



Children's Care and Justice Bill

Call for Views – Education, Children and Young People Committee

About Together (Scottish Alliance for Children's Rights)

Together (Scottish Alliance for Children's Rights) is an alliance that works to improve the awareness, understanding and implementation of the UN Convention on the Rights of the Child (UNCRC) and other international human rights treaties across Scotland. We have over 500 members ranging from large international and national non-governmental organisations (NGOs) through to small volunteer-led after school clubs and interested professionals. The views expressed in this submission are based on wide consultation with our members but may not necessarily reflect the specific views of each and every one of our member organisations. Members' own responses should also be taken into account.

Introduction

Together (Scottish Alliance for Children's Rights) welcomes the opportunity to comment on policy proposals for the Children's Care and Justice Bill. Our response analyses proposals from a children's rights perspective. It draws upon the articles of the United Nations Convention on the Rights of the Child (UNCRC), guidance set out in General Comment 24,¹ the Council of Europe's Guidelines on Child-friendly Justice² and other instruments.

Together recognises that children who engage in harmful behaviour are some of the most vulnerable in society and are often victims and witnesses of harm themselves. As such, they require responses that are centred around their care, protection and reintegration. The UN Committee on the Rights of the Child is clear that strictly punitive approaches are contrary to children's human rights.³

As Scotland moves towards incorporating the UNCRC into law, it is essential that existing law, policy and practice are assessed for their compatibility with the UNCRC. The Children's Care and Justice Bill provides an opportunity to review certain aspects of care and justice legislation but there are many other issues that require attention. This includes other areas within justice, such as the minimum age of criminal responsibility which remains below international standards, as well as matters relating to children's health, education and the age of marriage.⁴ A comprehensive review of existing law, policy and practice across *all* areas is required to identify these gaps and the actions required to secure compliance.

It is essential that the maximum available resources are directed towards the progressive realisation of children's rights and that the principle of non-regression is fully upheld.^{5 6} Our response outlines several concerns related to resourcing and the Financial Memorandum.

We are concerned that the Bill does not specify a commencement date, instead leaving this to Scottish Government's discretion. Taking into account the resourcing issues highlighted throughout this response, our view is that a phased approach should be taken to commencement and implementation. Scottish Government should identify where there are existing rights breaches and

1 CRC/C/GC/24.

2 Council of Europe (2010). *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*, CM/Del/Dec(2010)1098/10.2abc-app6.

3 CRC/C/GC/24: Para 76.

4 Together (2023). *State of Children's Rights Report*, p15.

5 Article 4 UNCRC

6 CRC/GC/2003/5

prioritise implementation and resourcing in these areas – for example, ending the placement of children in Young Offenders Institutions and reforms to cross-border placements. Thereafter, Scottish Government should turn its attention to aspects which should be achieved through progressive realisation over time. A phased approach which ensures the minimum obligations to children and young people are met, before moving to the progressive realisation of children’s rights across the justice system will help to ensure support services are sufficiently and sustainably resourced to deliver the policy objectives of the Bill.

We are grateful to have had sight of submissions from our members: Who Cares? Scotland, Scottish Women’s Aid, Children 1st, CELCIS and Clan Childlaw, as well as from the Children and Young People’s Commissioner Scotland and The Promise Scotland. We have drawn from these submissions in preparing our response.

Part 1: Children’s Hearings System

Question 8. The Bill widens access to the Children’s Hearings system to all 16- and 17-year-olds. What are your views on this?

Together welcomes the proposal to increase the maximum age of referral to 18, in line with the UNCRC definition of a child.⁷ This change will enable more children to benefit from the welfare-based approach of the Children’s Hearings System, helping to address concerns raised by the UN Committee on the Rights of the Child that further action was needed to prevent children being drawn into the adult system.⁸ The move will also address unequal treatment of 16- and 17-year-olds not subject to a Compulsory Supervision Order (CSO), who were previously excluded from the Children’s Hearings System.

We are concerned that the Financial Memorandum suggests 17.5 years old is likely to be the “*practical cut-off for offence referrals*” to allow time for grounds to be accepted or established, or orders made.⁹ This appears to undermine the policy intention of enabling “all” 16- and 17-year-olds to access the Children’s Hearings System. It also raises questions around non-discrimination (Article 2 UNCRC) and conflicts with the UN Committee’s clear guidance that the “relevant date” for assessing age should be the date of the alleged offence.¹⁰ These issues must be scrutinised and clarified as the Bill moves through parliament.

Further, it is essential that the Scottish Parliament has sufficient time to review the findings of The Hearings System Working Group (HSWG). The HSWG, chaired by Sheriff Mackie, is due to publish its report in May 2023 setting out detailed proposals to redesign the Children’s Hearings System and ensure children’s lived experience informs these changes. We support and endorse the comments made by The Promise Scotland - it is crucial that MSPs are able to draw from this report when considering amendments to the Bill.

Finally, Scottish Government must allocate sufficient resources to support the expansion of the Children’s Hearings System and other changes proposed by the Bill if it is to fully deliver on its policy intention. For example, we note evidence from our members around resources needed to ensure

⁷ Article 1 UNCRC

⁸ CRC/C/GBR/CO/5.

⁹ Financial Memorandum: Para 13.

¹⁰ CRC/C/GC/24: Paras 29 and 31: “Child justice systems should also extend protection to children who were below the age of 18 at the time of the commission of the offence but who turn 18 during the trial or sentencing process.”

access to independent advocacy (Who Cares? Scotland), support for child victims (Scottish Women's Aid, Children 1st), access to legal representation (Clan Childlaw), and recruitment and training of Safeguarders (Children 1st).

Question 9. The Bill suggests that the law should be changed so that most offences committed by 16- and 17-year-olds will be dealt with through the Children's Hearings system in future. What are your views on this?

Together supports the maximum use of the Children's Hearings System for people who were under 18 at the time of the alleged offence.

We recognise that raising the age of referral will result in more children coming through the Children's Hearings System on offence grounds, including the potential for more serious offences. It is crucial that sufficient investment is made to support this change. The Financial Memorandum here needs to be evidence based, with detailed consideration of how many more children will come through the Children's Hearings System, on which grounds and at what additional cost.

We note the Bill does not affect the discretion of the Lord Advocate or Procurator Fiscal to bring criminal proceedings in court when they consider it appropriate to do so. By contrast, the UN Committee requires countries to "*ensure a non-discriminatory full application of their child justice system to all persons below the age of 18 years at the time of the offence*".¹¹ The UN Committee is clear that countries that treat certain children as adults (for example, due to the type of offence) should change their laws and ensure the child justice system applies to *all* those aged under 18 at the time of the alleged incident.¹² Accordingly, our view is that *all* offences by children should be dealt with through the Children's Hearings System. We echo and support the submission from Clan Childlaw that adult courts – despite the changes proposed in the Bill – are not an appropriate forum for children.

We acknowledge concerns raised by Scottish Women's Aid that increasing the age of referral must uphold the rights of all children, including victims of domestic abuse and their right to recovery from trauma (Article 39 UNCRC). It is essential that the Children's Hearings System understands the needs and experiences of these children and that Scottish Government commits sufficient resources to ensure they are properly supported.

Question 10. The Bill makes several changes to Compulsory Supervision Orders. What are your views on these proposed changes?

Directions authorising restriction of liberty (Section 2)

The proposals around CSOs must be examined in the context of the child's right to be protected from unlawful deprivation of liberty as set out in Article 5 ECHR and Article 37 UNCRC. These provisions require that any deprivation or restriction of this right must be lawful, necessary and proportionate. Article 37 UNCRC is clear that any deprivation of liberty should be "*in conformity with the law, and shall be used only as a measure of last resort and for the shortest appropriate period of time*".

Under the current law, a CSO may include a requirement for the child to reside at a specified place and a direction authorising a person to "restrict" the child's liberty to the extent considered

¹¹ CRC/C/GC/24: Para 30.

¹² CRC/C/GC/24: Para 30.

appropriate. The Bill proposes clarifying that this power does not authorise the person to “deprive” the child of their liberty. The UN Committee is clear that a deprivation of liberty includes:

“Any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by any judicial, administrative or other public authority.”

As such, our view is that measures under this section may still amount to unlawful deprivation of liberty. The proposed clarification does not prevent this. We echo the Children and Young People’s Commissioner Scotland’s proposals around the need for additional procedural safeguards.

Prohibitions (Section 3)

The Bill allows additional restrictive measures to be included in a CSO, such prohibiting the child from entering a certain place or prohibiting the child from approaching or communicating with (or attempting to approach or communicate with) a person or group of people, whether directly or through a third party. It will be necessary to assess these proposals in light of children’s rights to freedom of expression and association, restrictions of which must be lawful, necessary and proportionate.¹³ The UN Committee’s General Comment 25 and Human Rights Committee General Comment 37 offer guidance in the context of children’s rights in the digital environment.¹⁴

We note the Policy Memorandum states these conditions are distinct from and less intrusive than movement restrictions conditions (MRC). However, we note they are not subject to any preconditions or specific monitoring arrangements in the way that MRCs are – we would appreciate reassurance that Scottish Government is not in effect creating a restriction “akin to” an MRC but without the associated safeguards. We note calls from Scottish Women’s Aid and Children 1st for greater clarity around monitoring and non-compliance.

Movement restriction conditions (MRCs) (Section 4)

A movement restriction condition (MRC) can be attached to a CSO or interim CSO. It sets out the manner in which the child’s liberty will be restricted and uses electronic monitoring (a ‘tag’) to monitor compliance.

The Bill proposes lowering the threshold for imposing an MRC. Under the current law, the test for imposing an MRC is the same as that for secure accommodation. The Bill removes the requirement of previously absconding and specifies that an MRC can be applied where the child’s “physical mental or moral welfare is at risk” and/or “the child is likely to cause physical or psychological harm to another person”. The Bill notes psychological harm can include fear, alarm and distress but does not offer any objective element to be included in this test. Scottish Government states the policy aim is to “broaden the circumstances in which a movement restriction condition may be imposed”. This raises concerns around potential ‘net-widening’. It will be important to consider the potential effects at both the upper and lower reaches of the spectrum - i.e. does the widening of criteria mean that more children are being put on MRC who otherwise would have gone into secure care (with resulting decrease in use of secure care), or are more children being drawn into the system who otherwise would not have been made subject to a measure. Our clear view is that MRCs should only be used as an alternative to secure care. We echo and support calls from the Children and Young

¹³ CRC/C/GC/25: Paras 65 and 119.

¹⁴ CRC/C/GC/25; CCPR/C/GC/37: Paras 6 and 34.

People's Commissioner Scotland that the threshold of "risk" should be strengthened, for example by referring to "significant risk" or "severe harm".

We are concerned that the Financial Memorandum does not make any cost predictions for use of MRCs.¹⁵ The Policy Memorandum considers them a "costly measure" due to the package of intensive support offered alongside them, yet the Financial Memorandum does not estimate the associated costs for social work departments.¹⁶ The Policy Memorandum says MRCs are fairly uncommon and "as a result" there has been no evaluation of their usage.¹⁷ The UN Committee emphasises the importance of estimating costs to enable budget planners and relevant decision makers to make informed decisions about resources required for implementation.¹⁸ Accordingly, Scottish Government should evaluate current MRC use with a view to understanding the rights impacts and estimating costs. Where there is a lack of clarity as to the financial implications, Scottish Government should demonstrate its commitment to children's rights by dedicating the maximum available resources. There is a real risk that existing resource and staffing issues – for example those currently affecting social work¹⁹ – will be exacerbated if the rollout is not carefully planned and managed, and children will suffer as a result.

Our clear view is that an MRC has the potential to constitute a deprivation of liberty in some circumstances. As such, in all cases where an MRC is being considered, children should have automatic access to legal representation as is the case for secure care orders.²⁰ Decoupling MRCs from secure care orders is no justification for reducing children's access to legal representation. Scottish Government should ensure that sufficient resources are committed to upholding children's rights to participation (Article 12 UNCRC) and to a fair hearing (40 UNCRC) by ensuring they have access to specialist legal advice (Article 37(d) UNCRC).

Although not a creation of this Bill, we are concerned by the broad regulation-making powers held by Scottish Government to prescribe more intrusive forms of tracking. At present, electronic tags that monitor MRC compliance use radio signals to confirm whether or not the child is at a specified place. Importantly, they do not operate as GPS trackers yet the Explanatory Notes envisage this could be a future possibility.²¹ Any proposals to monitor children's movements more closely or change arrangements for data sharing must be subject to robust scrutiny and safeguards that uphold children's rights to privacy and data protection (Article 16 UNCRC).

Secure accommodation authorisation (section 5)

The Bill proposes amending the criteria for secure care authorisation, including that it can be used in situations where the child is likely to cause "fear, alarm and distress" to another person. Our view is that this threshold is concerningly low and risks disproportionate responses that constitute an unlawful deprivation of liberty. We support the proposal by the Children and Young People's Commissioner Scotland that this threshold should be amended so that it requires a "significant risk" or "severe harm". We echo calls from Who Cares? Scotland and Clan Childlaw that greater emphasis is needed on community intensive support packages.

15 Financial Memorandum: Para 39.

16 Financial Memorandum: Para 52.

17 Policy Memorandum: Para 63.

18 CRC/C/GC/19: Para 73.

19 Together (2023). State of Children's Rights Report, p45.

20 S v Miller (No 1) 2001 S.L.T 531; Article 37(d) UNCRC.

21 Explanatory Notes, p7.

Question 11. What impact (if any) do you think the Bill could have on young people who have been harmed by another young person?

We recognise that those impacted by children’s harmful behaviour are often children themselves and require special care and attention to ensure their rights are simultaneously met. As stated in the Council of Europe’s Guidelines on Child-friendly justice, *all* children “be they a party to proceedings, a victim, a witness or an offender – should benefit from the ‘children first’ approach”.²² We note that Scottish Government’s 2022 consultation included questions around additional support for victims, particularly child victims, including proposals for a single point of contact. However, these have not been included in the Bill. The rights of victims should be fully considered by the Committee as the Bill progresses, taking into account the development of the Bairns’ Hoose model.

We refer the Committee to submissions by Scottish Women’s Aid and Children 1st for discussion that draws from the views and experiences of child victims.

Question 12. The Bill makes changes to the current law around when information should be offered to a person who has been affected by a child’s offence or behaviour. What are your views on what is being suggested?

Together recognises the important role that information plays for victims (particularly child victims) in having their experiences validated and knowing that harmful behaviour has been taken seriously. All children have a right to information and the right to have their views heard and taken into account (Articles 12, 13, 17 UNCRC). Children also have the right to recovery from trauma (Article 39). From the perspective of the child who engaged in harmful behaviour, the provision of information to victims has clear implications for their right to privacy (Article 16 UNCRC, Article 8 ECHR) alongside implications for data protection. Accordingly, it is crucial that careful consideration is given to the type of information that may be provided to victims and the level of detail this should contain.

We note the changes proposed relate solely to advising the victim of their right to *request* information (i.e. what was previously discretionary will become a duty to inform). The Bill does not grant an automatic right to *receive* information, nor does it change the rules and processes for determining what information can be shared. As highlighted in our 2022 response, the Council of Europe Guidelines on Child-friendly Justice encourage the sharing of “all relevant and necessary” information with victims,²³ while the UN Guidelines on Justice in matters Involving Child Victims and Witnesses of Crime promote a similar approach based on what is “feasible and appropriate” to provide.²⁴ We support the proposal’s aim of ensuring that victims are aware of their right, while ensuring that disclosure of information is not automatic but remains based on careful consideration of the specific case, circumstances and best interests of all children involved. Information sharing must be proportionate and the rules on what information can be shared and when must be set out clearly. Greater clarity is needed around how the best interests of children (including victims) will be

²² Council of Europe (2010). *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*. p8.

²³ Council of Europe (2010). *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*. p38, para 50.

²⁴ ECOSOC Resolution 2005/20. *UN Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime: Paras 19-20*.

determined when deciding whether to share information, drawing from General Comment 14.²⁵ Any information intended for child victims must be communicated in a child-friendly, trauma-informed manner and in a format that they will be able to understand. It should also explain in simple terms why some information cannot be shared.

The above notwithstanding, our clear view is that informing victims of their right to request information is no substitute for wider support to uphold their right to recovery under Article 39. This must be subject to further scrutiny by the Committee.

Question 13. Do you wish to say anything else about the proposals to increase the age at which young people can be referred to a Children’s Hearing?

As already highlighted, Scottish Government must provide sufficient resources to support the expansion of the Children’s Hearings System if it is to fully deliver on its ambition. We are concerned that the Financial Memorandum is incomplete and therefore underestimates costs. The projections are based on a practical cut off of 17.5 years old and do not take account of those diverted from prosecution or where no further action was taken under the current system.²⁶ Reference is made to potential development of an “alternative panel model” for more complex cases, yet no costs have been identified.²⁷ Advocacy costs are projected based on current uptake levels (10%) and do not appear to accommodate factors such as the likelihood of more serious offences being dealt with through the Children’s Hearings System and the possibility of greater advocacy need as a result. We note existing issues in accessing independent advocacy services as highlighted by Who Cares? Scotland. There is a need for clarity as to how advocacy services will link in with a national lifelong advocacy service for Care Experienced people through The Promise – a coordinated approach will ensure most effective and efficient use of resources.

The UN Committee acknowledges that resources are finite, and so governments should “implement legislation, policies and programmes that are strategically designed to overcome the challenges of realising the rights of the child” (emphasis added).²⁸ The UN Committee is also clear that preventative spend is essential to fully uphold children’s human rights.²⁹ As such, Scottish Government should frontload its initial budget in order to deliver on longer term commitments, simultaneously demonstrating its commitment to children’s human rights.

Part 2: Criminal Justice and Procedure

Question 14. The Bill makes several changes to existing Criminal Justice and Procedure. These are related to raising the age at which young people can be referred to the Children’s Hearings System. Do you have any comments on these proposals?

Definition of a child (sections 8-9)

Together welcomes the changes made to the *Criminal Procedure (Scotland) Act 1995* to ensure that “child” is understood as meaning any person under 18, in line with Article 1 UNCRC.

²⁵ CRC/C/GC/14

²⁶ Financial Memorandum: Para 17.

²⁷ Financial Memorandum: Para 24.

²⁸ CRC/C/GC/19: Para 59.

²⁹ CRC/C/GC/19: Para 9.

Authorisation by the Lord Advocate (section 10)

Together supports the consequential change to require authorisation by the Lord Advocate for prosecution of any child aged 12-18. The proposal will end the discriminatory approach by which authorisation is currently only required for prosecution of children aged 12-15 but not for children aged 16 or 17. However, additional safeguards will be needed to ensure that prosecution in court is only used as a last resort.

Safeguards in police custody (section 11)

Together supports the extension of safeguards in police custody to all under 18s. This will further Scotland's commitment to incorporation and implementation of the UNCRC by ending the previous distinction between under-16s (and 16-17-year-olds with a CSO) and over-16s as regards access to safeguards. The changes will include that no under 18s will have the ability to waive the right to have a solicitor present at police interview, that a place of safety should not be a police station except in limited circumstances, and the local authority will be informed whenever an under 18 is taken into police custody. Again, these changes will have significant resource implications – particularly around provision of legal representation - which must be taken into account if the Bill is to deliver on its stated aims.

The Policy Memorandum reflects that the evolving capacities of the child must be respected but in such a way that does not mean older children have a lower degree of protection. We support that the Bill navigates this by allowing additional powers for over 16s – including that they can choose to have a different adult notified of their custody other than their parent/carer (the local authority will be notified if they do not wish to notify an adult).

Reporting restrictions (sections 12-13):

We support the extension of reporting restrictions to cover the investigation and pre-trial phase. However, we note these restrictions can be dispensed with by a sheriff “in the interests of justice”. This is a vague test and has the potential to be highly subjective. There is a need for greater clarity on how this test will be applied and what safeguards will be put in place. We note that the sheriff is required to consider the impact on the “wellbeing” of the person about whom the information relates – again this test is vague. We would call for the assessment to be based on an impact on the child's *rights*, reflecting Scotland's commitment to incorporate the UNCRC.

We remain concerned that the proposals do not provide lifelong anonymity for people who were under 18 at the time of the alleged offence. Instead, they set out a system whereby reporting restrictions cease to apply when the individual turns 18 or the cessation of proceedings (whichever is later), unless they are extended. Reporting restrictions can be extended beyond 18 unless this would not be “in the public interest”. The test for determining this includes an assessment of the child's wellbeing, which must be taken as a primary consideration. As noted above, our view is that this should be a test based on the impact on the child's *rights*, including their right to have their best interests considered in all decisions that affect them. Regard should be had to the UN Committee's guidance on factors to take into account in assessing the child's best interests.³⁰

The UN Committee is clear that:

“there should be lifelong protection from publication regarding crimes committed by children. The rationale for the non-publication rule, and for its continuation after the child reaches the age of 18, is that publication causes ongoing stigmatization, which is likely to have a negative impact on access to education, work, housing or safety. This impedes the child’s reintegration and assumption of a constructive role in society. States parties should thus ensure that the general rule is lifelong privacy protection pertaining to all types of media, including social media.”³¹

Our clear view is that those who commit offences aged under 18 should have lifelong anonymity. At the very least, we would seek a presumption in favour of lifelong anonymity from which exceptions can be made (rather than the proposed position of no restriction upon turning 18 or cessation of proceedings, unless the court grants an extension). This would learn from experiences with reporting restrictions in other areas: for example, courts currently have the “power” to put restrictions in place regarding witnesses under 18 but *in practice*, and as noted in the Policy Memorandum, this has meant directions are generally not made.³² Accordingly the Bill proposes a move to *automatic* restrictions.

We note the presumption in favour of lifelong anonymity for individuals whose proceedings end in acquittal or are discontinued. However, we note that an exception can be made if the court “determines otherwise”. We would welcome clarity on the rationale for this approach and the test/safeguards to be applied.

Safeguards in court (section 14)

Together supports the introduction of a duty on courts to consider what steps might be taken to facilitate a child’s participation in court proceedings and to take these steps insofar as reasonably practicable. We also support the specific proposals to extend powers around use of different court rooms and sitting days to solemn cases. We note, however, that the current proposal will result in this being a *duty* in summary cases, whilst only *discretionary* in solemn cases. We propose that this provision should be strengthened so there is a duty to sit in a different room/building or on different days from other courts in both summary and solemn cases that involve children.

While a legal duty to support children’s participation is a positive first step, it must be underpinned by resources if it is to be effective in practice. This includes investment in the development and provision of child-friendly information, access to independent advocacy, legal representation and training on trauma-informed practice.

Disposal via the Children’s Hearings System (section 15)

Together supports the maximum use of the Children’s Hearings System for disposal of cases involving children in an adult court. We welcome the changes proposed in section 15 to maximise courts’ ability to remit cases of children who have pled or been found guilty back to the Children’s Hearings System for advice or disposal. However, we echo concerns raised by the Children and Young People’s Commissioner Scotland that there remains discretion not to request advice from a children’s hearing where the child is within six months of turning 18.

³¹ CRC/C/GC/24: Para 70.

³² Policy Memorandum: Para 152.

Question 15. The Bill changes the law so that young people aged 16 and 17 who are accused of or found guilty of an offence can no longer be sent to a Young Offenders' Institution or a prison. What are your views on these proposals?

Together supports the proposal to end the use of Young Offenders' Institutions (YOI) for under 18s. As highlighted in our 2022 response, YOIs contribute to a range of children's rights violations and therefore are unsuitable for under 18s.

The UN Committee is clear there are only "few situations" in which a child's detention is justified.³³ In most cases, community-based support should be used as an alternative. Together believes that where no such alternatives are possible and deprivation of liberty is required as a last resort, this should be in secure care. These settings are better equipped to offer relationship-based, therapeutic, trauma-informed support than YOIs. Secure care still constitutes a serious deprivation of a child's liberty and, as such, must only be used as a last resort and for the shortest appropriate period of time.³⁴ We do not want proposals to result in net-widening and increased use of secure care where community alternatives would have been appropriate. The UNCRC is clear that children deprived of their liberty must be treated with humanity, respect and in a manner that takes into account their needs.³⁵

We note the UN Committee's statement that deprivation of liberty should only be used for "older children" and that countries should set a lower limit below which children may not legally be deprived of their liberty "such as 16 years of age".³⁶

Part 3: Residential and secure care

Question 16. The Bill changes the way in which secure accommodation is regulated. It would also introduce regulation for cross-border placements (for example, a child placed in Scotland as a result of an order made in England). What are your views on the proposed changes?

We fully endorse the Children and Young People's Commissioner Scotland's response and note that it reflects many of the concerns raised by our members – for example around the use of restraint, access to advocacy and legal representation, cross-border placements, resources/investment, and ensuring time to consider the findings of the review of secure care.

Part 4: Anti-Social Behaviour Orders, Named Person and Child's Plan

Question 17. What are your views on the proposals set out in Part 4 of the Bill?

We support the changes to the definition of a child for the purposes of Anti-Social Behaviour Orders. This will mean that ASBOs are only possible from age 18, not 16.

We support the repeal of provisions on the named person service and child's plans (Parts 4 and 5 of the *Children and Young People (Scotland) Act 2014*). These provisions were never commenced and their removal is in line with recommendations from the GIRFEC Practice Development Panel.³⁷ In

³³ CRC/C/GC/24: Para 6(c)(v).

³⁴ UNCRC Art 37.

³⁵ Article 37(c) UNCRC.

³⁶ CRC/C/GC/24: Para 89.

³⁷ GIRFEC Practice Development Panel (2019). Final report.

repealing these provisions, the Bill upholds the commitment made by the Deputy First Minister to the Scottish Parliament in September 2019.³⁸

Impact Assessments

Question 18. Do you have any comments on the impact assessments accompanying this Bill?

We welcome that a Child Rights and Wellbeing Impact Assessment (CRWIA) has been completed and look forward to this being continuously updated as the Bill progresses.

We note some articles have been missed from the analysis, including children's right to education under Articles 28-29. This is despite the proposals having clear implications for children's education: a greater number of 16- and 17-year-olds will potentially be subject to Children's Hearings System measures specifying where a child should attend school; the Bill proposes ending placement of children in YOIs where their right to education was not sufficiently supported; and secure care proposals are made against a backdrop of ongoing issues with access to education as noted in our 2023 State of Children's Rights Report.³⁹ Similarly, there is no reference to children's right to the best possible standard of health (Article 24), including mental health, which is likely to be affected if reporting restrictions are dispensed with or if the child is made subject to measures that deprive them of their liberty. We note concerns raised by Children 1st around the extent to which the CRWIA addresses concerns around children's right to recovery (Article 39).

We note that the CRWIA proposes using the SHANARRI wellbeing indicators to monitor the impact of the proposals. Our view is that work is needed to ensure the SHANARRI indicators have children's rights at their core. We note that Scottish Government has committed to do work on developing a rights-based indicator set as part of its UNCRC Implementation Plan. Funding has recently been secured for Together and partners at the Observatory of Children's Human Rights Scotland to recruit a PhD student to explore this issue further.⁴⁰ Their findings will help to inform, influence and reinforce the development of this indicator set.

The UN Committee is clear that child rights impact assessments should be updated and evaluated on an ongoing basis, including through consultation with children. We would welcome a commitment to do this, particularly considering that some of the proposals do not have the benefit of an underlying evaluation – for example the proposal to widen the criteria for MRCs despite no existing evaluation of their use.⁴¹

Finally, we welcome that the CRWIA commits to ongoing engagement with children and young people.⁴² However, we note that the focus of this section is primarily on "young people". It is crucial that children, including younger children, are included in this work and in the design of any information intended for children.

³⁸ Together (2019). *What does the Scottish Government's recent announcement on Getting it right for every child mean?* (article submitted by Scottish Government for publication in Together's e-newsletter).

³⁹ Together (2023). *State of Children's Rights Report*.

⁴⁰ SGSSS (2023). *Studentship Opportunity: Developing a framework of children's human rights indicators for Scotland*.

⁴¹ Policy Memorandum: Para 63.

⁴² CRWIA, question 9, p25.

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