporting in that age group. Given the increasing number of young people who will be going into the hearings system, we must ensure that the right training, support and information go to panel members, panel chairs and others, so that they are equipped to deal with those situations as well as with the more serious offences that may come to them.⁵⁴

130. Education Scotland highlighted—

” For some offences it would require a highly skilled and experienced Panel. Is there currently this capability and does the capacity extend geographically to all areas? These issues would need to be satisfied before some offences could be addressed in the CHS [*Children's Hearings System*] rather than court.⁵⁵

131. The need for training has also been raised by many other stakeholders including the Mental Health Foundation which noted that, in light of the potential expansion of the Children's Hearing System's remit and caseload, it is vital all those working within this system receive appropriate training and support to respond to the mental health and wellbeing needs of the children and families they are in contact with.⁵⁶

132. While welcoming the provisions in this section, St Mary's Kenmure, a secure care provider, acknowledged that it would lead to a significant increase in the number of young people who required attendant assessment and support, with an associated impact on resources and capacity.

133. It highlighted that there would still be a role for jointly reported cases for the most serious or persistent concerns involving young people who cause harm. In such cases, shared oversight and decision making will be important and it advocated knowledge exchange and sharing, adding—

” "We believe there is a need for investment into the training, support, and understanding of the panel members to enable them to identify the critical few and those with forensic needs."⁵⁷

134. This additional training is not only advocated for panel members. Children 1st highlighted the role that the Safeguarders Panel plays. It described the Panel as a diverse range of independent professionals based across Scotland, who can be appointed by a children's hearing to provide a separate, rights-based perspective on the best interests of the child.

135. Children 1st stated that Safeguarders are well equipped to take on this role for increased numbers of older children, however, it noted that "there will be further training and upskilling required, for example around issues such as housing and risk of homelessness and young parents, alongside recruitment."⁵⁸

136. While of the view that there is no sound basis for the two-tier approach which exists at present, the Law Society of Scotland noted the challenge with volunteer Children's panel members who are not experienced in dealing with children accused of a crime, and potentially have not received the appropriate level of training (including trauma informed training) which is required to fulfil their role.

137. The Committee acknowledges the considerable effort and commitment of the volunteer Children's panel members, chairs and staff in delivering a Children's Hearings System across Scotland.
138. The Committee recognises that there will be an increase in 16 and 17 year olds being referred on offence grounds as a result of this Bill, and that some of these offences will be more serious in nature.
139. The Committee further recognises that there will be an increase in 16 and 17 year olds being referred solely on welfare grounds, and that some of these young people will have complex needs.
140. The Committee believes that it will be critical for all panel members to receive training to equip them to respond effectively to these young people.

Upholding legal rights within the Children's Hearings System

141. The Committee heard that when a child is referred to a children's hearing on offence grounds, they are not automatically provided with legal representation.
142. Katy Nisbet of Clan Childlaw explained that offence grounds are libelledⁱ in the same way as a criminal charge would be, including reference to the crime and the behaviour that supports that the crime has been committed. Where these grounds are agreed by the child (without a hearing on evidence, and with no automatic right to legal advice) they can be disclosed in PVG checks years later, potentially impacting on employment opportunities in later life. The child will only be referred to a solicitor if they refuse to agree the grounds, or don't appear to understand the grounds. In which case, the matter is referred to the sheriff Court for what is known as a proof hearing.
143. Although advice by way of representation [ABWOR] can be applied for, it is considered on the basis of a means and merit assessment. In other words, it is not granted as a matter of right, nor is there any duty on the part of the Children's Reporter to ensure a child knows about this option to obtain legal advice.
144. In the view of Clan Childlaw, the seriousness of the consequences of agreeing offence grounds – that it will be treated as a criminal conviction in certain disclosure contexts – is not adequately explained, neither is the potential impact of the disclosure of the criminal offence.⁵⁹
145. Clan Childlaw therefore called for automatic legal representation for children when being presented with offence grounds and for this to be addressed in this Bill.⁶⁰
146. Who Cares? Scotland and CYPCS concurred, with Megan Farr of CYCPS stating—

ⁱ The formal statement of the complaint or ground of the charge in a civil or criminal prosecution, an indictment

” I whole-heartedly agree with Katy Nisbet on legal representation when there are offence grounds. We have come across young people who have contacted us who had not realised that they had, in effect, pleaded guilty when they were asked whether they accepted offence grounds.⁶¹

147. The Committee notes the publication of the Hearings System Working Group's final report on 25 May. The report recommended significant changes which, the group hopes, will lead to a much strengthened and more robust tribunal. Among its 97 recommendations were—

- Children's hearings must be inquisitorial, non-adversarial tribunals
- The Reporter must ask children and their families for their views, at the point of referral, when they are considering whether they need the legal support of the children's hearing.
- The reasons that the system has become involved in children's lives (grounds) must be established prior to a children's hearing taking place: there will be no more 'Grounds Hearings'.
- The decision-making model must change so that the Chair of the Hearing is a highly skilled salaried professional, accompanied by two remunerated Panel Members.
- Children should have an opportunity to meet their Chair before their hearing and the Chair should be the same person every time they attend. Where possible, the Chair should be the same person for brothers' and sisters' hearings too.
- At a children's hearing, children and families will be actively encouraged to participate and share their views and should feel like they are working alongside the Panel.
- As part of this, there must be a coordinated approach to establishing an appropriate, considered, and non-judgmental language of care across the country, which children and their families find easier to understand.
- There must be closer links between local authority decision-making and the Children's Hearings System, including a closer link between the orders made by a Hearing and the Child's Plan.
- Children must not be in the Children's Hearings System for longer than needed (there will be no 'drift and delay') and children and their families must be well supported after a Hearing takes place.⁶²

148. The recommendations are intended to ensure—

- more continuity so that young people don't have to repeatedly tell their story to anonymous adults who are about to make big decisions about their lives;
- the use of more appropriate language and an environment which is more conducive to children's understanding of the process and purpose of hearings; and

- greater oversight of the implementation and conduct of orders.⁶³

149. The Committee recognises the concerns of stakeholders regarding the potential for young people to accept offence grounds without understanding the full implications of that decision.
150. The Committee notes the recommendation from the Hearings System Working Group report that children should be fully informed of their right to legal representation and also that there should be an exploration and understanding of whether the current mechanism for them to access legal aid and their right to legal support is sufficient. The Committee supports these recommendations and believes, should the current mechanism be found to be insufficient, that children be provided with legal representation in all cases where a child is attending a Children's Hearing on offence grounds.

Capacity to cope with increased referrals to the Children's Hearings System

151. In 2021/22, 10,494 children in Scotland were referred to the Children's Reporter:
 - 8,691 on non-offence grounds
 - 2,398 on offence grounds.
152. The figure of 10,494 children equates to 1.2% of all children in Scotland.
153. Within this, 1.0% of all children were referred on non-offence grounds and 0.5% of all children aged between 8/12⁶⁴ and 16 years were referred on offence grounds.⁶⁵
154. The number of children referred to the Reporter has increased for the first time since 2006/07, following 14 consecutive years of decrease. The Reporter suggests that this is most likely an impact of Coronavirus and lockdowns rather than any wider system trend. Therefore, any conclusions drawn from this data should be treated with caution.
155. In 2020/21, 595 children aged 16 and 17 were proceeded against in a criminal court.
156. SCRA forecasts an additional 3,900-5,300 referrals of between 2,600-3,400 children as a result of extending the age of referral as proposed. It is important to note that referrals do not always lead to a hearing being convened, however, each referral will need to be considered by the Children's Reporter to decide the most appropriate course of action. In terms of hearings, the forecast is for an additional 80 to 150 hearings on offence grounds and 650 to 1,200 on non-offence grounds annually, equating to 730-1,350 additional hearings per year.
157. The Committee notes with concern that the costings provided in the Financial

Memorandum were based on the lower estimated number of hearings. In her evidence to the Finance and Public Administration Committee, the Minister accepted that the higher figure should have been used. She committed to using that higher estimate in the updated financial costings.⁶⁶

158. In its evidence, Children's Hearing Scotland expressed confidence that it could successfully recruit the estimated 270 additional panel members it will need as a result of changes brought about by the Bill, as well as 50 more members of staff to support their work. Panel members, and most staff, are volunteers.
159. The Committee heard that not only will Children's Hearings Scotland require this significant recruitment and training of new of panel members but will also require the upskilling of current panel members and staff.
160. While supportive of the provisions in the Bill to raise the age of referral to the Children's Hearings System, concerns were raised by some stakeholders as to whether there will be sufficient capacity to manage this expansion.
161. Multiple contributors including Police Scotland, Inspiring Scotland, Sheriff David Mackie and SCRA noted the Bill will lead to an increase in the number and range of cases being dealt with by the Children's Hearings System, including offence cases and called for the required "capacity and resource requirements, essential training and support"⁶⁷
162. Police Scotland stated that any changes and increase in the powers of the CHS must have meaningful support and services behind such commitments. It is its view that "such a rightly ambitious vision for our children and young people must be matched by an investment in resource, including equipping professionals to meet these expectations."⁶⁸
163. Sheriff David Mackie, independent chair of the Hearings System Working Group, stated—

” 16 and 17-year-olds coming into the system will undoubtedly challenge the system's capacity. Our ambition is to reduce the number of children and families who come into the children's hearings system in the first place, hence the emphasis on the wider child protection regime contributing to the call for more and better services to support families.

We are therefore effectively adding to the call for greater capacity and early support, as well as for social work services.⁶⁹

164. Numerous contributors highlighted the potential impact that the Hearings System Working Group's recommendations could have on the system. They highlighted the importance of sequencing the changes envisaged by the Bill, the Hearings System Review and the Promise, to ensure that any changes are planned for effectively, coordinated and introduced in a logical order.
165. COSLA and Social Work Scotland emphasised the need for not only the changes to be fully funded, but also consideration to be given to wider staffing needs and capacity of the sector to manage further change, including, the sequencing of any changes resulting from the bill.

166. Social Work Scotland cautioned that without all these aspects being considered ahead of any decisions about implementation timescales, the bill will not achieve its purpose and risks placing further pressure and stress on an already stretched workforce, impacting further on recruitment and retention and capacity to meet the goals of the Promise.
167. Police Scotland noted that it has been consulting with the Children's Hearings System Review Working Group and added that having a Children's Hearings System equipped in both capacity and capability will be essential to fulfil any of the options presented in the Review.
168. The Committee recognises the importance of the work that is carried out by panel members and staff, social work teams and a wide range of other agencies, currently working to support children and young people referred to the Children's Hearing System. It acknowledges that the measures in this Bill will increase those referrals, increasing the number of hearings and the complexity of the cases before panel members. Recognising the additional pressures this may place on the Children's Hearing System and agencies supporting it, the Committee believes it is crucial that these factors are fully costed and taken into account when the Scottish Government updates the figures currently set out in the Financial Memorandum.
169. The Committee therefore notes the Minister's evidence to the Finance and Public Administration Committee that costings for the Bill will be updated to reflect the skills and training needs required as a result of the Bill, and be based on the higher number of projected hearings.
170. These updated costings must be provided ahead of the Stage 1 debate.
171. The Committee acknowledges the significant resourcing and training challenges that implementation of this Bill will pose to a number of key agencies, including Children's Hearings Scotland, SCRA and local authorities.
172. The Committee also notes the reassurances provided in evidence, for example, by Children's Hearings Scotland, that this resource will be in place ahead of the Bill's implementation (e.g. in relation to the recruitment of additional panel members).
173. However, given the significant risks associated with these recruitment, resourcing and training challenges not being met, the Committee urges the Scottish Government to work with Children's Hearings Scotland to set clear targets and timescales for the recruitment and training of new panel members and to outline what additional actions will be taken to address any deviation from these targets/ timescales in a timely manner.
174. The Committee also urges Children's Hearings Scotland to monitor and report upon the retention of existing panel members, in order to identify whether the changes brought about by the Bill are negatively impacting upon this.
175. The Committee notes the recommendations of the Hearings System Working Group final report, The Hearings for Children. The Committee further notes, should all the recommendations be implemented, this would have a significant

impact on the way the Children's Hearing System works. The Committee urges the Scottish Government to set out how this will affect the timescales for implementing the measures in this Bill.

Section 2: Compulsory supervision orders: directions authorising restriction of liberty

176. The explanatory notes state that a children's hearing may make a CSO in relation to a child, if it is satisfied that it is necessary to do so for the protection, guidance, treatment or control of the child. Section 83 of the [Children's Hearings \(Scotland\) Act 2011](#) explains that a CSO is an order that may include any of the measures listed in section 83(2). One of those measures is a requirement that the child reside at a specified place.
177. If a CSO includes that type of requirement, it may also include a direction authorising the person in charge of the place where the child is to reside to restrict the child's liberty. That person may do so to the extent considered appropriate when taking account of the terms of the CSO.
178. Section 2 of this Bill amends section 83 to make it explicit that any such direction does not include authorisation to deprive the child of their liberty. If a children's hearing considers it necessary to deprive the child of their liberty, it must instead include in the CSO a secure accommodation authorisation. That measure attracts special legal safeguards for the child's protection.
179. In its evidence to the Committee, SCRA agreed that it would be helpful to clarify that a measure made under 83(2)(b) of the [Children's Hearings \(Scotland\) Act 2011](#) does not include authorisation to deprive the child of their liberty. However, it noted that this measure is not often included in a CSO and, therefore, suggested that its practical benefit will be very limited.⁷⁰
180. In its written evidence, the Good Shepherd Centre - a secure accommodation provider, assumed that the intention of this provision is to ensure that children are only deprived of their liberty when absolutely necessary, and that by 'tightening' this area of law, the risks of children being deprived of their liberty in a place not equipped or regulated to do so will be lessened.⁷¹
181. However, it remarked that, when coupled with the Scottish Government's revised registration process for services seeking to register as fit to care for children in deprivation of liberty settings, this will re-enforce the nature of 'secure accommodation'.
182. The Good Shepherd Centre also warned of 'unintended consequences', stating that, as currently drafted, this provision appeared to restrict opportunities to provide 'close support', a service which provides intensive support but is less restrictive than secure care, which could act as a bridging support for some, following a period of secure care, to ensure that they don't experience a 'cliff edge' in their support.⁷²

Section 3: Compulsory supervision orders: prohibitions

183. Section 3 extends the list of measures that can be included in a CSO, adding measures to prohibit a child from entering a specified place, type of place or area. This is intended to give children's hearings a greater choice when deciding on which measure or combination of measures to include in a CSO.
184. The Bill's Explanatory Notes state these measures could be used—
- ” ...to protect someone who is considered to be at risk of harm or harassment from the child by, say, prohibiting the child from entering the person's home or place of work. Alternatively, it may be used to prohibit the child from entering an area or premises where the child is at risk of being exploited.”⁷³
185. While welcoming the possible use of these CSOs on those who have harmed, Includem, Good Shepherd Centre, Aberdeenshire Criminal Justice Social Work Service and Victims Support Scotland all raised concerns about them being applied to young people at risk of exploitation or harm.
186. These organisations were all clear that this would put the onus on victims to avoid certain locations and environments where they may be harmed, rather than dealing with the people perpetrating the harm. Concerns were also raised that, should victims fail to adhere to the measures, it may have the unintended consequence of increasing their contact with the Children's Hearing System and leading to more restrictive measures on them.
187. While these measures would not be subject to monitoring arrangements in the same way as Movement Restriction Conditions (MRCs), which will be covered in more detail later in this report, any breach of prohibitions would lead to a review of the CSO by a children's hearing.
188. CYCJ, Scottish Women's Aid, Rape Crisis Scotland, Includem and Aberdeenshire Criminal Justice Social Work Service welcomed the power to prohibit a child to enter a particular location or to communicate with an individual in the context of protecting others from harm, with Includem expecting that these measures would most likely to be used when a child has been accused of targeting another person or persons.⁷⁴
189. However, Rape Crisis Scotland and Scottish Women's Aid questioned how these would be enforced. They were concerned that without clarity as to the governance and monitoring of these CSOs, the provisions would fail to address the risks to victims of domestic and sexual assault.⁷⁵
190. Children's Hearings Scotland similarly questioned how non-compliance would be dealt with. It noted that while the explanatory notes refers to a 'breach' of these measures, there seems to be no recourse if a prohibition was not complied with. Children's Hearings Scotland stated that it would therefore be helpful to further clarify how these new measures will be implemented, monitored and reviewed and how the measures will protect children at risk of offending and/or at risk of harm.⁷⁶

191. In its written evidence, Children's Hearings Scotland and SCRA also highlighted that a CSO and interim CSO can already include a measure that requires the child to “comply with any other specified condition” (section 83(2)(h) of the 2011 Act). This wide power means that a children’s hearing can already include in a CSO a measure in identical terms to the proposed measures in section 3. As a result, SCRA considers this section to be unnecessary.

192. The Committee recognises the concerns of stakeholders that these provisions could lead to putting the onus on victims to avoid people and locations that could be harmful to them.

193. The Committee also notes the lack of clarity as to how these measures would be monitored and enforced.

194. The Committee therefore asks the Scottish Government to set out how prohibitions will be implemented, monitored and reviewed and how they will protect children at risk of offending and/or at risk of harm.

Section 4: Compulsory supervision orders: movement restriction conditions

195. Movement restriction conditions (MRC) are measures in a CSO which restrict a child’s movements and require the restrictions to be monitored by way of an electric monitoring device, i.e. a tag. An MRC has to be accompanied by an intensive support package around the child.

196. Currently, under section 83(4) of the 2011 Act, a CSO may only include a movement restriction condition if two of the following requirements are met—

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

197. Section 4 changes the test so that there will now be two conditions—

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

198. Psychological harm is defined in the Bill as including “fear, alarm and distress”.

199. A children’s hearing or sheriff may impose a movement restriction condition only if one or both of the new conditions apply and it is considered necessary to do so.

200. The criteria for authorisation of an MRC is currently the same as the authorisation for secure accommodation, however, as a result of these changes, the criteria for MRCs will be de-coupled. It will also be possible to apply an MRC without the prerequisite of absconding.
201. The new test for an MRC moves to consideration of ‘harm’ rather than ‘injury’ and also makes it clear that it can be applied where it is necessary to help the child to avoid causing physical or psychological harm to others.
202. These conditions cover a broader range of circumstances than the current conditions. For example, it might limit a child’s movement to avoid a certain address where a known abuser lives, a place where there is a risk of sexual exploitation, or a locale where the child is known to buy drugs.
203. The Committee heard evidence that MRCs are currently not widely used. Most recent Scottish Government figures show that for all children up to the age of 18, an average of 26 MRCs per year – 2 per month – over the past 4 financial years have been in place.
204. When MRCs are imposed, they should be used for the shortest period possible and are to be reviewed within six months⁷⁷. However, the Policy Memorandum notes that, as there have been very few MRCs used in practice, there has been no evaluation of their usage.
205. With regard to the change to the threshold test, the Policy Memorandum states—
- ” The new test would mean the MRC would be available as an option for panel members to protect both the child and others from harm where the child’s physical, mental or moral welfare is at risk. This would cover situations to stop the child self-harming as well as to stop putting themselves at risk of further conflict with the law by approaching a specified person or place.⁷⁸
206. In his oral evidence to the Committee, Alastair Hogg of SCRA acknowledged that the bill widens the test for MRCs and therefore widens the opportunity for their use. He stated that, as a result—
- ” there will have to be proportionality in the way that they are used, and as one might imagine, significant thought will have to be given to guidance in that respect, certainly for those making the decisions— that is, the panel members.⁷⁹
207. Indeed, the Minister noted that MRCs are designed to be less restrictive than secure care and that "expanding the circumstances in which MRCs can be used will mean that more children can be supported in that way."⁸⁰
208. Who Cares? Scotland highlighted a lack of protection for young people who are a risk to themselves—

” We are deeply concerned at the subjectivity which will be required in determining these specified conditions, in particular ‘moral welfare’. This order would not be effective in protecting a young person who is at risk to themselves. These orders put the onus, or punishment, on the child to remove themselves from harmful or exploitative contexts rather than on the child protection system to address the harm in the first place.⁸¹

209. When a children's hearing is due to consider the possibility of secure care authorisation, children are entitled to automatic legal representation ahead of that hearing.
210. This is currently the case with MRCs, however, should the Bill be passed as introduced, MRCs will be de-coupled from the criteria for secure care authorisation and, as a consequence, this automatic right to legal representation will also disappear.
211. Stakeholders were clear that an MRC absolutely restricts children's liberty⁸² and in the view of Clan Childlaw and CYPSC, imposition of an MRC can amount to a deprivation of liberty.
212. Concerns were raised by Clan Childlaw, CYCJ, Who Cares? Scotland and Includem regarding the lowering of the threshold to impose an MRC. The Bill moves this from the child being "likely to cause injury to another person" to "likely to cause physical or psychological harm to another person".
213. They explained that, as a result of the decision to de-couple the criteria from that used for secure care authorisation, MRCs could potentially be used more frequently and in circumstances disproportionate to the threat posed. With this in mind, stakeholders called for the automatic right to legal representation to be reinstated.
214. Concerns were also expressed about the change in the wording of the test for an MRC, from consideration of injury, to harm. Clan Childlaw and CYPSC 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'.
215. Clan Childlaw stated that, while it may be understandable to change the second criteria from injury to harm, in recognition of the potential psychological harm that can be caused to the public by the behaviour of another, "the definition of psychological used in the amendment opens up the possibility that a young person may be put on an MRC for behaviour that falls well below any criminal threshold."⁸³
216. Clan Childlaw also highlighted that in legislation such as Harassment Act 1997 and the Criminal Justice and Licensing (Scotland) Act 2010, an objective test is applied to determining harassment or a breach, in that a consideration has to be made to what a reasonable reaction would be to the behaviour.⁸⁴
217. CYPSC suggested that a qualification of "significant risk" or "severe harm" be used to ensure that there was better protection against "disproportionate interference in children's right to liberty."⁸⁵
218. When giving evidence alongside the Minister on 3 May, Debbie Nolan, the Bill Team

Professional Adviser explained—

” We have tried to recognise in this context that injury might be broader than physical injury. The previous test did not, in fact, specify physical injury, but our concern was that that was how it was being interpreted in practice.

Panel members always had to determine that the child was likely to cause injury to someone else; now the test is whether they are likely to cause physical or psychological harm. We do not deem that to be necessarily a broadening and we do not necessarily deem that it is more subjective.⁸⁶

219. Scottish Women's Aid welcomed the broadening of the test, although it cautioned against the use of 'psychological' in the test as it risks pathologising victims. It suggested a focus on emotional harm and trauma instead.⁸⁷
220. Victim Support Scotland similarly welcomed the broadening of the test but agreed that there should be clearer guidance as to what might constitute "physical or psychological harm". It also called for clearer guidance as to how the conditions of the MRC will be communicated to victims (where appropriate) and how compliance with the MRC will be monitored.⁸⁸
221. A child cannot "breach" an MRC as such, in the sense that it would not result in automatic referral to a hearing. It is for the implementation authority to decide whether the child is not complying with an MRC and if so, to give notice to the reporter to require a review of the CSO. This will be an ordinary review hearing and requires the standard period of notification, therefore it is not a process that is designed to respond urgently to an emerging situation.
222. Victim Support Scotland, Scottish Women's Aid and Rape Crisis raised concerns about a lack of clarity around the breach process. They all highlighted that it is critical that victims are able to plan for their own safety and ensure that what happened to them doesn't happen to anyone else. As such, a lack of information and clarity around monitoring was unhelpful.
223. Children 1st similarly argued that enforceability and monitoring arrangements around the new provisions are not yet clear enough and concluded—
- ” If there are no arrangements to practically monitor or enforce these conditions beyond normal local authority monitoring arrangements, these should not be presented as 'protective' options for other people.⁸⁹
224. When giving evidence to the Committee on 29 March, Claire Lunday of St Mary's Kenmure, stated—
- ” There are occasions when an MRC can work effectively. However, more often than not, at the disposal of our children's hearings system, we are relying on a traumatised and dysregulated child to assume responsibility for their own regulation. That is a big ask and quite an unrealistic one. If the outcome of that is a return to the children's hearings system, where the consequences of not meeting those requirements may result in an escalation and in further restrictions, we are potentially setting children up to fail in that situation.⁹⁰
225. As noted earlier, MRCs involve not only monitoring a child with a tag but must also

provide that child with intensive support.

226. CYCJ highlighted that, with the intensive support, the Bill allowed "creative" use of MRCs which could ensure that fewer children are placed in secure care.⁹¹
227. Alastair Hogg highlighted that it is the intensive support package put in place alongside an MRC which makes the difference to the young person, rather than the actual restriction of movement. He noted that this support could be put in place without an MRC.⁹²
228. The need to ensure MRCs are accompanied by intensive support was raised by a number of witnesses including Includem, Children's Hearings Scotland, Who Cares? Scotland, The Promise and CYCJ.
229. The Bill doesn't specify the surrounding support that should be available to those on MRCs. Scottish Government internal figures (over the past four financial years) show average annual costs of £13,719 for electronic monitoring. However, these don't include the costs of the 24-hour support required for those on an MRC, particularly for local authority social work.
230. While the Financial Memorandum accompanying the Bill states that the intention is "not to promote wide-scale use", it is concerning that it does not estimate costs associated with changes to the MRC criteria.
231. In its evidence, CYPSC noted that when MRCs were first introduced, they came with a package of intensive support but that this was no longer the case, stating—
- ” 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.
232. In its evidence to the Committee, Who Cares? Scotland stated that current provision of intensive support was patchy across local authorities.
233. The Committee notes that, given how few MRCs have been imposed across Scotland, some local authorities may lack experience of providing the support around them, or even be aware of their obligations under them. For instance, in its written evidence, Aberdeenshire Council queried what intensive support looks like and who would deliver it.⁹³
234. As noted earlier, and by the Scottish Government in its Policy Memorandum, the provision of an intensive support package is essential for the imposition of MRC.
235. Clan Childlaw raised concerns that should a child be placed on an MRC without an intensive support package in place, it could be setting a child up to fail and, in that case, could risk the being subject to more restrictive measures, including secure care authorisation, as a result of non-compliance with the MRC.⁹⁴
236. In her evidence to the Committee, the Minister for Children and Young People and Keeping the Promise reassured the Committee that the intensive support would be available for children with an MRC—

” an MRC is always associated with the child receiving intensive support. The details of the intensive support that the child will receive will be contained in the MRC child’s plan. The plan must be practicable to address the immediate and longer-term needs of said child, with a view to safeguarding and promoting that child’s welfare. MRCs can be highly individualised and flexible on a case-by-case basis, depending on the child.⁹⁵

237. As noted earlier, the Minister also assured the Committee, and the Finance and Public Administration Committee, that the Scottish Government would provide updated costings, following Stage 1.

238. Whilst the Committee recognises that MRCs can provide an alternative to secure accommodation, MRCs have the potential to significantly restrict a child’s liberty and may in fact amount to a deprivation of liberty. As such, they should be subject to a rigorous threshold test, to ensure that an MRC is a necessary and proportionate response to the risks posed to or by the child. In all cases, MRCs must be accompanied by an intensive package of support and their use time-limited.

239. The Committee recognises that MRCs are only appropriate in very limited circumstances and, in order for them to be applied successfully, they need to be accompanied by a package of intensive support. The Committee is concerned that potential costs for such support have not been included within the Financial Memorandum. The Committee therefore urges the Scottish Government to set out exactly how this will be resourced, when revisiting the costs associated with this Bill.

240. The Committee has significant concerns in relation to proposals in the Bill to amend the current threshold test and specifically the use of the term “psychological harm”. Given the subjectivity of this term, the Committee agrees with stakeholders that an objective test should be added, 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.

241. The Committee also believes that clear guidance and training should be provided to panel members to ensure that decisions about such “severe harm” are taken in an informed manner and applied consistently across Scotland.

242. Further, the Committee believes that the use of MRCs for these purposes should be closely monitored to ensure they are used appropriately. The Committee urges the Scottish Government to commit to bringing forward amendments at Stage 2 to address these issues.

243. The Committee notes that a decision to impose an MRC should only be taken where it is in the best interests of the child, a proportionate response to the risks posed to or by the child, and where other less restrictive measures have been fully explored. The Committee notes the Scottish Government’s stated intention that MRCs should not be used more frequently in future than they are at present. Again, the Committee requests that appropriate monitoring is put in place to

ensure that MRCs are used only when appropriate and also asks that the Scottish Government carries out an evaluation of the use of MRCs and their impact on the outcomes of the young people.

244. The Committee believes that the Scottish Government should urgently address the issues identified in relation to the automatic provision of legal representation i.e. to ensure that the child has access to a solicitor at the point at which an MRC is being considered. It should amend the Bill at Stage 2 to ensure this important safeguard is reinstated.

Section 5: Compulsory supervision orders: secure accommodation authorisations

245. The 2011 Act sets out the conditions and requirements that must be met when including a secure accommodation authorisation in a CSO. These include a requirement for the children's hearing or sheriff to be satisfied that a secure accommodation authorisation is necessary, having considered all the other options available.
246. The changes proposed in Section 5 of the Bill would adjust these conditions in order to take into account the likelihood of a child causing physical or physiological harm to another person.
247. In its written evidence, the Care Inspectorate stated that it was supportive of the changes in this section as it will "provide clearer parameters to inform the appropriate placement of children." ⁹⁶
248. However, CYPSC expressed concerns that the Bill would result in conditions for a secure care authorisation being too broad. Together Scotland raised similar concerns.
249. Within this section, the same change is proposed to the threshold test for secure care orders, medical examination orders and warrant to secure attendance, as was the case with MRCs.
250. Consequently, CYPSC again advocated that a qualification such as "significant risk" or "severe harm" be added. ⁹⁷
251. Clan Childlaw also reiterated its concerns about the subjective nature of the test and the definition of psychological within the Bill. As with MRCs, the organisation called for the addition of an objective test.
252. With regard to these specific orders, Clan Childlaw also highlighted that the criteria considers the risk of absconding. However, there is no reference in the criteria as to how this risk should be balanced against the risk to the child from being placed in secure care.

253. As with section 4, the Committee believes that any threshold test should ensure that a secure care authorisation is a necessary and proportionate response to the risks posed to or by the child. The Committee is concerned that the new test is too subjective without the addition of an objective test.
254. The Committee believes that this provision should be amended at Stage 2 of the Bill's consideration.

Section 6: Provision of information to person affected by child's offence and behaviour

255. Under the Children's Hearing (Scotland) Act 2011, the victim of an offence (or person harmed by a child's behaviour) can make a request for information from the Children's Reporter. For example, this might include asking about a final decision on whether to arrange a children's hearing or the final outcome of an arranged children's hearing. If the victim is under 16, a relevant person can make a request.
256. 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.
257. 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 request information. The age at which a victim is considered to be 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. The term "relevant person" for the purposes of a children's hearing is defined in the 2011 Act. It is usually a parent, but can also be any other person who has parental rights and responsibilities (e.g. obtained via a court order).
258. During the evidence session on 22 March 2023, SCRA told the Committee that under current practice the Children's Reporter already writes to victims to advise them of their right to request information. The proposed legislation would put this practice into statute.
259. A person entitled to request information will not automatically receive it; they will simply be advised of their right to request 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.
260. Multiple stakeholders, including CYCJ, Includem, The Promise, Who Cares? Scotland, CYPES and the Information Commissioner's Office, highlighted that any change to the information sharing processes must achieve a rights-respecting solution, to balance "the rights of the child who has caused harm with the rights of the victim, who might well be a child, too." ⁹⁸
261. In her evidence to the Committee on 29 March, Kate Wallace of Victim Support Scotland said there was currently a "lack of information sharing" ⁹⁹.
262. In his written evidence, Stephen Bermingham of Children's Hearing Scotland

explained that although the Reporter can inform a victim of the existence or variation of a CSO, they are not able to provide specific detail, for example, if there was a prohibition to visit the victim's address or contact them. He clarified that this will not be changed by the Bill. ¹⁰⁰

263. Alasdair Hogg of SCRA stated that more than 2,500 letters had been sent to victims or their relevant person last year, however, only 13-14% of people requested information. While possible reasons for this low number were suggested, including the lack of detail provided in an individual's case, there has not, as yet, been any research as to why this number is so low. ¹⁰¹

264. Both Alasdair Hogg and Sheriff David Mackie agreed that research into this would be helpful, to understand why the vast majority of victims, or their families, do not want this information from SCRA.

265. Kate Wallace of Victim Support Scotland stated that the balance of rights in the Bill, as currently drafted, isn't correct with the focus on the child who has harmed and not as much on the child (or adult) who has been harmed. She went to explain that, with regard to information sharing—

” if you are offended against by an adult, you can opt into a victim notification scheme in order to get information if someone has escaped or absconded from prison. You are also entitled to know when they are released. However, if, for example, you have been subjected to a serious sexual assault by a child or young person who ends up in secure care and goes through that route, at the moment, you will not be informed about when they leave that secure establishment. ¹⁰²

266. In such circumstances, victims cannot effectively plan for their own safety.

267. When giving evidence on 26 April, Stephen Bermingham of Children's Hearing Scotland stated—

” you would hope that, when that information could impact on the rights of a child—for example, if another child could potentially be harmed—there would be ways of sharing it at a local level that would not require legislative change.
...

The risk assessment around that would be hugely complex. It would have to happen on a case-by-case basis, and it would have to look at the risk not only to the victim but to the child who had caused harm. ¹⁰³

268. In its evidence, the Law Society of Scotland stated that, given that 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." ¹⁰⁴

269. Police Scotland similarly proposed that the information currently available to a victim within the criminal justice system should also be available to a victim whose case is dealt with in the Children's Hearings System, where it is possible and deemed appropriate to do so. While acknowledging that it should be decided on a

case by case basis, Police Scotland suggested that the default should be to share that information.¹⁰⁵

270. When giving evidence to the Committee on 26 April, Ben Farrugia of Social Work Scotland noted—

” We can probably operate in a very safe space around information sharing, where we do not share inappropriate information, but we can reassure a victim that they are being heard and listened to and that they can plan for their safety
¹⁰⁶

271. Children 1st recognised that information sharing can play a critical role in the recovery of victims. It stated that children and young people often report that current practice is not adequate.

272. Children 1st stressed that this does not only apply to the individual outcome of a particular case. There is also a lack of access to clear, basic information about the system and how and why decisions are taken within it.

273. Children 1st stated that children and families wanted services to talk to them to understand how the process currently works for them, and how it can be improved, to make it easier to navigate. It stated that this would give children and families a sense of control and efficacy and would support recovery from their experiences.
¹⁰⁷

274. The organisation further stressed that it is important that improvements are made to current practice in both the civil and criminal justice processes, and that information sharing in respect of a hearing is not seen as an administrative task but rather as an opportunity to help those who have been harmed towards meaningful recovery.

275. The Committee heard from CYPSCS about its disappointment that the Bill doesn't contain proposals to provide support for victims, including having a single point of contact. CYPSCS felt that such a measure, where people could go to find out about other support, would be helpful for all victims, particularly child victims.¹⁰⁸

276. In its evidence, Children 1st stressed that ensuring child victims are offered support to recover at an early stage is preventative in and of itself. However, it stated that children and their families consistently report that the "disjointed systems supposed to protect them most often cause them further harm and trauma and fail to help them recover from their ordeal."¹⁰⁹

277. The organisation highlighted its work, along with partners, on Bairns' Hoose. Based on the Scandinavian Barnahus model, it stated that Bairns' Hoose will bring together justice, health, social work and recovery support, 'under one roof' to best meet the needs of child victims and witnesses.

278. The first Bairns' Hoose will be operational this year, however, Children 1st stated—

” there is no clear alignment between the work on Bairns' Hoose and the contents of the Bill as it stands. This is surprising given the commitment to roll out the Bairns' Hoose model for all child victims and witnesses of violence was set out in the Programme for Government 2021/22 and 2022/23.¹¹⁰

279. Kate Wallace of Victim Support Scotland concurred, stating that Bairns' Hoose was designed to provide the continuity that victims need, and have been calling for. ¹¹¹
280. While Police Scotland stated that Bairns' House may help to fill the gap, it advocated additional support for a child and their family, including a single point of contact to provide an explanation of the fairly complex process. It further advocated that this support should extend to all people who have been harmed. ¹¹²
281. The Committee recognises that it is often challenging to balance the rights of those offending against those of people harmed by that offending. This is particularly true where both parties are children.
282. The Committee acknowledges the critical role that information sharing can play in allowing victims to plan for their safety and wellbeing.
283. The Committee notes the call of some stakeholders, including Victim Support Scotland, for a victim notification scheme to operate within the Children's Hearings System as it does within the criminal justice system. The Committee recognises that stakeholders also called for improvements to this scheme.
284. The Committee supports the Criminal Justice Committee's request that the Scottish Government considers 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.
285. The Committee notes that only 13-14% of victims or their families are requesting information from SCRA. The Committee urges SCRA to undertake research to understand why the rate is so low.
286. The Committee recognises that the Scottish Government has committed to roll out the Bairns' Hoose model for all child victims and witnesses of violence. The Committee notes that stakeholders are unclear as to how this Bill will align with the Bairns' Hoose model roll out and asks the Scottish Government to clarify how these measures will work together.
287. The Committee strongly supports the need for victims, witnesses and their families to have ready access to information and support to navigate their way through the criminal justice or Children's Hearings System. The Committee acknowledges that a single point of contact was cited by many stakeholders as a good way to facilitate this.

Section 7: Supervision or guidance post-18

288. The explanatory notes state that where, on reviewing a CSO, the children's hearing decides that the CSO should come to an end, the hearing must consider whether the child nevertheless has a continuing need for supervision or guidance and make a statement to that effect. The local authority has a duty to provide such supervision and guidance if the child accepts it.

289. Section 7 will raise the age at which a child can be provided with supervision and guidance once a CSO comes to an end, from 18 to 19. The Policy Memorandum states the Bill will help to ensure a young person does not ‘fall through the cracks’ on turning 18.
290. As noted earlier, the Financial Memorandum prepared for the Bill models 17.5 years as the practical cut-off for referral to the Children's Hearings System.
291. In its written evidence, Who Cares? Scotland highlighted that this section enables a young person to remain under the guidance and supervision of the Principal Reporter, beyond the age of a child, up until the age of 19. It consequently asked, given this flexibility, whether the reference to the 17.5 cut-off should be clarified, to address concerns that a cut-off before the age of 18 would not be compliant with the UNCRC.¹¹³
292. In evidence to the Committee on 26 April, Jackie Irvine of the Care Inspectorate said that, in relation to secure care, raising the age to 19 would mean children would not be moved into YOI unnecessarily on reaching the age of 18.¹¹⁴
293. The idea of an age limit being a “cliff edge” of support came up during multiple evidence sessions. At the Committee meeting on 29 March, Sheriff Mackie, Chair of the Hearings System Working Group, highlighted the challenges of this, stating—
- ” It is all very well having 16 and 17-year-olds coming into the Children's Hearings System, but we do not want there to be a cliff edge for people at the age of 18, with services being withdrawn or unavailable. It is difficult to find a legal way for that gap to be bridged.¹¹⁵
294. Several stakeholders including SCRA, Children's Hearings Scotland, the Promise and East Ayrshire Advocacy Services welcomed the provisions within the Bill to allow supervision and guidance to be extended to those aged 18 as this would allow continuing support as they transition into adulthood.
295. Although many stakeholders were supportive of this change, they stressed that it is essential that any expansion be properly resourced. Barnardo's Scotland, Stirling Council and the Care Inspectorate all noted that supporting some children up to the age of 19 will add further strain onto children and families social work teams.
296. At the Committee's 26 April meeting, Ben Farrugia of Social Work Scotland said person- centred planning was the only way to avoid an abrupt end to support.
- ” the only way in which we address the cliff edge is through person-centred planning...and we can do that only with a sufficiently robust and skilled workforce.¹¹⁶
297. Similarly, COSLA stated that it recognised the need for, and importance of, appropriate care and support to be provided for all young people, including those transitioning into adulthood. However, it did not consider extending the duties on local authorities to support a person up to the age of 19 to be the right approach.
298. COSLA argued that decisions on the level and needs of support should be based on the young people and their capacity and maturity rather than a legal context being the deciding factor. A young person is not legally a child after 18 and support

should be based around transitions to adulthood rather than extending their support, as if they were a child.

299. Furthermore, it highlighted the importance of including other agencies, particularly health, and recognising that their role and duties should include supporting a young person beyond the age of 18. ¹¹⁷
300. Glasgow City Health and Social Care Partnership and Social Work Scotland also shared concerns about applying children’s provision to adults, noting that there “will always be a need for a point at which a child becomes an adult”. ¹¹⁸
301. Dr Michal A Piegzik of the Centre for Mental Health and Capacity Law, Edinburgh Napier University, questioned the rationale behind 19 years old, suggesting that it was inconsistent with other Scottish Family Law system regulations and seemed too long for someone who attained the age of majority. He suggested 18.5 years as an alternative. ¹¹⁹

302. The Committee notes that the Bill provides flexibility with regard to support for those beyond the age of 18. It therefore asks the Scottish Government to consider how this principle could be applied to those being referred on offence grounds who are older than 17.5 years, but under 18.

303. The Committee recognises that extending supervision and guidance for young people will put additional pressure on local authority budgets. The Committee therefore calls for this to be reflected in the resources allocated to local authorities to implement this change.

Part 2

304. Part 2 of the Bill relates to children in the criminal justice system, provisions have been introduced to reflect the updated definition of a child (i.e. under 18) in criminal proceedings.

Section 8: Meaning of "child"

305. The [Policy Memorandum to the Bill](#) points out that the meaning of "child" for the purposes of the [Criminal Procedure \(Scotland\) Act 1995](#) is currently defined by reference to [section 199 of the 2011 Act](#).
306. Currently, in the context of the children's hearings system, while all under 16s will be children for the purposes of the 1995 Act, some 16- and 17-year-olds will also be children if they are already involved with the children's hearings system.
307. As Section 1 of the Bill raises the maximum age at which a child can be referred to the Children's Hearings System, section 8 of the Bill will amend the definition of "child" in the 1995 Act meaning that "child" will generally now mean the same in both the Children's Hearings System and the criminal justice system, namely a person under 18.
308. The issues regarding raising the age of a child within the criminal justice system are explored in detail earlier in this report.

Section 9: Offences against children to which special provisions apply

309. The explanatory notes produced for the Bill state that Schedule 1 of the [Criminal Procedure \(Scotland\) Act 1995](#) contains a list of offences against children under the age of 17 in relation to which special provisions apply.
310. Those provisions are in section 46 of the 1995 Act and include presumptions about the age of a child involved in criminal proceedings (either as the victim or as the offender) relating to offences under the Children and Young Persons (Scotland) Act 1937, those listed in schedule 1 of the 1995 Act and certain offences under the Criminal Law (Consolidation) (Scotland) Act 1995.
311. Given that the Bill will ensure that all persons under 18 will be regarded as children for the purposes of the 1995 Act, section 9 will amend schedule 1 to remove references to children aged under 17. As a result, schedule 1 and section 46 will apply in relation to offences committed against all children under 18.

Section 10: Prosecution of children over the age of criminal responsibility

312. Section 42 of the Criminal Procedure (Scotland) Act 1995 currently provides that children aged 12 to 15 who commit an offence may only be prosecuted if the Lord Advocate authorises the prosecution. Children aged 16 or over can be prosecuted without this authorisation, although a child of this age who offends while already subject to a Compulsory Supervision Order imposed by a children's hearing may be remitted back to a children's hearing.
313. Currently, under the [Lord Advocate's Guidelines to the Chief Constable on the Reporting to Procurators Fiscal of offences alleged to have been committed by children](#), certain offences alleged to have been committed by 16- and 17-year-olds are jointly reported to the Procurator Fiscal and the Children's Reporter if—
- the young person is subject to a compulsory supervision order (CSO) or
 - where the young person was referred to the Principal Reporter before their 16th birthday, but where a decision has not yet been made either to make them subject to a CSO, to refer them to the Children's Hearings System or to discharge the referral.
314. In all jointly reported cases, the decision as to whether the case will be prosecuted or referred to the Children's Reporter is made in consultation between the Procurator Fiscal and Children's Reporter, with the Procurator Fiscal making the final decision.
315. In jointly reported cases, there is a presumption in favour of referral to the Children's Reporter. This presumption can be set aside where it is in the public interest to prosecute.
316. In assessing whether the public interest resides in prosecution, the Procurator Fiscal may consider the following factors including—
- whether the gravity of the offence is such that solemn proceedings may be justified
 - the impact of the offence on the victim
 - any pattern of serious offending by the child.
317. Section 10 of the Bill will amend section 42 of the 1995 Act so that all children over the age of criminal responsibility (i.e. all those aged over 12 and under 18) may be prosecuted only if the Lord Advocate authorises it.
318. This will mean that all 16 and 17 year olds alleged to have committed an offence will have an opportunity to be referred to the Children's Hearings System.
319. However, several contributors have highlighted that, in practice, the most serious offences will likely be prosecuted in the adult criminal justice system which, they argue, is not suitable for children, potentially undermining the intention of the Bill to take most 16 and 17 year olds out of the adult justice system. ¹²⁰

320. In its evidence, Clan Childlaw highlighted its concerns about the transparency and the ability of children to participate in the joint referral process, and noted that there are no measures currently included in the Bill to change the process.
321. In particular, Clan Childlaw stated that there is not a clear procedure in place to ensure that the child's view is taken into account, nor does the [Lord Advocate's Guidelines](#) specifically provide this opportunity.¹²¹
322. As noted earlier, several contributors including CYCJ, Clan Childlaw and Children 1st all stated that the adult criminal justice system is not suitable for children, citing Article 40 of the UNCRC which states that children have a right to access child-friendly justice.
323. The UN Committee on the Rights of the Child's General Comment 24 on children's rights in the child justice system has been frequently highlighted by witnesses in the scrutiny of this Bill.
324. General Comment 24 includes a recommendation that countries who allow certain children to be treated as adult offenders (for example, because of the offence category), should change their laws to ensure a "non-discriminatory full application of the child justice system to all persons below the age of 18 years at the time of the offence."
325. In its written evidence, CYCJ noted [evidence by Professor Lesley McAra and Professor Susan McVie](#) which highlights that bringing children into adult justice systems can have a detrimental impact on their future behaviour and outcomes, often leading to further offending and more serious disposals.
326. In contrast, stakeholders including Rape Crisis Scotland¹²² and Scottish Women's Aid¹²³ called for further discussion as to how serious offences, such as domestic abuse and sexual assault, will generally be treated and whether the Lord Advocate will tend to pursue criminal proceedings in such cases.
327. Professor Elaine Sutherland stated that how the Lord Advocate uses their discretion to prosecute under 18s will be of "crucial importance to public faith in the system."¹²⁴

328. The Committee welcomes the policy intention of this Bill, namely that it should remove the majority of under 18s from the adult justice system. However, in doing so, it also recognises the views of the UN Committee on the Rights of the Child that age-appropriate justice should not be contingent on the severity of the offence of which the child is accused.
329. The Committee welcomes that the Lord Advocate will retain the ability to authorise prosecution, when it is in the public interest. However, it urges the Scottish Government to consider which measures could be put in place to ensure that a child proceeding through the adult justice system, rather than the Children's Hearings System, should also have access to age-appropriate justice, including putting in place safeguards and measures designed to help them better understand and participate in proceedings.

330. The Committee recommends that when the Lord Advocate's Guidelines are next revisited, careful consideration is given as to how the views of the child or young person are 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. In making this recommendation, the Committee is mindful that this process should include the views both of the young person accused of an offence and any young person harmed as a result of that behaviour.

Section 11: Custody of children before commencement of proceedings

331. The [Criminal Justice \(Scotland\) Act 2016](#) makes provision for what happens if a child is arrested and taken into police custody.
332. Under the 2016 Act, a child who the police believe is under 16 or one who is subject to a CSO, must be kept in a place of safety until they can be brought to court. While every effort is made to avoid detaining children in police stations, which can be frightening and intimidating, it is sometimes not practicable to hold a child anywhere else, for instance due to a lack of available places of safety or the child's imminent release.
333. In taking a decision to hold a child in police custody, the wellbeing of the child is a primary consideration. Guidelines issued by the Lord Advocate set out a presumption of liberty, unless factors such as the seriousness of the offence, a significant risk to victims or witnesses, and the nature and timescale of further enquiries, justify police custody.
334. Where a child is being prosecuted for an offence, is in police custody and is not to be liberated, the place of safety where they are to be held must not be a police station unless it would be impracticable, unsafe, or not advisable for reasons of the child's health to be kept anywhere else.
335. Section 11 of the Bill extends these considerations to all under 18s, and, except in the limited circumstances described, children should not be kept in police stations.
336. When giving evidence to the Committee on 22 March, Superintendent Dobson of Police Scotland outlined the current protections when a child believed to be under 16 or a young person under 18 who is subject to a CSO is arrested—
- The local authority will be notified, to allow someone to visit and check on the welfare of the child;
 - The child is unable to waive their right to a solicitor and solicitor advice;
 - Should the child be required to appear before the court the following day, Police Officers will look for a place of safety for them, although it was acknowledged that the availability of secure accommodation can be

challenging; and

- The child's parent or guardian would also be notified and afforded access unless there was a specific reason, such as a safeguarding reason, for them not to be given that access.¹²⁵

337. Superintendent Dobson contrasted this with the approach when the person is 16 or 17, and not subject to a CSO. In such cases—

” they are treated in the same way as an adult is treated. They can waive their right to a solicitor but, at the moment, they must do that via a reasonably named person, and there are no guidelines about who that reasonably named person should be. It can be any individual over the age of 18, and they can agree with the child that they can waive their right to solicitor access.

There is also no consideration of a place of safety. A 16 or 17-year-old remains in a cell overnight and is presented at court at the next opportunity.¹²⁶

338. Section 11 will ensure that all people aged under 18 are treated as children and will have 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.

339. The Policy Memorandum points out that from age 16, and respecting the evolving capabilities of the child, the Bill will ensure that a child will have the choice to nominate an adult, other than a parent, to be notified of their being in custody (subject to the local authority being able to give information that the intimation should not be sent because that may be detrimental to the wellbeing of the child).

340. The child can also request that no notice is sent or ask that no adults attend the police station. In such circumstances, the local authority would be informed to ensure that every child has someone notified of their situation. Likewise, in any case, should parental or another adult's access to the child be refused or restricted, the local authority should be notified.

341. In respect of places of safety, given that there are already issues with availability, Superintendent Dobson of Police Scotland stated—

” we need to make sure that the infrastructure is in place to support the change, and we need to put in place adequate provision for young people—for example, so that a place of safety is available for a young person when it is decided that they must appear before the court. That infrastructure must be in place.¹²⁷

342. In his evidence to the Committee, Ben Farrugia of Social Work Scotland welcomed the enhancement of rights for children aged 16 and 17 who aren't on a CSO, however, he cautioned about the capacity to deliver this improvement quickly as a result of resourcing concerns—

” 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. ¹²⁸

343. As a consequence, he stated—

” the reality is that, with the infrastructure that we have in Scotland, it is almost inconceivable to me that we will not have to use that resource [police cells] for a number of years to come. I give credit to Police Scotland, as it is aware of that and is investing in its police estate to ensure that it improves its provision to take that into account for the affected population of children and young people. ¹²⁹

344. Aberdeenshire Council raised concerns as to whether it will be possible to ensure that children have all protections in all locations, reflecting that, in their experience, there aren't enough solicitors locally who can be brought in to support young people at present, and that these measures could aggravate this issue even more. ¹³⁰

345. The Committee welcomes the enhancement of rights for 16 and 17 years that are contained within these provisions.

346. The Committee shares the concerns of the Criminal Justice Committee about the capacity of Police Scotland and local authorities to ensure that these rights can be realised. Specifically, the Committee is concerned that there is a lack of suitable solicitors to advise young people in some areas across Scotland. Similarly, appropriate alternatives to police custody (i.e. places of safety) are not easily accessible in all areas. The Committee is conscious that the provisions in this Bill may place additional pressure on already over-stretched resources. As such, the Committee urges the Scottish Government to work with relevant agencies to assess where the current gaps are, and to address these ahead of the Bill's implementation.

347. The Committee notes the Scottish Government's assurances to the Criminal Justice Committee that local authorities will be able to advise Police Scotland about the appropriateness of any adult who is to be contacted about a child's detention. The Committee endorses the Criminal Justice Committee's request that the Scottish Government seeks to prevent individuals with the potential to exploit vulnerable young people, such as organised crime groups, from being able to do so.

Sections 12 and 13: Restrictions on reporting

348. The Bill includes provisions which deal with restrictions on the reporting of (a) suspected offences involving children (section 12), and (b) proceedings involving children (section 13).

349. The Policy Memorandum explains that, at present, reporting restrictions are automatically applied to a child under 18 in court proceedings, with the courts having power to lift restrictions in the public interest.
350. This will still be the case, however, sections 12 and 13 will extend the restrictions so that they apply to a child suspected of an offence up to the completion of proceedings, at which point the court may dispense with restrictions or alternatively leave the restrictions in place until the child attains the age of 18.
351. The sentencing court may also direct that the restrictions remain in place beyond age 18. If the proceedings against a child suspect are not continued, or the child is found not guilty, the restriction applies lifelong unless the court determines otherwise.
352. The Bill also makes it an offence to publish information that is likely to lead to the identification of a person under 18 who is a victim or witness.
353. Other provisions in the Bill will amend restrictions to ensure that they not only cover publication of information in a newspaper report, or in a sound or television programme, but also apply to other forms of speech, writing or communication which are addressed to a section of the public, such as on social media.
354. In addition, these sections include measures which deal with applications to dispense with the restrictions imposed by the Bill. Applications to have the restrictions dispensed with can be made to a sheriff by the police, a prosecutor, the person whose information is the subject of the restrictions, or by a media representative. A sheriff may dispense with the restrictions if they are satisfied that it would be in the interests of justice to do so. 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, as detailed in the Bill, be given the opportunity to make representations.
355. The Bill ensures, with regard to an accused person, that the court must not dispense with restrictions unless it has taken into account a report from a relevant local authority regarding the person's circumstances and only at the conclusion of proceedings. The Bill also provides for appeals against decisions to dispense with restrictions.
356. In their evidence to the Committee, CYPSC and Together Scotland stressed the importance of the right to anonymity for a child accused, in line with General Comment 24 of the UN Committee on the Rights of the Child. They further stressed that this anonymity should be lifelong, so as not to "impede the child's reintegration and assumption of a constructive role in society."¹³¹
357. Dr Andrew Tickell and Seonaid Stevenson-McCabe, of Glasgow Caledonian University, co-founded the Campaign for Complainers Anonymity in 2020. In their evidence, they stated that it is critical that anonymity laws have clear and workable thresholds establishing when restrictions begin, end and who decides them.
358. In their view, sections 12 and 13 address some of the current issues, including the updating of legislation to reflect today's publishing landscape to take account of social media. However, they suggested that 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 only £2,500; and
- Update reporting restrictions in civil as well as criminal cases which involve children, to bring greater consistency to the law as a whole.¹³²

359. Together Scotland, Social Work Scotland and CYPCS welcomed the inclusion at Section 12 of the Bill of restrictions on reporting suspected criminal offences involving children, as it "addresses the current gap in the law whereby child accused and victims can legally be identified prior to the commencement of formal criminal proceedings."¹³³

360. However, the CYPCS similarly called for clarity as to when anonymity protections are triggered before the formal commencement of criminal proceedings, stating—

” “Currently, it is not clear when suspicion is crystallised. One approach would be to activate the right when a report is made to a police officer that an offence has been committed.”¹³⁴

361. Together Scotland and CYPCS also both advocated that courts be allowed to extend reporting restrictions for child complainers and victims.

362. The Committee notes the recent introduction of the Victims, Witnesses, and Justice Reform (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).¹³⁵

363. When giving evidence to the Committee on 3 May, the Minister for Children and Young People and Keeping the Promise stated that the Scottish Government will continue to assess any potential differences in provisions between the two bills and highlighted—

” 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.¹³⁶

364. The Committee welcomes the Minister's stated intention that the provisions in this Bill, and those in the Victims, Witnesses and Justice Reform (Scotland) Bill, will

be closely aligned. The Committee would welcome sight of any analysis carried out by the Scottish Government to inform this process to date and an indication of which amendments the Scottish Government believes might be required to each Bill to ensure this alignment. The Committee asks that this be provided ahead of Stage 2 consideration.

365. The Committee asks the Scottish Government to clarify when reporting restrictions begin to apply when there is a suspected offence involving a child.

366. The Committee would also welcome the Scottish Government's views on the other changes suggested by Dr Andrew Tickell and Seonaid Stevenson-McCabe regarding the—

- The ability of children and young people to waive their anonymity, without committing a criminal offence;
- Removing the Scottish Government's power to dispense with reporting restrictions;
- Increasing the maximum penalty for violating reporting restrictions; and
- Updating of reporting restrictions in civil as well as criminal cases which involve children, to bring greater consistency.

Section 14: Steps to safeguard welfare and safety of children in criminal proceedings

367. Currently, under Section 50(6) of the Criminal Procedure (Scotland) Act 1995, every criminal court dealing with an offender who is a child is required to have regard to the welfare of the child.

368. Section 14 of this Bill will modify Section 50, to place a duty on the courts to—

- consider what steps might be taken to facilitate the child's participation in the proceedings while safeguarding their welfare; and
- take the steps it identifies, unless it is not reasonably practicable to do so.

369. Section 14 will also amend the Criminal Procedure (Scotland) Act 1995 to give the court the power, when dealing with a child accused of an offence in solemn proceedings, to—

- sit in a different building or room from that usually used or to sit on different days from other courts in the building and to take other steps to modify the court proceedings; and

- direct that the court be cleared except for essential persons, including representatives of the press i.e. the general public will be excluded.
370. It will also makes provision for court proceedings in which a child is accused along with an adult in the same proceedings, requiring the court to ensure that the adult accused can participate effectively in the proceedings.
371. In his evidence to the Committee, Kenny Donnelly of the Crown Office and Procurator Fiscal Service (COPFS) highlighted that courts will always take steps to improve the experience for children, citing the use of pre-recorded evidence or by taking evidence using other measures, such as closed-circuit television links. He stated that there are constraints as "a court is a court". He therefore welcomed the provisions in the bill that will allow the court to perhaps sit somewhere else.¹³⁷
372. The Scottish Courts and Tribunal Service (SCTS) outlined measures that it has developed to provide more comfortable surroundings for children and vulnerable witnesses, to facilitate the giving of their best evidence in a less traumatic way. This includes—
- a new Evidence Suite in Glasgow, which can be used in criminal proceedings, providing a non-court venue for witnesses giving evidence by using a live TV link on the day of a court hearing; or by having their evidence taken by a commissioner and pre-recorded in advance of a trial; and
 - Scotland's first purpose-built justice centre, in Inverness, which provides a bespoke Evidence suite and facilities for children and vulnerable witnesses to give their evidence by live link and evidence by commission.
373. SCTS stated that these suites have specially designed waiting rooms, which include support spaces and sensory equipment to improve the experience for those attending to give evidence.
374. Furthermore, work has begun to provide designated evidence by commission and evidence giving facilities in Edinburgh and further facilities are planned for Aberdeen based on aspects of the Inverness and Glasgow models.¹³⁸
375. In its written evidence, the Sheriffs' and Summary Sheriffs' Association stated that the proposals in section 14 appear to be—
- ” sensible, are consistent with the changes to the definition of “child”, and the sections as drafted allow a degree of flexibility to take account of particular circumstances when safeguarding the welfare of children while balancing the interests of justice.”¹³⁹
376. Together Scotland welcomed the duties within this section, however, the organisation advocated that the provisions be strengthened to place a duty on the court to sit in a different building or room from that usually used or to sit on different days from other courts, when dealing with a child accused of an offence in solemn proceedings rather than an option to do so.¹⁴⁰
377. While Clan Childlaw welcomed these proposed changes, it was clear in its view that the changes do not go far enough to make the system fit the needs of children. It

therefore called for the development of a juvenile justice system, to ensure that the rights of children are adequately protected.¹⁴¹

378. CYCJ, Includem, CYPSC and The Promise were similarly clear in their view that courts were not a place where children's rights can be realised. Fiona Dyer of CYCJ stated—

” the bill still includes the option for children to be prosecuted in the courts. The independent care review, which became the Promise, said that children's rights cannot be upheld if children cannot be heard. We know that. The bill improves that to some extent by trying to extend the children's hearings system to more 16 and 17-year-olds, but, if children are still going to court, their rights are not being upheld.¹⁴²

379. Witnesses from COPFS and CYCJ highlighted the work of youth courts in Glasgow and Lanarkshire. Youth courts hear cases of those aged between 16 and 24. Sheriffs sitting within the youth court have all options available to them that they would in an adult court but, where the presiding sheriff is satisfied, Structured Deferred Sentencing (SDS) may be employed. An SDS combines regular court review and monitoring with targeted social work and other interventions, based on the needs of the child/young person as outlined within their Criminal Justice Social Work Report. A key purpose of the youth court is to support more rehabilitative and participatory justice for young people in conflict with the law.

380. An [evaluation of the Glasgow Youth Court](#) was recently published. While it was noted that further work could be done to embed those operating within the youth court environment, simplify the language used and improve the way that the room is set up for proceedings, it found that—

- Many young people felt positively about their engagement with the sheriff, who often displayed patience and flexibility, offered positive feedback and used simple language.
- Broadly, young people also found the interventions and support programmes offered to them via the Youth Court to be beneficial.
- Generally young people felt positive about their future following their involvement in the Youth Court process.

381. The Committee notes the evidence received and welcomes recent developments in relation to specialist provision for young people accused of offences in court settings.

382. Whilst there is evidence of recent good practice and innovation in the court system in many parts of Scotland, much remains to be done to ensure all under 18s have access to age-appropriate justice. The Committee recommends that this work commences without delay.

Section 15: Referral or remit to the Principal

Reporter of children guilty of offences

383. The [Policy Memorandum to the Bill](#) points out that the Children's Hearings System and criminal justice system currently interact in certain limited circumstances, including the ability of the court, where considered appropriate, to remit a child's case to the hearings system for advice and/or disposal where a child has pleaded or been found guilty.
384. The circumstances in which a child's case can be remitted vary depending on the child's legal status, age (if not already subject to measures through the hearings system), court and proceeding type.
385. The Bill will provide for under 18s to be treated in the same way whether they are subject to a CSO/ICSO (an Interim Compulsory Supervision Order) or not. However, summary cases (such as assault, breach of the peace or driving under the influence of drink or drugs, which are heard by a sheriff without a jury) and solemn cases (most serious cases, including all cases of rape and murder) will continue to be treated differently, and solemn cases in the sheriff court (heard by a sheriff with a jury) will be treated differently from High Court cases (heard by a judge and jury).
386. In sheriff court solemn cases, the Bill provides that the sheriff has a choice—
- to request advice from a children's hearing,
 - to remit the case to a hearing for disposal, or
 - to dispose of the case without remitting it.
387. However, before disposing of a case without remitting it, the sheriff must request advice from a children's hearing. The sheriff can move to dispose of the case without requesting advice in two circumstances—
- (a) either where the sheriff determines that it would not be in the interests of justice to do so, or
- (b) where the child is within six months of turning 18 and the sheriff considers that it would not be practicable to request advice before disposing of the case.
388. In light of this second circumstance, the Financial Memorandum accompanying the Bill assumes that the majority of summary court cases involving those aged between 16-17.5 could be referred to the hearings system, rather than cases for those between 16-18.
389. Stakeholders including CYPCS and Together Scotland, while welcoming the changes to allow courts the ability to remit or refer the cases of children who have pled or been found guilty to a children's hearing, shared concerns that the court will have discretion not to request advice from a children's hearing where the child is within 6 months of turning 18.
390. The Committee notes that a key aim of the Bill is to bring about positive change for all 16 and 17 year olds involved in offending. However, as currently drafted,

any additional protections may only be available to those up to the age of 17.5 years.

391. The Committee does not believe that it is fair that the Bill treats young people over the age of 17.5 years but under 18, differently, purely on the basis of how long it might take for agencies to put in place support.
392. The Committee requests that the Scottish Government urgently addresses these concerns to ensure that all under 18s in Scotland have access to age-appropriate justice.

Sections 16 and 17: Detention of children involved in criminal proceedings

393. Sections 16 and 17 make provision about the 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.
394. There are two main changes—
- consequential to the change made by Sections 8 and 9, to the meaning of ‘child’ for the purposes of the 1995 Act, to ensure that the provisions that apply to children apply to all persons under 18, regardless of whether they are subject to a Compulsory Supervision Order; and
 - to provide that a child cannot be held on remand or sentenced to detention in a young offenders’ institution.
395. The Policy Memorandum to the Bill points out that these provisions do not interfere with a court's ability to deprive children of their liberty where this is deemed to be necessary; they simply change where a child under 18 can be detained.
396. In cases of remand, the place of detention would either be secure accommodation, if the court requires this, or a place of safety to be determined by the local authority, which could include secure accommodation but not a prison or YOI.
397. Also, where a child is sentenced by a court to detention under summary proceedings, this will be in a residential establishment chosen by the local authority, which, again, could include secure accommodation.
398. Where a child is sentenced by a court under solemn proceedings, the Scottish Ministers will direct where the child is to be placed – this will no longer be a prison or YOI, but may be secure accommodation.
399. The Bill also provides that Scottish Ministers may make regulations relating to children detained in secure accommodation through a criminal justice route, which may include providing that a child may remain in secure accommodation up to a maximum age of 19.

400. The policy memorandum accompanying the Bill suggests that this would remove the current requirement for children to automatically leave secure accommodation when they turn 18 and is intended to provide support, stability, continuity of care and maintain relationships which will be essential for rehabilitation and gradual transitions from secure accommodation.¹⁴³
401. It has been noted by several stakeholders that significant progress has already been made to reduce the number of under 18s in Young Offenders Institutions. Howard League Scotland stated that the figure on any one day, dropped from over 120 in 2011, to 9 in 2022/23.¹⁴⁴
402. The Scottish Government states that this progress is as a result of the hard work of partners implementing a Whole System Approach. In place since 2011, the Whole System Approach has provided a focus on—
- Early and effective intervention (EEI)
 - Opportunities to divert young people from prosecution
 - Court support
 - Community alternatives to secure care and custody
 - Managing high risk, including changing behaviours of those in secure care and custody
 - Improving reintegration back into the community¹⁴⁵
403. However, despite the reduction, multiple stakeholders have been clear that young offenders institutions are not appropriate environments for children.
404. In their evidence to the Committee, Gerry Michie, Governor of YOI Polmont, and Sue Brookes of the Scottish Prisons Service, and herself a former Governor of YOI Polmont, agreed, stating unequivocally—
- ” 16 and 17-year-olds, as children, should not be with us. Even if the rest of the establishment was empty, those children should be somewhere else.¹⁴⁶
405. In his evidence to the Committee, and in the Committee's visit to YOI Polmont, Gerry Michie outlined many of educational, training and health programmes that are in place to support the under 18s in his care. However, he explained that there were limits to what is possible—
- ” We are trying hard to soften what the prison looks like, but, architecturally, it is a prison. For example, today, the five young men who are in our care are in half a gallery in a hall in Polmont—there are 44 single cells, and there are only five of them. The prison is absolutely massive. There are young offenders above them and below them. Prisons tend to be noisy and busy places.¹⁴⁷
406. In its written evidence, Children's Hearing Scotland highlighted—

” The use of prison for children on remand is particularly unacceptable and fails to recognise the inherent vulnerabilities of children, regardless of their own actions. There is a significant body of evidence that placing children in custody deprives children of their rights, is traumatising and does not lead to positive outcomes.¹⁴⁸

407. As such, all of the stakeholders who have given evidence to the Committee on this Bill have welcomed the measures which mean that under 18s will no longer be held in a prison or YOI.

408. The majority of stakeholders highlighted that secure care is a more therapeutic environment, significantly smaller in scale than a YOI (with four- or six-bed houses set within a maximum capacity of 24, as opposed to a 44 cell half gallery within a prison with a design capacity of around 800), with a higher ratio of staff to children of around one to two. Kevin Northcott, of Rossie Young People’s Trust, stated—

” In our view, having therapeutic intervention work and relational-based work as part of a trauma-informed approach can achieve better outcomes for young people more quickly.¹⁴⁹

409. When giving evidence to the Criminal Justice Committee on 29 March, Wendy Sinclair-Gieben, HM Chief Inspector of Prisons for Scotland stated—

” Let us look at the difference between how prisons and secure care are funded and resourced. Prison staff have about 12 weeks’ training, and then extra bits are added on. Staff in secure care have full social work training and have to be accredited by the General Teaching Council for Scotland or the Scottish Social Services Council. That is a big difference. Prisons are inspected once every four years. Secure care is inspected every year. The staff to child ratios are completely different—they are so much more in favour of the child in secure care.

We have the human rights pathways, the standards and all the wonderful things that prison and secure care share but, from the point of view of straight facts, are we more likely to reduce the risk if we concentrate intensely on the child at the early stage of their offending, even if it is a serious offence, or are we more likely to do that if the child is in a prison? I think that the answer is clear: secure care offers that opportunity.¹⁵⁰

410. Stakeholders supported these measures, and the therapeutic care, rehabilitation and reintegration that secure care provide to the children in their care. When asked whether the public would be reassured that they were genuinely secure, Fiona Dyer of CYCJ stated—

” The secure care centres are secure. I think that, if the public realised what they are actually like, with the children locked in rooms, they would have that confidence. It can be as traumatising for children to go there as it is for them to go to a young offenders institution—well, perhaps it is not as traumatising as those, but it is a harsh reality; it is very secure.¹⁵¹

411. As such, many witnesses stressed that it should only be used as a last resort. Stephen Bermingham of Children’s Hearings Scotland stated—

” In general comment 24 of the Beijing rules, the UN says that deprivation of a child’s liberty should be the last step, that it should happen for as short a time as possible and that it should take place as near as possible to their community. I think that that is the right position. ¹⁵²

412. Whilst many stakeholders recognised that secure care was a more suitable environment for under 18s than a YOI or prison, it was stressed that age-appropriate justice also encompasses community-based support and alternatives to detention – and that further work was required to bolster what was currently available.

413. Ben Farrugia of Social Work Scotland stated—

” Should we have a greater array of services that provide therapeutic care without the need to deprive a child of their liberty? Absolutely, we should. Because of how we have allowed the system to develop over the past two decades, intensive wraparound education and healthcare happen in secure care. That is a weakness, not a strength, of our system. ¹⁵³

414. When Members of the Committee visited YOI Polmont, they made a number of observations. These included the presence of comprehensive medical services on-site including general practice, dentistry, mental health and sexual health. They further noted that this was in combination with what appeared to be specially arranged working relationships with the local NHS board and defined resources. ¹⁵⁴

415. Recognising the key role that healthcare made to young people’s well-being in Polmont YOI, the Committee was keen to explore how that compared with provision in the secure care estate. It noted that secure care providers had built good relationships with local health teams, and that this was primarily down to individual staff in secure care settings. However, it noted that continuity of care was an issue, particularly when individuals came into secure care from other health board areas.

416. When asked whether she would consider the possibility of the NHS providing direct support to ensure that services are more co-ordinated in the future, the Minister responded—

” we will continue to monitor the situation. I do not rule anything out. On your point, we are committed to funding the interventions for vulnerable youth service, which is hosted by Kibble, as you might be aware. [IVY](#) is a specialist psychological and social work service that provides three types of service: professional consultation and advice, psychological assessment and psychological intervention for children who are at risk of harming others. Such support can be given to those on the edge of secure care and to those in secure care settings. We are committed to that service. ¹⁵⁵

417. It should be noted that there was not complete support for the use of secure care when detention of a child is required. COSLA, while supporting the ambition to prohibit placing a 16 and 17 year old in a YOI, advocated reforming secure care "so it meets the needs of children and young people who are deprived of their liberty on care, protection, and justice grounds" and exploring alternative community-based options.

418. Furthermore, it argued that the move towards ceasing the availability of YOIs should be incremental and sequenced appropriately, to allow the current review of secure care, Reimagining Secure Care, to conclude, its recommendations be implemented and the current resourcing and capacity issues addressed.
419. The review is considering the supports and services currently provided by secure accommodation providers and what may be required in the future. It is currently expected to report in Spring 2024.
420. COSLA stated that local government are of the view that alternative trauma-informed and child centred approaches could be developed, by partners across the system, in the interim, until the secure care redesign work is complete.¹⁵⁶
421. As stated earlier, given its policy locus and previous work on children in custody, the Criminal Justice Committee has been designated as a secondary committee to scrutinise this Bill. It has been focussing on the provisions concerning the rights of children in custody and the measures within sections 16 and 17.
422. The Committee notes the conclusions of the [Criminal Justice Committee's Stage 1 report](#), including the strong evidence that it heard from stakeholders that young people aged under 18 should no longer be held in YOIs.
423. The Committee further notes that some witnesses, including Linda Allen, whose daughter Katie completed suicide at Polmont YOI in 2018, told the Criminal Justice Committee that the Bill did "not go far enough", highlighting that it was "quite confusing in terms of the new sentencing guidelines that were published in 2022 and the robust research into neural development".¹⁵⁷
424. Professor Lorraine Johnstone of St Mary's Kenmure similarly noted that the guidelines apply to people under the age of 25, and questioned "why would a bill be introduced that does not reflect that robust research".¹⁵⁸
425. Others, including Wendy Sinclair-Gieben, suggested that age should not be the only factor, calling for individualised assessments and a degree of flexibility to ensure that young people can be placed in the most appropriate setting - based on factors such as maturity and risk.¹⁵⁹
426. The Scottish Government has indicated, however, that it does not plan to extend the provisions beyond 18 (allowing for the exception in the Bill to the age of 19 in certain circumstances). Neither does the Scottish Government plan to implement individualised assessments at the point of sentencing, as suggested by some stakeholders.
427. The Committee notes that the Criminal Justice Committee, based on the limited evidence it heard, believes that there is a case for a more flexible, individualised system based on more than age alone. It further notes that the Criminal Justice Committee recommended that, should there be any increase in the age that a person is sent to secure care rather than a YOI, this should be made by primary legislation.

Capacity

428. The Committee heard a range of evidence relating to the capacity of secure

accommodation providers to cope with the changes outlined in the Bill, including—

- Concerns changes in the Bill may lead to demand for secure beds outstripping supply
- The impact this may have on young people, who may be placed outside their local area
- Complex funding and procurement processes
- The current use of cross-border placements to ensure the 90% occupancy required for secure settings to break even financially.

429. There are currently five secure care centres in Scotland, offering 84 (with 6 additional ‘emergency’ or ‘respite’ places across the centres, which are not within the current secure care contract). Four are independently run by charitable organisations and one directly by the City of Edinburgh Council.
430. In recent years there has been a rise in cross-border placement of children from outwith Scotland as Scottish usage of secure care has fallen, which will be covered in more detail later. However, there are concerns changes proposed by the Bill may lead to demand outstripping supply.
431. Local authorities and the Scottish Government currently approach individual centres in order to arrange secure care placements. Often, placements are decided based on where there are vacancies, rather than the needs of the child.
432. Secure accommodation services must run at 90% occupancy to remain viable. As the number of Scottish children being sent to secure accommodation has fallen, services have become financially dependent on placements from other parts of the UK.
433. While giving evidence at the Committee meeting on 29 March, Kevin Northcott stated that approximately half of Rossie Young People’s Trust current cohort had come on cross-border placements; Alison Gough stated that the figure at Good Shepherd Centre was 25%.
434. St Mary’s Kenmure also have young people from other parts of the UK placed in their care. In her evidence, Claire Lunday stated—
- ” If we are to exist and provide a service to Scottish children and young people, it is absolutely necessary that, when there are a number of empty beds because demand in Scotland is not high, we look to cross-border placements and try to find appropriate matches. I note that it is only when young people can be matched appropriately from England or from the rest of the United Kingdom that we admit them to our service. Without that income subsidy, no service for Scottish children would exist. ¹⁶⁰
435. In her evidence, Fiona Dyer of CYCJ noted that when comparing the number of available places within secure accommodation services with the number of children in young offenders institutions, it was "touch and go" ¹⁶¹ as to whether there is sufficient capacity within the secure care estate on any given day.
436. She highlighted a pilot that the Scottish Government put in place from January to

March 2023 which saw it pay for a bed in each of the independently run secure accommodation services - to ensure that there would be capacity in each facility to accommodate a Scottish child in need of the place.

437. When giving evidence to the Finance and Public Administration Committee on 9 May, on the Bill's Financial Memorandum, the Minister for Children and Young People and Keeping the Promise explained that the Scottish Government was seeking to extend and increase the pilot, to secure four places at each of the four independent secure units, thus ensuring that 16 places will be available across the estate to bolster the financial sustainability of the secure care centres and the availability of places for children and young people in Scotland, when required. ¹⁶²
438. In its [inquiry into secure care in Scotland](#), the Scottish Parliament's Justice Committee in Session 5 concluded that the current funding model for secure care was not sustainable and called on the Scottish Government and COSLA to look at alternative models, such as national commissioning or the use of block funding of places.
439. The Promise identified a lack of clarity about pathways through secure care and decision-making driven by overly-complex funding and procurement arrangements, as well as the detrimental impact of the current competitive contractual framework.
440. Both stressed that planning and provision must reflect the needs of Scotland's children to ensure there are sufficient places for children who require to be placed in secure care.
441. When giving evidence to the Finance and Public Administration Committee on 9 May, the Minister noted—
- ” The work of reimagining secure care will have four phases, and it will involve looking at issues with regard to funding going forward. However, the last bed pilot scheme is the method that we are currently using to look at how to make secure care centres more financially viable. ¹⁶³

18 year olds in secure care

442. Several stakeholders, including the Care Inspectorate, specifically welcomed the provisions in the Bill which would allow a young person to remain in secure care after their 18th birthday, for example, if they were nearing the end of their detention to avoid the young person being moved unnecessarily. ¹⁶⁴ This would ensure that young people would not have to transition to an adult setting for the remainder of their sentence.
443. However, the policy memorandum states that this would only be when it is in the young person's best interests and not contrary to the best interests of other children within the facility.

Managing the risks of the secure care population

444. Whilst the bulk of the evidence the Committee heard related to young people involved in offending, the Committee also received evidence which looked at how the new arrangements might affect other young people in secure care settings, namely those there on welfare grounds. That is, young people who are in secure

accommodation for their own protection. A key concern related to how the risk posed by young people convicted of serious offences to those there on welfare grounds could best be managed.

445. When Kate Wallace of Victim Support Scotland gave evidence to the Criminal Justice Committee, she stated that while there is “merit” in not having under 18s placed in young offenders institutions, care would need to be taken to ensure the “problems in young offenders’ institutions are not replicated in a different institution.”¹⁶⁵

446. The Care Inspectorate highlighted the importance of ensuring the safety and wellbeing of children who would previously have been in prison, but also of other children already residing in secure settings, and staff working with them.

447. However, in her evidence to the Education, Children and Young People Committee, Kate Wallace highlighted feedback that victims had given about the proposals—

” Victims who are in secure accommodation at the moment because of serious welfare concerns are worried that they are going to be put at risk if serious offenders are placed in secure accommodation with them. They would like to know what is going to be put in place to safeguard them there, so they are not put at further risk.”¹⁶⁶

448. In her evidence to the Committee, Alison Gough of Good Shepherd Centre highlighted that, across the secure accommodation estate, there is considerable experience of working with 16 and 17 year olds who have been placed there as a result of welfare concerns or because of offending - balancing their needs and providing effective risk assessment.

449. It was also highlighted by many witnesses, including Alasdair Hogg of SCRA and Fiona Dyer of CYCJ, that there is a strong correlation between young people offending and them having their own welfare needs. Very often, they are the same children¹⁶⁷ and they have fundamentally similar life experiences, adversities and display of harmful behaviours.¹⁶⁸

450. Alison Gough, Kevin Northcott of Rossie Young People’s Trust and Claire Lunday of St Mary’s Kenmure, all explained that they undertake a comprehensive assessment of each child who is placed with them. There are mental and physical health assessments and an education formulation assessment to work out their learning needs. This allows them to build up a holistic picture over several weeks which helps them understand the child and their needs.

451. Claire Lunday of St Mary’s Kenmure—

” part of the immediate admission process is a physical and mental health screening that is followed up within 72 hours by our school nurse. Probably the most important part of the process that informs our plan for young people is the formulation, which involves looking at all aspects of a child’s life from pre-birth to where they are now. The process involves all relevant parties, including the child and anyone who can contribute information about them. We use all that information to inform our approach and understand what has led to the child or young person being in the situation that they are in.

The formulation process is overseen by our specialist interventions team and our consultant clinical and forensic psychologist. We create a plan that informs our care plan for the young person, which belongs to that young person, is informed by them and shared with them. Most importantly, that plan goes with the child beyond their placement in secure care, because secure care should always be time-limited until as soon as it is reasonably possible for the child to move on.¹⁶⁹

452. However, the Care Inspectorate highlighted that it has particular concerns regarding the change that will be required in practice. It explained that, currently, services are required to undertake an admission assessment and reach a decision about whether they can appropriately meet a referred child’s needs (with the ability to terminate a placement post-admission if required). This will change as a result of the Bill. As such, services will need to admit, and hold on to, the children referred to them.

453. The Care Inspectorate concluded—

” This carries a different set of expectations and risk than is currently the case, and is likely to require a cultural shift across the sector. It will be crucial to ensure that relevant professionals and key stakeholders are appropriately engaged to allow exploration of what greater training and support they think is necessary for the secure sector going forward.¹⁷⁰

454. Secure accommodation providers agreed that extra training and support would be required. They highlighted the need to ensure that they are providing—

- a high quality environment for children and staff - in terms of living accommodation but also education/occupational, recreational, health and therapeutic environments;
- well supported and trained staff who can help equip the team to meet both the vulnerabilities and risk needs of children;
- appropriate remuneration for staff, so that they can recruit and retain the right people, to provide the right care, in the right place and at the right time; and
- an environment with a very strong sense of safety, care and compassion but where risk to and from the young people is properly managed to ensure that no event occurs where there is any level of re-traumatisation or further stigmatisation.¹⁷¹

455. In written evidence provided to Committee members when visiting its secure

accommodation service in Montrose, Rossie Young People's Trust highlighted that it had repeatedly asked for data on the profile of young people currently in Polmont, including the types of offences for which they are on remand- or sentenced - to enable it to plan and design services to meet the needs, risks and vulnerabilities of this cohort. However, it stated that this information has not been shared.

456. It explained that this could inform the enhancement of the vocational education and skills that are taught, or assist in reconfiguring living accommodation to help manage the risk and balance the needs of the children placed there. ¹⁷²

457. Despite not having access to the data, when giving evidence at the Committee meeting on 29 March 2023, Kevin Northcott stated that staff at Rossie had been engaging with the Governor and staff at YOI Polmont, to improve their understanding of that cohort of young people, recognising their experience in managing young people who have committed more serious offences. ¹⁷³

458. The Committee recognises the strong support among stakeholders for the provisions that ensure that under 18s will no longer be sent to a YOI or prison.

459. The Committee welcomes this support and agrees that, in the event that a child must be deprived of their liberty, this should be within the secure estate (i.e. a secure accommodation provider).

460. The Committee agrees, however, that it is essential that secure care providers have the resources - in terms of training, staff and stability of funding - to be able to provide the therapeutic care, rehabilitation and reintegration service that children and young people require, as well as being able to provide the protections needed for all who live in secure care.

461. The Committee asks the local Health and Social Care Partnerships to scope out the possibility of formal arrangements with secure accommodation providers in their area, to ensure that young people have timely access to services.

462. Given the vital nature of its work, the Committee is concerned about the financial stability of secure accommodation services and the fact that it depends on such high occupancy rates to be viable.

463. The Committee welcomes the planned expansion of the pilot scheme to increase the number of places held for Scottish children at secure accommodation services, to ensure that there is protected capacity across the secure care estate. It also notes the ongoing Secure Care review and that this is considering the funding of secure care as part of its work.

464. However, it notes that the Secure Care review is not due to report until Spring 2024. The Committee therefore asks the Scottish Government to urgently produce interim findings in relation to how the measures set out in the Bill are likely to affect the financial sustainability of the secure care sector.

465. The Committee would also welcome reassurance that the extension of the pilot will mean that decisions regarding placements can, where at all possible, be based on what is in the best interests of the child, rather than simply where there

is available space.

- 466. Given the concerns about potential capacity issues across the secure care estate, the Committee would urge the Scottish Government to consider publishing data on the capacity of secure care on a monthly basis in order to monitor the impact of the pilot scheme, and to assess where pinch points remain.
- 467. The Committee recognises that secure care providers may have capital costs relating to the re-design of their estates to manage the increase in older young people with more complex needs staying with them, as result of the provisions in the Bill. This might include adjusting existing accommodation arrangements, or putting in place additional security measures, to ensure the safety of other young people. The Committee is concerned that these costs do not currently appear in the Financial Memorandum and suggests that the Scottish Government includes these potential costs when revisiting the Financial Memorandum.
- 468. The Committee notes the Criminal Justice Committee's findings regarding a more flexible, individualised system which isn't based on age alone. The Committee suggests that the Scottish Government conducts a review of international evidence governing the use of individualised assessments at the point of sentencing to help inform any next steps.

Section 18: Meanings of "young offenders institution" and "young offender"

- 469. Section 18 includes provision to make amendments which will change the definition of "young offenders' institution" and "young offender".
- 470. Under section 19 of the Prisons (Scotland) Act 1989, Scottish Ministers have a duty to provide young offenders' institutions (YOIs) - places where offenders sentenced to detention in a YOI, and those aged at least 14 but under 21 who are remanded in custody for trial or awaiting sentence, can be held. As a result of the provisions in the Bill, no one under 18 will now be held in a YOI.
- 471. As such, the Bill amends the 1989 Act so that YOIs are defined as places for the detention of those aged 18 but under 21. The Bill also amends the Prisons and Young Offenders Institutions (Scotland) Rules 2011 which currently define a "young offender" as someone who is aged at least 16 but under 21. The Bill will amend this so that "young offender" will now mean a person aged at least 18 but under 21.

Section 19: Abolition of remand centres

- 472. The Prisons (Scotland) Act 1989 provides that Scottish Ministers have a duty to provide remand centres, i.e. places where those aged at least 14 but under 21 and remanded in custody either for trial or to await sentence can be held.

473. There are no such centres in Scotland. As such, section 19 will remove the duty to provide them. The Bill also repeals any other redundant and unnecessary references to remand centres in legislation.
474. The written evidence received in respect of this section welcomed the provisions it contains. ¹⁷⁴

Sections 20 and 21: Local authority duties in relation to detained children

475. As noted earlier, sections 16 and 17 will define where children can and, in the case of YOIs, cannot be detained, with the result that children who are required to be detained will be placed in secure accommodation.
476. The explanatory notes state that Section 22 of this Bill will provide for an amended definition of secure accommodation, which includes reference to the Children (Scotland) Act 1995.
477. Under section 59 of the Social Work (Scotland) Act 1968, local authorities have a duty to provide and maintain residential establishments that are required for their functions under a number of enactments, however, the list of enactments does not currently include the 1995 Act.
478. Section 20 will therefore add the 1995 Act to that list, so that the duty to provide and maintain residential establishments includes providing and maintaining these establishments for the purposes of local authority functions conferred under or by virtue of the 1995 Act. ¹⁷⁵
479. The explanatory notes state that section 21 will provide that where a child is detained in secure accommodation under section 51, 205, 208 or 216 of the Children (Scotland) Act 1995, the child will be treated as a child “looked after” by the local authority for the purposes of section 17 of the Children (Scotland) Act 1995. Section 17 puts various duties on local authorities, primarily to safeguard and promote the welfare of looked after children, which will now apply to children detained by order of the court in criminal proceedings.
480. Section 21 also provides that a child detained by order of the criminal court is treated as a looked after child for the purposes of sections 29, 30 and 31 of the Children (Scotland) Act 1995. These sections are about the provision of after-care for looked after children after they cease to be so looked after, including financial support for education or training, as well as about reviewing the cases of looked after children. These sections will now apply to detained children as they apply to former looked after children.
481. CYPCS, Who Cares? Scotland and Children's Hearings Scotland broadly welcomed both provisions. Dr Rob Clucas, Director of the Centre for Family Law, Child and Policy, Edinburgh Napier University, said that it was appropriate that children detained in secure accommodation should be treated as 'looked after' children with concomitant duties on the part of the local authority. ¹⁷⁶

482. COSLA and Stirling Council highlighted, however, that there would be cost implications of providing throughcare, aftercare and continuing care to more children. COSLA further highlighted that these costs had not been factored into the Financial Memorandum. Social Work Scotland acknowledged the rationale for change but similarly raised issues about the ability for social work services to deliver this support.

483. The Committee notes the duties that these provisions will place on local authorities in relation to detained children.

484. The Committee is concerned that the cost of this support has not been factored into the Financial Memorandum. It recognises that the Minister has committed to provide updated costings for the Bill and the Committee would expect this support to be costed as part of that work and provided ahead of the Stage 1 debate.

Part 3

485. Part 3 of the Bill 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.

Sections 22 and 23: Secure accommodation

486. The Policy Memorandum explains that the Bill amends the existing definition of secure accommodation. Where previously described in the 2011 Act as being for the purpose of restricting a child's liberty, Section 22 of the Bill will make clear that the overarching purpose of secure care is to deprive a child of their liberty in a locked setting. Children cannot leave freely and are subject to supervision and monitoring while there.
487. Section 22 also clarifies that 'secure accommodation' is accommodation provided in a residential establishment by a secure accommodation service. Such accommodation services must be approved by Scottish Ministers.
488. In its evidence, Who Cares? Scotland ¹⁷⁷ welcomed this clarification in the definition, explaining that this will ensure that the necessary procedural safeguards are in place to comply with Article 5 of the European Convention on Human Rights (right to liberty).
489. While secure care providers feel that the current definition is outdated, and support greater clarity in relation to the deprivation of liberty, some shared concerns that "deprivation of liberty" is the sole focus of the legal definition.
490. Alison Gough of the Good Shepherd Centre highlighted that the accompanying notes to the Bill, and the vision developed by the Secure Care Strategic Board and The Promise, describe secure care as a place of safety, nurture, and recovery to deliver care, education and health and wellbeing supports which will promote children's rights and meet their needs and longer-term potential positive outcomes.
491. However, she argued that the focus on deprivation of liberty in the definition, and the regulatory changes within the Bill, risks enforcing the association between secure care and punishment, which she stated would be in contradiction with the UNCRC and The Promise. ¹⁷⁸
492. Section 23 will amend the Public Services Reform (Scotland) Act 2010, to provide a fuller and clearer definition of what a "secure accommodation service" is, the services that it provides and that they must be approved by Scottish Ministers.
493. This section will set out that a "secure accommodation service" will provide "appropriate care, education and support for the purposes of safeguarding and promoting the welfare of the children who are accommodated there."
494. In its evidence, Who Cares? Scotland suggested that this section be amended to

specify that—

- Therapeutic services are part of the care, education and support provided; and
- The right to advocacy and legal representation is provided. ¹⁷⁹

495. As noted earlier, there is currently a review of secure care taking place, Reimagining Secure Care, which is considering the supports and services currently provided by secure care and what may be required in the future.

496. The Committee notes concerns of secure accommodation providers regarding the definition of secure accommodation. The Committee asks the Scottish Government that, however this section is worded, it reflects the reality that secure care goes well beyond the deprivation of liberty, and must provide care, education, healthcare, support and safeguarding to the children and young people living there.

Sections 24 and 25: Cross-border placements


497. Children and young people can currently be placed in residential care settings in Scotland from other UK jurisdictions. These are known as cross-border placements and can often occur without Scottish authorities being aware that the children are in Scotland.

498. The Policy Memorandum states that section 24 will—

- ensure that any new care service providers must tailor provision to Scotland's particular needs, for example by increasing scrutiny and communication around proposed new services;
- extend the reach of the Care Inspectorate to have an increased role in relation to the registration, regulation, and oversight of care settings where cross-border children are accommodated; and
- require Scottish Ministers to prepare and publish standards and outcomes for care services providing residential accommodation for children subject to a cross-border placement.

499. Section 25 will give Ministers greater flexibility around the kinds of non-Scottish orders that have effect in Scotland and how they have effect. As a result, Scottish Ministers will be able to impose certain requirements in relation to non-Scottish orders, relating to the provision of information, information sharing, provision of services needed to support a child subject to a non-Scottish order and payment of costs incurred.

500. In 2022, the Scottish Government introduced the Cross-border Placements (Effect of Deprivation of Liberty Orders) Regulations 2022 as an interim measure to ensure that certain kinds of cross-border placements to children's residential care in Scotland from the rest of the UK had a statutory basis in Scots law and could be made without having to petition the Court of Session in each case.

501. During its [scrutiny of the regulations](#), the Committee took evidence from stakeholders including CYPSC, Children's Health Scotland and Clan Childlaw as well as the then Minister for Children and Young People, Claire Haughey MSP. At that time, the Minister stated that the Scottish Government was committed to implementing more long-term solutions in the forthcoming Children's Care and Justice Bill. ¹⁸⁰
502. In its evidence, Education Scotland stated that the amendments in this Bill were welcome as there had previously been ambiguity in many areas.
503. CYCJ and CYPSC both welcomed the changes in Section 24 as, in their view, they appear to enhance the level of care that is provided to children in secure care in Scotland.
504. However, Clan Childlaw commented that the Bill leaves the discretion of whether to apply any requirements, standards and outcomes to residential homes providing cross border placements to Scottish Ministers, noting that should any be imposed, there is no guidance as to what these should be.
505. It highlighted concerns that the preparation and publication of standards and outcomes is a mandatory process for care services and social work services for Scottish children and young people. However, for cross border placements it will be discretionary.
506. Clan Childlaw advocated that, as a minimum, "any accommodation in which a child is deprived of their liberty should replicate the secure care criteria and standards and the Bill should state that in terms." ¹⁸¹
507. CELCIS argued that the publication of standards and outcomes is "not an appropriate or adequate solution to ensuring the needs of children are met" as it will not ensure that young people from England have the same access to their rights as Scottish children. ¹⁸²
508. CELCIS stated that it unequivocally supported the introduction of [Secure Care Pathways and Standards](#), which set out what all children in or on the edges of secure care in Scotland should expect across the continuum of intensive supports and services. CELCIS strongly advocated that the Bill stipulates that any care setting in which children are deprived of their liberty must abide by them.
509. When giving evidence to the Committee on 26 April, Jackie Irvine of the Care Inspectorate highlighted—
-  we need to better understand what is proposed in the bill around specific standards and outcomes in relation to cross-border placements, because we would expect the same outcome that we seek for Scottish children. We regulate services using the health and social care standards, which were developed by Healthcare Improvement Scotland and the Care Inspectorate, so we have some anxiety about creating another set of standards, which would give us a twin-track system, when we should be treating children—whether they are from England, Wales or Scotland—against the same standards. We would urge against creating another set of standards for cross-border placements. ¹⁸³

510. She also highlighted that the Inspectorate has been undertaking a 'Secure Care Pathway Review' inspection across Scottish Local Authorities. She explained that the review, due to be published in September 2023, "will tell us a lot about that journey for the child before, during and after secure care." ¹⁸⁴
511. Ben Farrugia of Social Work Scotland welcomed the efforts that the Scottish Government has made to improve the information received from local authorities in other parts of the UK. He also welcomed that the Bill is trying to improve regulation and would welcome further progress in this area - though stated that it would probably not be via this Bill. ¹⁸⁵
512. In respect of section 25, several stakeholders including CYPCS, Who Cares? Scotland, Clan Childlaw and Together Scotland raised concerns that the Bill would not ban cross-border placements, as recommended by the Independent Care Review.
513. Stakeholders, including CELCIS, generally welcomed the explicit statement in the Policy Memorandum that cross-border placements should only occur in exceptional circumstances where the placement is in the best interests of an individual child.
514. When giving evidence to the Committee, Meg Thomas of Includem stated—
- ” It is hard to support or to see a circumstance in which removing a child from their community, connections and family relationships supports their right to a family life and their other rights. However, it is a really complex landscape. The findings of the care review in England will need time to take effect. In Scotland, the reality is that we do not have a say in the legislative decisions that are made in other home nations in relation to children. ¹⁸⁶
515. In her evidence, Claire Lunday of St Mary's Kenmure, however, highlighted examples of when a cross border placement could be in the best interests of the child—
- ” With criminality diversifying as it does -such as serious and organised crime, gangs, child criminal exploitation and child sexual exploitation - the use of cross-border placements can be critical to ensuring safety, breaking associations, and affording children, young people and their families a 'new and safe start'. Thus, in some cases there is a very clear and compelling argument for interrupting their community ties, peer and criminal networks. Our experience of working in secure care has revealed many examples where young people recognise this and explicitly request to be supported to remain in Scotland. Against this context, we believe there is a place for cross border placements but these must be regulated properly. ¹⁸⁷
516. Several stakeholders, including East Ayrshire Advocacy Services, Who Cares? Scotland, Together Scotland, Clan Childlaw and CYPCS, highlighted that further work would be required ahead of Stage 2 to ensure that advocacy support, legal advice and rights representation for children in cross-border placements was explicitly included in the Bill.
517. Stakeholders recognised that the Scottish Government is unable to regulate what happens in a decision-making process by a court in another jurisdiction, including any assessment of what the welfare of the child requires; nor is it responsible for a

lack of appropriate accommodation in other parts of the UK.

518. In her evidence, the Minister for Children and Young People and Keeping the Promise stated that she would soon be meeting with the UK Parliamentary Under-Secretary of State for Children, Families and Wellbeing, Claire Coutinho MP and would use the opportunity to discuss cross-border placements.¹⁸⁸

519. The Committee recommends that the use of cross-border placements should be monitored and assessed by the Care Inspectorate to ensure that they are only used where it is assessed to be better for a child/young person, than a placement closer to home.

520. The Committee believes that young people should be fully included in the planning process for a cross-border placement. Their needs and wishes should be taken into account, alongside an assessment of what is in their best interests, recognising that what the young person wants and what is in their best interests may not always be the same. This process should be clearly set out in guidance for providers offering cross-border placements.

521. However, the Committee notes concerns from stakeholders that—

- young people from England in cross-border placements do not have the same rights as Scottish children, and may also find it more difficult to enforce their rights;
- there is a lack of clarity as to the standards and outcomes for residential homes providing cross border placements; and
- there is a need to ensure advocacy support, legal advice and rights representation for young people subject to cross-border placements.

522. The Committee suggests that further thought be given as to how these issues could best be addressed ahead of Stage 2 consideration of the Bill.

523. The Committee notes from the Minister's evidence that engagement between the Scottish and UK Government is due to take place on this issue. The Committee would welcome an update on this engagement once it has taken place.

Secure transport

524. In the course of the Stage 1 scrutiny of the Bill, the Committee received evidence from a campaign group entitled Hope Instead of Handcuffs. The group highlighted issues, including—

- inappropriate use handcuffs during secure transportation journeys;
- a lack of consistency in the reporting of instances of restraint; and
- the need for an appropriate body to collect, monitor and review data regarding instances of restraint in secure transportation.¹⁸⁹

525. In its written evidence, Hope instead of Handcuffs stated that the lack of provisions within this Bill in respect of secure transportation was an omission, as the regulations proposed for secure accommodation assume that secure transportation will be used and called for measures to address its concerns.
526. In her evidence to the Committee, Megan Farr from CYPSC noted that, while not in the Bill, the Scottish Government's earlier consultation on the Bill provisions had included proposals regarding transportation.
527. CYPSC highlighted points that it had made in response to that consultation, including—
- children under 18 should never be transported in adult secure transport or in the company of adult prisoners; and
 - decisions about the appropriate transport for a child should be made on an individual basis, taking into account their best interests, based on national minimum standards to ensure consistency of approach.
528. In terms of restraint, CYPSC advocated a single coherent legal framework to cover every circumstance in which children in the care of the State may be subject to restraint, seclusion or restrictive practices, including secure transport.¹⁹⁰
529. Standard 14 of the Secure care: Pathway and standards introduced in 2020 states children and young people should—
- ” ‘...fully understand what to expect of my transport and admission to secure care and I am treated with dignity, compassion, sensitivity and respect. Someone I know and trust comes with me.’¹⁹¹
530. Duties relating to secure transport lie principally with the local authority responsible for the child's placement. Transport is purchased by individual authorities on a spot purchase basis. Local authorities have long-standing issues associated with secure transport, including the limited availability of Scottish based providers; the combination of planned and unplanned journeys; limited regulation; and the lack of standards and expectations for services.
531. The Committee heard in evidence that COSLA, the Scottish Government and other stakeholders are currently working to develop guidance on secure transport, including the issue of restraint.
532. The Committee believes that such work should take into account the issues uncovered in evidence, including ensuring that transport is safe, person-centred and locally based as far as is practicable
533. During the Committee meeting on 22 March, CYCJ suggested that, given the urgent need for changes to current practice, that these could be brought about via non-statutory means initially. CYPSC was clear, however that, in its view, any guidance on restraint needs to be on a statutory basis to ensure that it is applied consistently across care and healthcare settings.¹⁹²
534. In their evidence, secure accommodation providers explained that there are few secure transport providers who are trauma-informed and appropriate for children.

As a result, they are dependent on providers from mid- and Southern England, to transport children on journeys. This means that there can be lengthy waits to transport a child short distances, for instance from Glasgow Sheriff Court to Bishopbriggs, ¹⁹³ a journey of only six miles.

535. Providers called for discussion as to how the situation regarding secure transport could be improved as the current situation is "not easily managed for any of the secure providers or the local authorities who place children in our care." ¹⁹⁴

536. In his evidence on 26 April, Councillor Tony Buchanan of COSLA, suggested that secure accommodation providers should be allowed to provide secure transport as part of the care service that they provide. ¹⁹⁵

537. Ben Farrugia of Social Work Scotland concurred, stating that it is "an obvious solution to have the care providers providing transport". He acknowledged that there would be costs and resource implications for such a move. However, he stressed that it had to be discussed and the issue resolved as—

” “Every month, I hear about a case or an individual example of a child who has had a completely inappropriate experience in relation to transport, which is reflected in the evidence that the committee has received. We must bring that to an end as soon as possible.” ¹⁹⁶

538. Laura Pasternak of Who Cares? Scotland highlighted recent examples where young peoples’ experiences had fallen short of expected secure care standards and stated that her organisation would support mandatory reporting of journeys. ¹⁹⁷

539. She shared an example of a young person who had been woken on Christmas Eve to be taken to secure accommodation but had been lied to by the staff member about where they were going—

” The young person told us:

“He said do you want to go to McDonalds? I said, ‘Sound man, let’s go’. I put my best tracksuit on. On the journey there, he asked me ‘what are you getting?’. I said, ‘A Big Mac ...’ We were on the M8, then he passed by McDonalds. I said to him, ‘McDonalds is that way’. He said, ‘You’re going to secure mate.’” ¹⁹⁸

540. Hope instead of Handcuffs suggested that the Care Inspectorate be the body to review data collected on secure transportation, as is the case in Wales.

541. However, Jackie Irvine of the Care Inspectorate explained that the Care Inspectorate is currently unable to regulate transport, particularly if it is based outwith Scotland. She explained that, were the Care Inspectorate to be given this role, it would require a change to primary legislation, and additional resources. ¹⁹⁹

542. When giving evidence to the Committee on 3 May, the Minister for Children and Young People and Keeping the Promise recognised that there was an issue with the availability of secure transport provision in Scotland and confirmed that further consideration was under way as to who is best placed to provide a secure transport service and whether it should be a regulated, registered service.

543. The Minister also indicated that the Scottish Government was considering whether amendments concerning secure transport could be lodged at Stage 2 or 3.²⁰⁰

544. The Committee believes that the use of some secure transport providers (e.g. those in the South of England) is inefficient, resulting in unacceptable delays for both children and secure accommodation services. Given the significant travel involved to transport children for short distances, the Committee does not believe that current practice provides good value for money.

545. The Committee recognises that the Scottish Government, COSLA and other stakeholders are currently working to develop guidance on secure transport.

546. The Committee urges them, as part of this work, to identify why secure accommodation providers often only source secure transport for children from outwith Scotland. It also urges the group to conduct a Children's Rights Impact Assessment on the specific issue of secure transportation, to ensure that the needs of children and young people are at the forefront of any future reforms.

547. The Committee urges the Scottish Government to ensure that, in future, secure transport operators are—

- sourced as locally as possible;
- are appropriately trained in trauma-informed practice; and
- are fully regulated.

548. The Committee is concerned by the apparent inconsistencies in the reporting of incidents of restraint within a secure transport environment. It believes that incidents of restraint should be logged, reported and analysed regularly.

549. The Committee recognises and welcomes COSLA's support for secure transport to be regulated to similar standards as secure accommodation.

550. The Committee welcomes the Scottish Government's commitment to consider these issues ahead of Stage 2.

Part 4

551. Part 4 of the Bill 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.

Section 26: Antisocial behaviour orders relating to children

552. Section 26 will amend the Antisocial Behaviour etc. (Scotland) Act 2004 so that, except in one respect, "child" in that Act will mean a person under 18. The exception is in the case of parenting orders, which currently can be made by the sheriff under section 13 of the 2014 Act only in respect of children under 16. That exception will remain and this is achieved by the amendment of section 13 contained in subsection (2) of section 3.
553. Stakeholders including Social Work Scotland, Who Cares? Scotland, SCRA, St Mary's Kenmure, The Promise Scotland and CYPSC agreed with the proposals to amend the age of a child for antisocial behaviour orders, to align this with changes made elsewhere in the Bill and UNCRC.
554. While Includem and CYCJ welcomed the greater harmonisation across legislation that would be brought about by the amendment, they both called for antisocial behaviour orders not to be used. They stated that evidence indicates that they are ineffective, particularly if they are not supported by robust whole family support which mitigates structural inequalities.
555. In its evidence, Police Scotland stated that it was supportive of aligning the age of a child to under 18 years old and, where 16 and 17 year olds have a tenancy and are suspected to be engaging in anti-social behaviour, they will now have access to the Children's Hearing System.
556. Police Scotland warned, however, that an unintended consequence may be that registered social landlords (RSL), who would have previously seen an ASBO for 16 and 17 year old tenants as a means to support landlords in their tenancy, and to protect their property as well as other tenants, may now view the Children's Hearing System route as ineffective and restrict access to these older young people. It stated that this could have an unintended consequence of increasing homelessness for young people, unless other supportive measures were made available to prevent this.²⁰¹
557. The Committee notes the support for the provisions in section 26 of the Bill from stakeholders.
558. The Committee acknowledges the concerns of Police Scotland regarding the potential unintended consequences of these measures.

559. The Committee therefore asks the Scottish Government to monitor 16 and 17 year olds, and their access to accommodation with a Registered Social Landlord, to ensure that it is not being impacted by this Bill.

Section 27: Named person and child's plan

560. Section 27 repeals Part 4 (provision of named persons) and Part 5 (Child's Plan) of the Children and Young People (Scotland) Act 2014.
561. As part of the Getting It Right For Every Child (GIRFEC) policy, children, young people and their families can access the support of a named person, should they require information, advice or help. However, there is no obligation to accept the offer of advice or support from a named person.
562. Part 4 (provision of named persons) of the Children and Young People (Scotland) Act 2014 would have made statutory provision for every child and young person to have a named person.
563. As set out in the [Looked After Children \(Scotland\) Regulations 2009](#), all 'looked after children' should have a child's plan.
564. Part 5 of the Children and Young People (Scotland) Act 2014 would have extended this to children with a wellbeing need, which means if the child's wellbeing is being, or is at risk of being, adversely affected by any matter.
565. As previously stated, Parts 4 and 5 of the Children and Young People (Scotland) Act 2014 have never been in force and the repeal of these sections will not affect the existing named person or child's plan practice.
566. Generally stakeholders who commented on these provisions, such as Social Work Scotland and CYCJ, agreed with them.
567. In its evidence, the Care Inspectorate stated that it recognised the need to repeal Parts 4 and 5 of the Children and Young People (Scotland) Act 2014, following the withdrawal of the Children and Young People (Information Sharing) (Scotland) Bill and the refreshed GIRFEC practice guidance on the role of the named person published last year.
568. However, it highlighted that the refresh of the child's plan & supporting guidance is not yet available and called for this to be brought forward without further delay to support good practice in planning to meet children's needs.²⁰²

569. The Committee notes the support for the provisions in section 27 of the Bill from stakeholders.
570. It further notes the Care Inspectorate's call for the refresh of the child's plan & supporting guidance to be brought forward and asks the Scottish Government to

indicate when that is likely to be published.

Conclusion

571. The Committee recognises that it is essential that the public understands the rationale for the changes brought about by this Bill, and the benefits that they are intended to bring, both to children and young people and to communities more generally through a reduction in harmful behaviour and a reduction in re-offending.
572. The Committee recognises that support provided by social work teams to children referred to the Children's Hearing System is critical to them recovering and/or being able to move on from offending behaviour. It notes with concern, however, that resources and time are already stretched.
573. The Committee shares the concerns of the Finance and Public Administration Committee regarding the lack of financial information contained in the Financial Memorandum, in relation to all aspects of the Bill.²⁰³ While we understand that some of these costs would be included in secondary legislation in due course, these estimates would not be subject to the same level of Parliamentary scrutiny as if they had been presented in the Financial Memorandum. Therefore, the Committee believes that these should all be included in any revised costings.
574. Furthermore, the Committee notes that the Finance and Public Administration Committee was not convinced that the way costs were set out in the Financial Memorandum [in line with policy areas rather than the provisions in the Bill] provides the clarity and transparency necessary for detailed scrutiny. The Committee therefore seeks more information from the Scottish Government regarding its rationale for using this approach on this Bill.
575. The Committee welcomes the reassurance from the Minister that updated costings will be provided, and that these will take account of inflation.
576. However, the Committee agrees with the Financial and Public Administration Committee that the Scottish Government should revisit, for clarity, its formula for calculating the draw on social work resource, given the significant concerns raised in evidence to both Committees.
577. The Committee agrees with the Finance and Public Administration Committee that it is critical that the best possible full and sufficient costings and information is placed before Parliament for scrutiny ahead of Stage 1 votes.
578. While the Committee notes that the Minister indicated to the Finance and Public Administration Committee that updated costings would not be presented until after Stage 1, the Committee is firmly of the view that an updated Financial Memorandum must be provided for scrutiny ahead of the Stage 1 debate.
579. The Committee notes the strong support amongst stakeholders, to raise the age at which a young person is defined as a "child" and can therefore be referred to a children's hearing.
580. The Committee recognises the concerns raised by many stakeholders, in relation

to how the provisions in this Bill may interact with a range of existing legislation pertinent to children and young people. The Committee believes that, ahead of Stage 2, there should be detailed analysis of all such legislation and consideration of how best to ensure an alignment of approach, which takes into account both children's need for protection and their evolving capacity to participate in decisions affecting them.

581. The Committee also notes the suggestion from the Faculty of Advocates that a root and branch review of the definition of "child" across Scots law be carried out, to ensure consistency and reduce complexity and asks the Scottish Government for its view of this suggestion.
582. The Committee notes that the Financial Memorandum sets 17.5 years as the likely effective cut-off date for referral to children's hearings on offence grounds. This decision appears to be based primarily around the length of time it might take for a case to be processed, rather than any factors relating to the child's best interests.
583. The Committee remains unconvinced that reducing the age to 17.5 years for these purposes is a) in the spirit of the Bill and b) 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.
584. Whilst noting that the most serious offences will continue to be dealt with via the Lord Advocate's Guidelines, and therefore may end up in court, the Committee acknowledges that, in order to be compliant with UNCRC, any young person up to the age of 18, who is accused of an offence, should have access to age-appropriate justice.
585. The Committee is concerned by evidence heard around the timescales from referral to children's hearing to a decision being made being too long. The Committee therefore calls for further exploration about how these timescales could be reduced.
586. The Scottish Government should also explore how providing support to young people beyond 18 may impact on the Children's Hearings System.
587. The Committee acknowledges the considerable effort and commitment of the volunteer Children's panel members, chairs and staff in delivering a Children's Hearings System across Scotland.
588. The Committee recognises that there will be an increase in 16 and 17 year olds being referred on offence grounds as a result of this Bill, and that some of these offences will be more serious in nature.
589. The Committee further recognises that there will be an increase in 16 and 17 year olds being referred solely on welfare grounds, and that some of these young people will have complex needs.
590. The Committee believes that it will be critical for all panel members to receive

training to equip them to respond effectively to these young people.

591. The Committee recognises the concerns of stakeholders regarding the potential for young people to accept offence grounds without understanding the full implications of that decision.
592. The Committee notes the recommendation from the Hearings System Working Group report that children should be fully informed of their right to legal representation and also that there should be an exploration and understanding of whether the current mechanism for them to access legal aid and their right to legal support is sufficient. The Committee supports these recommendations and believes, should the current mechanism be found to be insufficient, that children be provided with legal representation in all cases where a child is attending a Children's Hearing on offence grounds.
593. The Committee recognises the importance of the work that is carried out by panel members and staff, social work teams and a wide range of other agencies, currently working to support children and young people referred to the Children's Hearing System. It acknowledges that the measures in this Bill will increase those referrals, increasing the number of hearings and the complexity of the cases before panel members. Recognising the additional pressures this may place on the Children's Hearing System and agencies supporting it, the Committee believes it is crucial that these factors are fully costed and taken into account when the Scottish Government updates the figures currently set out in the Financial Memorandum.
594. The Committee therefore notes the Minister's evidence to the Finance and Public Administration Committee that costings for the Bill will be updated to reflect the skills and training needs required as a result of the Bill, and be based on the higher number of projected hearings.
595. These updated costings must be provided ahead of the Stage 1 debate.
596. The Committee acknowledges the significant resourcing and training challenges that implementation of this Bill will pose to a number of key agencies, including Children's Hearings Scotland, SCRA and local authorities.
597. The Committee also notes the reassurances provided in evidence, for example, by Children's Hearings Scotland, that this resource will be in place ahead of the Bill's implementation (e.g. in relation to the recruitment of additional panel members).
598. However, given the significant risks associated with these recruitment, resourcing and training challenges not being met, the Committee urges the Scottish Government to work with Children's Hearings Scotland to set clear targets and timescales for the recruitment and training of new panel members and to outline what additional actions will be taken to address any deviation from these targets/ timescales in a timely manner.
599. The Committee also urges Children's Hearings Scotland to monitor and report upon the retention of existing panel members, in order to identify whether the

changes brought about by the Bill are negatively impacting upon this.

600. The Committee notes the recommendations of the Hearings System Working Group final report, *The Hearings for Children*. The Committee further notes, should all the recommendations be implemented, this would have a significant impact on the way the Children's Hearing System works. The Committee urges the Scottish Government to set out how this will affect the timescales for implementing the measures in this Bill.
601. The Committee recognises the concerns of stakeholders that the provisions in Section 3 could lead to putting the onus on victims to avoid people and locations that could be harmful to them.
602. The Committee also notes the lack of clarity as to how the measures in Section 3 would be monitored and enforced.
603. The Committee therefore asks the Scottish Government to set out how prohibitions will be implemented, monitored and reviewed and how they will protect children at risk of offending and/or at risk of harm.
604. Whilst the Committee recognises that Movement Restriction Conditions (MRCs) can provide an alternative to secure accommodation, MRCs have the potential to significantly restrict a child's liberty and may in fact amount to a deprivation of liberty. As such, they should be subject to a rigorous threshold test, to ensure that an MRC is a necessary and proportionate response to the risks posed to or by the child. In all cases, MRCs must be accompanied by an intensive package of support and their use time-limited.
605. The Committee recognises that MRCs are only appropriate in very limited circumstances and, in order for them to be applied successfully, they need to be accompanied by a package of intensive support. The Committee is concerned that potential costs for such support have not been included within the Financial Memorandum. The Committee therefore urges the Scottish Government to set out exactly how this will be resourced, when revisiting the costs associated with this Bill.
606. The Committee has significant concerns in relation to proposals in the Bill to amend the current threshold test for MRCs and specifically the use of the term "psychological harm". Given the subjectivity of this term, the Committee agrees with stakeholders that an objective test should be added, 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.
607. The Committee also believes that clear guidance and training should be provided to panel members to ensure that decisions about such "severe harm" are taken in an informed manner and applied consistently across Scotland.
608. Further, the Committee believes that the use of MRCs for these purposes should be closely monitored to ensure they are used appropriately. The Committee urges the Scottish Government to commit to bringing forward amendments at

Stage 2 to address these issues.

609. The Committee notes that a decision to impose an MRC should only be taken where it is in the best interests of the child, a proportionate response to the risks posed to or by the child, and where other less restrictive measures have been fully explored. The Committee notes the Scottish Government's stated intention that MRCs should not be used more frequently in future than they are at present. Again, the Committee requests that appropriate monitoring is put in place to ensure that MRCs are used only when appropriate and also asks that the Scottish Government carries out an evaluation of the use of MRCs and their impact on the outcomes of the young people.
610. The Committee believes that the Scottish Government should urgently address the issues identified in relation to the automatic provision of legal representation i.e. to ensure that the child has access to a solicitor at the point at which an MRC is being considered. It should amend the Bill at Stage 2 to ensure this important safeguard is reinstated.
611. As with section 4, the Committee believes that any threshold test should ensure that a secure care authorisation is a necessary and proportionate response to the risks posed to or by the child. The Committee is concerned that the new test is too subjective without the addition of an objective test.
612. The Committee believes that this provision in Section 5 should be amended at Stage 2 of the Bill's consideration.
613. The Committee recognises that it is often challenging to balance the rights of those offending against those of people harmed by that offending. This is particularly true where both parties are children.
614. The Committee acknowledges the critical role that information sharing can play in allowing victims to plan for their safety and wellbeing.
615. The Committee notes the call of some stakeholders, including Victim Support Scotland, for a victim notification scheme to operate within the Children's Hearings System as it does within the criminal justice system. The Committee recognises that stakeholders also called for improvements to this scheme.
616. The Committee supports the Criminal Justice Committee's request that the Scottish Government considers 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.
617. The Committee notes that only 13-14% of victims or their families are requesting information from SCRA. The Committee urges SCRA to undertake research to understand why the rate is so low.
618. The Committee recognises that the Scottish Government has committed to roll out the Bairns' Hoose model for all child victims and witnesses of violence. The Committee notes that stakeholders are unclear as to how this Bill will align with the Bairns' Hoose model roll out and asks the Scottish Government to clarify how

these measures will work together.

619. The Committee strongly supports the need for victims, witnesses and their families to have ready access to information and support to navigate their way through the criminal justice or Children's Hearings System. The Committee acknowledges that a single point of contact was cited by many stakeholders as a good way to facilitate this.
620. The Committee notes that the Bill provides flexibility with regard to support for those beyond the age of 18. It therefore asks the Scottish Government to consider how this principle could be applied to those being referred on offence grounds who are older than 17.5 years, but under 18.
621. The Committee recognises that extending supervision and guidance for young people will put additional pressure on local authority budgets. The Committee therefore calls for this to be reflected in the resources allocated to local authorities to implement this change.
622. The Committee welcomes the policy intention of this Bill, namely that it should remove the majority of under 18s from the adult justice system. However, in doing so, it also recognises the views of the UN Committee on the Rights of the Child that age-appropriate justice should not be contingent on the severity of the offence of which the child is accused.
623. The Committee welcomes that the Lord Advocate will retain the ability to authorise prosecution, when it is in the public interest. However, it urges the Scottish Government to consider which measures could be put in place to ensure that a child proceeding through the adult justice system, rather than the Children's Hearings System, should also have access to age-appropriate justice, including putting in place safeguards and measures designed to help them better understand and participate in proceedings.
624. The Committee recommends that when the Lord Advocate's Guidelines are next revisited, careful consideration is given as to how the views of the child or young person are 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. In making this recommendation, the Committee is mindful that this process should include the views both of the young person accused of an offence and any young person harmed as a result of that behaviour.
625. The Committee welcomes the enhancement of rights for 16 and 17 years that are contained within the provisions in Section 11.
626. The Committee shares the concerns of the Criminal Justice Committee about the capacity of Police Scotland and local authorities to ensure that these rights can be realised. Specifically, the Committee is concerned that there is a lack of suitable solicitors to advise young people in some areas across Scotland. Similarly, appropriate alternatives to police custody (i.e. places of safety) are not easily accessible in all areas. The Committee is conscious that the provisions in this Bill may place additional pressure on already over-stretched resources. As

such, the Committee urges the Scottish Government to work with relevant agencies to assess where the current gaps are, and to address these ahead of the Bill's implementation.

627. The Committee notes the Scottish Government's assurances to the Criminal Justice Committee that local authorities will be able to advise Police Scotland about the appropriateness of any adult who is to be contacted about a child's detention. The Committee endorses the Criminal Justice Committee's request that the Scottish Government seeks to prevent individuals with the potential to exploit vulnerable young people, such as organised crime groups, from being able to do so.
628. The Committee welcomes the Minister's stated intention that the provisions in this Bill, and those in the Victims, Witnesses and Justice Reform (Scotland) Bill, will be closely aligned. The Committee would welcome sight of any analysis carried out by the Scottish Government to inform this process to date and an indication of which amendments the Scottish Government believes might be required to each Bill to ensure this alignment. The Committee asks that this be provided ahead of Stage 2 consideration.
629. The Committee asks the Scottish Government to clarify when reporting restrictions begin to apply when there is a suspected offence involving a child.
630. The Committee would also welcome the Scottish Government's views on the other changes suggested by Dr Andrew Tickell and Seonaid Stevenson-McCabe regarding—
- The ability of children and young people to waive their anonymity, without committing a criminal offence;
 - Removing the Scottish Government's power to dispense with reporting restrictions;
 - Increasing the maximum penalty for violating reporting restrictions; and
 - Updating of reporting restrictions in civil as well as criminal cases which involve children, to bring greater consistency.
631. The Committee notes the evidence received and welcomes recent developments in relation to specialist provision for young people accused of offences in court settings.
632. Whilst there is evidence of recent good practice and innovation in the court system in many parts of Scotland, much remains to be done to ensure all under 18s have access to age-appropriate justice. The Committee recommends that this work commences without delay.
633. The Committee notes that a key aim of the Bill is to bring about positive change for all 16 and 17 year olds involved in offending. However, as currently drafted, any additional protections may only be available to those up to the age of 17.5 years.

634. The Committee does not believe that it is fair that the Bill treats young people over the age of 17.5 years but under 18, differently, purely on the basis of how long it might take for agencies to put in place support.
635. The Committee requests that the Scottish Government urgently addresses these concerns to ensure that all under 18s in Scotland have access to age-appropriate justice.
636. The Committee recognises the strong support among stakeholders for the provisions that ensure that under 18s will no longer be sent to a YOI or prison.
637. The Committee welcomes this support and agrees that, in the event that a child must be deprived of their liberty, this should be within the secure estate (i.e. a secure accommodation provider).
638. The Committee agrees, however, that it is essential that secure care providers have the resources - in terms of training, staff and stability of funding - to be able to provide the therapeutic care, rehabilitation and reintegration service that children and young people require, as well as being able to provide the protections needed for all who live in secure care.
639. The Committee asks the local Health and Social Care Partnerships to scope out the possibility of formal arrangements with secure accommodation providers in their area, to ensure that young people have timely access to services.
640. Given the vital nature of its work, the Committee is concerned about the financial stability of secure accommodation services and the fact that it depends on such high occupancy rates to be viable.
641. The Committee welcomes the planned expansion of the pilot scheme to increase the number of places held for Scottish children at secure accommodation services, to ensure that there is protected capacity across the secure care estate. It also notes the ongoing Secure Care review and that this is considering the funding of secure care as part of its work.
642. However, it notes that the Secure Care review is not due to report until Spring 2024. The Committee therefore asks the Scottish Government to urgently produce interim findings in relation to how the measures set out in the Bill are likely to affect the financial sustainability of the secure care sector.
643. The Committee would also welcome reassurance that the extension of the pilot will mean that decisions regarding placements can, where at all possible, be based on what is in the best interests of the child, rather than simply where there is available space.
644. Given the concerns about potential capacity issues across the secure care estate, the Committee would urge the Scottish Government to consider publishing data on the capacity of secure care on a monthly basis in order to monitor the impact of the pilot scheme, and to assess where pinch points remain.
645. The Committee recognises that secure care providers may have capital costs

relating to the re-design of their estates to manage the increase in older young people with more complex needs staying with them, as result of the provisions in the Bill. This might include adjusting existing accommodation arrangements, or putting in place additional security measures, to ensure the safety of other young people. The Committee is concerned that these costs do not currently appear in the Financial Memorandum and suggests that the Scottish Government includes these potential costs when revisiting the Financial Memorandum.

646. The Committee notes the Criminal Justice Committee's findings regarding a more flexible, individualised system which isn't based on age alone. The Committee suggests that the Scottish Government conducts a review of international evidence governing the use of individualised assessments at the point of sentencing to help inform any next steps.
647. The Committee notes the duties that the provisions in Sections 20 and 21 will place on local authorities in relation to detained children.
648. The Committee is concerned that the cost of this support has not been factored into the Financial Memorandum. It recognises that the Minister has committed to provide updated costings for the Bill and the Committee would expect this support to be costed as part of that work and provided ahead of the Stage 1 debate.
649. The Committee notes concerns of secure accommodation providers regarding the definition of secure accommodation. The Committee asks the Scottish Government that, however this section is worded, it reflects the reality that secure care goes well beyond the deprivation of liberty, and must provide care, education, healthcare, support and safeguarding to the children and young people living there.
650. The Committee recommends that the use of cross-border placements should be monitored and assessed by the Care Inspectorate to ensure that they are only used where it is assessed to be better for a child/young person, than a placement closer to home.
651. The Committee believes that young people should be fully included in the planning process for a cross-border placement. Their needs and wishes should be taken into account, alongside an assessment of what is in their best interests, recognising that what the young person wants and what is in their best interests may not always be the same. This process should be clearly set out in guidance for providers offering cross-border placements.
652. However, the Committee notes concerns from stakeholders that—
 - young people from England in cross-border placements do not have the same rights as Scottish children, and may also find it more difficult to enforce their rights;
 - there is a lack of clarity as to the standards and outcomes for residential homes providing cross border placements; and

- there is a need to ensure advocacy support, legal advice and rights representation for young people subject to cross-border placements.

653. The Committee suggests that further thought be given as to how these issues could best be addressed ahead of Stage 2 consideration of the Bill.
654. The Committee notes from the Minister's evidence that engagement between the Scottish and UK Government is due to take place on the issue of cross-border placements. The Committee would welcome an update on this engagement once it has taken place.
655. The Committee believes that the use of some secure transport providers (e.g. those in the South of England) is inefficient, resulting in unacceptable delays for both children and secure accommodation services. Given the significant travel involved to transport children for short distances, the Committee does not believe that current practice provides good value for money.
656. The Committee recognises that the Scottish Government, COSLA and other stakeholders are currently working to develop guidance on secure transport.
657. The Committee urges them, as part of this work, to identify why secure accommodation providers often only source secure transport for children from outwith Scotland. It also urges the group to conduct a Children's Rights Impact Assessment on the specific issue of secure transportation, to ensure that the needs of children and young people are at the forefront of any future reforms.
658. The Committee urges the Scottish Government to ensure that, in future, secure transport operators are—
- sourced as locally as possible;
 - are appropriately trained in trauma-informed practice; and
 - are fully regulated.
659. The Committee is concerned by the apparent inconsistencies in the reporting of incidents of restraint within a secure transport environment. It believes that incidents of restraint should be logged, reported and analysed regularly.
660. The Committee recognises and welcomes COSLA's support for secure transport to be regulated to similar standards as secure accommodation.
661. The Committee welcomes the Scottish Government's commitment to consider these issues ahead of Stage 2.
662. The Committee notes the general support for the provisions in section 26 of the Bill from stakeholders.
663. The Committee acknowledges the concerns of Police Scotland regarding the potential unintended consequences of these measures.

- 664. The Committee therefore asks the Scottish Government to monitor 16 and 17 year olds, and their access to accommodation with a Registered Social Landlord, to ensure that it is not being impacted by this Bill.
- 665. The Committee notes the support for the provisions in section 27 of the Bill from stakeholders.
- 666. It further notes the Care Inspectorate's call for the refresh of the child's plan & supporting guidance to be brought forward and asks the Scottish Government to indicate when that is likely to be published.
- 667. The Committee agrees to the general principles of the Children (Care and Justice) (Scotland) Bill at Stage 1.

Annex A - Minutes of Meetings

Extracts from the minutes of meetings of the Education, Children and Young People Committee—

[10th Meeting, Wednesday 22 March 2023](#)

Agenda Item 1 - Children (Care and Justice) (Scotland) Bill:

The Committee heard evidence on the Bill at Stage 1 from—

Alistair Hogg, Head of Practice and Policy, Scottish Children's Reporter Administration (SCRA);

Kenny Donnelly, Procurator Fiscal, Policy and Engagement, Crown Office and Procurator Fiscal Service; and

Superintendent Claire Dobson, Partnerships, Prevention and Community Wellbeing Division, Police Scotland

and then from—

Megan Farr, Policy Officer, Children and Young People's Commissioner Scotland;

Fiona Dyer, Director, Children's and Young People's Centre for Justice; and

Katy Nisbet, Head of Legal Policy, Clan Childlaw.

Agenda Item 2 - Evidence Session (In Private):

The Committee considered the evidence it heard earlier under agenda item 1.

[11th Meeting, Wednesday 29 March 2023](#)

Agenda Item 1 - Children (Care and Justice) (Scotland) Bill:

The Committee took evidence on the Bill at Stage 1 from—

Alison Gough, Director, The Good Shepherd Centre;

Kevin Northcott, Deputy Chief Executive Officer, Rossie Young People's Trust;

Claire Lunday, Headteacher, St Mary's Kenmure Secure Care Centre; and

Gerald Michie, Governor, HMP & YOI Polmont and Sue Brookes, Interim Director for Strategy and Stakeholder Engagement, Scottish Prison Service;

and then from—

Sheriff David Mackie, Chairperson, Hearings System Working Group;

Chloe Riddell, Policy Lead, The Promise Scotland;

Meg Thomas, Head of Research, Policy & Participation, Includem;

Kate Wallace, Chief Executive Officer, Victim Support Scotland; and

Laura Pasternak, Policy & Public Affairs Manager, Who Cares? Scotland.

Agenda Item 3 - Evidence Session (In Private):

The Committee considered the evidence it heard earlier under agenda item 1.

The Committee agreed to seek further information on Bairns Hoose. It also agreed to write to the five secure care accommodation providers.

[12th Meeting, Wednesday 26 April 2023](#)

Agenda Item 3 - Children (Care and Justice) (Scotland) Bill:

The Committee heard evidence on the Bill at Stage 1 from—

Jenny Brotchie, Regional Manager, Scotland, Information Commissioner's Office;

Ben Farrugia, Director, Social Work Scotland;

Councillor Tony Buchanan, Councillor East Renfrewshire Council and Children and Young People Spokesperson, COSLA;

Jackie Irvine, Chief Executive, Care Inspectorate; and

Stephen Bermingham, Head of Practice and Policy, Children's Hearings Scotland.

Agenda Item 4 - Children (Care and Justice) (Scotland) Bill:

The Committee considered the recent visits to Polmont YOI and secure care providers.

Agenda Item 5 - Evidence Session (In Private):

The Committee considered the evidence it heard earlier under agenda item 3.

[13th Meeting, Wednesday 3 May 2023](#)

Agenda Item 1: Children (Care and Justice) (Scotland) Bill:

The Committee heard evidence on the Bill at Stage 1 from—

Natalie Don MSP, Minister for Children, Young People and Keeping the Promise,

Brendan Rooney, Bill Manager and

Deborah Nolan, Bill Team Professional Adviser.

Agenda Item 2 - Children (Care and Justice) (Scotland) Bill (In Private):

The Committee considered the evidence it had heard on the Children (Care and Justice) (Scotland) Bill.

[17th Meeting, Wednesday 31 May 2023](#)

Agenda Item 1 - Children (Care and Justice) (Scotland) Bill (In Private):

The Committee considered and agreed amendments to the draft Stage 1 report.

[18th Meeting, Wednesday 7 June 2023](#)

Agenda Item 3 - Children (Care and Justice) (Scotland) Bill (In Private):

The Committee considered a draft report. Various changes were agreed to. The Committee agreed to delegate to the Convener responsibility for finalising the draft report for publication.

The Committee considered the arrangements for publication of the report. The Committee agreed, by division, that Members would not comment on the report during the embargo period, prior to publication. For 8 (Sue Webber, Ben MacPherson, Bob Doris, Pam Duncan-Glancy, Ross Greer, Bill Kidd, Ruth Maguire, Willie Rennie), Against 1 (Stephen Kerr), Abstentions 0.

- 1 Children (Care and Justice)(Scotland) Bill, Policy Memorandum
- 2 Education, Children and Young People Committee meeting of 3 May 2023, Col 3
- 3 Education, Children and Young People Committee meeting of 22 March 2023, Col 10
- 4 Children 1st written evidence
- 5 Ellen written evidence
- 6 Children (Care and Justice)(Scotland) Bill, Policy Memorandum, Para. 174
- 7 Centre for Youth and Criminal Justice written evidence
- 8 Scottish Children's Reporter Administration written evidence
- 9 Barnardo's Scotland written evidence
- 10 Education, Children and Young People Committee meeting of 22 March 2023, Col 4
- 11 Scottish Children's Reporter Administration written evidence
- 12 Education, Children and Young People Committee meeting of 22 March 2023, Col 32
- 13 Shannon Valentine written evidence
- 14 Elaine Sutherland, Professor Emerita at University of the Stirling written evidence
- 15 Education, Children and Young People Committee meeting of 22 March 2023, Col 14
- 16 Dumfries & Galloway Council written evidence
- 17 Care Inspectorate written evidence
- 18 Scottish Children's Reporter Administration written evidence
- 19 Education, Children and Young People Committee meeting of 26 April 2023, Col 19
- 20 Finance and Public Administration Committee, 9 May 2023, Cols 25
- 21 Letter from the Finance and Public Administration Committee to the Education, Children and Young People Committee, dated 19 May 2023
- 22 East Lothian Council Children's Services written evidence
- 23 Centre for Youth and Criminal Justice written evidence
- 24 Howard League Scotland written evidence
- 25 Education, Children and Young People Committee meeting of 22 March 2023, Col 2
- 26 Education, Children and Young People Committee meeting of 22 March 2023, Col 32
- 27 Criminal Justice Committee meeting of 29 March 2023, Col 26

- 28 [The development of cognitive and emotional maturity in adolescents and its relevance in judicial contexts, by University of Edinburgh for the Scottish Sentencing Council, January 2020](#)
- 29 [Faculty of Advocates written evidence](#)
- 30 [Police Scotland written evidence](#)
- 31 [Social Work Scotland written evidence](#)
- 32 [Elaine Sutherland, Professor Emerita at University of the Stirling written evidence](#)
- 33 [Professor Colin McKay, Centre for Mental Health and Capacity Law, Edinburgh Napier University written evidence](#)
- 34 [Scottish Biometrics Commissioner written evidence](#)
- 35 [Elaine Sutherland, Professor Emerita at University of the Stirling written evidence](#)
- 36 [The 3 'P's resource, Open University](#)
- 37 [Education, Children and Young People Committee meeting of 3 May 2023, Col 4](#)
- 38 [Faculty of Advocates written evidence](#)
- 39 [Scottish Children's Reporter Administration written evidence](#)
- 40 [Social Work Scotland written evidence](#)
- 41 [Scottish Mental Health Law Review Final Report, published September 2022](#)
- 42 [Professor Colin McKay, Centre for Mental Health and Capacity Law, Edinburgh Napier University written evidence](#)
- 43 [Professor Colin McKay, Centre for Mental Health and Capacity Law, Edinburgh Napier University written evidence](#)
- 44 [Recommendation 12.26, Scottish Mental Health Law Review Final Report, published September 2022](#)
- 45 [Recommendation 12.27, Scottish Mental Health Law Review Final Report, published September 2022](#)
- 46 [Includem written evidence](#)
- 47 [Education, Children and Young People Committee meeting of 29 March 2023, Col 34](#)
- 48 [Children's Hearings Scotland written evidence](#)
- 49 [Education, Children and Young People Committee meeting of 3 May 2023, Col 14-15](#)
- 50 [Education, Children and Young People Committee meeting of 29 March 2023, Col 35](#)
- 51 [Scottish Children's Reporter Administration written evidence](#)
- 52 [Clan Childlaw written evidence](#)

- 53 [Rape Crisis written evidence](#)
- 54 [Education, Children and Young People Committee meeting of 29 March 2023, Col 53-54](#)
- 55 [Education Scotland written evidence](#)
- 56 [Mental Health Foundation written evidence](#)
- 57 [St Mary's Kenmure written evidence](#)
- 58 [Children 1st written evidence](#)
- 59 [Clan Childlaw written evidence](#)
- 60 [Education, Children and Young People Committee meeting of 22 March 2023, Col 56](#)
- 61 [Education, Children and Young People Committee meeting of 22 March 2023, Col 57](#)
- 62 [Hearings System Working Group final report, The Hearings for Children, The Redesign](#)
- 63 [Education, Children and Young People Committee meeting of 29 March 2023, Col 37-38](#)
- 64 The Age of Criminal Responsibility (Scotland) Act 2019 raised the age at which a child is deemed to have the capacity to commit a crime, from 8 to 12. It was brought into force on 17th December 2021. Prior to this change, children between 8 and 12 could not be prosecuted in the criminal courts but could be held to have committed an offence and thus dealt with through the Children's Hearings System on that basis.
- 65 The number of children referred to the Reporter has increased for the first time since 2006/07, following 14 consecutive years of decrease. The Reporter suggests that this is most likely an impact of Coronavirus and lockdowns rather than any wider system trend. Therefore, any conclusions drawn from this data should be treated with caution.
- 66 [Finance and Public Administration Committee, 9 May 2023, Cols 29](#)
- 67 [Inspiring Scotland written evidence](#)
- 68 [Police Scotland written evidence](#)
- 69 [Education, Children and Young People Committee meeting of 29 March 2023, Col 38-39](#)
- 70 [Scottish Children's Reporter Administration written evidence](#)
- 71 [Good Shepherd Centre written evidence](#)
- 72 [Good Shepherd Centre written evidence](#)
- 73 [Children \(Care and Justice\)\(Scotland\) Bill, explanatory notes](#)
- 74 [Includem written evidence](#)
- 75 [Rape Crisis Scotland written evidence](#)

- 76 [Children's Hearings Scotland written evidence](#)
- 77 [Childen's Hearings Scotland Practice and Procedure Manual](#), Pg 246
- 78 [Children \(Care and Justice\)\(Scotland\) Bill, Policy Memorandum](#)
- 79 [Education, Children and Young People Committee, 22 March 2023, Col 17](#)
- 80 [Education, Children and Young People Committee meeting of 3 May 2023, Col 9](#)
- 81 [Who Cares? Scotland written evidence](#)
- 82 [Education, Children and Young People Committee meeting of 29 March 2023, Col 55](#)
- 83 [Clan Childlaw written evidence](#)
- 84 [Clan Childlaw written evidence](#)
- 85 [Children and Young People's Commissioner for Scotland written evidence](#)
- 86 [Education, Children and Young People Committee meeting of 3 May 2023, Col 10-11](#)
- 87 [Scottish Women's Aid written evidence](#)
- 88 [Education, Children and Young People Committee meeting of 29 March 2023, Col 57](#)
- 89 [Children 1st written evidence](#)
- 90 [Education, Children and Young People Committee meeting of 29 March 2023, Col 22-23](#)
- 91 [Children and Young People's Centre for Justice written evidence](#)
- 92 [Education, Children and Young People Committee, 22 March 2023, Col 17](#)
- 93 [Aberdeenshire Council written evidence](#)
- 94 [Clan Childlaw written evidence](#)
- 95 [Education, Children and Young People Committee meeting of 3 May 2023, Col 9](#)
- 96 [Care Inspectorate written evidence](#)
- 97 [Children and Young People's Commissioner for Scotland written evidence](#)
- 98 [Education, Children and Young People Committee meeting of 26 April 2023, Col 22](#)
- 99 [Education, Children and Young People Committee meeting of 29 March 2023, Col 33](#)
- 100 [Children's Hearings Scotland written evidence](#)
- 101 [Education, Children and Young People Committee meeting of 22 March 2023, Col 14](#)
- 102 [Education, Children and Young People Committee meeting of 29 March 2023, Col 45](#)
- 103 [Education, Children and Young People Committee meeting of 26 April 2023, Col 22](#)

- 104 [Law Society of Scotland written evidence](#)
- 105 [Police Scotland written evidence](#)
- 106 [Education, Children and Young People Committee meeting of 26 April 2023, Col 23](#)
- 107 [Children 1st written evidence](#)
- 108 [Education, Children and Young People Committee meeting of 29 March 2023, Col 36-37](#)
- 109 [Children 1st written evidence](#)
- 110 [Children 1st written evidence](#)
- 111 [Education, Children and Young People Committee meeting of 29 March 2023, Col 61](#)
- 112 [Police Scotland written evidence](#)
- 113 [Who Cares? Scotland written evidence](#)
- 114 [Education, Children and Young People Committee meeting of 26 April 2023, Col 5](#)
- 115 [Education, Children and Young People Committee meeting of 29 March 2023, Col 36](#)
- 116 [Education, Children and Young People Committee meeting of 26 April 2023, Col 6](#)
- 117 [COSLA written evidence](#)
- 118 [Social Work Scotland written evidence](#)
- 119 [Dr Michal A Piegzik , Centre for Mental Health and Capacity Law, Edinburgh Napier University written evidence](#)
- 120 [Clan Childlaw written evidence](#)
- 121 [Clan Childlaw written evidence](#)
- 122 [Rape Crisis Scotland written evidence](#)
- 123 [Scottish Women's Aid written evidence](#)
- 124 [Elaine Sutherland, Professor Emerita at University of the Stirling written evidence](#)
- 125 [Education, Children and Young People Committee meeting of 22 March 2023, Col 6](#)
- 126 [Education, Children and Young People Committee meeting of 22 March 2023, Col 6](#)
- 127 [Education, Children and Young People Committee meeting of 22 March 2023, Col 3](#)
- 128 [Education, Children and Young People Committee meeting of 26 April 2023, Col 39](#)
- 129 [Education, Children and Young People Committee meeting of 26 April 2023, Col 39](#)
- 130 [Aberdeenshire Council written evidence](#)
- 131 [Children and Young People's Commissioner for Scotland written evidence](#)

- 132 [Dr Andrew Tickell and Seonaid Stevenson-McCabe written evidence](#)
- 133 [Children and Young People's Commissioner for Scotland written evidence](#)
- 134 [Children and Young People's Commissioner for Scotland written evidence](#)
- 135 [Victims, Witnesses, and Justice Reform \(Scotland\) Bill, explanatory notes](#)
- 136 [Education, Children and Young People Committee meeting of 3 May 2023, Col 22](#)
- 137 [Education, Children and Young People Committee meeting of 22 March 2023, Col 19](#)
- 138 [Scottish Courts and Tribunal Service written evidence](#)
- 139 [Sheriffs' and Summary Sheriffs' Association written evidence](#)
- 140 [Together Scotland written evidence](#)
- 141 [Clan Childlaw written evidence](#)
- 142 [Education, Children and Young People Committee meeting of 22 March 2023, Col 35](#)
- 143 [Children \(Care and Justice\)\(Scotland\) Bill, Policy Memorandum, Para. 197](#)
- 144 [Howard League Scotland written evidence](#)
- 145 [Scottish Government's Youth Justice Vision](#)
- 146 [Education, Children and Young People Committee meeting of 29 March 2023, Col 13](#)
- 147 [Education, Children and Young People Committee meeting of 29 March 2023, Col 20](#)
- 148 [Children's Hearings Scotland written evidence](#)
- 149 [Education, Children and Young People Committee meeting of 29 March 2023, Col 20](#)
- 150 [Criminal Justice Committee meeting of 29 March 2023, Col 24-25](#)
- 151 [Education, Children and Young People Committee meeting of 22 March 2023, Col 51](#)
- 152 [Education, Children and Young People Committee meeting of 26 April 2023, Col 16](#)
- 153 [Education, Children and Young People Committee meeting of 26 April 2023, Col 16](#)
- 154 [Letter from Michael Marra MSP to the Committee, dated 2 May 2023](#)
- 155 [Education, Children and Young People Committee meeting of 3 May 2023, Col 25](#)
- 156 [COSLA written evidence](#)
- 157 [Criminal Justice Committee meeting of 29 March 2023, Col 4](#)
- 158 [Criminal Justice Committee meeting of 29 March 2023, Col 4](#)
- 159 [Criminal Justice Committee meeting of 29 March 2023, Col 41](#)
- 160 [Education, Children and Young People Committee meeting of 29 March 2023, Col 12](#)

- 161 [Education, Children and Young People Committee meeting of 22 March 2023, Col 50](#)
- 162 [Finance and Public Administration Committee, 9 May 2023, Cols 25 and 36](#)
- 163 [Finance and Public Administration Committee, 9 May 2023, Col 36](#)
- 164 [Education, Children and Young People Committee meeting of 26 April 2023, Col 5](#)
- 165 [Criminal Justice Committee meeting of 29 March 2023, Col 5](#)
- 166 [Education, Children and Young People Committee meeting of 29 March 2023, Col 44](#)
- 167 [Education, Children and Young People Committee meeting of 22 March 2023, Col 4](#)
- 168 [Centre for Youth and Criminal Justice written evidence](#)
- 169 [Education, Children and Young People Committee meeting of 29 March 2023, Col 7-8](#)
- 170 [Care Inspectorate written evidence](#)
- 171 [St Mary's Kenmure written evidence](#)
- 172 [Rossie Young People's Trust Supplementary Information, 24 April 2023 \[](#)
- 173 [Education, Children and Young People Committee meeting of 29 March 2023, Col 14](#)
- 174 [Children and Young People's Commissioner for Scotland written evidence](#)
- 175 [Children \(Care and Justice\)\(Scotland\) Bill, explanatory notes](#)
- 176 [Dr Rob Clucas, Director of the Centre for Family Law, Child and Policy, Edinburgh Napier University written evidence](#)
- 177 [Who Cares? Scotland written evidence](#)
- 178 [Good Shepherd Centre written evidence](#)
- 179 [Who Cares? Scotland written evidence](#)
- 180 [Letter from Minister for Children and Young People to Education, Children and Young People Committee, dated 23 May 2022.](#)
- 181 [Clan Childlaw written evidence](#)
- 182 [CELCIS written evidence](#)
- 183 [Education, Children and Young People Committee meeting of 26 April 2023, Col 35-36](#)
- 184 [Education, Children and Young People Committee meeting of 26 April 2023, Col 6](#)
- 185 [Education, Children and Young People Committee meeting of 26 April 2023, Col 36-37](#)
- 186 [Education, Children and Young People Committee meeting of 29 March 2023, Col 47](#)

- 187 [St Mary's Kenmure written evidence](#)
- 188 [Education, Children and Young People Committee meeting of 3 May 2023, Col 26](#)
- 189 [Hope instead of Handcuffs written submission](#)
- 190 [Children and Young People's Commissioner for Scotland supplementary written evidence](#)
- 191 [Secure care: Pathway and standards](#)
- 192 [Education, Children and Young People Committee meeting of 22 March 2023, Col 48](#)
- 193 [Education, Children and Young People Committee meeting of 29 March 2023, Col 15-17](#)
- 194 [Education, Children and Young People Committee meeting of 29 March 2023, Col 16](#)
- 195 [Education, Children and Young People Committee meeting of 26 April 2023, Col 30](#)
- 196 [Education, Children and Young People Committee meeting of 26 April 2023, Col 31-32](#)
- 197 [Education, Children and Young People Committee meeting of 29 March 2023, Col 41](#)
- 198 [Education, Children and Young People Committee meeting of 29 March 2023, Col 41](#)
- 199 [Education, Children and Young People Committee meeting of 26 April 2023, Col 31-35](#)
- 200 [Education, Children and Young People Committee meeting of 3 May 2023, Col 29](#)
- 201 [Police Scotland written evidence](#)
- 202 [Care Inspectorate written evidence](#)
- 203 [Letter from the Finance and Public Administration Committee to the Education, Children and Young People Committee, dated 19 May 2023](#)

