

Equality Impact Assessment - Results for Children (Care and Justice) (Scotland) Bill

December 2022

Equality Impact Assessment - Results

Title of Policy	Children (Care and Justice) (Scotland) Bill
Summary of aims and desired outcomes of Policy	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 aim to 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 Scotland to Keep the Promise and promote and advance the rights of all children and people who have been harmed.
Directorate: Division: team	Children and Families Directorate Children's Rights, Protections and Justice Division Children's Care and Justice Bill Team

Executive Summary

The Children (Care and Justice) (Scotland) Bill is a wide-ranging Bill that supports the advancement and revision of a number of Scotland's existing policies¹. The Bill's core aims are:

- To ensure where any child (defined as anyone under 18) requires the support and intervention of formal systems, this is available through the children's hearings system by raising the maximum age of referral to the Principal Reporter.
- To improve the safeguards available to children in the criminal justice system to promote an approach that is trauma-informed and accounts for their age and stage of development.

¹The background and policy context, as well as specific provisions, are outlined at length in the policy memorandum, which this impact assessment should be read alongside

-Where a child requires to be deprived of their liberty, to ensure that this only happens in age-appropriate care facilities, ending the use of YOIs, and ensure all children who require secure accommodation can access it.

-That cross-border placements should only occur in exceptional circumstances where the placement is in the best interests of an individual child, with the introduction of additional safeguards and regulation.

-To enhance the provisions in respect of people who have been harmed.

This will contribute to a number of Scotland's National Outcomes:

-We grow up loved, safe and respected so that we realise our full potential;

-We live in communities that are inclusive, empowered, resilient and safe;

-We are well educated, skilled and able to contribute to society;

-We are healthy and active;

-We respect, protect and fulfil human rights and live free from discrimination.

The provisions within the Bill specifically impact on particular groups within society. These are:

-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).

However, the benefits of these provisions should be felt by everyone – the individual children (and young people) involved, their families, the wider community, any person who has been harmed and ultimately broader society.

This EQIA has considered the potential impacts of the Bill on people with protected characteristics. Our findings are based various evidence and information sources.

Our assessment identified that the provisions in the Bill are likely to have an overall positive impact on people with protected characteristics in

- Evidence of the needs of children who are particularly likely to be affected by the Bill provisions and their experiences of system-involvement.
- Evidence in respect of children and young people’s development⁷.

In developing this Bill, the Scottish Government is mindful of the 3 needs of the Public Sector Equality Duty – to eliminate unlawful discrimination, harassment and victimisation; advance equality of opportunity between people who share a protected characteristic and those who do not; and foster good relations between such people. Where any negative impacts have been identified, we have sought to mitigate/minimise these, whilst being mindful that we also have a positive duty to promote equality.

In considering all 9 protected characteristics, the Scottish Government note that the protected characteristics listed along with other considerations are not independent of each other and some people may have to deal with complex and interconnected issues related to disadvantage at any one time. We recognise the established vulnerability, disadvantage and multiple adversity often experienced by those people particularly affected by the Bill⁸.

We also note that these children and young people will often have experienced other intersecting disadvantage and inequality. For example, The Promise identified that whilst there is no evidence that care experienced children engage in more offending behaviour than their peers, the consequences of their behaviour whilst in care are much more likely to result in criminalisation, with care experienced people also overrepresented in the prison population⁹. Moreover, it is acknowledged that system responses can be influenced by and exacerbate pre-existing vulnerabilities and compound inequality, stigma and disadvantage¹⁰. This led the authors of the Edinburgh Study of Youth Transitions and Crime¹¹ to conclude: “*the more serious the deeds, the more deep-seated*

⁷ For example [The development of cognitive and emotional maturity in adolescents and its relevance in judicial contexts](#)

⁸ Various national and international research has evidenced this as summarised in [Key messages from the Centre for Youth & Criminal Justice](#); [Scotland’s approach to children in conflict with the law \(cycj.org.uk\)](#); [Children and young people in conflict with the law: policy, practice and legislation](#); [The Promise.pdf \(carereview.scot\)](#)

⁹ As self-reported in the [17th Prisoner Survey 2019 \(sps.gov.uk\)](#) and [16th PRISONER SURVEY 2017 - Young People in Custody \(sps.gov.uk\)](#)

¹⁰ For example in agency responses to children from [different socio-economic backgrounds, the disproportionate criminalisation of looked after children](#), and [in depriving children of their liberty in YOIs](#).

¹¹ McAra, L & McVie, S. (2013). ‘Delivering Justice for Children and Young People: Key Messages from the Edinburgh Study of Youth Transitions and Crime’, in A Dockley (ed.), Justice for Young People: Papers by Winners of the Research Medal 2013. Howard League for Penal Reform.

the needs". Given the Bill will have the greatest impact on children and young people, our analysis identified age, disability, sex and race as the key protected characteristics of focus.

Key Findings

Age

Children under 18

Age is the protected characteristic the Bill provisions are likely to have the greatest positive impact on. Under section 199 of the Children's Hearings (Scotland) Act¹², a child is currently defined as a person who is under 16 or a 16/17 year old who is the subject of a referral to the Principal Reporter or measures enacted through the children's hearings system. This definition is utilised and mirrored in other legislation leading to inconsistency in the way in which 16 and 17 year olds are treated, which can lead to disadvantage to some 16/17 year olds. Therefore the Bill will address this disparity, seeking to uphold and advance the rights of all children under the age of 18.

Through changing the definition of a child, all children will now have the opportunity, where appropriate, to access the children's hearings system where there are either concerns for the child's care and welfare and/or coming into conflict with the law¹³. Therefore, this change may result in fewer children being dealt with in the criminal justice system.

The children's hearings system is a child-centred system created for children that has continued to evolve and adapt in line with their needs and rights¹⁴. Children's hearings are more age- and stage- appropriate environments, being held in private, bespoke and arranged around the needs of an individual child in terms of their participation (for example, in being held in person or remotely, timing, and those relevant to attending to support the child or contribute to the discussion like an advocacy worker or school guidance teacher). This approach and the more holistic focus on the child's full life circumstances, as opposed to a single "deed", should enable greater consideration of the child's needs and more support for the child attending the hearing, as well as greater efforts to capture the child's voice and experiences. Siblings, parents

¹² [Children's Hearings \(Scotland\) Act 2011 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

¹³ For a summary of evidence on the children's hearings system see CYPSC [Older Children in Conflict with the Law](#).

¹⁴ For a summary of research in respect of the CHS see CYPSC [Older Children in Conflict with the Law](#). The Hearing System Working Group is currently considering how best to improve the children's hearing system

and relevant persons have greater rights to be participate in the children's hearings system than in the criminal justice system, so there should also be positive impacts for these individuals.

Children in the criminal justice system are predominantly older children¹⁵. The definition of "child" as being a person under 18 under Bill provisions will now apply for most criminal procedure purposes. The implications of this change has been assessed for these purposes and, whilst not reducing the disposals available to court, all children under 18 are able to benefit from additional protections and safeguards, whilst also respecting evolving capabilities. For example, all under 18s should be kept in a place of safety that is not a police cell unless specific exceptional criteria apply. However, respecting the evolving capacities, 16 and 17 year olds have a choice as to who should be notified of their being in police custody.

Although it is consistent with evolving capabilities that some decision-making rights are given to children prior to 18, this does not mean that they lose their right to protection, which is crucial for children who require care and/or who are in conflict with the law. Some children may perceive it as a disadvantage to be treated as a child, rather than as an adult. However, the change simply allows all under 18s the same opportunity; decision-making in relation to individual children, based on their facts and circumstances, will remain and independent prosecutorial function (in discussion with local Children's Reporters). Any negative impact is mitigated by the fact that views of the child must be taken into account in decision-making under national and international legislation.

Current legislation in relation to secure accommodation means that not all children under the age of 18 can access such provision. In some cases this means children, purely by virtual of their legal status, regardless of their needs, cannot benefit from the age and stage appropriate environments, which can lead to children being deprived of their liberty in Young Offenders Institutions (YOIs). Measures in the Bill will address this. This will mean whichever route a child requires to be deprived of their liberty, all children will have the opportunity to be cared for in a child-centred environment. Provisions to enable children who are detained in secure accommodation to be treated as "looked after" children, meaning those who leave secure accommodation on or after their 16th birthday will have aftercare entitlements, should promote equality with the entitlements available to other children during and after

¹⁵ Published and unpublished criminal proceedings data [Criminal Proceedings in Scotland statistics - gov.scot \(www.gov.scot\)](http://www.gov.scot)

a stay in secure accommodation, promoting improved life chances. Similar benefits stem from the recognition of care orders from other jurisdictions in Scot's law.

The above changes promote greater fairness and advance equality of opportunity for all under 18s, removing the potential for discriminatory treatment for 16/17 year olds in particular¹⁶. They support individualised consideration and needs-led decision-making rather than this being driven at times purely by a child's chronological age and legal status. This further realises Scottish Ministers commitment to UNCRC compliance.

Young people

Whilst most of the provisions in the Bill relate to children, there are a few exceptions that have implications for young people, the distinct needs of whom have been well established in Scotland¹⁷. These include the Bill enabling Scottish Ministers to make regulations to enable certain children to remain in secure accommodation beyond their 18th birthday (to a maximum age of 19). Such provision will remove the requirement for these children to leave secure accommodation when they become 18, enabling any decision to be made on a case-by case basis. This supports the correct balance of the rights and interests of all parties-the individual young person, other children residing in secure accommodation, and those young people who are remanded or sentenced post-18 having not been in secure accommodation previously. Similarly is the ability for young people to benefit from additional support if they have been remanded or sentenced in secure accommodation and are leaving on or after their 16th birthday, and for young people to receive continuing guidance and support from the local authority when their compulsory order is terminated up to the age of 19. Additionally, the Bill, in recognising the necessity for offences committed in childhood to be treated differently than adult offences, provides an option for courts to extend reporting restrictions for those who have committed offences in childhood beyond the age of 18. These changes should advance equality of opportunity for young people and foster good relations between children and young people.

¹⁶ As identified in rights-based reviews of approaches to children in Scotland [Older Children In Conflict With the Law - CYPCS](#) and [Scotland's approach to children in conflict with the law \(cycj.org.uk\)](#)

¹⁷ See for example [sentencing-young-people-guideline-for-publication.pdf \(scottishsentencingcouncil.org.uk\)](#)

Wider society

Where children come into conflict with the law, providing the best support to address the causes of their behaviours will help children to reintegrate, rehabilitate and desist. This is best achieved through holistic, welfare-based, trauma, developmentally and system informed approaches, that uphold and advance children rights, are individualised and bespoke, and focus on the child's integration¹⁸. The children's hearings system and secure accommodation are well placed to provide such approaches. In turn, these approaches should support children to achieve more positive outcomes and to go on to live fulfilling lives, including the prevention of parts of the child's behaviour causing further harm thereby minimising the number of people experiencing such harm. This is summed up by Lynch¹⁹ *“the best protection for society is a child who has been reintegrated successfully into society and where the causes of the offending have been addressed”*.

Likewise, where a child's case does need to be addressed in the justice system, improving the safeguards and experiences of children in the justice system has benefits not just for the individual child involved but wider society. These experiences have important implications for children's perceptions of procedural fairness²⁰. Key components of that include the individual child's ability to understand the process, have a voice, feel treated with respect, and trust the neutrality of the process. This matters because evidence indicates if people feel they have been treated fairly, they are more likely to believe that the courts have a right to make decisions, and are more likely to comply with these decisions.

The benefits of this are felt by everyone – the individual child thought to be responsible for causing harm, their family, the wider community, the person harmed and ultimately broader society. This can also prevent children becoming more embedded within the criminal justice system.

Measures in respect of cross-border placements are to ensure there is increased accountability on placing local authorities and that includes financial accountability. This should ensure that Scottish local authority and health board budgets are not utilised to pay for out of authority placements and any associated health and welfare costs. Improved visibility and scrutiny of services should improve circumstances for all those placed within those services, as well as society more broadly.

¹⁸ As per international human rights standards and in accordance with national and international evidence and best practice

¹⁹ [Towards a Principled Legal Response to Children Who Kill - Nessa Lynch, 2018 \(sagepub.com\)](#)

²⁰ For more detail see [problem-solving-courts-an-evidence-review.pdf \(justiceinnovation.org\)](#)

Children who have been harmed

The evidence indicates that where a child's behaviour causes harm to others, these are often other children. Balancing the rights and meeting the needs of both the child or person who have been harmed and child who have caused harm can prove challenging. In such cases, a child's case may be addressed through the children's hearings system or the criminal justice system. The Scottish Government recognises that the two systems have different approaches, focuses and underpinning principles.

This is reflected in the differences between the two systems, including in relation to:

- 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.

The Bill means that more children in conflict with the law aged 16 and 17 may go through the children's hearings system rather than the criminal courts (albeit prosecutorial discretion remains on a case-by-case basis). Efforts have been made to minimise any negative impacts on people who have been harmed of doing so.

Where a child's case is managed through the children's hearing system, the information available to a person who is harmed, and that person's involvement in the process, may, in some cases, be less than if the case were managed through the criminal justice system. This reflects the particular sensitivities of sharing information in relation to a child who has caused harm, and different focuses of these systems. This is unavoidable without fundamentally shifting the ethos of the children's hearings system. 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. Existing case-specific considerations will also continue to apply.

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.

The Bill includes provision to reform the reporting restrictions for children, including child victims and witnesses, who are part of an investigation into a suspected offence, or involved in criminal court proceedings. Reporting restrictions for victims and witnesses will now automatically apply where that person is under 18, whether or not the accused is under 18 (at the moment, unless the accused is under 18, reporting restrictions will only apply if the court so directs). Decisions on lifting the reporting restrictions (either wholly or in part) will require the court to take into account certain key considerations about the child. This should improve the existing position for child victims and witnesses.

There are no current equivalent provision in relation to witnesses over 18. The Scottish Government considers it appropriate for there to be stronger reporting restrictions as regards a child witness compared to others, given the particular vulnerabilities of a child. A further consideration is not to unduly impede the freedom of an adult to talk or write publicly about their experiences. However, the Scottish Government has consulted on anonymity of complainants in sexual assault cases and is taking forward work in that area. Therefore, while Government considers the provisions in the Bill on victim/witness anonymity to have a positive impact, it nonetheless notes ongoing work in other areas.

The provisions to extend the ability to use closed courts when a child is appearing in a criminal court might reduce the ability for people 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. We anticipate more summary cases may be dealt with in the children's hearings system, which are also held in private. Moreover, in solemn proceedings and 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. We therefore deem potential negative impacts are minimised.

Disability

There is estimated to be a high prevalence and often overrepresentation of disabled children who are made subject to offence referrals to the Principal Reporter, or are in contact with the criminal justice system, and who are deprived of their liberty²¹. Through the provisions made in each of these areas of the Bill, the interests of disabled children in Scotland should be protected and advanced.

Through raising the age of referral to the Principal Reporter disabled children who could benefit from the guidance, treatment, care or control either as a result of concerns about their care and welfare or their behaviour aged 16 or 17, will be able to be referred to the Principal Reporter. Moreover, the children's hearings system takes into account the whole circumstances of a child's particular situation and their needs, including any disabilities, in an environment that tends to be less formal and can be more appropriate for the child's participation and engagement. The support given under compulsory measures should be tailored to their individual needs.

Detention in secure accommodation rather than a YOI might be a more appropriate environment for disabled children given the more therapeutic environment, where greater trauma and attachment informed support can be provided, and there is a higher staffing ratio and range of health and care interventions. Ending the use of YOI's also mitigates the particularly acute concerns about the impact of such placements on children's mental health²².

Transitional support is particularly important as we know transitions can be challenging for all children and are likely to be even more difficult for disabled children, for example if they are returning to the community having been deprived of their liberty. This is particularly important given the prevalence of disabled children in secure accommodation²³. Therefore provisions to reduce the cliff edge of support for children who have been subject to measures through the children's hearings system or detained in secure accommodation could have further benefits.

²¹ Different pieces of research adopt different definitions of disabilities and may focus on particular conditions/needs-see for example [Children aged 12 to 15 years involved in offending and referred to the Children's Reporter and Procurator Fiscal in Scotland](#), [Children and young people in conflict with the law: policy, practice and legislation \(cycj.org.uk\)](#); [childrens-social-work-statistics-2020-21.pdf](#) and [Scottish Parliament Inquiry into secure care places](#)

²² For more information see [Mental Health and Wellbeing of Young People in Custody: Evidence Review - Enlighten: Publications \(gla.ac.uk\)](#)

²³ [childrens-social-work-statistics-2020-21.pdf](#)

Where children do appear in court, the Bill provisions seek to safeguard and improve children's experiences. This is important to assist children to understand and participate in court proceedings and reduce the potentially traumatising and re-traumatising impact of proceedings²⁴. These issues are even more concerning given the high prevalence of disabled children who come into contact with the justice system and the resulting risk of discrimination, which is likely to render their understanding and participation in processes even more challenging²⁵. The additional Bill requirements that in having regard to the welfare of the child, the court considers the steps that might be taken to facilitate the participation of the child in the proceedings and, where reasonably practicable, take those steps, recognise the need for distinct and individualised consideration of each child's needs and are in addition to other supports already available owing to a child's disability. These measures are likely to have additional positive impacts for disabled children, advancing opportunities and relations between children who experience disabilities and those who do not, and promoting equality.

Building on the interim measures made in the Deprivation of Liberty Regulations²⁶ enabling Ministers to recognise a greater range of care orders from England, Wales and Northern Ireland in Scot's law, should ensure that the needs and rights of the most vulnerable children and young people placed in residential care placements in Scotland are properly communicated and met by those legally responsible for their care.

People who have been harmed

People who have been harmed in disability aggravated offences should not be negatively impacted by provisions in the Bill as they will still be supported to give their evidence, if required, as a vulnerable witness. Where children commit such offences, they will still be supported to address their offending behaviour and as required can be deprived of their liberty but this would be within age-appropriate systems and services.

Sex

The provisions in the Bill apply to all children and do not make any distinction based on sex. Current data indicates that boys are more likely

²⁴ As detailed in the consultation

²⁵ See [Older Children In Conflict With the Law - CYPCS](#) and [Scotland's approach to children in conflict with the law \(cycj.org.uk\)](#) for more information

²⁶ [The Cross-border Placements \(Effect of Deprivation of Liberty Orders\) \(Scotland\) Regulations 2022 \(legislation.gov.uk\)](#)

than girls to be referred to the Principal Reporter, proceeded against at court; and detained in YOIs, with the number of girls in custody often so low that it is in their best interests to associate with adults detained in the YOI²⁷. By enabling all girls who require to be deprived of their liberty through the criminal justice system to be placed in a child-centred environment and ending the use of YOIs, they are more likely to be cared for with their peers, even if their routes to secure accommodation differ. In respect of secure accommodation and cross-border placements, it would appear that trends based on gender are more variable. Therefore while the measures may have more of an impact on boys, they aim to ensure boys and girls rights are advanced and protected.

Evidence highlights the impact of gender-based perceptions on decision making, with girls having been found to be more likely to be deprived of their liberty for behaviours that would not have provoked the same responses for boys and particularly on the basis of being deemed at risk, often when defined as at risk sexually, and in need of protection²⁸. Girls could be more impacted on by the changes to secure accommodation criteria, namely the amended criteria that the child is likely to cause injury to another person, to being likely to cause physical or psychological harm (which may cause fear, alarm and distress). In doing so, we have sought to ensure different types of concern continue to be specified (absconding, self-harm and harm to others). Moreover, through decoupling the secure accommodation and MRC criteria, girls might be more able to benefit from this lesser level of restriction as opposed to deprivation of liberty. We have not changed existing safeguards related to secure accommodation placements, which should further mitigate potential risks.

People who have been harmed

Whilst the 2019/20 Scottish Crime and Justice Survey²⁹ found no significant difference in the proportion of men and women who were victims, there are particular offences that males are more likely to experience (such as violent crime) and other females (such as gender-based violence and sexual offences). The particular measures in the Bill

²⁷ [Children referred to the Reporter \(scra.gov.uk\)](https://scra.gov.uk); Published and unpublished criminal proceedings data [Criminal Proceedings in Scotland statistics - gov.scot \(www.gov.scot\)](https://www.gov.scot); [Children and young people on remand in Scotland - Children and Young People's Centre for Justice \(cycj.org.uk\)](https://www.cycj.org.uk). Under Article 37(c) of the UNCRC "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".

²⁸ See [Risk Assessment and Secure Accommodation Decision-Making in Scotland: Taking Account of Gender? \(wiley.com\)](https://www.wiley.com) for a summary

²⁹ [Scottish Crime and Justice Survey - gov.scot \(www.gov.scot\)](https://www.gov.scot)

that have implications for people who are harmed, as detailed under the age characteristic, are therefore likely to impact more heavily on these groups. As detailed above, where children cause harm they will still be supported to address their behaviour. Whilst more children may have their cases addressed through the children's hearings system, as detailed elsewhere efforts have been made to bolster the protective and preventative measures available through this system and in respect of information sharing. Where depriving a child of their liberty is needed, this will still occur, but not in penal settings, instead in child-centred accommodation, normally secure accommodation. Moreover, we are not making changes to existing formal risk management approaches or public protection measures that can still be engaged as required. For example, Care and Risk Management measures would continue to be available regardless of whether the child's case was being addressed through the children's hearings or criminal justice system. We will continue to consider these matters further as the Bill progresses.

Pregnancy and maternity

There is limited data on the number of girls and young women whom provisions in the Bill are likely to impact on who are pregnant or parents. Statistics from SPS show that no under 18s have used their Mother & Baby unit since 2016. However, discussions on future secure accommodation provision will consider how providers would manage pregnancy/birth. Extending the right to support will benefit this group and for children, they will no longer be born in any prison setting if their parent is detained. Young parents in contact with the justice system have been identified as group who may need additional support in the Scottish Government's Pregnancy and Parenthood in Young People Strategy³⁰.

Gender reassignment

There is limited data on the number of transgender children who the provisions in the Bill are likely to effect, although there are snapshot estimates of the number of transgender children and young people in secure accommodation and custody³¹. Research indicates those whose gender identity differs from the sex assigned at birth often find themselves facing additional challenges while in custody³². The

³⁰ [Pregnancy and Parenthood in Young People Strategy - gov.scot \(www.gov.scot\)](http://www.gov.scot)

³¹ [ACEs, Distance and Sources of Resilience \(cycj.org.uk\)](http://cycj.org.uk); [16th PRISONER SURVEY 2017 - Young People in Custody6076_2850 \(1\).pdf](#)

³² For a summary see [Children and young people in conflict with the law: policy, practice and legislation \(cycj.org.uk\)](http://cycj.org.uk)

measures in the Bill relating to removing children from YOIs should have a positive impact on transgender children and secure accommodation does not separate children based on gender. In addition, secure accommodation may be better placed than custody to meet the mental health needs of transgender children and given the smaller care-based, trauma-informed environment discrimination might be less likely.

People who have been harmed

Efforts in the Bill to mitigate any detrimental impacts to people who have been harmed would also apply where transgender identity aggravated offences have taken place.

Sexual orientation

Although limited information is available regarding the how the Bill's provisions might impact, the evidence indicates people whose sexual orientation differs from strict definitions of heterosexuality often find themselves facing additional challenges while in custody³³. There may therefore be further positive impacts of ending the use of YOIs and instead, where required, depriving children of their liberty in secure accommodation.

People who have been harmed

Efforts in the Bill to mitigate any detrimental impacts to people who have been harmed would also apply where sexual orientation aggravated offences have taken place.

Race

There is limited data regarding the impact of the Bill on children and young people on grounds of their race. However, given the evidence from the UK that people of black and minority ethnic heritage have faced significant discrimination, disadvantage and prejudice, including in the justice system, efforts to reduce the number of children in this system by virtue of raising the age of referral to the Principal Reporter should have a positive impact³⁴. For children who do continue to be have their cases addressed within the criminal justice system, measures to require additional consideration of the child's welfare, including participation needs, should have a positive impact. The smaller centres and higher staffing ratio in secure accommodation might mean staff are better

³³ For a summary see [Children and young people in conflict with the law: policy, practice and legislation \(cycj.org.uk\)](https://www.cycj.org.uk)

³⁴ For a summary see [Children and young people in conflict with the law: policy, practice and legislation \(cycj.org.uk\)](https://www.cycj.org.uk)

placed to meet children's diversity needs and adopt a more individualised approach, although given the smaller number of children being cared for it may mean fewer children share protected characteristics, albeit it is recognised each child is an individual.

People who have been harmed

Efforts in the Bill to mitigate any detrimental impacts to people who have been harmed would also apply where racially aggravated offences have taken place.

Religion or belief

People who have been harmed

Efforts in the Bill to mitigate any detrimental impacts to people who have been harmed would also apply where religiously aggravated offences have taken place.

Recommendations and Conclusion

The evidence collected over the course of the EQIA process has highlighted known inequalities experienced by children and young people in many of the core groups the Bill will particularly affect. The EQIA has reinforced the necessity for various provisions contained within the Bill and has highlighted an overall positive impact on the groups identified in the legislation. Where potential negative implications have been identified, efforts have been made to minimise or mitigate these as far as possible.

Relevant stakeholders (including children and young people) have been engaged with, prior to and during the consultation process. We have taken on board their views and will continue to engage with them during further policy and legislative development to continue to gather, analyse and review all available data and evidence concerning equality impacts of this legislation. The EQIA process will be ongoing and the associated documents will be kept up to date as the Bill progresses or new evidence emerges.

Declaration and Publication

I have read the Equality Impact Assessment and I am satisfied that it represents a fair and reasonable view of the expected equality impacts of the Regulations.

Signed: Tom McNamara. Interim Deputy Director, Children's Rights,
Protection and Justice

Date: 02/12/2022



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