Children's Care and Justice Bill
Consultation on Policy Proposals

Scottish Government
Riaghaltas na h-Alba
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☐ Individual

☒ Organisation

Full name or organisation's name

Scottish Children's Reporter Administration (SCRA)

Phone number

Address

Ochil House
Springkerse Business Park
Stirling

FK7 7XE

Postcode

Email Address

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☒ Yes

☐ No

Questions

Question 1: Where a person has been harmed by a child whose case is likely to proceed to the children's hearings system, should further information be made available to a person who has been harmed (and their parents if they are a child) beyond what is currently available?

Yes

- If yes: what further information should be made available? If yes: are there specific circumstances when further information should be provided and what would those circumstances be?

Please give reasons for your answer

The Scottish Children's Reporter Administration (SCRA) welcomes the opportunity to respond to this consultation.

Children's Reporters work within Scotland's Children's Hearing approach to child protection and children in conflict with the law. The Children's Hearing is the distinct statutory way in which Scotland responds to concerns about a child's circumstances (whether about the care or treatment of the child by adults or the behaviour of the child). Such concerns are assessed by professionals and are then considered by Children's Reporters and if required by panel members in a Children's Hearing, who make a decision about whether there needs to be compulsory professional involvement with the child and family. This compulsory involvement takes the form of a Compulsory Supervision Order.

In the Children's Hearing:

- the rights of children and families are respected
- the needs of children or young people are addressed in an integrated approach which considers all the circumstances of the child and the child's welfare
- the welfare of the child remains at the centre of all decision making and the child's best interests are paramount throughout
- the child's engagement and participation is crucial to good decision making

The role and purpose of SCRA is:

- To receive referrals for children/young people who may be at risk.
- To make sure that other public agencies carry out enquiries and assessments into children's circumstances so we can make informed decisions about children referred to us.
- To make the decision on whether to refer a child to a Children's Hearing, if they need compulsory measures of supervision.
- To draft the grounds for any referral to the Hearing.
- To arrange for Hearings to take place when we decide that compulsory measures of supervision are necessary and where there is sufficient evidence to prove the grounds.
- To make sure the Hearing follows fair process, including meeting the rights of those in attendance.
- To be responsible for establishing grounds of referral in court, where these are contested, and for defending decisions of Children's Hearings which are subject to appeal.

SCRA supports the opportunity to proportionately and carefully widen the information available to a person who has been harmed. SCRA previously had wider powers under the Criminal Justice (Scotland) Act 2003. We are well aware of the ongoing concerns for people who have been harmed and the desire to see access to information widened.

For people who have been harmed by other people it is very important to give them the right information at the right time. It is also important to recognise that information provision is not a single interaction – that different pieces of information will need to be communicated over time. When a child who has harmed someone else is referred to the Children's Reporter it is likely that there will be a period of time whilst the Reporter is investigating the circumstances of the child and their behaviour. If that child is then referred to a children's hearing there will be a period of time before the Hearing can convene and there may be a period of time when section 67 grounds for referral are at a Sheriff Court for proof. If section 67 grounds are established there will be a period of time before a children's hearing considers whether to make a Compulsory Supervision Order (CSO). A children's hearing could defer the decision to make a CSO – which would take more time. Some mapping to determine what information to give – and who is best placed to provide that over time would be helpful.

At the moment the legislation strikes a balance between the privacy rights of the child who caused harm and the right of a person who has been harmed to receive information. We think that this balance is important and in recognising this balance, we think it would be proportionate for the Principal Reporter to be able to share some additional information. In particular:

1. An outcome in relation to seriously harmful behaviour of over 12s, to cover the situation where the Children's Reporter decides not to arrange a hearing on section 67 (j) grounds and instead uses a ground like section 67 (m), including the seriously harmful behaviour in the narration of supporting facts.

2. The measure in relation to a person harmed (covered in Q2), recognising that this was the previous law.

3. A decision by a subsequent review hearing to alter or add a measure relating to a person harmed or to include a measure relating to a victim (where there is a previously accepted or established ground that the child committed an offence or caused serious harm to the victim).

4. More detailed information about the progress of decisions or any delay in decision making, which might be important to a person who has been harmed.

5. More detailed information in relation to related court proceedings and the supports available when people who have been harmed are required to be witnesses and give evidence at court.

In making these comments about the information that should be available we would want to say that the detail of such information requirements should be informed by those with lived experience of these difficult circumstances. We think a balance between rights required to be maintained – and we think our proposals retain an appropriate balance.

There are also improvements that could benefit people who have been harmed that don't require legislation. The general information about the Children's Hearings System that is supplied could be reviewed and altered. Work could also be done with all partners across the Children's Hearings System, to ensure that we are saying the same things, in the same way. The development of restorative justice services across Scotland under the Scottish Government's Restorative Justice Action Plan will have a positive effect for people who cause and experience harms and will change the conversation and the wider thinking about responses to harm.

We are clear that any changes have to be right in principle for all children, and not just changes added to make it more acceptable for 16/17 year olds to be referred to the Reporter.

Question 2: Where a person has been harmed by a child who has been referred to a children's hearing, should SCRA be empowered to share further information with a person who has been harmed (and their parents if they are a child) if the child is subject to measures that relate to that person?

Yes

Please give reasons for your answer

We have already covered some of the detail of this in our response to Q1.

Previously, legislation enabled the Principal Reporter to provide information about the "disposal" of the case by a children's hearing (under section 53 of the Criminal justice (Scotland) Act 2003). This allowed wider information about the decisions that had been made to be communciated. We would support a return to this position.

The consultation recognises the important differences between the children's hearings system and criminal justice system. There is no concept of "breaching" a CSO or an Interim Compulsory Supervision order (ICSO), or any attached measures. In the event that a child does not comply with any compulsory order, the implementation authority would have a duty to request a review hearing.

In communicating any protective measure to a person who has been harmed, it will be important to explain these differences to them. There is a danger that, by telling a person harmed of such a measure, that they will expect a criminal justice reponse.

In addition, whilst protective measures have been competent for many years, they are extremely rare. There is also a danger that, by creating the power for the Principal Reporter to provide information about such a measure, it is raising false expectations that hearings will make them.

Question 3: Where a person has been harmed by a child who has been referred to the Principal Reporter, should additional support be made available to the person who has been harmed?

No

- If yes, what additional supports do you feel are necessary?
- If yes, should this apply to all people who have been harmed or only in certain circumstances? (Please specify)

Support should not be predicated on whether the child who caused the harm has been referred to the Principal Reporter or not. All persons who have been harmed should get the support they need, when they need it.

This may mean that additional capacity needs to be built in order for victim support services to provide the supports that are required. Support in response to harm should be available regardless of what decisions are taken in relation to the cause of the harm. These supports should probably also be tailored to suit individuals – and should be available when an individual required, not when a system thinks it is convenient to signpost or refer.

This principle applies to all people who experience harm. But we think it is especially relevant for any child who has been harmed as the principle is central to GIRFEC and to the minimum intervention approach.

Question 4: Should a single point of contact to offer such support be introduced for a person who has been harmed?

Yes

- If yes, should this be available to all people who have been harmed or only in certain circumstances? (Please specify)
- If yes, who should be responsible for providing the single point of contact?

Please give reasons for your answers

We agree with the single point of contact in principle. We think further work is needed to determine the following:

1) how a single point of contact could work.
2) where the single point of contact should be based.
3) how the current information landscape can be co-ordinated and aligned.

It seems likely that positive change in this area may be possible without legislative change. The development of Bairns Hoose gives a potential central or focal point for the provision of therapeutic supports (for children) and could also be a focal point for support for people who have been harmed. The ambitious plan to have Bairns Hoose available nationwide by 2025 could help with this.

We think the idea of a single point of contact or a more cohesive person-centred approach is worth exploring further and we would be pleased to be involved in such an exploration.

Question 5: Should existing measures available through the children's hearings system be amended or enhanced for the protection of people who have been harmed?

No

Please give reasons for your answer

- If yes, please provide details of how they should be amended or enhanced

We strongly agree with the consultation document at paragraph 4.4.4 that "we must ensure that the fundamental welfare-based and non-punitive principles of the Children's Hearings System would be retained and that existing rights to privacy for referred children, would be upheld". We do not think change should be made just in response to the referral of 16 & 17 year olds to the Principal Reporter – any change should be made because it strengthens or improves the Children's Hearings System overall, and the way it deals with children.

We are also not of the view that change should be made in order to provide the same levels of protection available in the criminal justice system for people who have been harmed. It is very difficult for us to see how measures commonly used to provide protection in the court could transfer to the children's hearing without being seen as punitive. Children's hearings already have wide ranging powers to include a condition on a child under section 83 (2) (h) (section 83 (2) of the Children's Hearings (Scotland) Act 2011) and can make measures similar to may criminal justice options. For example:

- Requiring the child not to approach a certain person,
- Requiring the child not to approach a certain place (this could also be a movement restriction condition, provided that it is possible to install the required technology in that place),
- Requiring the child not to access harmful material on the internet.

However, the consequence of non-compliance with a measure attached to a CSO is different to breach of a criminal justice order. There is also an issue related to the

practicality and feasibility of monitoring compliance with measures that are attached to the CSO.

The decision about whether a child should be dealt with by the children's hearing or by prosecution is a decision for the Procurator Fiscal, with the overriding consideration of whether it is in the public interest to prosecute. This decision will include considerations about the protections available for people who have been harmed whilst any subsequent process is ongoing. The overriding consideration for any Children's Reporter decision is the referred child – and we think this has to remain.

In saying this, a separate support for people who have been harmed, that could operate across 'systems' and focus on the people who need the supports could (and probably should) be considered.

Question 6: Should MRCs be made available to children who do not meet the current criteria for secure care?

No

Please give reasons for your answer
If yes, what should the new criteria for MRCs be?

Movement restriction conditions and other forms or electronic monitoring work most effectively where they are part of a comprehensive package of intensive support to the child. We must be cautious of any separation of MRC with this provision of a full support package – this will diminish efficacy, reduce compliance and discredit the intervention.

An MRC remains an intrusive intervention which can have a real impact on a child's liberty. It curtails choice and restricts behaviours. Altering the test could mean that an MRC is used for children where other interventions may be more appropriate. We think that this impact on a child's rights is such that it remains aligned with secure care. Given the restriction of liberty involved in being subject to a MRC, we think it's right that the test for a making a MRC is the same high test as for a secure authorisation.

There are likely to be a number of different reasons for the low numbers of MRCs (between April 2021 and the end of March 2022, SCRA recorded 19 MRCs for 17 children). The MRC requires a 'safe' base or place for a child to be contained. Often children in crisis have no such 'safe' place. In comparison, secure accommodation offers a safe base first.

As in the answer to Q5, we strongly agree with the consultation document at paragraph 4.4.4 that "we must ensure that the fundamental welfare-based and non-punitive principles of the children's hearings system would be retained and that existing rights to privacy for referred children, would be upheld". We do not think change should be made just in response to the referral of 16 & 17 year olds to the Principal Reporter – any change should be made because it strengthens or improves the Children's Hearing. By lowering the test for a MRC alongside increasing the age of referral to the Reporter,

there is a danger that this is seen as enabling a hearing to make a MRC as a more punitive measure.

We have wondered if an alteration to the MRC test could allow it to provide protection to a child who has been harmed or is at risk from harm – but we feel confident that this could already be done under the current test, if it was required. There may be some risk taking behaviour that the current test in section 83 (6) does not fully address, like child sexual exploitation or ongoing contact with an older sexual offender. This could be considered for inclusion in the existing criteria for secure accommodation and an MRC. If amendment is being considered, it should be considered for both MRC and secure.

Question 7: Should any of the above options be considered further?

Yes

If yes, which option(s)?

All three options

Please give reasons for your answer, including any positive or negative implications of any of the proposals.

We agree with the UNCRC definition of a child as anyone under the age of 18. We therefore support the move to open up the children's hearing, to ensure that it can support children up to the age of 18.

We agree with the option of enabling all children under the age of 18 to be remitted to the children's hearing for advice and disposal of their case where they have been prosecuted and have pled, or been found, guilty.

We agree that this option is enabled and not made mandatory for any court. It is important that the court can consider the child's particular circumstances in deciding whether a remit for advice or disposal is appropriate e.g. due to the length of time since the offence took place, or due to the proximity to the child's 18th birthday at the time of the court's decision, the court might decide that intervention through a children's hearing is no longer appropriate.

More consideration or an options appraisal is required in relation to the voluntary ongoing support that might be needed at the end of a CSO. A closure report from the Hearing may be useful for the local authority or third sector supports. However, some monitoring of ongoing support may also be useful.

It may also be that some form of statutory throughcare or aftercare should be considered up until age 25/26. However, the provision of support post-18 would require additional thinking and consultation. For example, the following questions would need to be considered:

1. In what circumstances should someone on a CSO prior to 18 be liable to be made subject to some kind of order post 18? Those who present a continuing risk

to others, those at risk from others, or something else? In answering this, it needs to be recognised that the person is an adult and no longer a child.

2. What should that compulsory order be able to authorise? Compulsory involvement of the LA, residence somewhere, prohibition of contact with someone, or something else? The answer to this will depend in part to the answer to question 1.

3. What is the best mechanism to put that compulsory order in place? Should it be a children's hearing or civil court or some other tribunal? The answer to this will depend on the answers to questions 1 and 2.

Question 8: Please give details of any other ways in which the use of the children's hearings system could be maximised, including how the interface between the children's hearings system and court could change

We strongly agree with the statement in paragraph 4.5.1 of the consultation, that: "the differences between the childen's hearings system and the criminal justice system including their distinct purposes, must be respected. Certain measures can only realistically be made available via one system or the other." We would not be able to support change which was not in keeping with the ethos of the Children's Hearings System.

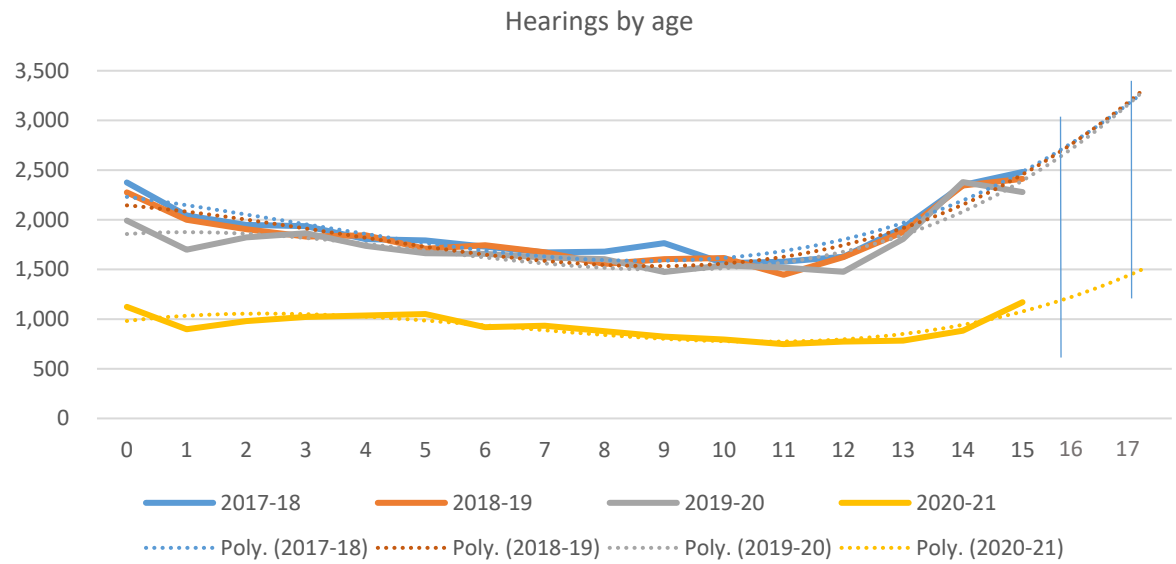
This is a very difficult question for us to answer. There is no single interface between the children's hearing and court. The interfaces that do exist are entwined and difficult to consider in isolation. We could answer this question in relation to the interface with both the criminal and civil court and in relation to the court interfaces that are in-built in the legsilative framework for children's hearings. The Children's Hearings System is also the focus of the work of the Hearings System Working Group in relation to the reform agenda managed by The Promise Scotland. This means that all of this complex interweave between the hearing and the court is being considered as part of the Scottish Approach to Service Design.

We have decided that the most useful thing we can provide are some extrapolated / modelled figures in relation to the possible impact of including 16 & 17 year olds within the Children's Hearings System.

'Trend' data from SCRA:

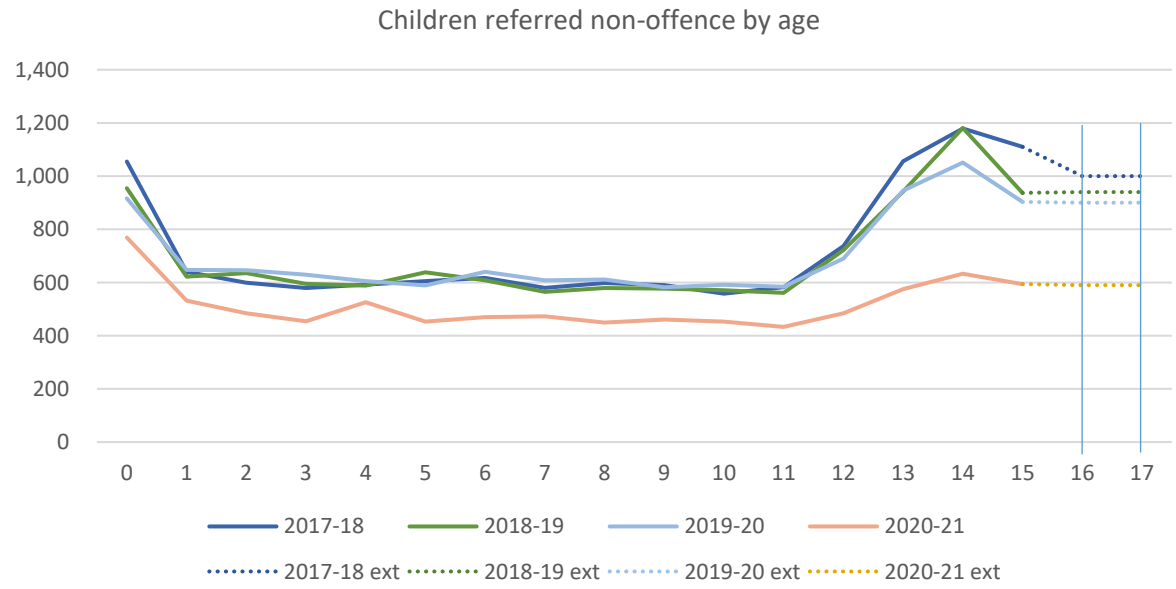
Care and Justice Bill Data Modelling
Hearings
To look at potential hearing increases we plotted hearings for children aged 0 to 15 forward based on prior 4 years data. Hearings have a pretty consistent pattern. We then applied polynomial trends for 16 & 17 year olds (trend uses existing curves to plot forward) to get estimates of numbers post 16. We already run around 2,200 hearings for 16+ in normal years. Therefore estimated additional Hearings could be between 2,500 and 3,500 per

year depending on where hearing numbers return to post-pandemic. On top of this, we may have children on Compulsory Supervision Orders until they are 19. Therefore we can assume we would have the same kind of numbers of Hearings that we currently have for 17 year olds. This would be in the region of 700 Hearings per year.



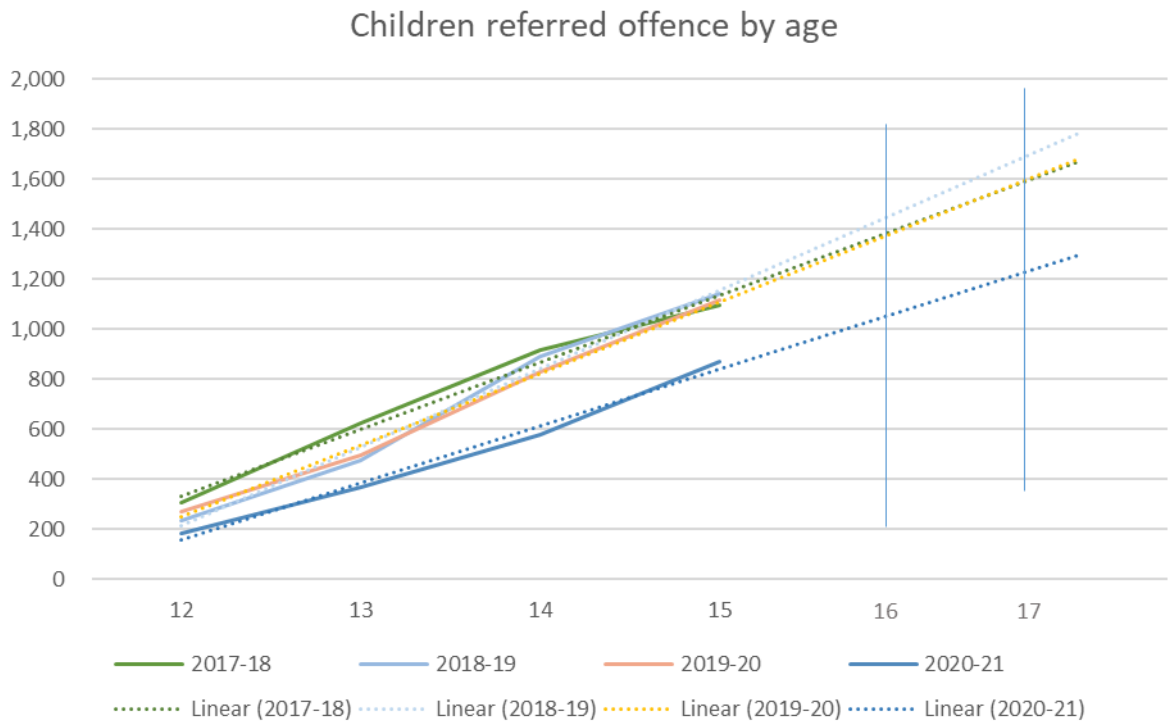
Children referred non-offence

Plotting age shows no real trend, assuming extension of aged 15. A small number of children are referred aged 16+ on non-offence grounds, around 150 per year. Given that some children will come in at more than one age in the year, an estimate of an extra 1,450 children referred seems reasonable.



Children referred offence

Under 12s have been excluded in line with the minimum age increases. The pattern shows linear increases from ages 12 to 15. Assuming continued pattern, and allowing for the fact that some children will come in at more than one age in the year, and that we already get around 360 children referred aged 16 plus per year, we could be looking at an estimated additional 2,000 – 2,400 children per year.



Question 9: Should any of the above options be considered further?

Yes

If yes, which option(s)?
Please give reasons for your answer, including any positive or negative implications of any of the options. We are particularly interested in implications for people who have been harmed

1) Re-examination of the decision making framework around Jointly Reported cases. This framework is an agreement between SCRA and COPFS. It is reviewed regularly and was last reviewed in 2019. It will require review if the age of referral to the Principal Reporter is increased. We will work with COPFS on the review. The raising of the age of referral will also mean the Lord Advocacte's guidelines will have to be reviewed. That is for the Lord Advocate, but we would hope to be part of the conversation.

2) Continued use of traditional court settings.
3) Changes to court practice.

As we have no direct involvement in the criminal justice system, we do not think it is appropriate for us to comment on the detail of these options. However, we wish to make

it clear that we support the aspiration of The Promise that children have their cases dealt with in an environment that upholds their rights and allows them to effectively participate in proceedings. We would also hope that Scotland determines a model for a 'child friendly court' in criminal proceedings, whilst taking steps to improve children's participation, engagement and understanding in civil proceedings.

Question 10: Where a child requires to be deprived of their liberty, should this be secure care rather than a YOI in all cases?

Yes

Please give reasons for your answer

We are of the view that YOI should not be used for children under the age of 18. We realise that this will have repercussions across Scotland's secure estate and that consideration will need to be given to appropriate placements.

We are also of the view that deprivation of liberty prior to trial or sentencing for under 25's should be a last resort and should only be used where it can be demonstrated that other approaches have been tried or will present a significant public risk.

Question 11: Should there be an explicit statutory prohibition on placing any child in a YOI, even in the gravest cases where a child faces a significant post-18 custodial sentence and/or where parts of a child's behaviour pose the greatest risk of serious harm?

Yes

- If no, in what exceptional circumstances should use of a YOI be considered?

Please give reasons for your answer

We think that all children under the age of 18 who are remanded should be subject to secure care, and that the transition for them from secure care to custody should be carefully managed and arranged. The gravity of a case has no impact on the fundamental rights of the child. We are of the view that if we can get it right for the gravest cases we can get it right for everyone.

It might be appropriate to consider a different use of space and care within the prison estate and for the Scottish Prison Service to develop facilities which could be used specifically for young people aged 18-25 who are to be integrated into a wider custodial population. The numbers of young people for whom this will be necessary will be low.

Question 12: Should existing duties on local authorities to assess and support children and care leavers who are remanded or sentenced be strengthened?

Yes

Please give reasons for your answer

- If yes, please provide details of how could this be achieved

We think the links between remand and wellbeing could be more explicitly made and could, at the very least, require a local authority to consider assessment and support for any remanded child. Corporate parenting duties could be seen as relevant for children who are remanded (and for children who receive other forms of long term residential care – like hospital care).

We are not in a position to make detailed comments on current and potential future statutory duties which impact on the functioning of a local authority. We are, however, clear that young people sentenced or remanded are vulnerable. They require ongoing focused support. They are also a group of young people who may require different supports from their corporate parents. They may not actively seek out that support. It would be helpful to have a consistent and recognised pathway for local authority service provision. it would also be helpful to have a collaborative approach to corporate parenting.

Question 13: Do you agree that the three changes related to anonymity should be made?

- **Yes to all changes**

Please give reasons for your answer

We think the changes are clear and will bring consistency in approach. We also wonder whether the age 26 cut off for all is appropriate and that there may be a call for the option of a lifelong anonymity order.

Question 14: Do you agree that the regulatory landscape relating to secure care needs to be simplified and clarified?

Yes

Please give reasons for your answers

- If yes, please provide details of how this could be achieved

The secure landscape is complex. It has complex regulation and complex decision making routes into and out of secure care. We are of the view that changes could be made to the pathway into and out of secure care which would allow a social worker to describe what will happen more easily to a child and their family.

However, we do think that there is always going to be an element of complex decision making inherent in decisions which curtail or restrict individual rights – and we think such complexity is perhaps commensurate with the gravity of the decision. Enhanced support, preparation and explanation may enable children to more fully understand and engage when such decision making becomes relevant for them.

This may not always be possible – for example when secure care is needed on an emergency basis. There should be materials available to explain what is happening to children when this happens to them – and these materials should be accessible and understood by a child's trusted adult.

Question 15: Do you feel that the current definition of "secure accommodation" meets Scotland's current and future needs?

Yes

Please give reasons for your answers

- If no, please provide details of how this could be changed

We think that the definition provided in paragraph 6 of schedule 12 of the Public Services Reform (Scotland) Act 2010 continues to make sense.

> A "secure accommodation service" is a service which –
> (a) provides accommodation for the purpose of restricting the liberty of children in residential premises where care services are provided;
> and (b) is approved by the Scottish Ministers for that purpose.

Question 16: Do you agree that all children under the age of 18 should be able to be placed in secure care where this has been deemed necessary, proportionate and in their best interest?

- **Yes through all lawful routes**

Question 17: Should the costs of secure care placements for children placed on remand be met by Scottish Ministers?

Yes

Please give reasons for your answer

We agree with the view in the consultation that it is important to ensure decisions as to where a child is placed are driven by the needs of the child as opposed to financial considerations and who is responsible for payment, and that to reduce any disincentives to the use of secure care as opposed to YOI when a child is being remanded, these costs should be covered by Scottish Ministers.

Question 18: Is a new national approach for considering the placement of children in secure care needed?

Yes

Please give reasons for your answer

- If yes, please provide details of what this approach should look like

We agree with the reasons stated in the consultation for a more consistent national approach to placement. The current approach to placement of children in secure care is fragmented and highly inconsistent. This is not sustainable if Scotland is to make progress in Keeping the Promise. A new national approach to placement could benefit all the children who are subject to secure care in Scotland. The numbers of secure care beds are low enough for this to be viable. This approach could be developed quickly.

This approach could lead to richer, more effective data gathering and from that significant improvements in ensuring individuals childrens needs are comprehensively met.

However, it is important to recognise the role of chief social work officers, heads of establishment, courts and children's hearings in making decisions about secure care. Any national approach should enhance decision making, not detract from exisiting decision making roles.

Question 19: Is provision needed to enable secure transport to be utilised when necessary and justifiable for the safety of the child or others?

Yes

Please give reasons for your answer

The absence of a consistent national approach to secure care transport means that there can be huge variation for children across Scotland. This variation of experience can happen when children are being taken into secure care for the first time. This is when children can be at their most vulnerable.

Question 20: Are there any other factors that you think need to be taken into account in making this provision for secure transport?

Yes

Please give reasons for your answer

- If yes, please provide details of these factors

1) Whether secure accommodation is required on an emergency or a planned basis.

2) Whether the reason for secure care makes a difference to the professional planning that is possible in advance of the decision being made.

3) The distance to the secure unit and the journey time.

4) The people who are important to a child.

5) The people who need to be involved in the child's admission to secure care.

6) The child's views about admission and their opportunity to input into admission planning.

7) The age of the child.

Question 21: Do you agree children should be able to remain in secure care beyond their 18th birthday, where necessary and in their best interests?

- **Yes**

If yes, for all children or only those who are remanded or sentenced?

- **In principle we think this should apply to all children.**

If yes, how long for?

- **For as long as the child's needs require it**

Please give reasons for your answers

We have answered yes to the question, but we think that this decision requires to be made for each individual child.

It needs to take into account all the circumstances of an individual child. It needs to take into account the living circumstances of the individual and of other children who will be living with them. It is very difficult to provide 'cut off' points in legislation which need to be determined in practice in relation to an individual child.

It will necessitate the development of throughcare and aftercare and other transition services from secure to adult estate, so there is no 'cliff edge' at 18.

Question 22: Do you agree with the introduction of pathways and standards for residential care for children and young people in Scotland?

Yes

Please give reasons for your answer

- If yes, please provide details of what measures and provisions are needed and how you think this should operate in practice

We agree with the proposition that deprivation of liberty should ordinarily occur in secure care settings. Where residential care providers seek provision for restriction or deprivation of liberty this should be associated with significantly more rigour in registration and subsequent incpection. Children deprived or restricted in their liberty should be subject to a single set of standards. In Scotland this must be consistent with the Secure Care Pathways and Standards approach. This approach provides a focus on the experience of children. It also considers their thoughts, perceptions and reactions to the care they receive.

We think that the experience of care in Scotland should not vary if a child from another UK nation is moved to live here. We are aware that the current experience of children who are subject to cross border placement may be very different to the experience of Scottish children placed in Scotland. We would hope that residential care pathways and standards would help to relegate this two tiered system to history.

If a child resides in Scotland then that child should have access to local support, resources and a lead professional. That child should be able to challenge decisions made about them, should be able to have decisions reviewed and should be able to have their views taken into account. That child should have access to advocacy and legal supports, if required and their experience should mirror the same experience of a Scottish child. The pathway and standards could demonstrate how this is to occur.

Question 23: Do you agree that local strategic needs assessment should be required prior to approval of any new residential childcare provision?

Yes

Please give reasons for your answer

- If yes, please provide details of what measures and provisions are needed and how you think this should operate in practice

We think this is sensible. It adds a visibility across local children's services and planning. It could lead to the availability of increased supports for children.

One variation to this approach could be for service development proposals that have novel or national/regional importance, specialism or significance. This could be resolved by the 'host' Partnership area undertaking a broader assessment – perhaps in dialogue with the Scottish Government.

Question 24: Do you agree that there should be an increased role for the Care Inspectorate?

Yes

Please give reasons for your answer

- If yes, please provide details of what measures and provisions are needed and how you think this should operate in practice

The recent consultation on Deprivation of Liberty (DOL) Orders from England and Wales indicated a clear scrutiny gap that must be filled. This has been to the detriment of 'invisible' children placed across Scotland. This is not compatible with Scotland's stated intentions in relation to UNCRC. It is not compatible with the ethos of the Children's Hearing System or the Secure Care Pathways and Standards. This needs to change. A specific Care Inspectorate focus on scrutiny across the sector is needed.

Question 25: Do you agree that all children and young people living in cross-border residential and secure care placements should be offered an advocate locally?

Yes

If yes, please provide details of how you think this should operate in practice

We think that there should be a legislative duty for a local advocacy worker to be provided. We think that the cost of this should be carried by a placing authority.

However, we do not think that advocacy support alone would be sufficient and are of the view that additional legal supports may be required. Our view is that these should also be funded by a placing authority.

Question 26: Whilst there are standards and procedures to follow to ensure restraint of children in care settings is carried out appropriately, do you think guidance and the law should be made clearer around this matter?

Yes

- If yes, please provide details of how this could be achieved

We think the description provided by The Promise of a Scotland striving to be a nation that does not restrain its children is the one we should aspire to. In saying this we do recognise the very difficult presenting behaviours of some children in crisis and that on occasion physical contact is required to keep a child safe. Physical contact should be pain free, used rarely and only when required to keep a child safe.

All physical contacts should be recorded and we think consideration should also be given to reporting such contact. If a national approach to secure care placement is developed perhaps the responsibility for gathering and reporting on physical contact could sit there? We also think that consideration should be given to developing a national restorative approach following any physical hold. A physical hold can be traumatic and difficult for all involved and can cause guilt and shame. An effective way to move beyond this seems to be required.

Question 27: Do you agree that the review of the 2019 Act should take place, as set out, with the 3-year statutory review period?

Yes

If no, what period do you think is appropriate?

- If a shorter review period, how should the Scottish Government to address the lack of review findings or data to inform such a change?

We would ask the Scottish Government to consider the contracted research on older children in conflict with the law, being carried out by SCRA's research team. We also think that ongoing research in relation to the impact of Covid 19 across Scotland could have implications for the age of criminal responsibility and the appropriate resourcing of

services for children. We need to monitor and review the operation of the new ACR provisions. It may take some time to gather the evidence for this monitoring and review, as the numbers in relation to the new provisions are low.

We think a further raise to the age of criminal responsibility is in line with Scotland's commitment to UNCRC - but we also think that such a rise will alter the work being done across children's services and that careful resourcing and planning should be done in the lead up to any additional change.

Question 28: What, if any, do you see as the data protection related issues that you feel could arise from the proposals set out in this consultation?

The data protection issues will depend in part on the detail of solutions presented on the face of the legislation.

There will be data protection issues around information sharing which would need to be explored and clarified. There are issues in relation to the age of children who could be subject to an order from a children's hearing – particularly if that order extends across into adulthood. There are issues in relation to data control, data ownership and data retention which would need to be resolved.

Question 29: What, if any, do you see as the children's rights and wellbeing issues that you feel could arise from the proposals set out in this consultation?

Rights and wellbeing issues should be explored in full when the detail of the proposal is made public. There are issues across all the areas of the consultation which should be explored more explicitly and in more depth.

There will need to be wider discussion about whether full relevant person status and rights should continue post 16, or whether there should be limited or no rights for relevant persons, and whether the child's consent or otherwise should be a factor.

Question 30: What, if any, do you see as the main equality related issues that you feel could arise from the proposals set out in this consultation?

Scotland should be able to describe the populations affected by the proposals contained across the consultation in detail. However, this is probably not possible at the moment.

There needs to be investment in scoping the characteristics of the affected populations and in data gathering and reporting in relation to them.

The approach of the Bill aligns with the Scottish Governments stated approach to poverty and social justice and to the equal distribution of opportunity.

We look forward to reading the full equalities impact assessment when it is published alongside the Bill.

SCRA Policy & Practice Team 2022