

Data Protection Impact Assessment Children (Care and Justice) (Scotland) Bill

December 2022

**Data Protection Impact Assessment
Children (Care and Justice) (Scotland) Bill**

Version date: 13/12/2022

Review date:

Review Date	Details of update	Completion date	Approval date
Stage 2	DPIA will be reviewed to reflect any amendments		
Stage 3	DPIA will be reviewed to reflect any amendments		
Royal Assent	DPIA will be reviewed to reflect any amendments		

This Data Protection Impact Assessment (DPIA) works in conjunction with the Article 36(4) ICO consultation form submitted in advance of this, as the proposal requires consultation with the Information Commissioner’s Office (ICO).

This DPIA is undertaken in compliance with UK General Data Protection Regulation (UKGDPR) Article 35(10).

This is an iterative impact assessment at the stage of Bill introduction, which may need to be amended as the Bill makes its way through Parliament.

1. Contact and schedule information

1.1	Scottish Government (SG) department	Children and Families Directorate
1.2	Contact email	CC&JBill@gov.scot
1.3	Data protection support email Data protection officer	dpa@gov.scot dataprotectionofficer@gov.scot
1.4	Is your proposal primary legislation, secondary legislation or other form of statutory measure?	Primary legislation
1.5	What stage is the legislative process at? Please indicate any relevant	Programme for Government (PfG) commitment to introduce a Children (Care and Justice) (Scotland) Bill during this Parliamentary term.

1.1	Scottish Government (SG) department	Children and Families Directorate
	timescales and deadlines.	The Bill is due to be introduced in the Scottish Parliament on 13 December 2022.

2. Introductory information

	Questions	Comments
2.1	Summary of proposal	<p>The Bill is a multi-topic piece of legislation, helping to improve outcomes for children who come into contact with care and justice services in Scotland. The vast majority of the provisions in the Bill amend existing Acts. The Bill creates no new statutory bodies. Therefore data considerations concern existing organisations already subject to GDPR requirements which processes and arrangements in place for processing, handling and sharing personal data, to discharge their existing public duties.</p> <ul style="list-style-type: none"> • Part 1 relates to the children’s hearings system. The main change is to the meaning of “child” in the Children’s Hearings (Scotland) Act 2011, which means that all under 18s will be considered children for the purposes of the children’s hearings system (without any distinction made between children over 16 who are subject to compulsory supervision orders (CSO) and those who are not). The Bill takes forward measures to enhance the ability for protective and preventative measures to be made available through this system, and places a duty on the Principal Reporter to inform people, who have a right to request information about the disposal of a child’s case by the children’s hearings system, that they have that right and provides for supervision and guidance for children after they turn 18 up to age 19. • Part 2 relates to children who are dealt with by the criminal justice system when suspected or accused of offences or as involved as witnesses or victims. This part of the Bill maintains the current link between the meaning of “child” in the Criminal Procedure (Scotland) Act 1995 and the definition in the 2011 Act so that, for almost all purposes, under 18s will be regarded as children. Many of the other provisions in this Part are consequential on this age change and amend provision for the treatment of children from the point of being arrested by the police through to

	Questions	Comments
		<p>detention after pleading, or being found, guilty. This includes introducing restrictions on the reporting of criminal investigations involving children and making changes to the current restrictions on the reporting of court proceedings. This Part also provides that under 18s will no longer be detained in young offenders institutions. Where children are detained in secure accommodation, there is provision for how local authority duties in relation to “looked after” children will apply.</p> <ul style="list-style-type: none"> • Part 3 has links back to both Part 1 and Part 2 as it is mainly aimed at reforming the legislative landscape around the provision of secure accommodation and the approval and regulation of those who provide it. That also includes changes around cross-border placements into accommodation in Scotland from other parts of the UK, as well as changes that will facilitate the recognition in Scotland of orders made in other UK jurisdictions. • Part 4 makes two changes. It changes the meaning of “child” in the Antisocial Behaviour etc. (Scotland) Act 2004 so that it covers under 18s (except in the case of parenting orders, where it will remain as under 16s). And it repeals Parts 4 and 5 of the Children and Young People (Scotland) Act 2014. The Bill amends a number of existing enactments, some of which do, and some of which do not, apply to the Crown. The Bill makes no change to the application of those enactments to the Crown. • Part 5 makes some necessary measures in relation to issues such as ancillary provisions, interpretation and commencement. This DPIA relates to changes introduced by the provisions of the Bill and the policies which support it. It does not provide in full for the operational delivery of the provisions. At the implementation stage following commencement of any future Act of Parliament, operational DPIAs will be the

	Questions	Comments
		<p>responsibility of the organisations identified as data controllers. These organisations are already dealing with personal data, are independent of Scottish Government and as public authorities or bodies, they have legal obligations to ensure that their processes are in accordance with the full requirements of the UK GDPR.</p>
2.2	<p>Description of the personal data involved</p> <p>Please also specify if this personal data will be special category data, or relate to criminal convictions or offences</p>	<p>Overview</p> <p>In terms of data protection, as the Bill proposes adaptations to existing measures and processes, the implications which arise are assessed as minor and build on procedures which currently take place.</p> <p>Impact on personal data</p> <p>The Bill does not make provision to collect any additional personal data. Personal data is already collected when a child comes into contact with children’s care or justice systems. For example, this could be at the point of a child’s first interaction with Police or social work. The personal data typically collected and processed may include name, date of birth, address, postcode, proof of identification. This is not affected by the Bill.</p> <p>The impact of the Bill on processing or sharing of personal data is minimal. The following areas are impacted:</p> <ul style="list-style-type: none"> • By amending the definition of “child” to include 16 and 17-year-olds, children in this age bracket may follow different pathways through the care and justice systems. For example, extending eligibility of referral to the Principal Reporter to all under 18s may result in more children’s data being shared with Scottish Children’s Reporter Administration (SCRA) rather than only with the Procurator Fiscal and the courts. This is an already established data sharing practice.

	Questions	Comments
		<ul style="list-style-type: none"> • The Bill amends section 179A(5) of the Children’s Hearings (Scotland) 2011 Act¹ to place a duty on the Principal Reporter to inform the persons entitled to request information of their right to do so, where reasonably practicable, subject to certain exceptions. This reframes the existing provisions which give the Principal Reporter the discretion to advise a person entitled to information of that right. Therefore this process already takes place. • The Bill seeks to extend provisions for information sharing when a child under 18 is in Police custody. A police constable must notify a local authority if any under 18 is in police custody. Currently, a police constable must notify a local authority if any child under 16 and 16/17s who are subject to a CSO are in police custody. This provision extends information sharing in this specific circumstance, however an information sharing agreement already exists between Police Scotland and local government social work departments. • Where children are prosecuted in the criminal justice system, the Bill extends the ability of courts to hold a child’s case in a closed court. If these provisions results in an increase in the use of closed courts, this should lead to enhanced privacy for more children. • The Bill introduces an extended framework for remittal between the courts and the children’s hearings system. Yet this process already takes place, with the Bill building upon it. The impact of this may be an increased volume of data sharing between Crown Office and Procurator Fiscal Service (COPFS) and SCRA or Children’s Hearings Scotland (CHS), however this is an already established data flow. • The personal data of children who might otherwise have been detained in a Young

¹ See section [179A](#)(1) and (2). Section [179B](#) sets out the information that may be requested.

	Questions	Comments
		<p>Offenders Institution (YOI) – a practice the Bill will end – will have their data shared with secure accommodation services, rather than (for certain children at present) the Scottish Prison Service (SPS). Information sharing already takes place with secure accommodation service providers meaning that the provisions extend use of existing data processing relationships, rather than create new processes.</p> <ul style="list-style-type: none"> • Movement restriction conditions (MRC) may be imposed on a child currently as part of a compulsory supervision order (CSO), although in practice this is rare. The Bill clarifies and extends the specific matters and devices which may be prescribed regarding restrictions or monitoring arrangements as part of a movement restriction condition. Furthermore, the Bill positively impacts the ability of the Scottish Ministers to prescribe certain matters to make sure that specified monitoring devices are used appropriately and proportionately. This includes prescribing how or when information obtained through the monitoring of a child through such devices may, or may not, be gathered, retained, used or shared for the purpose of monitoring a movement restriction condition. This is to expressly cover the additional data-collecting involved in using GPS technology should this be used as a method of monitoring a child’s movements or whereabouts in the future, thus future-proofing legislation around MRCs. However, currently electronic monitoring exclusively uses radio frequency and the provider and data processor G4S is considered a competent authority under Schedule 7, Data Protection Act 2018. This will not be changed by the Bill. • The Bill has no impact on data protection or information sharing as it relates to cross-border secure accommodation. The current processes for sharing information will continue to be used and comply with UK GDPR. However, regulations resulting from the provisions in this Bill may lead to

	Questions	Comments
		<p>improved communication of a young person's needs in relation to their care in a cross border placement and may alter the point at which services are notified of a young person's placement. Any regulations drafted will undergo their own DPIA process.</p> <p>Impact on special category data</p> <p>The Bill does not introduce provision for the collection of any special category data. The Bill will not result in the routine processing or sharing of data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, data concerning health or data about a person's sex life or sexual orientation.</p> <p>Genetic and biometric data</p> <p>By raising the age of referral to the Principal Reporter the exceptions that apply to the normal rules governing retention of DNA and other data in relation to certain cases dealt with by the children's hearing system will be extended to referrals of a child under 18.</p> <p>The Bill has been discussed with the Scottish Biometrics Commissioner and no issues were raised.</p> <p>Criminal conviction or offence data</p> <p>No new criminal conviction or offence data will be collected or processed. The relevant sections of Disclosure Act 2020² will continue to apply to any criminal conviction or offence data which continues to be processed, as it is at present.</p> <p>Furthermore, the special provision with respect to certain disposals by children's hearings made in the Rehabilitation of Offenders Act 1974³ will continue to apply regarding disclosure.</p> <p>A positive impact on privacy relating to criminal offence data is anticipated due to the supplementation of reporting restrictions. The Bill introduces extensions to restrictions on the</p>

² [Disclosure \(Scotland\) Act 2020 \(legislation.gov.uk\)](https://legislation.gov.uk)

³ [Rehabilitation of Offenders Act 1974 \(legislation.gov.uk\)](https://legislation.gov.uk)

	Questions	Comments
		<p>reporting of suspected criminal offences involving children, and of criminal proceedings involving children, including an amendment to the threshold of whether the information is likely to lead to identification of the child rather than having to be calculated to lead to that.</p> <p>In regards to a victim's or witness's data, the Bill builds on existing reporting restrictions, applying to a victim or witness aged under 18, both in relation to suspected offences and during court proceedings. The restrictions apply until the date on which the victim or witness reaches the age of 18 or until the date of completion of the proceedings, whichever is later. The new data impact of this is expected to be limited: reporting restrictions apply at present to witnesses under 18, except where an accused is over 18 years old. In that case, the court has to issue a direction specifying that the restrictions are to apply: the Scottish Government understands that such directions are typical. The court and Scottish Ministers will retain their current ability to lift reporting restrictions in certain limited circumstances.</p> <p>Additionally, as the children's hearings system is a welfare-based system, there is no prosecution or sentencing regardless of the grounds for referral. The potential increased use of children's hearings as an alternative to courts may lead to a change in the type and form of data held. This may be reflected in criminal justice proceedings statistics.</p> <p>Information Sharing Agreements (ISAs) and protocols</p> <p>The Bill does not introduce any exchanges of information outside of existing sharing arrangements. There will be no additional ISAs resulting from this Bill, and the Bill does not require establishment of new data controllers or processors. The existing systems and processes used by data controllers will continue to be compliant with UK GDPR.</p> <p>There are several information sharing agreements in place between certain bodies. The following list</p>

	Questions	Comments
		<p>is not exhaustive, but indicates some of these arrangements:</p> <ul style="list-style-type: none"> • SCRA, Police Scotland and COPFS have an information sharing protocol in place⁴. • SCRA has a data processing contract with CHS. • SCRA has a memorandum of understanding with Police Scotland, currently applicable to cases of children aged 16 or 17 who have a CSO or an open referral to the Children’s Reporter⁵. • There is a Memorandum of Understanding for information sharing between SG and SPS for cases where a young person transitions to YOI. • Information sharing between SG and secure accommodation providers is covered by the terms of the Excel secure care services contract. • <i>[Scottish Courts and Tribunals Service] SCTS currently participates in several secure data sharing arrangements principally with Justice partners including Crown Office and Procurator Fiscal Service (COPFS), Police Scotland, Scottish Children’s Reporter Administration (SCRA) and Scottish Prison Service (SPS)</i>⁶ • There is a memorandum of understanding between SG and other UK Administrations around cross border placements. <p>Each of the data controllers have their own individual responsibilities to comply with GDPR as operationally independent bodies or agencies.</p>

4 [Information sharing protocol between the Scottish Children’s Reporter Administration \(SCRA\) and the Crown Office and Procurator Fiscal Service \(COPFS\)](#)

5 [Memorandum-of-Understanding-between-Police-Scotland-and-the-Scottish-Childrens-Reporter-Administration-v2.pdf \(scra.gov.uk\)](#)

6 [version-1-8---april-2022-rmp-internet.pdf \(scotcourts.gov.uk\)](#)

	Questions	Comments
2.3	<p>Will the processing of personal data as a result of the proposal have an impact on decisions made about individuals, groups or categories of persons?</p> <p>If so, please explain the potential or actual impact. This may include, for example, a denial of an individual's rights, or use of social profiling to inform policy making.</p>	<p>The Bill aims to ensure that decisions about children are age appropriate, trauma-informed and made in the best interest of the child. The decisions made are not directly as a consequence of personal data being processed, rather the data processing is necessary to support decisions being made. These decisions are made on a case-by-case basis and always by a human. The Bill does not introduce automated decision-making or profiling.</p>
2.4	<p>Necessity, proportionality and justification</p> <p>What issue/public need is the proposal seeking to address?</p> <p>What policy objective is the legislation trying to meet?</p> <p>Were less invasive or more privacy-friendly options considered, and if so why were these options rejected?</p> <p>Are there any potential unintended consequences with regards to the provisions e.g., would the provisions result in unintended surveillance or profiling?</p> <p>Have you considered whether the intended processing will have appropriate safeguards in place? If so briefly explain the nature of</p>	<p>Legislating for the advancement of the rights of children who come into contact with the care and justice systems is a well-considered, necessary and proportionate measure. The Bill is being introduced in line with the Scottish Government's commitment to Keep the Promise, made as a result of the Independent Care Review. The commitment includes the presumption against children in the criminal justice system. Where children come into contact with the care and justice systems, or in conflict with the law, Scotland is committed to ensuring children's experiences are age-appropriate and trauma-informed and that systems and settings reflect this.</p> <p>All data relating to the Bill is already subject to processing and appropriate safeguards are in place. The Bill proposes to shift the age bracket that currently determines a child's experience in the care and justice systems, including when in conflict with the law, thus amending the way data is processed while remaining within existing parameters.</p> <p>There is no expectation that new or different data will be collected, processed or shared outside of existing arrangements as a result of the introduction of the Bill. No new data controllers or processors are being introduced. Therefore the safeguards that are already in place will continue to be utilised, albeit for a larger cohort of children.</p> <p>Considerations</p>

	Questions	Comments
	those safeguards and how any safeguards ensure the balance of any competing interests in relation to the processing.	The objective of the Bill is to further uphold children’s rights and ensure that decisions being made reflect the best interest of the child and their wellbeing. This includes Article 40 of UNCRC ⁷ , the child’s right to protection of privacy where the child is in conflict with the law, and this has been considered when drafting the provisions of the Bill. The information processed by data controllers is limited to that which is necessary and proportionate for the purpose of making decisions which aim to support the child’s needs. It would not be practicable to reduce the level of personal data without detriment to the provision of support to the child.
2.5	<p>Will the implementation be accompanied by guidance or by an associated Code of Conduct?</p> <p>If the latter, what will be the status of the Code of Conduct? (statutory or voluntary?)</p>	<p>The data controllers are established bodies with robust and trusted policies and procedures in place for data protection. They already have extensive responsibilities and understand the sensitivities and legal requirements for handling this type of data, therefore it would not be necessary for SG to introduce new guidance. Further, as the data controllers are operationally independent from SG, it would not be appropriate for SG to prescribe a Code of Conduct.</p> <p>The Bill will result in a potential alteration in the volume of children experiencing certain already established routes within the care and justice systems, for example the potential additional referrals of 16 and 17-year-olds to children’s hearings. As these data processes already exist, it should be possible for data controllers and processors to incorporate this additional volume of information.</p> <p>However, where organisations would welcome further guidance on data sharing and management as a result of the Bill to supplement their established practices, this will be considered and further explored.</p>

3. Data Controllers

⁷ [The Convention on the Rights of the Child \(unicef-irc.org\)](https://www.unicef-irc.org/)

Organisation		SCRA	
Activities		<p>SCRA processes a child's information in their administration capacity to assist Children's Reporters and Children's Hearings in making decisions on what measures are needed to protect or support the child, or to address parts of their behaviour. They may also share information with other agencies working with the child: <i>"SCRA may disclose information it holds to other child protection and justice agencies as and when required, however this will be done only in line with [their] statutory responsibilities, if required by law and if there is a reasonable and justifiable purpose for sharing the information such as to protect and defend the rights of an individual."</i>⁸</p> <p>At present, SCRA obtain contact information for victims or other parties entitled to receive information from information provided to them by Police Scotland. SCRA is also working with the COPFS to agree an exchange of information where a case is remitted to a children's hearing from the criminal courts.</p> <p>The Bill provides that a larger cohort of children will be able to benefit from referral to the Principal Reporter. However, there is no expected change to the activities of SCRA as a data controller.</p>	
Is the organisation a public authority or body as set out in Part 2, Chapter 2, Section 7 of the Data Protection Act 2018?		Yes	
Lawful basis for processing under UK General Data Protection Regulation (UK GDPR) Article 6 for the collection	- Article 6.1(e) Necessary for the performance of a task carried out in the public interest.	Lawful basis for processing under UK General Data Protection Regulation (UK GDPR) Article 9 – special	Special category data Article 9.2(b) necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the field of employment and social security and social protection law.

⁸ [Data Protection - SCRA](#)

<p>and sharing of personal data – general processing</p>		<p>category data or Article 10 – criminal convictions data</p> <p>Include condition from Schedule 1 or 2 of the Data Protection Act 2018</p>	<p>or,</p> <p>Schedule 1 Safeguarding of children and of individuals at risk 18(1) This condition is met if— (a) the processing is necessary for the purposes of— (i) protecting an individual from neglect or physical, mental or emotional harm, or (ii) protecting the physical, mental or emotional well-being of an individual, (b) the individual is— (i) aged under 18, or (ii) aged 18 or over and at risk, (c) the processing is carried out without the consent of the data subject for one of the reasons listed in sub-paragraph (2), and (d) the processing is necessary for reasons of substantial public interest.</p> <p>Criminal conviction data SCRA does not consider that it processes criminal conviction data.</p>
<p>Law Enforcement – if any law enforcement processing will take place – lawful basis for processing under Part 3 of the Data Protection Act 2018</p>	<p>N/A</p>	<p>Legal gateway for any sharing of personal data between organisations</p>	<p>Existing legal gateways will continue to apply, which include that:</p> <ul style="list-style-type: none"> • SCRA is required to share personal data in line with the requirements of the Children’s Hearings (Scotland) Act 2011^{9,10}; • SCRA and COPFS share personal data by virtue of sections 172 and 179 of the Children’s Hearings (Scotland) Act 2011¹¹.

⁹ [Children's Hearings \(Scotland\) Act 2011 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukdsi/2011/01/0130110000000001.pdf)

¹⁰ [SCRA-Data-Protection-Policy-2018.pdf](#)

¹¹ [Children's Hearings \(Scotland\) Act 2011 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukdsi/2011/01/0130110000000001.pdf)

Organisation		Children’s Hearings Scotland (CHS)	
Activities		CHS processes personal data for the purposes of carrying out a children’s hearing and to support making a decision in the best interest of the child. CHS may share information with selected partners, for example national and local government, where there is a need. The Bill does not seek to change CHS activities.	
Is the organisation a public authority or body as set out in Part 2, Chapter 2, Section 7 of the Data Protection Act 2018?		Yes	
Lawful basis for processing under UK General Data Protection Regulation (UK GDPR) Article 6 for the collection and sharing of personal data – general processing	Article 6.1(e) Necessary for the performance of a task carried out in the public interest.	Lawful basis for processing under UK General Data Protection Regulation (UK GDPR) Article 9 – special category data or Article 10 – criminal convictions data Include condition from Schedule 1 or 2 of the Data Protection Act 2018	In the case of hearings data, SCRA are the controller of special category data rather than CHS. Therefore the above in relation to SCRA would be considered to apply.
Law Enforcement – if any law enforcement processing will take place – lawful basis for	N/A.	Legal gateway for any sharing of personal data between organisations	Existing legal gateways will continue to apply: <ul style="list-style-type: none"> • CHS shares personal data by virtue of the Children’s Hearings (Scotland) Act 2011¹².

¹² [Children’s Hearings \(Scotland\) Act 2011 \(legislation.gov.uk\)](https://legislation.gov.uk/uk/scot/acts-and-regs/2011/1)

processing under Part 3 of the Data Protection Act 2018			
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Organisation	Police Scotland		
Activities	<p>Police Scotland collects and processes data for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security.</p> <p>The Bill extends provision to all under 18s for Police Scotland to share a child's personal information with local authority social work departments when a child is in custody. There is no other impact on Police Scotland's activities regarding data protection.</p>		
Is the organisation a public authority or body as set out in Part 2, Chapter 2, Section 7 of the Data Protection Act 2018?	Yes		
<p>Lawful basis for processing under UK General Data Protection Regulation (UK GDPR) Article 6 for the collection and sharing of personal data – general processing</p>	<p>As the lawful basis relates to Part 3 of the Data Protection Act (DPA) 2018, the basis for processing personal data is covered by DPA 2018 Section 35 (2), which states that processing is lawful if it is either:</p> <p>a. Based on the consent of the individual, or</p>	<p>Lawful basis for processing under UK General Data Protection Regulation (UK GDPR) Article 9 – special category data or Article 10 – criminal convictions data</p> <p>Include condition from</p>	<p>Special category data (sensitive data)</p> <p>As the lawful basis relates to Part 3 of the Data Protection Act (DPA) 2018, conditions for processing sensitive data are relevant under schedule 8. The following conditions apply:</p> <ul style="list-style-type: none"> • Necessary for the safeguarding of children and of individuals at risk; • Judicial and statutory purposes; • Administration of justice. <p>Article 10 is not required.</p>

	<p>b. Is necessary for the performance of a task carried out for the purpose by a competent authority.</p> <p>As consent cannot be relied on by Police Scotland as a competent authority, the latter shall apply.</p>	Schedule 1 or 2 of the Data Protection Act 2018	
<p>Law Enforcement – if any law enforcement processing will take place – lawful basis for processing under Part 3 of the Data Protection Act 2018</p>	<p>Part 3 of the Data Protection Act 2018 applies to Police Scotland as a Competent Authority under Schedule 7, Data Protection Act 2018.</p>	<p>Legal gateway for any sharing of personal data between organisations</p>	<p>Existing legal gateways will continue to apply:</p> <ul style="list-style-type: none"> • Police constables must provide information to the Principal Reporter under certain circumstances, by virtue of section 61 of the Children’s Hearings (Scotland) Act 2011. • Section 11 (7) of the Bill amends section 41 of the Criminal Justice (Scotland) Act 2016, which is the legal gateway for information to be shared with local authorities when a child is in police custody.

Organisation	COPFS
Activities	<p>COPFS process data to investigate and consider prosecutorial action, including investigations of deaths. It processes personal data of witnesses. COPFS shares information with emergency services where vital to establish safety of the individual or others.</p>

		<p>COPFS has legal and regulatory obligations, requirements and guidance with which they must process data to comply.</p> <p>The Bill does not propose new activities for COPFS.</p>	
<p>Is the organisation a public authority or body as set out in Part 2, Chapter 2, Section 7 of the Data Protection Act 2018?</p>		<p>Yes</p>	
<p>Lawful basis for processing under UK General Data Protection Regulation (UK GDPR) Article 6 for the collection and sharing of personal data – general processing</p>	<p>Article 6 (1)(c) Legal obligation: the processing is necessary to comply with the law.</p> <p>- Article 6(1)(e) Necessary for the performance of a task carried out in the public interest.</p> <p>This also relates to Part 3 of the Data Protection Act (DPA) 2018, the basis for processing personal data is covered by DPA 2018 Section 35 (2), which states that processing is lawful if it is either:</p> <p>a. Based on the consent of the individual, or b. Is necessary for the performance of a task carried out for the purpose by a competent authority.</p>	<p>Lawful basis for processing under UK General Data Protection Regulation (UK GDPR) Article 9 – special category data or Article 10 – criminal convictions data</p> <p>Include condition from Schedule 1 or 2 of the Data Protection Act 2018</p>	<p>Special category data Article 9.2 (b) necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the field of employment and social security and social protection law; (f) legal claims or judicial acts; and (g) reasons of substantial public interest (with a basis in law).</p> <p>Criminal conviction data Article 10 - Processing of personal data relating to criminal convictions and offences or related security measures based on Article 6(1) shall be carried out only under the control of official authority or when the processing is authorised by domestic law providing for appropriate safeguards for the rights and freedoms of data subjects. Any comprehensive register of criminal convictions shall be kept only under the control of official authority.</p> <p>COPFS may also rely on Schedule 1 of the Data Protection Act 2018, under Part 2 (7) administration of justice and parliamentary purposes; (12) regulatory requirements relating to unlawful acts and dishonesty</p>

	As consent cannot be relied on by COPFS as a competent authority, the latter shall apply.		etc.; and (18) safeguarding of children and of individuals at risk.
Law Enforcement – if any law enforcement processing will take place – lawful basis for processing under Part 3 of the Data Protection Act 2018		Legal gateway for any sharing of personal data between organisations	As this legislation does not introduce exchanges of information outside of existing sharing arrangements, the existing legal gateways will continue to apply.

Organisation	Local Authorities
Activities	<p>Scottish local authorities have a legal duty to provide justice and children and families social work services. These may be provided directly or certain services by third sector agencies. They use personal data to support the administration of these services. Social work services may make referrals to the Principal Reporter and may work with a number of other bodies including Police Scotland, SCRA, CHS and others. Departments also share information between local authorities, for example where there is a cross border placement of a child from England, Wales or Northern Ireland.</p> <p>Largely, the activities of local authorities regarding information processing are not affected by the Bill. However, it does extend provision that local authorities will be contacted when a child is in custody in order that the child may be visited by a social worker, if appropriate, and to ensure that a child's welfare is safeguarded. The Bill also</p>

		ensures that the local authority has a duty to treat all children detained in secure accommodation as “looked after” children under the Children (Scotland) Act 1995.	
Is the organisation a public authority or body as set out in Part 2, Chapter 2, Section 7 of the Data Protection Act 2018?		Yes	
Lawful basis for processing under UK General Data Protection Regulation (UK GDPR) Article 6 for the collection and sharing of personal data – general processing	<p>- Article 6 (1)(c) Legal obligation: the processing is necessary to comply with the law.</p> <p>- Article 6(1)(e) Necessary for the performance of a task carried out in the public interest.</p>	<p>Lawful basis for processing under UK General Data Protection Regulation (UK GDPR) Article 9 – special category data or Article 10 – criminal convictions data</p> <p>Include condition from Schedule 1 or 2 of the Data Protection Act 2018</p>	<p>Special category data Article 9.2 (b) necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the field of employment and social security and social protection law and (h) health or social care (with a basis in law).</p> <p>Criminal conviction data Article 10 - Processing of personal data relating to criminal convictions and offences or related security measures based on Article 6(1) shall be carried out only under the control of official authority or when the processing is authorised by domestic law providing for appropriate safeguards for the rights and freedoms of data subjects. Any comprehensive register of criminal convictions shall be kept only under the control of official authority.</p> <p>Local authorities may also rely on Schedule 1 (6) of the Data Protection Act 2018 as it relates to statutory etc. and government purposes. This allows for the processing of criminal offence data on the condition that it is necessary for the exercise of a function conferred on a person by an enactment of law and is necessary for reasons of</p>

			substantial public interest. The lawful basis of, Schedule 1 (18), which relates to safeguarding of children and of individuals at risk, can also be reasonably relied on.
Law Enforcement – if any law enforcement processing will take place – lawful basis for processing under Part 3 of the Data Protection Act 2018	Schedule 1 (7) Administration of Justice - This condition is met if the processing is necessary— (a)for the administration of justice, Schedule 1 (33) Legal claims - This condition is met if the processing— (a)is necessary for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings), (b)is necessary for the purpose of obtaining legal advice, or (c)is otherwise necessary for the purposes of establishing, exercising or defending legal rights.	Legal gateway for any sharing of personal data between organisations	The legal gateways that local authorities currently rely on to share information will continue to apply.

Organisation	Scottish Courts and Tribunals Service (SCTS)
Activities	SCTS is the body responsible for administration of the courts and tribunals of Scotland. It also operates as a central point for the management of all Scottish judicial records. As a data controller, SCTS makes all decisions on access to court and legal records

	<p>from the High Court of Justiciary, the Court of Session and the Sheriff Courts.</p> <p>The Bill does not seek to change the activities of SCTS. However, by virtue of the Bill increasing the maximum age of referral to the Principal Reporter it is expected that fewer children will have their information processed by SCTS.</p>
<p>Is the organisation a public authority or body as set out in Part 2, Chapter 2, Section 7 of the Data Protection Act 2018?</p>	<p>Yes</p>
<p>Lawful basis for processing under UK General Data Protection Regulation (UK GDPR) Article 6 for the collection and sharing of personal data – general processing</p>	<p>- Article 6 (1)(c) Legal obligation: the processing is necessary to comply with the law.</p> <p>- Article 6(1)(e) Necessary for the performance of a task carried out in the public interest.</p> <p>This also relates to Part 3 of the Data Protection Act (DPA) 2018, the basis for processing personal data is covered by DPA 2018 Section 35 (2), which states that processing is lawful if it is either:</p> <p>a. Based on the consent of the individual, or b. Is necessary for the performance of a task carried out</p>
<p>Lawful basis for processing under UK General Data Protection Regulation (UK GDPR) Article 9 – special category data or Article 10 – criminal convictions data</p> <p>Include condition from Schedule 1 or 2 of the Data Protection Act 2018</p>	<p>Special category data Article 9.2 (b) necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the field of employment and social security and social protection law; (f) legal claims or judicial acts; and (g) reasons of substantial public interest (with a basis in law).</p> <p>Criminal conviction data Article 10 - Processing of personal data relating to criminal convictions and offences or related security measures based on Article 6(1) shall be carried out only under the control of official authority or when the processing is authorised by domestic law providing for appropriate safeguards for the rights and freedoms of data subjects. Any comprehensive register of criminal convictions shall be kept only under the control of official authority.</p> <p>SCTS may also rely on Schedule 1 of the Data Protection Act 2018, under Part 2 (7) administration of justice and parliamentary</p>


	<p>for the purpose by a competent authority.</p> <p>As consent cannot be relied on by SCTS as a competent authority, the latter shall apply.</p>		<p>purposes; (12) regulatory requirements relating to unlawful acts and dishonesty etc.; and (18) safeguarding of children and of individuals at risk.</p>
<p>Law Enforcement – if any law enforcement processing will take place – lawful basis for processing under Part 3 of the Data Protection Act 2018</p>		<p>Legal gateway for any sharing of personal data between organisations</p>	<p>The legal gateways that SCTS currently rely on to share information will continue to apply.</p>

<p>Organisation</p>	<p>The Scottish Ministers (Scottish Government)</p>
<p>Activities</p>	<p>Scottish Ministers are responsible for case management when certain children are sentenced and placed in secure accommodation under solemn proceedings, therefore a child's information is processed accordingly to support case management.</p> <p>In terms of the Bill's impact, currently Scottish Ministers are also responsible for providing this information when a child is returns to the community from a YOI or secure accommodation under the Victim Notification Scheme. As children will no longer be placed in YOIs, this will no longer be necessary but will continue to happen when a child leaves secure accommodation. Therefore there is limited change to the activities of Scottish Ministers regarding information processing.</p>
<p>Is the organisation a public authority or body as set out in Part 2, Chapter 2, Section 7 of the Data Protection Act 2018?</p>	<p>Yes</p>

<p>Lawful basis for processing under UK General Data Protection Regulation (UK GDPR) Article 6 for the collection and sharing of personal data – general processing</p>	<p>- Article 6 (1)(c) Legal obligation: the processing is necessary to comply with the law.</p> <p>- Article 6(1)(e) Necessary for the performance of a task carried out in the public interest.</p>	<p>Lawful basis for processing under UK General Data Protection Regulation (UK GDPR) Article 9 – special category data or Article 10 – criminal convictions data</p> <p>Include condition from Schedule 1 or 2 of the Data Protection Act 2018</p>	<p>Criminal conviction data Article 10 - Processing of personal data relating to criminal convictions and offences or related security measures based on Article 6(1) shall be carried out only under the control of official authority or when the processing is authorised by domestic law providing for appropriate safeguards for the rights and freedoms of data subjects. Any comprehensive register of criminal convictions shall be kept only under the control of official authority. Schedule 1(6) - Statutory etc. and government purposes will be relevant.</p>
<p>Law Enforcement – if any law enforcement processing will take place – lawful basis for processing under Part 3 of the Data Protection Act 2018</p>		<p>Legal gateway for any sharing of personal data between organisations</p>	<p>Government departments headed by a Minister of the Crown may rely on common law powers to share information. These legal gateways will therefore continue to apply.</p>

4. Consultation

	Questions	Comments
4.1	Have you consulted with the ICO using the Article 36(4) form?	ICO were consulted and a meeting was held on 04 July 2022. Following this, ICO provided advice which is detailed in the linked document:

	Questions	Comments
	<p>(please provide a link to it)</p> <p>If the ICO has provided feedback, please include this.</p>	 <p>ICO Advice - Article 36(4) - Children's Care</p>
4.2	<p>Do you need to hold a public consultation and if so has this taken place? What was the result?</p>	<p>A public consultation took place from 30 March 2022 to 22 June 2022. The consultation received 106 responses from a range of stakeholders¹³.</p> <p>An independent analysis of the consultation was published on 08 September 2022¹⁴.</p>
4.3	<p>Were there any Comments/feedback from the public consultation about privacy, information or data protection?</p>	<p>Responses relating to privacy, information or data protection were limited. Certain concerns raised related more broadly to the children's care and justice systems, rather than the specific legislative changes that were proposed. These concerns have been included in the categories below:</p> <p>1. Need for a full Data Protection Impact Assessment</p> <p>Several respondents commented on the need for a full Data Protection Impact Assessment to be completed before proposals are taken forward.</p> <p>This concern was noted and this document is evidence that a DPIA has been completed pre-introduction. The DPIA will continue to be reviewed throughout the Bill process.</p> <p>2. Collection of children's information</p> <p>Several respondents highlighted concerns relating to the collection of data, specifically that the amount of data being collected may exceed that which is necessary, constituting an invasion of children and young people's privacy.</p> <p>The Bill does not make provision for any additional data to be collected beyond that which is already obtained.</p> <p>3. Sharing children's information with the person harmed</p>

¹³ [Published responses for Children's Care and Justice Bill - consultation on policy proposals - Scottish Government - Citizen Space](#)

¹⁴ [Children's Care and Justice Bill - policy proposals: consultation analysis - gov.scot \(www.gov.scot\)](#)

	Questions	Comments
		<p>The consultation invited views on the sharing of information with individuals who have been harmed by a child. Many respondents believed that further information should be made available to a person who has been harmed. This was often caveated, however, with a view that the sharing of any further information should be balanced and proportionate; respecting both the need for a person harmed to receive further information, whilst also respecting the wellbeing of the child who has caused the harm, particularly in regards their right to privacy and data-protection.</p> <p>The provisions in the Bill require the Principal Reporter to inform a person entitled to receive information of their right to request that information, where it is practicable to do so, and subject to certain exceptions. The provision also provides the Principal Reporter with the discretion to inform a relevant person (within the meaning of section 200¹⁵ of the 2011 Act) as well as or instead of a victim, where the victim is a child. This reframes the existing provisions which give the Principal Reporter the <i>discretion</i> to advise a person entitled to information of that right. The Scottish Government understands that under current practice the Principal Reporter writes, where possible, to a person entitled to information under the 2011 Act now to advise them of their right. Accordingly these provisions simply seek to place that current practice on a statutory footing.</p> <p>4. Cross border information sharing</p> <p>There was a concern raised around the sharing of children’s information where a child from England, Wales or Northern Ireland is placed in a care facility in Scotland.</p> <p>The Bill seeks to address a number of issues relating to cross border placements as part of a broader package of measures. Established cross border information sharing practices will continue to be GDPR compliant.</p> <p>5. Children to be made aware of their data protection rights</p>

¹⁵ [Children's Hearings \(Scotland\) Act 2011 \(legislation.gov.uk\)](http://legislation.gov.uk)

	Questions	Comments
		<p>One respondent highlighted that children should be made aware of their data protection rights.</p> <p>SCRA and other organisations who have contact with children are responsible for making sure that they are aware of their data protection rights. SCRA has published documents about privacy which are aimed at children¹⁶ and young people¹⁷.</p>

5. Further assessment and risk identification

	Question	Comments
5.1	Will the proposal require the creation of new identifiers, or require the use of existing ones?	No new identifiers are being introduced.
5.2	<p>Will the proposal require regulation of:</p> <ul style="list-style-type: none"> • technology relating to processing • behaviour of individuals using technology • technology suppliers • technology infrastructure • information security 	<p>No new technology is being introduced. Current technology involved in the data affected by the Bill includes:</p> <ul style="list-style-type: none"> • Electronic Monitoring as part of Movement Restriction Conditions, supplied by G4S (as a data processor). The Bill does not impact on regulation of this technology, however it is expected that any future use will continue to be compliant with UK GDPR. • Collection of biometrics is not impacted by the Bill. It is expected that any future use of technology relating to collection of biometrics will continue to comply with UK GDPR.
5.3	Will the proposal require establishing or change to operation of an established public register (e.g. Accountancy in Bankruptcy, Land Register etc.) or other online service/s?	No change required.

¹⁶ [Privacy-Leaflet-Children-2018.pdf \(scra.gov.uk\)](#)

¹⁷ [Privacy-Leaflet-Young-People-2018.pdf \(scra.gov.uk\)](#)

	Question	Comments
5.4	Please provide details of whether the proposal will involve the collection or storage of data to be used as evidence or use of investigatory powers (e.g.in relation to fraud, identify theft, misuse of public funds, any possible criminal activity, witness information, victim information or other monitoring of online behaviour)	The Bill does not make new provision for this.
5.5	Would the proposal have an impact on a specific group of persons e.g. children, vulnerable individuals, disabled persons, persons with health issues, persons with financial difficulties, elderly people? (Please specify) In what way?	<p>The Bill aims to improve the experiences and outcomes for children in Scotland who interact with the children’s hearings system and criminal justice system, as well as care settings and those who are placed across borders in exceptional circumstances. Measures will ensure that children who come into contact with the care and justice systems are treated with trauma-informed and age-appropriate support. It will help advance the rights of all children and people who have been harmed.</p> <p>Children may have additional protected characteristics and the impact associated with these is recognised in the Children’s Rights and Wellbeing Impact Assessment and the Equality Impact Assessment for the Bill.</p> <p>Victims are impacted by this Bill as vulnerable individuals. However, victims’ personal data is not subject to additional processing or sharing as a consequence of the introduction of this Bill. Moreover, the Bill makes provision to further protect victims’ information.</p>
5.6	Is there anything potentially controversial or of significant public interest in the policy proposal as it relates to processing of	There is broad public interest in the Bill, which largely falls into three categories of stakeholders: a) children and children’s rights supporters, b) victim’s rights supporters, and c) criminal justice system interests. The Bill seeks to balance the rights of victims and persons harmed with the need to further

	Question	Comments
	<p>data? For example, is the public likely to views the measures as intrusive or onerous?</p> <p>Are there any potential unintended consequences with regards to the provisions e.g. would the provisions result in unintended surveillance or profiling.</p> <p>Have you considered whether the intended processing will have appropriate safeguards in place? If so briefly explain the nature of those safeguards and how any safeguards ensure the balance of any competing interests in relation to the processing.</p>	<p>advance the rights of children to support incorporation of UNCRC.</p> <p>Given processing will continue to be within established practices and utilising existing safeguards, it is not considered the Bill introduces new duties which are intrusive or onerous.</p>
5.7	<p>Are there consequential changes to in other legislation that need to be considered as a result of the proposal or the need to make further subordinate legislation to achieve the aim?</p>	<p>The Bill provides regulation making powers. Regulations made under those powers will be subject to impact assessments when they are made.</p>
5.8	<p>Will this proposal necessitate an associated code of conduct? If so, what will be the status of the code of</p>	<p>It is not considered that the Bill necessitates an associated code of conduct to be produced by the Scottish Government. The data controllers operate independently of the Scottish Government, and therefore are best placed to create any further guidance if needed, to ensure their staff comply with their obligations under the UK GDPR e.g. principles</p>

	Question	Comments
	conduct (statutory, voluntary etc.)?	of necessity and proportionality of the processing operations, storage limitation and the undertaking of regular reviews to ensure compliance with the statutory duties of the data controller. It would not be appropriate for the Scottish Government to determine how these operationally independent bodies approach their data protection requirements.
5.9	<p>Have you considered whether the intended processing will have appropriate safeguards in place, for example in relation to data security, limitation of storage time, anonymisation? If so briefly explain the nature of those safeguards</p> <p>Please indicate how any safeguards ensure the balance of any competing interests in relation to the processing.</p>	The data controllers already have policies and procedures in place for the handling of e.g. criminal offence data, and are well versed in the sensitivities and legal requirements for processing the personal data engaged by the measures in the Bill. As now, they will continue to ensure they comply with their statutory duties and have appropriate safeguards in place.
5.10	Will the processing of personal data as a result of the proposal have an impact on decisions made about individuals, groups or categories of persons? If so, please explain the potential or actual impact. This may include, for example, a denial of an individual's rights or use of social profiling to inform policy making.	See section 2.3

	Question	Comments
5.11	Will the proposal include automated decision making/profiling of individuals using their personal data?	No.
5.12	Will the proposal require the transfer of personal data to a 'third country'? (Under UK GDPR this is defined as country outside the UK.)	No.

6. Risk Assessment

It is not considered that the Bill results in any direct data risks beyond those which already exist. This is because the Bill does not introduce provision for extra information collection, sharing or processing outwith existing data flows and agreements.

During the Bill's progress, further consideration will be given to risk assessment and any risks that emerge will be recorded in future versions of the DPIA. At the point of implementation, responsibility for operational DPIA's will be assumed by the organisations involved in delivery.

Risk	Solution or mitigation	Likelihood (Low/Med/High)	Severity (Red/Amber Green)	Result
<p>6.1.1 Risk to individual rights</p> <ul style="list-style-type: none"> • right to be informed • right of access • right to rectification • right to erasure • right to restrict processing • right to data portability • right to object • rights in relation to automated decision making and profiling <p>Will this initiative result in any detriment if individuals do not want their personal data to be processed? This is particularly relevant if special category data is being processed</p>	<p>The Bill does not create new impacts on individual's rights. Data controllers already make mention of the rights in privacy statements and will be expected to continue to do so.</p>	<p>Low</p>		<p>No new impact</p>
<p>6.2.1 Privacy risks</p> <p>Purpose limitation</p>	<p>The purpose of data processing is not changed by the Bill. Data will continue to be collected</p>	<p>Low</p>		<p>No new impact</p>

Risk	Solution or mitigation	Likelihood (Low/Med/High)	Severity (Red/Amber Green)	Result
	and processed by data controllers for the same purposes as it currently is.			
6.2.2 Privacy risks Transparency – data subjects may not be informed about the purposes and lawful basis for the processing, and their rights	The Bill does not impact on the way data subjects are informed.	Low		No new impact.
6.2.3 Privacy risks Minimisation and necessity	No additional data will be collected as a result of the Bill, therefore it will continue to be minimal and only collected and processed when necessary.	Low		No new impact.
6.2.4 Privacy risks Accuracy of personal data	Data controllers will continue to be responsible for ensuring that the information they hold about a subject is accurate and up-to-date. This is not	Low		No new impact.

Risk	Solution or mitigation	Likelihood (Low/Med/High)	Severity (Red/Amber Green)	Result
	affected by the Bill.			
6.3.1 Security risks Keeping data securely Retention	The Bill and Scottish Ministers do not have any impact on the way in which data controllers store or retain data.	Low		No new impact.
6.3.2 Security risks Transfer – data may be lost in transit	Risks surrounding loss of data and information transfers occur at an operational level and therefore are not subject to risk assessment at Bill level.	Low		No new impact.
6.3.3 Security risks	Data controllers are responsible for data security and their own risk assessments. The Bill does not directly impact data security or introduce any new security risks.	Low		No new impact.

Risk	Solution or mitigation	Likelihood (Low/Med/High)	Severity (Red/Amber or Green)	Result

Data Protection Officer (DPO)

The DPO may give additional advice, please indicate how this has been actioned.

Advice from DPO	Action
Advice has been sought from DPO throughout the drafting of this assessment.	All advice and comments have been incorporated where possible.

I confirm that the Children (Care and Justice) (Scotland) Bill has been sufficiently assessed in compliance with the requirements of the UKGDPR and Data Protection Act 2018

Name and job title of a IAO or equivalent	Date each version authorised
Tom McNamara Interim Deputy Director, Children's Rights Protection and Justice	02/12/2022



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