

Child Rights and Wellbeing Impact Assessment (CRWIA) for Children (Care and Justice) (Scotland) Bill

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Introduction

As set out in Part 1 of the Children and Young People (Scotland) Act 2014, Scottish Ministers must keep under consideration whether there are any steps which they could take which would or might secure better or further effect in Scotland of the UNCRC requirements, and if they consider it appropriate to do so, take any of the steps identified by that consideration. Undertaking a CRWIA helps Ministers to fulfil this duty.

There are two key considerations when undertaking a CRWIA:

Participation: The United Nations Convention on the Right of the Child (UNCRC) sets out that children have the right to participate in decisions which affect them. When assessing the impacts of the policy/measure, you are recommended to consult with children and young people. You can do this directly, through organisations that represent children and young people or through using existing evidence on the views and experiences of children where relevant. Participation of children and young people should be meaningful and accessible.

Evidence: You are recommended to gather evidence when assessing the impact of the policy/measure on children's rights and also for measuring and evaluating the policy/measure. If you identify any gaps in the evidence base, you can discuss how you will address these with analytical colleagues.

1. Which articles of the UNCRC does this policy/measure impact on?

The Bill is focused on children and those in need of protection care and guidance. The main Articles that apply are 1, 2, 3, 4, 5, 6, 9, 12, 16, 17, 18, 19, 20, 23, 25, 33, 34, 36, 37, 39, 40

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Article 2

States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 6

States Parties recognize that every child has the inherent right to life.

States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 9

States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the

child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 12

States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 16

No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

The child has the right to the protection of the law against such interference or attacks.

Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

To this end, States Parties shall:

- (a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;
- (b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;
- (c) Encourage the production and dissemination of children's books;
- (d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;
- (e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Article 18

States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

Article 19

States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20

A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

States Parties shall in accordance with their national laws ensure alternative care for such a child.

Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 23

States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development

States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

Article 25

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 37

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without

possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall 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;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40

States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected. 4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

2. What impact will your policy/measure have on children's rights?

This CRWIA should be read alongside the Equality Impact Assessment (EQIA) and the Policy Memorandum attached to the Bill.

The Bill redefines children as being up to the age of 18 for the children's hearings system and for the purposes of criminal justice and procedure. All of the provisions in the Bill aim to have a positive impact on children.

The measures in the Bill have common strategic aims. These include:

- Promoting the requirements of the United Nations Convention on the Rights of the Child (UNCRC),
- Scotland's Getting it Right for Every Child (GIRFEC) policy,
- Whole System Approach (WSA),

- Keeping the Promise, ensuring more children can benefit from the welfare-based ethos of the Kilbrandon principles which underpin the children's hearings system and
- A Rights Respecting Approach to Justice for Children and Young People: Scotland's Visions and Priorities.

The Bill affects a number of children's care and justice services between which there is a great deal of interaction. The Bill does not and cannot make specific direction for every situation involving matters relating to children's care and justice. Rather, where children come into contact with such services the provisions are structured to create a framework which recognises their rights to best meet their needs, in line with the wider approach of the UNCRC.

There are many positive benefits to the provisions. Examples include:

- By adjusting the definition of 'child' under the Children's Hearings (Scotland) Act 2011 to include all children up to 18, it is likely that more 16 and 17 year olds will be able to benefit from referral to the Principal Reporter. The children's hearings system treats the welfare of the referred child as the paramount consideration, except in limited circumstances where its welfare is a primary consideration. In addition, the change in definition pulls through to the criminal justice system so that - in the main - children are treated as children up to age 18. For example, by changing the age of child to 18 in schedule 1 of the Criminal Procedure (Scotland) Act 1995 children of 17 will then benefit from the special provisions that the schedule affords.
- In expanding the provisions for remittal for advice and disposal between the criminal courts and a children's hearing, a decision made by a court will be made against a background of information about the child's specific circumstances, allowing for the disposal to be made in the most appropriate way for the individual child.
- Under 18s will benefit from the provision removing the ability for children to be remanded or sentenced to young offenders institutions (YOIs) or prisons, with secure accommodation as the alternative when a child is to be deprived of liberty.¹
- 'Closed' courts² being used for more children appearing in criminal proceedings, and a more focused consideration of the participation needs of the child, which will help reduce any unnecessary negative impacts of a criminal court appearance. In addition, the Bill increases the courts' powers to protect a child's anonymity for as long as the court decides appropriate,

¹ There may be occasions where children are deprived of their liberty in other locked settings in certain circumstances such as hospitals where the child has a mental disorder under the Criminal Procedure (Scotland) Act 1995. Overall however, children will never be able to be remanded or sentenced to YOIs or prisons.

² Currently section 142(1) [Criminal Procedure \(Scotland\) Act 1995 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/1995/17/schedule/1) directs that where summary proceedings are brought in respect of an offence alleged to have been committed by a child, no person shall be present at any sitting for the purposes of such proceedings except: (a) members and officers of the court; (b) parties to the case before the court, their solicitors and counsel, and witnesses and other persons directly concerned in that case; (c) bona fide representatives of news gathering or reporting organisations present for the purpose of the preparation of contemporaneous reports of the proceedings; and (d) such other persons as the court may specially authorise to be present.

against a background of factors. Child victims and witnesses are also protected up to age 18.

- A more consistent approach to the upholding of children's rights when they are in police custody, including in respect of intimation, parental access, local authority involvement and solicitor access.
- Additional supports for children both in and after leaving secure accommodation, and after the termination of a compulsory supervision order made by a children's hearing, will also benefit children as they transition into adulthood.
- Changing the tests for measures of Movement Restriction Conditions (MRCs) that can be imposed by children's hearings expands the options open to a hearing to support children where they might be putting themselves at risk of harm or at risk of harming others, including other children. Adjusting the secure authorisation test also allows makes it clearer when the threshold is met.

3. Will there be different impacts on different groups of children and young people?

The provisions will impact positively on the following groups:

- Children involved in the children's hearings system;
- Children (and some young people) in the criminal justice system;
- Children (and young people) in secure accommodation;
- Children placed in care settings in Scotland from elsewhere in the UK;
- Family members of children involved in any of the above systems (including siblings and any child of their own);
- People who have been harmed by parts of a child's behaviour (which may be other children or adults).

Prosecution of children over the age of criminal responsibility

The Bill will principally affect individual children over the age of criminal responsibility, who come into conflict with the law under the age of 18. It does this by ensuring their privacy is protected, removing the option for children to be detained in young offenders institutions, and allowing, where appropriate, their circumstances to be considered by or dealt with in the children's hearings system.

Age of referral to children's hearings

The new ability for 16 and 17-year-olds to be referred to the Principal Reporter will apply equally to all in this age group, whether it is done for care and welfare or offence-related concerns. This will enable holistic consideration of the need for compulsory measures for the guidance, care, treatment or control of children where their welfare is at risk, for children aged 16 and 17, many of whom cannot currently benefit from this system if they are not already subject to compulsory measures.

4. If a negative impact is assessed for any area of rights or any group of children and young people, can you explain why this is necessary and proportionate? What options have you considered to modify the proposal, or mitigate the impact?

The Bill provides that regulations may be made to provide that children may remain in secure accommodation rather than automatically being transferred to YOI if they have been sentenced or remanded before the age of 18, to a maximum age of 19. This could detrimentally impact on the rights of other children cared for within this accommodation to be kept separate from adults. However, secure care providers are already under obligations to ensure the interests of all children in that facility are taken into account during placing decisions. Moreover via planned regulations, as supplemented by guidance, necessary to implement this the Scottish Government will consider whether any adjustment to best interest stipulations is helpful in such instances. This can ensure case-by-case consideration will be informed to ensure any continuation of a young person's placement beyond 18 will be in the best interests of that young person and not contrary to the best interests of any other child. This is consistent with UNCRC.

Changing tests for MRC and secure accommodation could result in more children having their liberty restricted or deprived. However, this is not the broad policy intent and therefore no change is made to existing safeguards that such measures can only be put in place where necessary and appropriate. This will mitigate any potential for more widespread use.

The provisions extending the ability for closed criminal courts when a child is appearing might reduce the ability for children who have been harmed to be involved in proceedings beyond their giving of evidence. However, this is an extension of existing practice and is important in upholding the rights of all children being brought before court and promoting equality of opportunity. It is anticipated that some cases that would have been prosecuted summarily may instead be dealt with in the children's hearings system, which are also held in private. Moreover, in summary and solemn cases where the child is jointly charged with an adult, the court retains discretion to utilise closed courts and is not required to do so. Existing provisions for closed courts to include witnesses and other persons directly concerned in that case, and such other persons as the court may specially authorise to be present also remain.

Children in cross-border placements

The power to make regulations in respect of children coming from other parts of the UK to be placed in care in Scotland is intended to reduce the numbers of these children in such placements and we accept this may adversely affect the choices of where these children can be placed. However we consider that, other than in a small number of exceptional cases, a child's best interests are not likely to be met when they are such a distance from the place – and people and familiarities – they usually consider to be home.

There is a balance to be struck between the rights of Scottish children who require care placements, and the rights of children from other parts of the UK where a place in Scotland is being pursued. The Promise is clear that marketised practices

regarding cross-border placements into Scotland, whereby they are purchased by a local authority in another UK jurisdiction, must end. However, since these placements are being driven by a lack of adequate provision for children elsewhere in the UK, superior courts in other jurisdictions can and do determine that the best option for a child is to be accommodated in a childcare setting located in Scotland. Scottish Ministers and the Scottish Parliament cannot prevent that. They cannot regulate what happens when a court process in another jurisdiction is engaged and has made a legal decision, nor can they affect or re-litigate the outcome of that process.

Thus the Bill – in combination with the new regulatory regime and other non-legislative action – aims to strike a balance between regulation, deterrence and assurance. Bill provisions acknowledge the fact that the number of residential accommodation settings in Scotland over recent years has increased, and the provisions aim to bear down on further ‘market-driven’ proliferation. They do so by directing prospective new care service providers to tailor proposed provision to Scotland’s particular needs – by increasing scrutiny and communication around proposed new services with statutory planning partnerships. This helps balance the needs of Scottish children better against commercial motivations.

The Bill also takes additional regulation making powers to explore how to approach other orders (of which there are a number, regarding cross-border placements), based on evidence emerging from the new Deprivation of Liberty (DOL) orders regulatory regime. Therefore there is flexibility inbuilt by making a regulatory power to allow further provision to be made when evidence is available that this is necessary.

Children who have been harmed

There may be different impacts on children who are in conflict with the law and child victims. The provisions strive to strike a balance to ensure that, where best possible, child victims benefit from any changes made for “accused” children. For example, rights to anonymity extend to both groups of children.

Under the Bill provisions it is anticipated that more 16 and 17 year olds who are involved in offending behaviour will be channelled to the children’s hearings system. This forum, and the structures and mechanisms which surround it, is different to the criminal courts. Evidence indicates that where a child's behaviour causes harm to others, these are often other children. Therefore it is prudent to make an assessment of the balance of rights regarding meeting needs of both the child who has been harmed and the child who has caused harm.

The Scottish Government recognises that the two systems have different approaches and underpinning principles, principally:

- The process for providing information to a person who has been harmed, and nature of information available;
- The involvement of the person who has been harmed in processes;
- Restrictions on reporting proceedings;
- Certain disposals are system-specific.

Action has been made to assist those who have been harmed, in light of this.

The Bill does however place an obligation on the Principal Reporter to advise victims of their right to request information, under certain exceptions, which reflect that in some cases it will not be in a victim's best interests, or possible, for them to be so advised.

The Bill also makes provision to bolster the ability for measures to be placed on a child through compulsory orders where necessary to avoid a child causing harm to themselves or others. This includes through the revisions to the test for a MRC, and the ability to impose specific measures as part of a CSO to prohibit a child approaching or communicating with a specified person.

However, one key difference between the hearings system and the criminal court is the ability of a child victim to be notified of the details of measures taken against the offending child. Unlike where a court disposal is a matter of public record, where a compulsory measure is imposed by a hearing they would only be notified this was the outcome but none of the details of that measure or any elements which pertain to them.

However, the Kilbrandon ethos of the hearings system is well established and the protection of privacy for the referred child has been in place for younger children for a significant period of time. The Bill enables the raising of the maximum age of referral to the Principal Reporter, but does not dilute the welfare based principals of the hearings system. This is in line with recommendations from Lady Dorrian's Improving the Management of Sexual Offences Cases review:

“Broader information for complainers is required, addressing how the Children's hearings system, and associated referral proceedings, work, explaining in particular the restrictions applicable to the provision of information and the reasons for these, all with a view to helping mitigate complainers' concerns, and enabling them to appreciate the requirement of confidentiality in these proceedings.”

Moreover, it is important to recognise the need to support, manage and address elements of a child's behaviour that may pose a risk of harm to others, even if they are dealt with by the children's hearing. For example, where a child is subject to formal risk management measures (such as under Care and Risk Management procedures), victim safety planning will be considered as part of a multi-agency risk management plan. In those cases, information could be shared with a person who has been harmed as deemed necessary. This provides a key safeguard.

Also, the discretion of Procurators Fiscal, who are aware of the mechanisms of both systems, to prosecute in the criminal courts remains. In recognising these mechanisms which take into account the rights of those that have been harmed, as well as the Bill provisions outlined above and the overall approach of UNCRC, it is deemed the legislation at introduction strikes an appropriate balance of rights in this area.

Regarding criminal courts, the Bill also reforms the reporting restrictions for children, including child victims and witnesses, who are part of an investigation into a suspected offence, or involved in proceedings. Therefore, the Bill increases equity between the hearings system and the courts on such matters

5. How will the policy/measure give better or further effect to the implementation of the UNCRC in Scotland?

The Bill enables children up to age 18 to be afforded the protection of the children's hearings system where appropriate and necessary for their welfare. This includes children who require care and protection to protect them from harm as well as those who are in conflict with the law.

Children who engage in harmful behaviour are some of the most vulnerable in society³ and are often victims and witnesses of harm themselves and may also need protective measures due to other needs, as well as to address their behaviour. As such, they require responses that are centred around their care, protection and reintegration. The UN Committee on the Rights of the Child (CRC) is clear that strictly punitive approaches are contrary to children's human rights⁴ and stigmatise these children further, in turn increasing the risk of reoffending, due to the knock on effect factors that support desistance such as educational attainment, employment, and future aspirations⁵. The CRC has highlighted observations that the criminal court context, even where adapted, is not an optimal forum for considering the needs and developmental and cognitive stage of children⁶. The CRC, in General Comment No. 24⁷, also states: "*Children differ from adults in their physical and psychological development. Such differences constitute the basis for the recognition of lesser culpability, and for a separate system with a differentiated, individualised approach*".

The Promise also stated that:

"...Scotland must consider how to ensure that children have the totality of their cases dealt with in an environment that upholds their rights and allows them to effectively participate in proceedings. Traditional criminal courts are not settings in which children's rights can be upheld and where they can be heard... To ensure that all children benefit from the Kilbrandon approach to youth justice, there must [be] more efforts to ensure children stay within The Children's hearings system."

The different aspects of the Bill and its impacts are set out below.

Age of Referral to children's hearings and criminal justice. This provision in effect allows the children's hearings system to be recognised as an appropriate forum for children up to age 18, within the limits of the Lord Advocate's Guidelines and the independence of prosecutorial decision-making. This reframes the Scottish definition of a child for the children's hearings system, retaining the ethos of the

³ [Children-aged-12-to-15-years-offending.pdf \(scra.gov.uk\)](#)

⁴ CRC/C/GC/24: Para 76.

⁵ Bernburg, J. & Krohn, M. (2003) 'Labelling, life chances, and adult crime: The direct and indirect effects of official intervention in adolescence on crime in early adulthood', *Criminology* (Beverly Hills), 41(4).

⁶ [For UK criticism see the Committee on the Rights of the Child Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland](#)

⁷ [General Comment No. 24 \(201x\), replacing General Comment No. 10 \(2007\) Children's rights in juvenile justice](#)

children's hearings system as a system to address the needs of children requiring compulsory measures of care.

This provision ensures there is no differential treatment of a child due to age alone, instead promoting equality of access to this system, and allows decisions to be made with the child's welfare as a paramount, if not primary consideration in all cases. This recognises the need to be able to treat children differently from adults as envisaged by article 40.

Due to the ability of the children's hearings system to review a child's compulsory order where necessary to meet their needs, a more bespoke, holistic flexible approach to their welfare is more likely to improve outcomes in the longer term. The extensive children's hearings powers include making a measure of residence for a child away from their normal home; making a measure of where they attend school; provide for services to support their needs; and to keep them safe and secure if necessary and proportionate. Interim measures are available if necessary as a matter of urgency. These are considered beneficial, not only to the referred child but to those children affected by their behaviours if they are in conflict with the law. By helping address underlying causes of behaviour and looking more holistically at the circumstances surrounding a child's offending behaviour – in-line with the Kilbrandon ethos on which the children's hearings system was founded – Scotland can help them reintegrate and rehabilitate⁸. **Articles engaged are 1, 2, 3 12, 16, 37 40**

Offences against children to which special provisions apply. As a consequence of a child being considered as up to 18 the special provisions under schedule 1 of the Criminal Procedure (Scotland) Act are extended to age 18, which is a positive factor for 17 year olds to whom these provisions will now apply. **Articles engaged are 1, 3, 12, 37, 40**

Measures to prohibit contact with specified persons. The effect of this is to have clarity that a children's hearing may, if necessary make a measure on a child's order to include restrictions on contact with others, either for their own direct welfare, or to avoid their contact with others who they may harm; provided it is a measure necessary for their welfare. This measure would be reviewed if not complied with, allowing a children's hearing to review the child's needs and available measures. The aim is for this to have a positive effect on the child to avoid a specified person where it would not be in their interest to have unregulated contact. **Articles engaged are 3, 12, 37, 39, 40**

Amend the test for MRC in the 2011 Act. Decoupling the test for MRC from secure accommodation criteria allows a children's hearing or sheriff to more flexibly meet the needs of a child where it is at least a primary consideration for their welfare for their movements to be restricted to protect them against causing harm to themselves or others. This will allow, where appropriate, intensive support to be given to the child whilst their movements are restricted with the aim of preventing further harm

⁸ For a summary of evidence in respect of the children's hearings system see CYPES [Older Children in Conflict with the Law](#)

being caused by parts of their behaviour or to them. **Articles engaged are 1, 3, 6, 12, 37, 39, 40**

Provision of information to persons affected by child's offence or behaviour in the children's hearings system. The Bill will mean child victims will have contact with the Principal Reporter and the children's hearing rather than the Procurator Fiscal if a child of 16 and 17 is referred to the Principal Reporter. Special measures under the Vulnerable Witnesses (Scotland) Act 2004 apply to proof proceedings associated with children's hearings in the same way as at court in the criminal justice system, and the Bill will place the Principal Reporter under an obligation to advise a victim of their right to receive information about the outcome of a children's hearing, subject to exceptions where appropriate **Articles engaged are 3, 12, 16, 17, 40**

Places where children can no longer be detained. Under various Bill provisions, no child can be detained in a young offenders institution (or prison). Instead the Bill provides that where deprivation of liberty is required, children will normally be detained in secure accommodation, whether or not the child has already been subject to compulsory measures via the children's hearings system. This will allow appropriate care and support to be provided to meet the child's needs and respect children's rights. This also addresses the concerns about children's placement in YOIs including as raised by the Independent Care Review and the HMIPS Year of Childhood Pre-Inspection Survey⁹ which raised particular concerns about meeting children's psychological, educational, social or cultural rights and needs. **Articles engaged are 1, 3, 20, 37, 39, 40**

Abolition of remand centres There are no remand centres in Scotland. The repeal of references to remand centres in legislation will ensure that if children are detained, they are cared for and supported in appropriate child-centred facilities. **Articles engaged are 3, 37, 40**

Referral or remit to Principal Reporter of children guilty of offences. The effect of this is to allow greater opportunity for a court to seek advice of a children's hearing or remit for disposal when dealing with a child who has been convicted. This will ensure a court has a holistic view of a child's needs and circumstances to assist in appropriate sentencing, and to remit to a children's hearing should a compulsory supervision order best meet the needs of a child. **Articles engaged are 3, 12, 40**

Restriction on report of suspected offences involving children. This affords the courts additional powers to protect a child's identity for actions carried out in childhood. This should also mitigate the potential detrimental rights implications that can accompany such identification. **Articles engaged are 3, 6, 16, 24, 39, 40**

Restriction on report of proceedings involving children. This will ensure that the identity of a witness (who may be a victim) under 18 years old is protected, minimising the risk of a breach of the child's privacy, and prevent further unintentional consequences resulting from an offence committed against them. This

⁹ [Independent Care Review - The Promise](#) and [HMIPS - Year of Childhood Pre-inspection Survey 2021 | HMIPS \(prisonsinspectoratescotland.gov.uk\)](#)

could minimise the likelihood of children being publicly named in later life, even once the sentence imposed has been completed, assisting their rehabilitation and reintegration into society. **Articles engaged are 3, 16, 40**

Meaning of ‘secure accommodation’ and secure accommodation

authorisations. The Bill amends the criteria for making a secure accommodation authorisation through the children’s hearings system and considering the continuation of a child’s placement, as well as in respect of children in secure accommodation through other routes where these criteria are used. This will decouple the MRC and secure authorisation criteria and revise the criteria to include the child being likely to cause physical or psychological harm to another person. Existing safeguards remain to ensure that depriving a child of their liberty will remain in accordance with a procedure prescribed by law and with appropriate safeguards. **Articles engaged are 3, 37, 39, 40**

Custody of children before proceedings. For all under 18s an alternative place of safety should be considered when a child is to appear before court and except in limited circumstances, children should not be kept in police stations. Changes are made to the rights to intimation, access to another person, local authority notification and visits, respecting the responsibilities of parents and the evolving capabilities of children, whilst recognising children in such circumstances may also require protection. **Articles engaged are 3, 12, 37, 40**

Steps to safeguard welfare and safety of children in criminal proceedings.

Participation needs of children in court - provision is made for the court to determine on a case-by-case basis what amendments may be required to best meet the needs of each individual child,. Such provision supports the child’s full understanding of and participation in proceedings which is essential in upholding children’s rights, including to a fair trial. Participation is a fundamental principle of child-friendly justice, which requires support to ensure children’s right to be heard and express views can be upheld. The ability for the child to understand proceedings is at the core of participation and the exercising of a child’s rights. **Articles engaged are 3, 12, 40**

Extend the provision that children in summary cases should have their case heard in a closed court¹⁰, with this now also being an option in summary and solemn proceedings where there is an adult co-accused. These measures enable the court to make a decision based on the individual considerations in a particular case, providing all children with the opportunity to benefit from such safeguards and protections, while upholding the rights of the adult co-accused. These provisions

¹⁰ Currently section 142(1) [Criminal Procedure \(Scotland\) Act 1995 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/1995/37/section/142) directs that where summary proceedings are brought in respect of an offence alleged to have been committed by a child, no person shall be present at any sitting for the purposes of such proceedings except: (a) members and officers of the court; (b) parties to the case before the court, their solicitors and counsel, and witnesses and other persons directly concerned in that case; (c) bona fide representatives of news gathering or reporting organisations present for the purpose of the preparation of contemporaneous reports of the proceedings; and (d) such other persons as the court may specially authorise to be present.

seek to improve the experience of children at court and enhance the rights of children by recognising the additional rights and vulnerabilities all children under the age of 18 experience by virtue of their age. They also seek to bring consistency to existing provisions that vary dependent on the types of proceeding and who is involved in the case, recognising that in whatever circumstances, children should be treated as children and they may require additional safeguards and protections.

Articles engaged are 3, 6, 40

Extension of secure accommodation beyond 18. Provision is made in the Bill to remove the necessity for children to automatically leave secure accommodation, solely based on their chronological age (i.e. turning 18), up to a maximum of 19 years old. This will be achieved by regulations supplemented by guidance. Any decision will be made on a case-by case basis to ensure that the decision is in their best interests and not contrary to the best interests of other children in the facility.

Articles engaged are 3, 12, 40

Children detained in secure accommodation to be treated as ‘looked after children’. The Bill provides parity by enabling any child who is sentenced or remanded to secure accommodation to be treated as if they were a “looked after” child (if not already) for the duration of their placement. This will assist the child to be supported as they return to the community and include access to aftercare entitlements should the child leave secure accommodation on or after their 16th birthday. **Articles engaged are 3, 12, 20, 37, 39, 40**

Strengthening scrutiny and safeguards for Cross border provision. Children from England, Wales and Northern Ireland are also affected by the Bill, where the intention is to place the child in a residential placement in Scotland, and also through the provisions on sentencing placements for children not resident in Scotland.

The provisions allow for regulations to be made to provide further safeguards to cross border children, such as advocacy as may be necessary; and place appropriate duties on placing authorities, and enable the Scottish Ministers to impose a range of conditions on potential and existing providers of cross border placements thus strengthening the regulatory and scrutiny role of the Care Inspectorate in relation to such placements. Combined these measures should ensure these children are not overlooked and their needs are properly communicated and met.

In placing a duty on prospective providers of residential care services for children that they must inform the bodies with statutory responsibility for preparing a children’s services plan of any application to be registered with the Care Inspectorate appropriate provision will be made to ensure that care services and the placements they take are visible to local services. **Articles engaged are 3, 12**

Repeal of Part 4 (Named Person) and Part 5 (Child’s Plan) of the Children and Young People Scotland Act 2014 .

Parts 4 (Named Person) and 5 (Child’s Plan) of the Children and Young People (Scotland) Act 2014 were due to commence in August 2016. However, following a

Supreme Court judgement,¹¹ they were not commenced and have never been in force.

The Supreme Court found the intention of the named person policy to be "unquestionably legitimate and benign", but had concerns around information sharing provisions of the 2014 Act.

In response to the Supreme Court ruling the Children and Young People (Information Sharing) (Scotland) Bill was introduced with an intention to make changes to the rules relating to information sharing which were part of the Named Person provision in the 2014 Act (Part 4).

A practice development panel was formed to devise comprehensive information sharing guidance compatible with Article 8 of ECHR rights. The panel concluded that guidance of this nature would be extremely complex, may inhibit practitioners and for those reasons decided not to release the guidance.

On 19 September 2019 the Deputy First Minister announced in Parliament the intention to seek to repeal Parts 4 and 5 of the 2014 Act, and to withdraw the Children and Young People (Information Sharing) (Scotland) Bill. The Deputy First Minister also stated the Scottish Government's continued commitment to GIRFEC and an intention to produce refreshed GIRFEC practice guidance.

The first phase of the refreshed GIRFEC materials were published on 30 September 2022, including statutory guidance on the assessment of wellbeing. This suite of documents sets out the refreshed position in the light of the UK Supreme Court ruling.

GIRFEC seeks to realise children's rights on a day-to-day basis and to enhance the wellbeing of all children and young people as well as building a flexible scaffold of support: where it is needed, for as long as it is needed.

6. How have you consulted with relevant stakeholders, including involving children and young people in the development of the policy/measure?

The policy memorandum for the Bill gives full details of the consultation.

Key to the consultation process was listening to the views of children and young people themselves. To support engagement an easy read version of the consultation and young person's conversation guide were developed and published alongside the main document. Both of these resources were available for children and young people to use independently, as well as by professionals to facilitate individual or group discussions to help the children and young people they were working with to participate. As detailed above, these measures yielded a number of written consultation responses from individuals and groups including Our hearings; Our

¹¹ [The Christian Institute and others \(Appellants\) v The Lord Advocate \(Respondent\) \(Scotland\) - The Supreme Court](#)

Voice; STARR; Youth Justice Voices; North Lanarkshire's Promise Team and Participation group TNT – Today Not Tomorrow; and the Good Shepherd Centre.

In addition, we worked with CYCJ and the Scottish Youth Parliament (SYP) to carry out open and targeted sessions with children and young people.

The SYP WhatsYourTake Summer survey also generated 243 responses from children and young people. Although these were received too late to be part of the main consultation analysis, SYP's analysis was included in this report and informed policy development. The survey contained two questions which focused on maximising the use of the children's hearings system as opposed to the traditional criminal justice system, which the majority of respondents supported. Views were also sought on which, if any, potential changes in the criminal justice system should be made when it is dealing with children, with support across the different options varying. The children's hearings system, particularly information sharing, and criminal justice system were also the focus of a targeted workshop at the SYP Summer Sitting.

7. What evidence have you used to inform your assessment?

The UNCRC, the internationally mandated children's rights treaty, already ratified by UK, informs our strategies and programmes and feeds into our national outcomes. It sets out the rights that all children have and outlines what children need, to give them the best chance of growing up happy, healthy and safe.

The backdrop of the proposed UNCRC Incorporation (Scotland) Bill¹² has focused the attention in Scotland onto children aged 16 and 17 years in the care and justice systems as currently not all of this age group come within the definition of child. Enhancing the ability of all people up to 18 to be given protections afforded to children is supported by UNCRC principles and by analysis in consultation responses by the Commissioner for Children and Young People¹³ and the Children and Young Peoples Centre for Justice, both agencies skilled in the area of child's rights.¹⁴

The Independent Care Review¹⁵ published its report, The Promise¹⁶ in 2020. This told Scotland what it must do to make sure that all children and young people are loved, safe and respected so that they can reach their full potential. The Scottish Government is committed to Keeping The Promise by 2030. Our implementation

¹² [United Nations Convention on the Rights of the Child \(Incorporation\) \(Scotland\) Bill – Bills \(proposed laws\) – Scottish Parliament | Scottish Parliament Website](#)

¹³ [Childrens-Hearing-16-17-FINAL.pdf \(cypcs.org.uk\)](#)

¹⁴ [Use and impact of bail and remand in Scotland with children - Children and Young People's Centre for Justice \(cycj.org.uk\)](#) 13 December 2020

¹⁵ [Independent Care Review – The root and branch review of Scotland's care system.](#)

¹⁶ [The-Promise.pdf \(carereview.scot\)](#)

plan to achieve this was published on 30 March 2022 and has received cross-party support¹⁷ in the Scottish Parliament.

National and international evidence¹⁸ has highlighted the significant detrimental impact on children being deprived of their liberty, even for short periods particularly within custodial institutions. Accordingly international human rights instruments¹⁹ specify that where children do require to be deprived of their liberty, this should take place in correctional or educational facilities, in a manner that takes account of children's needs and age and prioritises ensuring the child's effective reintegration into their community as soon as possible. In Scotland, secure accommodation provides such facilities.

In terms of the number of children in YOIs in Scotland, this fluctuates. There were an average of eight children in YOIs in the period July to September 2022 and the last full yearly figure shows an average of seven child detainees in YOIs²⁰. However, in keeping with other baselines used in this Financial Memorandum based on pre-pandemic data, the figure for 19/20 stands at an average of 16.²¹

The Inspectorate for Prosecution in Scotland's thematic report²² on the prosecution of young people in the Sheriff and Justice of Peace courts demonstrates the approach being taken in Scotland under the Scottish Government Youth Justice Strategy²³ which has had the effect of reducing the numbers of children being dealt with by formal systems and instead being diverted through early intervention, diversion and use of robust community alternatives. This supports the approach taken in this Bill to remove as many children as possible from the criminal justice system.

SCRA studied²⁴ a cohort of children in conflict with the law and noted that already there is a trend towards younger children being diverted out of the criminal justice system, avoiding the negative consequences to the benefit of children, their families and victims, recognising that criminalisation of children can result in stigma and negativity towards a child. This supports the approach taken in this Bill.

Research confirms that police stations and cells can be frightening, distressing and traumatising places for children, with by their very nature their ability to be child-centred limited²⁵. Children report that it can be difficult to understand what is

¹⁷ Scottish Parliament official report [Official Report \(parliament.scot\)](https://www.parliament.scot)

¹⁸ [Report on Expert Review of Provision of Mental Health Services at HMP YOI Polmont | HMIPS \(prisoninspectorescotland.gov.uk\)](https://www.prisoninspectorescotland.gov.uk); [Rights Respecting? Scotland's approach to children in conflict with the law - Children's and Young People's Centre for Justice \(cycj.org.uk\)](https://www.cycj.org.uk); [UN GLOBAL STUDY ON CHILDREN DEPRIVED OF LIBERTY \(2019\) · Omnibook](https://www.unhcr.org/refugees/pdf/49999999)

¹⁹ Including [The United Nations Convention on the Rights of the Child](https://www.unhcr.org/refugees/pdf/49999999) and [General Comment No. 24 \(201x\), replacing General Comment No. 10 \(2007\) Children's rights in juvenile justice](https://www.unhcr.org/refugees/pdf/49999999)

²⁰ Scottish Prison Population [SPS Prison Population](https://www.sps.gov.uk)

²¹ Scottish Prison Population [SPS Prison Population](https://www.sps.gov.uk)

²² [Prosecution of young people: report](https://www.sps.gov.uk)

²³ [Preventing offending: getting it right for children and young people - gov.scot \(www.gov.scot\)](https://www.gov.scot)

²⁴ [Children-aged-12-to-15-years-offending.pdf \(sra.gov.uk\)](https://www.sra.gov.uk)

²⁵ CYCJ research on children in police custody is forthcoming

happening to them, what their rights are and how these can be upheld²⁶. Therefore, it is important that children are only kept in police custody when this is necessary and proportionate.

Diverting children from prosecution has been proven to facilitate desistance from crime and to be more cost-effective²⁷.

While secure accommodation and YOIs can both deprive children of their liberty, the environments are very different²⁸. Whilst it is recognised that YOIs have made great improvements, they are not primarily designed to be therapeutic environments, cannot offer the same level of trauma and attachment informed support, nor the high staff to child ratio sometimes necessary to meet the needs of these children. Safe and trusting relationships are the cornerstone of promoting children's healthy development and positive outcomes. However these are extremely difficult if not impossible to develop in a custodial environment such as a YOI, due to the purpose of prison, the inbuilt power imbalances, the restricted regime, a climate of fear, the building design and a lack of in-depth trauma related support²⁹. Different supports and interventions can also be afforded within each environment, including in respect of family support and contact, as well as the staff having different skills and qualifications. The expectations and requirements on children are also different within both settings, with children in secure accommodation regardless of their legal status expected to engage with interventions and education, with services available at the point of need.

There is a less evidence³⁰ on the use of MRC's within compulsory orders, albeit the numbers are relatively low (average of 26 per year – 2 per month – over the past 4 financial years), and the intention behind the Bill is not to promote wide-scale use or to alter the significant threshold by which a panel makes such a decision. Decisions are made independent of government on a case-by-case basis and subject to being necessary and proportionate with the welfare of the child as at least a primary consideration. Whilst the new criteria may give children's hearings the ability to put a child on a measure in wider circumstances than before, they will only be used where appropriate. The consequence of raising the age of referral to 18 means there will be more 16 and 17 year olds in the hearing system and the availability of MRCs as a tool for children who need their structure to safeguard their welfare may support a child from revisiting a harmful scenario.

Promoting rehabilitation and reintegration should in accordance with international human rights legislation and Scottish Government policy, be a core aim for approaches to children and young people in conflict with the law, and arguably

²⁶ Efforts have been made to address this, for example through the coproduction of materials like [CYCJ-Know-Your-Rights-Guide-WEB.pdf](#)

²⁷ For a summary see CYPCS [Older Children in Conflict with the Law](#)

²⁸ As above

²⁹ [It's knowing the right things to say and do: challenges and opportunities for trauma-informed practice in the prison context — University of Strathclyde](#)

³⁰ CARM Launch: Care and Risk Management (CARM) in Practice - Children and Young People's Centre for Justice (cycj.org.uk)

serves the interests and safety of the public. However as a Hart³¹ has concluded “there seems little doubt that being publicly named puts rehabilitation at risk”. This is because the identification of children and young people reduces the ability to access the identified core components that support rehabilitation, reintegration and desistance such as safety, healthy and positive relationships, education and employment opportunities, connectedness and sense of self-worth. Moreover, where a child is not named but is subsequently named after turning 18 this can make the progress made in terms of rehabilitation and reintegration more challenging to sustain, which further supports the extension of childhood anonymity.

Rights based reviews of Scotland’s approaches to children in conflict with the law highlighted³² rights concerns which informed development of the Bill and has sought to address a wide range of these. Children’s rights organisation, such as the Commissioner for Children and Young People³³, CYCJ and Dr Claire Lightowler³⁴ add support to these changes and in addition support extra measures to support children, for example in relation to anonymity for child victims and children who are themselves prosecuted.

In relation to information for victims Lady Dorrian’s recent review³⁵ (published 12 May 2022) highlights the challenges of effectively supporting victims where the child causing the harm is themselves in need of the welfare based children’s hearings system, and the measures in the Bill aim to balance the competing interests where it is appropriate to do so.

Children outwith Scotland who require placement here benefit from the measures that will evolve from the Bill. The places where they stay will be regulated, and inspected, to ensure that their needs are met and this aims to meet the concerns raised whilst the deprivation of liberty regulations were going through Parliament.³⁶

8. How will the impact of the policy/measure be monitored?

Children’s rights and their wellbeing are mutually reinforcing. Incorporating the rights in the UNCRC will further support the work which public authorities already do to

³¹ [What’s in a name? The identification of children in trouble with the law — AYJ, Alliance for Youth Justice](#)

³² [Older Children in Conflict with the Law. Rights Respecting? Scotland's approach to children in conflict with the law - Children's and Young People's Centre for Justice \(cycj.org.uk\)](#)

³³ [Improving victims' experiences of the justice system: consultation - The Children and Young People's Commissioner Scotland \(cypcs.org.uk\)](#)

³⁴ ['Rights respecting' report calls for Scottish youth justice reform - Children and Young People's Centre for Justice \(cycj.org.uk\)](#) 30 January 2020

³⁵ [Introduction - Improving victims' experiences of the justice system: consultation - gov.scot \(www.gov.scot\)](#)

³⁶ [Scottish Government’s Policy Position Paper on Cross-border Placements of Children and Young People - The Children and Young People's Commissioner Scotland \(cypcs.org.uk\)](#) Feb 22

[Supplementary evidence - The Cross-border Placements \(Effect of Deprivation of Liberty Orders\) \(Scotland\) Regulations 2022 - The Children and Young People's Commissioner Scotland \(cypcs.org.uk\)](#)

support children's wellbeing, and underpin effective and joined up decision-making in relation to rights and wellbeing for children and young people. Getting it right for every child and the eight wellbeing indicators have their origins in the UNCRC. The UNCRC general principles of non-discrimination, best interests of the child, right to life, survival and development, and respect for the views of the child, are the overarching rights needed for any and all rights in the UNCRC to be realised, and as such, should be the foundation for any assessment of a child's or young person's wellbeing. This rights-based approach emphasises the responsibility of all public services and their partners to protect children's rights and entitlements.

Some examples of the interaction of the wellbeing indicators that will be measured to support this Bill are as follows:

Safe - Protected from abuse, neglect and harm by others at home, at school and in the community.

Detained, if necessary as a last resort outwith a penal setting and within a setting that is trauma-informed and child-centred. Privacy respected by courts for children causing harm or being harmed, and holistic approach taken to disposal by taking advice from children's hearings. This is supported by **Articles 3,6 12, 37, 39, 40**

Healthy - Having the highest attainable standards of physical and mental health, access to suitable healthcare, and support in learning to make healthy and safe choices. Detention in secure accommodation afford access to health care appropriate to a child's needs and should mitigate the particularly acute concerns about the impact of placement in YOIs on children's mental health³⁷. This is supported by **Articles 3, 6, 23, 24, 39**.

Achieving - Being supported and guided in their learning and in the development of their skills, confidence and self-esteem at home, at school, in the community and whilst detained elsewhere than in penal institutions. Maximising the use of the children's hearings system, removing prison settings and extending option for anonymity are all enabling factors for a child to have the best chances for rehabilitation, reintegration and making future contributions to society. This is supported by **Articles 4, 18, 28, 29**.

Nurtured - Having a nurturing place to live, in a family setting with additional help if needed or, where this is not possible, in a suitable care setting. Detention outwith a penal setting supports a more nurturing environment. Children are less risk of stigmatisation for their behaviours if they are supported through children's hearings system and their anonymity protected. This is supported by **Articles 3, 37, 40**.

Respected - Having the opportunity, along with carers, to be heard and involved in decisions which affect them. Children may be better supported to participate in children's than in the court setting. Courts recognising the need for children to be able to participate in an environment suitable for them, and respect for their anonymity as a result of acts carried out as a child will lead to further realisation of this outcome. This is supported by **Articles 2, 3, 12, 37, 40**.

³⁷ For more information see [Mental Health and Wellbeing of Young People in Custody: Evidence Review - Enlighten: Publications \(gla.ac.uk\)](https://www.gla.ac.uk/publications/enlighten-mental-health-and-wellbeing-of-young-people-in-custody-evidence-review)

Responsible - Having opportunities to have their circumstances dealt with by a child appropriate forum, and, where necessary, having appropriate guidance and supervision to meet the child's needs and address deeds, and being involved in decisions that affect them. This is supported by **Articles 3, 12, 37, 40**.

Included – the extension of access to the children's hearings system for children up to 18. Keeping children out of a prison setting and the likely reduction in prosecutions for less serious offences will reduce the exposure of children to an adult criminal justice system. This is supported by **Articles 3, 37, 40**.

9. How will you communicate to children and young people the impact of the policy/measure on their rights?

In consultation and development of the Bill measures, open engagement has taken place with children and young people. The Scottish Government intends to continue in this spirit and will be engaging with the lead Scottish Parliament committee on how it intends to undertake such action during legislative scrutiny. The Scottish Government will continue to consider opportunities to engage directly with young people as the Bill progresses, being mindful of the role of Parliament as the principal forum for views to be heard during scrutiny. Upon commencement of any Act, the Scottish Government will continue its approach of engaging and informing young people and look at the most appropriate ways to do so on different elements of the Bill. The Scottish Government is also closely in touch with partners in children's rights and participation such as CYCJ, Scottish Youth Parliament, Young Scot, Together (Alliance Scotland), Our Hearings Our Voice and the Commissioner for Children and Young People. The Scottish Government will continue to use such networks to help disseminate messages regarding measures affecting young people and gathering necessary feedback.

10. Sign & Date

Policy Lead Signature & Date of Sign Off: Shona Spence, Youth Justice and Children's Hearings Unit, 2 December 2022

Deputy Director Signature & Date of Sign Off: Tom McNamara, Interim Deputy Director, Children's Rights Protection and Justice, 2 December 2022

Annex 1 – UNCRC Article Clusters

[CRC Clusters \(unicef-irc.org\)](https://www.unicef-irc.org/)

I General measures of implementation

- [Article 4](#) implementation obligations
- [Article 41](#) respect for existing standards
- [Article 42](#) making Convention widely known
- [Article 44\(6\)](#) making reports widely available

II Definition of a child

[Article 1](#)

III General principles

- [Article 2](#) non-discrimination
- [Article 3\(1\)](#) best interest to be a primary consideration
- [Article 3\(2\)](#) State's obligations to ensure necessary care and protection
- [Article 3\(3\)](#) standards for institutions services and facilities
- [Article 6](#) the right to life, survival and development (see also: [VI Basic health and welfare](#))
- [Article 12](#) respect for the views of the child

IV Civil rights and freedoms

- [Article 7](#) right to name, nationality and to know and be cared for by parents
- [Article 8](#) preservation of child's identity
- [Article 13](#) freedom of expression
- [Article 14](#) freedom of thought, conscience and religion
- [Article 15](#) freedom of association and peaceful assembly
- [Article 16](#) protection of privacy
- [Article 17](#) child's access to information, and role of mass media
- [Article 37\(a\) right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment](#)

V Family environment and alternative care

- [Article 5](#) parental guidance and child's evolving capacities
- [Article 18\(1\) and \(2\)](#) parental responsibilities and State's assistance
- [Article 9](#) separation from parents
- [Article 10](#) family reunification
- [Article 11](#) illicit transfer and non-return
- [Article 27\(4\)](#) recovery of maintenance for the child
- [Article 20 children deprived of their family environment](#)

[Article 21 adoption](#)

[Article 25](#) periodic review of placement and treatment

[Article 19](#) protection from all forms of violence

[Article 39](#) rehabilitation and reintegration of victims of violence (see also: [VIII - Special protection measures](#))

VI Basic health and welfare

[Article 6](#) right to life, survival and development (see also: [III - General principles](#))

[Article 18\(3\)](#) support for working parents

[Article 23](#) rights of disabled children

[Article 24](#) right to health and health services

[Article 26](#) right to social security

[Article 27\(1\)-\(3\)](#) right to adequate standard of living

VII Education, leisure and cultural activities

[Article 28](#) right to education

[Article 29](#) aims of education

[Article 31](#) right to leisure, play and participation in cultural and artistic activities

VIII Special protection measures

A - Children in situations of emergency

[Article 22](#) refugee children

[Article 38](#) children and armed conflict

[Article 39](#) rehabilitation of child victims (see also: [V Family environment and alternative care](#))

B - Children involved with the system of administration of juvenile justice

[Article 40](#) administration of juvenile justice

[Article 37\(a\)](#) prohibition of capital punishment and life imprisonment

[Article 37\(b\)-\(d\)](#) restriction of liberty

[Article 39](#) rehabilitation and reintegration of child victims (see also: [V Family environment and alternative care](#))

C - Children in situations of exploitation

[Article 32](#) child labour

[Article 33](#) drug abuse

[Article 34](#) sexual exploitation

[Article 35](#) sale, trafficking and abduction

[Article 36](#) other forms of exploitation

D - Children belonging to a minority or an indigenous group

[Article 30](#)

[Optional Protocol to the UNCRC on the Involvement of Children in Armed Conflict](#)

[Governments](#) should ensure that children under 18 who are members of the armed forces do not take a part in combat. Any recruitment of children under 18 must be voluntary and carried out with the full consent of the child's parents/carers. The UK Government has entered interpretive Declarations to this Optional Protocol. The UK would not exclude the deployment of under 18s who are members of the armed forces in direct combat if there is a genuine military need; it is not practicable to withdraw them before deployment; or doing so would undermine the operational effectiveness of their unit. The minimum age at which children may join the UK armed forces is 16 years, with parental consent required.

[Optional Protocol to the UNCRC on the Sale of Children, Child Prostitution and Child Pornography Governments](#) must prohibit the sale of children, child prostitution and child pornography, and recognise the vulnerability of child victims, protect their privacy, provide appropriate support services and ensure their safety.

Annex 2 – General Comments

General Comments are non-legally binding interpretive aids issued by the UN Committee on the Rights of the Child to provide State parties with assistance regarding the interpretation of an article or issue relating to the UNCRC, and what actions governments should take to ensure its implementation. New General Comments appear at irregular intervals.

[Treaty bodies Search \(ohchr.org\)](#)

1. [The aims of education \(2001\)](#)
2. [The role of independent National Human Rights Institutions in the protection and promotion of the rights of the child \(2002\)](#)
3. [HIV/AIDS and the rights of children \(2003\)](#)
4. [Adolescent health and development in the context of the Convention on the Rights of the Child \(2003\)](#)
5. [General measures of implementation on the Convention on the Rights of the Child \(2003\)](#)
6. [Treatment of unaccompanied and separated children outside their country of origin \(2005\)](#)
7. [Implementing child rights in early childhood \(2005\)](#)
8. [The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment \(2006\)](#)
9. [The rights of children with disabilities \(2006\)](#)
10. Children's rights in juvenile justice (2007)
11. [Indigenous children and their rights under the Convention \(2009\)](#)
12. [The right of the child to be heard \(2009\)](#)
13. [The right of the child to freedom from all forms of violence \(2011\)](#)
14. [On the right of the child to have his or her best interests taken as a primary consideration \(2013\)](#)
15. [On the right of the child to enjoyment of the highest attainable standard of health \(2013\)](#)
16. [State obligations regarding the impact of the business sector on children's rights \(2013\)](#)

17. [On the right of the child to rest, leisure, play, recreational activities, cultural life and the arts \(2013\)](#)
18. [On harmful practices \(Joint General Comment with the Committee on the Elimination of Discrimination against Women\) \(2019\)](#)
19. [Public budgeting for the realisation of children's rights \(2016\)](#)
20. [Implementation of the rights of the child during adolescence \(2016\)](#)
21. [Children in street situations \(2017\)](#)
22. General principles regarding the human rights of children in the context of international migration [\(Joint General Comment with the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families\) \(2017\)](#)
23. State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return [\(Joint General Comment with the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families\) \(2017\)](#)
24. [General comment No. 24 \(2019\)](#) on children's rights in the child justice system
25. [General comment 25 \(2021\)](#) Children's Rights in relation to the digital environment.



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