

Call For Views on Children (Care and Justice) (Scotland) Bill by Education Children and Young Person Parliamentary Committee

SUBMISSION FROM SOCIAL WORK SCOTLAND

17th March 2023

Introduction:

Social Work Scotland is the professional body for social work leaders, working closely with our partners to shape policy and practice, and improve the quality and experience of social services. We welcome the proposal contained in the Care and Justice Bill and this opportunity to respond to the Call for Views by Education, Children and Young Peoples' Committee. We will also be responding to the Finance and Public Administration Committee Call for Views on the Financial Memorandum.

The reflections within this response are drawn from consultation with our membership which covers senior leaders, including Chief Social Work Officers, service and team manager from across the country in both local authorities and third sector involved in delivery of services to children and adults

Social Work Scotland as an organisation is supportive and appreciative of the bill's move to a more children's rights and trauma informed approach to the care of 16 and 17 year olds. With a workforce whose professional code adheres to the principles of human rights at the core of the Promise, social work can offer a particular perspective and context on the proposals in the bill, and one which is critical to the delivery of quality services

Earlier responses about care and justice¹ and related matters such as deprivation of liberty orders² outline the views of Social Work Scotland members, and these are reflected in

¹ [Children's Care and Justice Consultation - Social Work Scotland](#)

² [Cross-border placements of children and young people into residential care in Scotland - Social Work Scotland](#)

many aspects of the bill. As a social work organisation the principles of child centred and trauma informed approaches to the care of children, and the move to extend the definition of a child to the age of 18, with all the related aspects which come with this, is welcomed and in keeping with both our organisational principles and approach and our support of UNCRC.

Our response reflects this support but underlines the equal importance of ensuring that attention is paid to the timing and sequencing of implementation. This is critical to ensure that the policy intent of the bill is able to be realised, as is alignment with the many other policy and legislative initiatives impacting on the children's social work sector. Some of the changes within the bill are dependent on or linked to other improvement programmes and particularly the work of the Children's Hearing Working Group to redesign the Children's Hearing System³ and Reimagining Secure Care work which has a similar remit in relation to secure care. Both of these pieces of work are also linked to the Promise⁴, and the development of a more trauma informed approach to children's' care.

This comes in a context where social work services are facing challenges not seen since the establishment of our current framework of local area based social work provision in the 1970's. Recent years have also seen a steadily growing gap between ambition, investment and ability to deliver, resulting in cumulative pressures on staff and our child care and wider system. The expression of this context includes staffing shortages, issues with recruitment of core care givers such as foster carers, increased demand as a result of both greater levels of need following the covid 19 pandemic and as a result of new initiatives and improvements, and a context of financial pressures, change and uncertainty which is causing anxiety and uncertainty for the workforce. The current national focus on adult social care, and additional funding being directed to adult services is welcomed by SWS, but the lack of similar funding for children, and the children's social work and social care workforce is adding to these pressures and lack of parity in services. An additional aspect of this wider context is the unanticipated requirements over the past year around support to Ukrainian families and unaccompanied asylum seeking children. The profession, and organisations employing and supporting our profession, have reached out and responded willingly, but

³ Hearings System Working Group - The Promise

⁴ <https://thepromise.scot/>

the extent of this additional demand cannot be underestimated – a third of children in care in some areas are now unaccompanied asylum seeking children

Social Work Scotland therefore, while fully supportive of the proposals in the Care and Justice Bill, would emphasise the importance of these changes being fully funded, with equal consideration given to the wider staffing needs and capacity of the sector to manage further change, including, as already highlighted, the sequencing of any changes resulting from the bill. Without those aspects being considered as part of 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 Promise to which we adhere

Consultation Questions:

1. *The Bill widens access to the Children's Hearings system to all 16 and 17 year olds. What are your views on this?*

Social Work Scotland are supportive of the principle to widen access to the Children's Hearing system to all 16 and 17 year olds.

Taking in to account the views of children and young people, the extension of remit to all those under the age of 18 may indicate that consideration be given to how the title of the Children's Hearing system might better reflect a remit which covers children, adolescents and young people.

2. *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?*

As the leadership organisation for social work in Scotland, SWS members have been aware for many years, that the adult justice system is not able to respond flexibly to the needs of children. Nor does managing children within an adult focused system facilitate management of risk in a child centred way. Therefore, we should maximise opportunities for children who commit offences to be responded to and managed within a child care system, where possible and safe to do so.

A small number of children will pose a significant risk of harm. This should be factored in to the changes, with a presumption in favour of most cases being dealt

with by the Reporter, but also with a view to public interest and best interest of the child. Attention to this group should not skew the overall system.

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

Social Work Scotland is positive about the recognition in the bill about the need and importance to healthy adult development of support beyond the age of 18. This is in line with knowledge and research around brain development and other policy drivers such as Promise.

While appreciative of the thinking behind the proposal to extend duties on local authorities to support a child up to the age of 19, SWS would note the importance of considering the means by which this occurs. Maturity and capacity rather than age or legal context should be the deciding factor for young people, and the opportunity to access that support is an approach SWS supports as appropriate. How the impact of support beyond the age of 18 years is evaluated and considered as part of other post 18 provision by local areas may be worthy of further consideration.

Some Social Work Scotland members have expressed concern at applying children's provision – the children's supervision concept - to adults, albeit young adults, and the potential impact of blurring that boundary, noting that there will always be a need for a point at which a child becomes an adult. We are however fully supportive of the principle of providing ongoing voluntary support, and would note that this principle already exists in the Children and Young People (Scotland) Act 2014

Transitions in to adult hood are important, and we know from the work around Principles of Good Transitions⁵ and the research underpinning the 2014 Act that it is the attitudes and relationships over any transition period which make the difference rather than the legal structures. A child cannot be a child after the age of 18, but may benefit from ongoing support as they learn to navigate the adult world question. The issue for consideration is therefore not about a duty to support a child up to the age

⁵ Principles of Good Transitions - Scottish Transitions Forum

of 19 – they are no longer a child - but the opportunity for that young adult to benefit from transition support which suits their needs.

This must go alongside consideration of development and availability of that support, which will be wide and varied and often beyond the remit or control of a local authority or children's service e.g. mental health provision, and aspects of financial or employability provision. To achieve the aims of the bill we would therefore suggest consideration is given to the how the responsibilities of other corporate parents not part of the local authority might be built in to the bill.

For young people subject to a supervision order for care and protection reasons this is of particular importance. We would note that the provision in the bill to enable referral to the Reporter of young people aged 16 and 17 is likely to result in an increase in referrals of young people of this age who are experiencing mental health difficulties, with resultant concerns about their welfare. Enabling support to be provided beyond the age of 18 in such situations is positive and welcomed, but the services needed will often sit within related agencies and professions such as health. Mental Health provision for those over the age of 18 is within scope for all Health and Social Care Partnerships, and linkage between children's and adult mental health provision could usefully be made, particularly where children's' mental health is part of HSCP.

Central and critical to all of the above is the importance of young people having choice about whether they receive ongoing support beyond the expiry of a supervision order. Such support must be of a voluntary nature, and we are aligned with the approach of the bill in this area.

Concern was expressed by our members that the 'system' is not ready for a blurring of the boundary between adult and children's care. To ensure that this aspect of support, to both those who found themselves subject to a supervision order due to offence ground and those whose route was one of care and protection, is available and the right support is large change. There are staff skill implications, as well as resource and service implications. Social Work Scotland therefore suggest that consideration is given to this direction of travel being progressed in an incremental manner focusing initially on the resource and skill base required. This will be

reflected in our response to the Finance and Public Administration Call for Evidence on the financial memorandum.

We would also note that learning from the implementation of continuing care would assist this development. Again this was, from a development and trauma perspective the right approach to take, but insufficient time and resource was given to the requirements needed for implementation. This has influenced ongoing issues and costs in this area, and importantly, the consequential impact on consistency of provision to young people.

Linked to the legal point above, we would note the need to include in this aspect of the bill the interface between other critical and related legislation in the adult and justice field. Adult Support and Protection legislation⁶ 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 flexibility and is it proposed that there will be resource transfer from adult services and that children's services pick up this work for young people who were subject to a supervision requirement? If so will this simply lead to a delay in the transfer to adult services where this is appropriate? We note that any proposed resource transfer from justice to children services is likely to be difficult given the ring fenced nature of funding for justice services.

Similarly for 16/17 year olds currently in the Justice system, as soon as an order ends, there is no aftercare. While we acknowledge the rightness of the change, this will no longer be the case under the bill's provisions. And provisions elsewhere in the bill, providing children in secure accommodation with aftercare rights has longer term resource implications.

Social Work Scotland along with many others are acutely aware of the number of vulnerable 16/17 year olds, not least as a result of the high number of unaccompanied asylum seeking children now resident in Scotland. We emphasise again that ongoing support is the right direction of travel, building a system which has the infrastructure and skill base to support often struggling young people

⁶ Adult Support and Protection (Scotland) Act 2007 (legislation.gov.uk)

regardless of context. Such a system however, requires investment and ongoing attention to funding, staffing and knowledge/skills, and is linked and likely to compound existing factors around availability of supports including health and care, accommodation, capacity to sustain accommodation, after care provisions and continuing care.

This underlines the earlier point about the importance of attention to implementation processes and timescales not least to ensure that decision makers receive the right training on the use of the new powers, and that the measures open to Children's Hearings around Compulsory Supervisions Orders are able to appropriately meet the needs of those whose safety is at risk or who are a risk to others.

Such provision has resource implications particularly for social work services e.g. where a child's movement is to be restricted how this is monitored? Such situations should be the exception, and must be part of a wider package of care and support, and any restrictions to freedom must align with UNCRC.

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

Taking a rights based approach to young people who have been harmed by another young person aligns to the move to UNCRC incorporation. It is however, important that this is teased out, as balancing the rights of the child harmed and the child who has inflicted that harm – and defining what 'harm' looks like - is not necessarily easy. We would also note that current child protection decision making processes will remain and there are specific complexities where sibling abuse has taken place

SWS members noted that both children in this situation have the same rights to privacy, and underlined the importance of respecting the privacy of the child who caused the harm, while balancing the needs and rights of the victim. We consider that the bill provides an opportunity to explore utilisation of more restorative approaches to practice in this area.

5. *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?*

As noted in or response to question 4 above, this is a complex question and any action must be respectful of and uphold the rights of all children. It would in our view be dangerous to move in to a space where one child's right to privacy is superseded by another individual's rights i.e. where the confidentiality and right to privacy of the child who caused the harm is breached in the interests of the child or adult who has been harmed. Whilst appreciative of the importance for victims of knowledge about what has happened to a child who caused them harm we would query if this would be in accordance with UNCRC principles.

As such we suggest that the person harmed is provided with minimal details, but enough for them to know that something is happening. Some members considered that going as far as the harmed person being told that the person who caused that harm has been referred to the Reporter, would be in order, but there was a general reluctance to provide any specific information.

In support of this approach, and beyond the rights issue already noted, we refer to the Kilbrandon principles⁷ on which the Children's Hearing system is built, which viewed children as in need of care and protection regardless of the reason for referral. This approach has been underlined by more recent research around trauma which underpins the Scottish Government trauma framework⁸. Given the prison population has a high number of individuals with care backgrounds or mental health issues,⁹ it is considered risky to contemplate sharing information on children who may later be part of that population. It is also challenging to reconcile the concept of protecting children by extending childhood support, as in question 3, with sharing information about what has been 'done to' children who have been caused harm.

It is however of critical importance that victims are aware of their rights, and the duty on the Principle Reporter should ensure that this occurs unless this would be detrimental to the best interest of *any* child - not only the child harmed. Children referred and dealt with via the Children's Hearing system, people who have been harmed can be supported to access support organisations, and in this situation a

⁷ REPORT OF THE COMMITTEE ON Children and Young Persons, Scotland - The KILBRANDON Report - gov.scot (www.gov.scot)

⁸ Trauma – national trauma training programme | NHS Education (scot.nhs.uk)

⁹ Scottish Prison Population Statistics - gov.scot (www.gov.scot)

single point of contact similar to that proposed in the victim consultation around the justice system, would be helpful.

In summary, we would suggest learning from the justice system and disclosure, and caution that care is taken in this area to avoid systems risks

6. *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?*

Social Work Scotland appreciates and supports the move to increase the age at which young people can be referred to the Children's Hearing. As with many proposals however, there is a need for attention to the details and specifically issues related to grounds for referral.

Referral on offence grounds is relatively simple with the caveat of referral not being made beyond the age of 17.5 years. Lack of parental care or care and protection grounds is more complex, given parental rights beyond the age of 16 years relate to advice and guidance. The bill does not explore or take in to account how this interface will be managed, or whether referral grounds should exclude those related to parental care. A child of 16 is also able to determine many aspects of their lives, and is considered able to consent to matters previously the preserve of their parent.

A further possibility is that separate grounds may be considered to take in to account the different rights of a 16 year old not already in the system. In this area, there is a question to be addressed around the overlap between the child and adult systems particularly where Adult Support and Protection and Child Protection systems may be in play. For a small number of young people e.g. those with significant mental health issues, the adult system may be more appropriate, carry more 'clout' and result in better support than a system focused on children's security and safety.

Social Work Scotland acknowledge that the proposed change in relation to age of referral seems, and is, sensible where offence grounds are involved. Where there are care and protection concerns however more consideration and attention to detail is required. These cases are likely to be primarily related to mental health, exploitation and vulnerability situations which can often be complex, concerning, difficult to manage and complicated by the parental rights position. The interface with

wider legislation such as guardianship, and adult support and protection is therefore critical, and the bill as it stands does not address this.

7. *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?*

Social Work Scotland support these changes,

It is critical, and in line with UNCRC incorporation, that all children in police custody are granted the same protection as under 16 year olds, and 16/17 year olds already on a supervision order. The provision that allows for the local authority to be notified as well as a parents is welcomed. We take the opportunity to further highlight existing discussions around children in custody, and the importance of attention to and resourcing of alternative approaches.

We would note that the bill could usefully extend restrictions in reporting, an issue which has arisen in the course of implementation of the age of criminal responsibility legislation¹⁰. In particular provision should cover restrictions in reporting where the Children's Hearing or court are not involved but where there is a police investigation involving a child. This would minimise the risk of children being identified on social media platforms.

8. *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?*

This is a change which is supported by Social Work Scotland members, underpinned as it is by sound developmental knowledge, and understanding of trauma. It is also aligns with the commitments of the Promise, and is a welcome opportunity to significantly influence for the better the lives of young people

The challenge resulting from this change, is what alternatives to custody for 16 and 17 year olds need to look like, and how that capacity can be developed - capacity in secure care, in the community, and in the staff group who would provide and support that care. Associated with this are the costs of that care, and what secure care and

¹⁰ <https://www.legislation.gov.uk/asp/2019/7/enacted>

the secure care system, needs to look like to accommodate a wider range of needs than it does currently, and to be able to meet and manage all the needs of the small but complex group of young people whose liberty requires to be restricted in this way

The Scottish Government has commence a redesign of secure care in Scotland, Reimagining Secure Care. Children and Young People's Centre for Justice¹¹ (CYCJ) has been tasked with and has commenced this wide ranging work, and are due to report in spring 2024.

We note the reduction in numbers of young people aged 16 and 17 years of age placed in Young Offenders Institutions over recent times but also that secure care, which is often the only alternative for young people accused of high risk crimes, is already acknowledged as not fit for purpose. This is reflected in the Promise, and underpins the CYCJ work. We work currently with a model which remains as it was several decades ago and which it is accepted needs updated and reimagined. Secure units operate within that model and despite improvement in staffing skills and knowledge, the current system restricts scope for improvement, and is maintained by providing almost half the available placements to children from south of the border.

There is a real danger in ceasing availability of YOI places to 16 and 17 year olds before new provision is in place. We would argue that this move should be undertaken incrementally, allowing the secure care redesign to complete and provision to be developed and updated to meet current need change secure before the YOI route is fully closed to 16 and 17 year olds. Acknowledging the damage incarceration can do to young people, and the critical importance of a more trauma informed and child centred approach to care for those young people Social Work Scotland would offer to work with others to consider how the existing system could be adapted as an interim measure to provide more child centred care e.g. exploration of what systems could be developed around Electronic Monitoring for young people, or how care within the current YOI structure could be adapted.

There is therefore a timing and sequencing issue which should be given attention to enable the intent of this change to be effective, and meet the often complex needs of this small but significant group of young people. This covers not only the secure care

¹¹ [Children and Young People's Centre for Justice \(cycj.org.uk\)](https://www.cycj.org.uk)

redesign but also the children's hearing redesign work which is due to report in end April 2023.

9. *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 agree with moves to bring in greater regulation around cross border placements and have been supportive of this in earlier consultations and discussions with Scottish Government¹² and Competition and Marketing Authority¹³. Understanding of the importance of local care, and how distance can affect critical relationships for children underpins this (reference Promise and the voice of children and young people on this matter) and means it is hard to see many situations where a young person should be placed in a cross border placement.

We would also note that there is no imperative to develop the appropriate and much needed resources in England while we facilitate easy access to placements in Scotland.

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

Social Work Scotland is in agreement 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 to repeal the named person and child's plan provisions the Children and Young People (Scotland) Act 2014.

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¹² Children's Care and Justice Consultation - Social Work Scotland

¹³ Competition and Markets Authority report on children's social care - Social Work Scotland