

NATALIE DON MSP

F/T: 0300 244 4000

E: [scottish.ministers@gov.scot](mailto:scottish.ministers@gov.scot)

Sue Webber  
Convener  
Education, Children and Young People Committee  
Scottish Parliament  
[ecyp.committee@parliament.scot](mailto:ecyp.committee@parliament.scot)

28 November 2023

Dear Convener

**Children (Care and Justice) (Scotland) Bill – 1 November 2023**

At the session on 1 November, I agreed to provide further information on a number of matters. I have set out the information in an annex below, according to topics raised and plan to update the Committee again ahead of Stage 2 on amendments I plan to table.

I would like to thank members for their careful consideration on this Bill. The Committee's Stage 1 report, the Scottish Government's response, and the stage 1 debate combined to highlight the significant areas in which the Bill seeks to take forward much needed reform and the cross party support for that action. The Bill is firmly embedded in a determination to advance Scotland's obligations under the United Nations Convention on the Rights of the Child and our commitment to Keep the Promise.

I am grateful to the Committee and Parliamentary Bureau for agreeing to extend the Stage 2 deadline. This will allow me to use this additional time to engage with Parliamentarians and explore areas of consensus in order to work together on shared outcomes we want to achieve and I remain open to meeting with any members who wish to discuss the Bill with me.

Yours sincerely

**NATALIE DON**

## **Victims – support and information**

There was a strong theme of questioning around the government's approach to balancing the rights of those who have been harmed, with those who have caused harm, especially with regard to the Bill enabling more children to have access to the hearings system on offence grounds. I said the government was giving this careful consideration and would bring forward measures at Stage 2 and set out some further detail here.

To earn and sustain professional and public confidence, it will be vital to respect and fulfil victims' rights. Scotland rightly takes an integrated approach to the care and justice of children – the evidence<sup>1</sup> shows that early victimisation, trauma and disadvantage are significant features in the backgrounds of children who later come into conflict with the law.

As the Committee is aware, the hearings system has a long track record of reconciling and balancing the rights of referred children, and those who may be affected by their conduct, including child victims. The provisions in this Bill strengthen the rights for children who are victims by allowing all children up to 18 to be referred on welfare grounds, not just those who are already in the system, or subject to an open referral, when they turn 16.

While it is anticipated that more children aged 16 and 17 in conflict with the law will also be referred to the Principal Reporter, should this Bill be passed, it is essential to note that this will not apply to all offence cases within that age group. Decisions on prosecutions in individual cases ultimately remain a matter for the Lord Advocate

Procurators Fiscal will therefore retain the final decision on prosecution in all jointly reported cases. The Bill gives the children's hearings system more scope to protect victims as outlined in sections 3, 4 and 6 on information sharing notification, new specific measures to specify that a victim is not to be approached, and widening of the existing monitoring restriction conditions which may be required to support a child to stay away from a specified person.

There has been considerable and encouraging engagement with victims' agencies and those working with referred children. That activity will of course continue throughout the Bill process to ensure the legislation is as strong as it can be and also to encourage the development of more victim-centred and trauma-informed practice within care and justice agencies.

As I outlined on 1 November, I am also giving careful and detailed consideration to proposals for a single point of contact for children who are harmed, and for their families. The government is acutely aware of the intersectionality between information and support, including non-legislative solutions focusing on support and explanations for victims.

Additionally, it is clear that there is a need for improved understanding about the ethos and objectives of the children's hearings system and that is already being considered as a result of the Lady Dorrian Review.

Care has to be applied when looking at comparisons between the respective objectives and functions of the children's hearings system and the criminal justice system. Respect, empathy, support and information should be given to victims in both processes.

---

<sup>1</sup> [Children-aged-12-to-15-years-offending.pdf \(scra.gov.uk\)](https://www.scra.gov.uk/children-aged-12-to-15-years-offending.pdf)

The criminal justice system is focused on justice. Therefore, transparency, deterrence and retribution are important and legitimate aspects of decision making within that system. Within the children's hearings system the welfare of the referred child is a primary consideration, when considering the need for measures for the purpose of protecting members of the public from serious harm. That is essential to the operation of the hearings system as a UNCRC rights-respecting, welfare-based decision-making apparatus for children in need or at risk.

In turn, this leads to Reporters' and hearings' decision-making being private and confidential. The focus of those decisions will invariably be on the child's wider individual needs and home circumstances in determining how best to support the child to address their offending behaviour. The victims' code<sup>2</sup> applies to the justice system but not to the children's hearings system – what a victim can expect in the criminal justice system is set out in published standards of service for victims and witnesses.

Recognising those distinctions, policy within the Bill is directed at promoting parity of entitlement to information to the maximum extent appropriate (taking account of the different focus of the children's hearings system). Accompanying policy activity is directed at boosting the currently available support and explanatory resources available to victims and to the families and carers of child victims.

For victims who require to be witnesses in proof proceedings associated with establishing the facts underpinning the alleged grounds of referral to a hearing, the Scottish Children's Reporter Administration (SCRA) report that the Children's Reporter will support that victim or witness in a bespoke way, in some cases spending significant time to support them to understand any special measures they may need to give their evidence. This can include arranging court visits, keeping them informed of when they might be giving evidence, and signposting them to victim agencies, including ASSIST, Scottish Women's Aid and Victim Support Scotland where appropriate. I am therefore confident that these witnesses are getting a service at least comparable to that they would have received through the justice system. Cases involving child witnesses are supported and prioritised as much as possible within the children's hearings system to minimise the stress of waiting for the case to be dealt with.

I also outlined during my 1 November evidence how careful consideration is being given to extending the remittal framework in the Bill on the issue of non-harassment orders. This would be an additional lever to improve the interface between the criminal justice system and the hearings system. Due to the fact that only a court can impose the order, such an approach would mean the child being subject to those conditions but also being able to be remitted to the hearing for that more age-appropriate decision-making forum. The Bill already contains such an approach for Sex Offenders' Register Notification and driving offences.

### **Movement Restriction Conditions (MRCs) – availability of support**

During the session on 1 November members raised that CoSLA had outlined that the costs of MRCs are unknown because of their bespoke nature, whilst Social Work Scotland had spoken of intensive support required and varying provision across the country.

I welcome the Committee's and stakeholders' recognition that costing support provision for each child subject to an MRC and the attendant intensive support is difficult – owing to the individualised nature and the widely varying intensity and therefore costs of this support.

---

<sup>2</sup> [Victims' Code for Scotland \(mygov.scot\)](https://www.mygov.scot/victims-code-for-scotland)

Illustrative figures were included in the financial information submitted to the Committee on 6 October.

In addition, we recognise that the nature of support does vary across local authorities. In some areas, intensive support teams or services are provided in-house by local authority teams and, in other areas, third sector partners are commissioned to do so. Updated mapping work under the Whole System Approach is currently being undertaken by the Children and Young People's Centre for Justice which should help to update our understanding of the national picture of this type of service provision for children in conflict with the law.

During my oral evidence I also set out how the government intends to improve monitoring and reporting on how MRCs are being used by panels and application of the decision-making framework around it. I can confirm that officials are in discussions with SCRA on how this can be best approached.

### **Social Work – recruitment, retention and skills**

A number of Committee members asked about social work considerations, following evidence from CoSLA and Social Work Scotland. The majority of social workers are employed by local authorities to undertake statutory duties, and therefore ultimately accountability lies primarily with local authorities. The Scottish Government recognises that action needs to be taken to address the current pressures in the system and we are already working to support and invest in the workforce. A national approach to workforce planning is supported by the sector and should help achieve the optimal future workforce capacity to respond to future demand.

Specifically in respect of this Bill, there has been detailed and intensive engagement with Social Work Scotland and CoSLA in the compilation and preparation of the updated financial information submitted last month. In addition both organisations are represented on the resourcing and implementation group.

Now that the updated resourcing information has been compiled, the Scottish Government is working with the CoSLA employment team to further analyse what the projections might mean for social work capacity and resourcing on the ground. In addition to the information already provided to the Committee, a range of activity is intended to address the challenges within social work including:

#### **Funding:**

- In 2022 – 2023, the Scottish Government provided councils with an additional £22m to address the shortage of social work staff in adult services. This £22m is recurring and has been given to councils in 2023 – 2024.
- Between 2020 – 2024, to address the shortfall in Mental Health Officers the Scottish Government will have provided an additional £12.13m.
- Between 2021-2024, we will have provided the Scottish Association of Social Work with £296,000 for the Social Work Professional Support Service, which offers peer support for career development and promotes wellbeing.
- The Scottish Government set up the National Trauma Training Programme in 2018 and have so far invested over £9.6 million to support the implementation of trauma-informed practice in Scotland. This includes a total of £1.6 million each year since 2021/22 shared across all 32 local authorities to progress trauma-informed services, systems and workforces.

## Social Work education

- We are working with key stakeholders to develop a Graduate Apprenticeship for Social Work to increase capacity by creating an additional work-based route, and last year, we supported a match-funding initiative to increase the numbers of local authority employees undertaking social work study with 90 students enrolling to date.
- Working with partners, we are creating a strategic framework from qualifying education through to advanced practice for all social workers and social work employers, by Autumn 2024.
- We are aiming to implement a mandatory supported *year-in-practice* for Newly Qualified Social Workers) by Autumn 2024 to ensure adequate training is available to all NQSWs as they transition from education into employment.
- We set up a subgroup to the Social Work Education Partnership to develop the Advanced Practice Framework for Social Work), which will endorse a series of learning and developmental opportunities to support workforce development. The aim of this is to support the retention of more experience workers by improving opportunities for career progression.
- The Trauma Responsive Social Work Services Programme has established a small team to work with key stakeholders, including local authorities to ensure social work services are able to recognise where people are affected by trauma, respond in ways which reduce risks of retraumatising, supports recovery and worker wellbeing. The team are currently delivering trauma skilled training for up to 340 early career social workers<sup>3</sup>. More information available at Social Work Services - National Trauma Transformation Programme.

In addition to the workforce improvement plan, further practical actions include:

- Developing a social work returners bank of staff.
- Working with partners to reduce the dependency on agency workers, whilst ensuring this does not result in reductions in staffing.
- Our proposals for the National Care Service include the establishment of a National Social Work Agency to support and invest in the social work profession. It will provide national leadership, consider future workforce needs and elevate the status of the profession.

## Solicitor capacity

Members were interested in receiving more information and assurance around the availability of legal representatives. Our information is that there is no current capacity issue in relation to solicitors supporting children within children's hearings or criminal justice processes.

As of 20 Sept 2023, 664 solicitors were registered<sup>4</sup> with the Scottish Legal Aid Board (SLAB) to carry out work in the children's hearings system under the Children's Legal Assistance Scheme, and SLAB continually keep this under review.

Automatic legal aid funding is in place for any suspect in police custody including children. Access to legal advice is protected in law, and there are additional safeguards for any interview process involving children as suspects.

---

<sup>3</sup> See [Social Work Services - National Trauma Transformation Programme](#)

<sup>4</sup> [Childrens-Legal-Assistance-Register.pdf \(slab.org.uk\)](#)

This is supplemented by the Solicitor Contact Line who provide telephone advice to suspects as well as the 39 police station duty plans) which provide details of solicitors who are on a rota to provide attendance at a police station. Officials have regular meetings with the legal profession and the Scottish Legal Aid Board, and no specific concerns have been raised as regards the potential impact of the Bill.

### **Ending the use of Young Offenders' Institutions (YOIs) – caring safely for all children under 18 who need to be deprived of their liberty in secure care**

The Committee's Stage 1 report confirmed Members' agreement that in cases where a child must be deprived of their liberty that this should be within the children's secure estate (i.e. a secure accommodation provider). I also note the recent correspondence to the Committee by HM Chief Inspector of Prisons for Scotland regarding their view for the urgent need to bring about the legislative changes necessary to end imprisonment of children in Scotland, detailing the risks of continuing to care for this small but persistent number of children in YOIs.

Some Members highlighted the perceived potential safety concerns of children who are placed in secure care on welfare grounds or have been the victim of certain offences being cared for alongside those children who would have been placed in a YOI. I understand that some staff told Committee Members during secure care visits that they did not yet feel they were yet in a position to deal with the changes from the Bill. Staff felt that adaptations may be needed to current services, should a larger cohort of children previously liable to YOI remand or detention, come under their responsibility as a result of these proposed reforms.

I assure the Committee that officials have been in discussions with the heads of centre and the Boards around any necessary adaptations or additional safety and security measures they feel may be required, and those are being progressed as part of annual budget activity.

The existing experience and expertise of secure care centres in supporting and managing all children in their care is well documented and established and was evidenced to committee during Stage 1. Particular attention is paid to the needs and risk profile of each child coming into their care and wider reference accorded to the potential contacts that each child may have.

Committee members have raised questions about the ability of secure care to cater for, and safety plan, around the needs of all children placed there. I want to reassure the committee that the government has taken into account the welfare of all children as a primary consideration in approaching these measures.

When a child is placed in secure care, public and children's safety and protection are the core considerations. Secure care centres already care for children together – including 16 and 17 year olds – regardless of the route the child is placed in secure care be that via the courts, the children's hearings system or for short periods under the emergency authorisation of the relevant Chief Social Work Officer (CSWO). This is based on a long-established understanding that all children placed in secure care have experienced, or are experiencing, extreme needs, risks and vulnerabilities in their lives. The insights of practitioners and managers and the evidence from research combine to rebut an understandable concern that greater risks are posed to children or staff by those children who are placed in secure care primarily on offence grounds. Extensive and recent research and evidence does not support the proposition that those 'offence case' children pose more risks than others to 'welfare case' children cared for in secure accommodation.

Research<sup>5</sup> commissioned to inform implementation of the policy to end the use of YOIs found that similar levels of adversity are experienced by children in secure care and YOIs. Both cohorts of children have often demonstrated acts of significant harm, with secure care already providing care, support and supervision to children who have caused acts of grave and significant harm. Dividing children based on the reason for admission is customary practice within Ireland (Whitelaw, 2022)<sup>6</sup> and England (Hales, Warner, Smith & Bartlett, 2018)<sup>7</sup>.

Recent research by Hart and La Valle (2021)<sup>8</sup> in England reviewed the practice of mixing children placed on justice grounds and those placed on welfare grounds following concerns around risks, particularly around sexual abuse. They found that there was a low incidence of harmful incidents, and this was not increased with reference to the reason children had been placed in secure care. Risk level was not determined by the route to secure care and perceptions that children's associations between groups would elevate risks, or that mixing children was unfair, did not reflect the reality. Mixing children was viewed as reflective of the wider community experience and provided opportunities for support and the development of life skills.

In addition to the information previously provided, including by secure care centres, regarding the processes for risk assessment and management for all children in secure care, additional information on maintaining the safety of all children in secure care includes:

- When a child is made subject to a secure accommodation authorisation via the children's hearings system, the CSWO can only implement this order with the consent of the head of the secure unit. In doing so the CSWO must be satisfied that this would be in the child's best interests and the head of unit that this would be appropriate to the child's needs and not detrimental *to other children residing in that unit* (as per the Children's Hearings (Scotland) Act 2011 (Implementation of Secure Accommodation Authorisation) (Scotland) Regulations 2013).
- Similar considerations for other routes apply under the Secure Accommodation (Scotland) Regulations 2013.
- When children are sentenced to custody, the court directs that they should be detained in 'such place and on such conditions as the Scottish Ministers may direct'. Officials follow the processes set out in the published Custody of convicted children and young people: practice guidance<sup>9</sup> to ensure an appropriate placement is identified in advance of sentencing. The Scottish Government's Child Placement Team will discuss the child's needs with social work and the Heads of Secure Centres to identify an initial placement, on a contingency basis. Any placement will be reviewed after 4 weeks followed by quarterly multiagency reviews to ensure it is still appropriate.
- For any placement, under the Care inspectorate's admissions and matching guidance<sup>10</sup>, when considering a new referral the head of centre/unit must consider not just the needs of the individual child and whether these can be met but also needs of the group of young people currently placed in the service, including assessing the impact potential risks and benefits for all young people affected by the potential placement, which should be recorded. All serious incidents require to be reported to the Care Inspectorate.

---

<sup>5</sup> [Preparing-to-Keep-The-Promise-Comparative-Study.pdf \(cycj.org.uk\)](#)

<sup>6</sup> [A flying visit to Ireland's Secure Care Centres - Children and Young People's Centre for Justice \(cycj.org.uk\)](#)

<sup>7</sup> [secure-settings-for-young-people-a-national-scoping-exercise-paper-2-census-report.pdf \(england.nhs.uk\)](#)

<sup>8</sup> [Secure children's homes: placing welfare and justice children together \(publishing.service.gov.uk\)](#)

<sup>9</sup> [Custody of convicted children and young people: practice guidance - gov.scot \(www.gov.scot\)](#)

<sup>10</sup> [Admissions Guidance for Residential Services.pdf \(careinspectorate.com\)](#)

- Where a child is in secure accommodation the managers, in consultation with the head of unit, must also ensure that the welfare of a child so placed and kept is safeguarded and promoted. This applies for all children. If a child's placement was or became contrary to the welfare of other children, there is a responsibility to reconsider the appropriateness of this placement.
- Although varying based on the route in which a child is placed in secure care, the CSWO of the child's home local authority has a duty to regularly review the child's placement in secure care to ensure for example this remains in the child's best interests, the placement is appropriate to the child's needs and the secure care criteria is met.

Secure care centres already care for a number of 16 and 17 year olds, with the Bill meaning that fewer than 5 additional children at any one time of that age will be placed in each secure centre.

It is now widely accepted that too often a child's placement in YOI is not due to the type or severity of their index offence, but to the child's legal status at a given age (i.e. the child not being subject to pre-existing measures via the hearings system and therefore being unable to access secure accommodation). The Bill's proposals address this anomaly. The research referred to above concluded that secure care centres in Scotland can already call upon a wide array of resources, services, interventions, and programmes designed to meet the needs of all the children within their care. This has been echoed by the recently published Care Inspectorate review of the Secure Pathway and Standards<sup>11</sup>, which involved 30 young people with experience of secure care. The findings included:

*The young people in our sample had very high levels of need for support to address safety concerns. Examples included high risks arising from young people harming themselves, risk of exploitation or trafficking or, for a few young people, they had come into conflict with the law and were a risk to others. Because of these factors, safety is a complex issue particularly for young people who live in secure care accommodation. Complexities including young people being kept safe from harmful behaviours such as self-harm and suicide risks, and keeping other young people safe if young people are placing others at risk. Protecting young people from harm may include the use of a range of restrictive practices.*

*Most young people felt safe when living in secure care and for almost all, risks of harm reduced while residing in secure care, and their rights to safety and protection were upheld. The high levels of staffing, the training of staff in trauma-informed approaches and the specialist support available all contributed to the safety of young people in secure care. While most young people felt safe while in secure care, there were a few in our sample who experienced feeling unsafe, either due to deterioration in their mental health or through the actions of other young people they lived with. When this was the case, these young people were able to raise their concerns with staff members that they trusted. Staff took the appropriate steps to ensure the safety of the young people.*

Children and young people, including those currently residing in or with previous experience of being placed in, secure care, have been central to the development of the Bill. Their involvement was supported by the deployment of a range of engagement and participation strategies.

---

<sup>11</sup> [Secure care pathway review 2022-23 \(careinspectorate.com\)](https://www.careinspectorate.com/reports/secure-care-pathway-review-2022-23/)



We recognise that some children who responded to the original 2020 policy consultation expressed concern about the ending of YOI placements, and some children reflected similar views through the engagement sessions around the Reimagining Secure Care project.

Those views are understandable and will be factored into the future redesigned secure care offer for 2030 and beyond. It will be important to continue to engage with children and young people in successive cohorts of secure placements, with providers, local authorities and advocacy organisations, to ensure children understand clearly how their safety will be assured and maintained with the changes proposed under the Bill provisions.

As part of the implementation group and as detailed in the Government's response to the Stage 1 report, I recognise the need to build public confidence in the Bill, and in the accompanying policy.

The governance groups operating under Age of Criminal Responsibility (Scotland) Act implementation since 2021 include a 'community confidence' subgroup of key stakeholders, including care and justice experienced young people. That subgroup will give these issues their expert attention over the coming year.

This subgroup is linked to the Children's Rights Implementation group under the Youth Justice Improvement Board, which looks at how to raise public awareness and community confidence in the Youth Justice system including current and potential Age of Criminal Responsibility reforms.

The group also considers the impact on community confidence of current responses to high risk/high harm behaviour and what this means for policy, services and interventions aimed at children who have caused harm, their victim(s) and their families. We have engaged this group on victims' information/support issues and intend to continue that work in light of Bill provisions as adopted and amended during later Stages.

### **Secure Care Centres – Capacity, support and adaptation in 2023-4 versus future reimagining and redesign to 2030**

All secure centres have been invited to give the Scottish Government information on any perceived additional changes to provision or resource that may be required to meet the full short-term implications of delivering safe additional capacity should the Bill be passed. We are clear that these additional safety, security and training asks rise only to the level of service adaptation and refinements to current provision. They do not need fundamental secure care redesign. Preparations are well in hand, and committed national investment has already been put in place, in anticipation of these more immediate challenges.

### **Updated financial information and links to annual budgeting**

The updated financial information of 6 October clearly outlines areas where updated figures and additional considerations have been applied to the original Financial Memorandum. That new information has now been factored into annual government planning and budget prioritisation activity, which is well advanced internally in respect of the Budget Bill for 2024-25, and Parliament will be able to take a view on that in due course. As is the required Parliamentary process, an updated financial memorandum will be prepared to reflect any amendments accepted at Stage 2.

## **Sequencing, implementation and prioritisation**

As detailed previously to the Committee, the multi-disciplinary Children (Care and Justice) Bill Implementation Group has been convened. Three meetings have taken place, with a further session scheduled for early 2024. The group has already begun to explore current and projected system readiness across a range of professions, disciplines and functions, has begun to assess training/guidance requirements, models and costs.

It will also consider how this Bill, if passed and once commenced, would dovetail with wider near-future policy/practice developments in the period to 2030. It will also consider implementation governance and working through more complex issues, that may engage multi-year questions in respect of the revised financial forecasts.

This co-design approach will continue and intensify as we develop plans for sequencing, commencement, training and guidance to ensure the framework to support any final Act of the Scottish Parliament, should the Bill be passed. This activity will benefit from further clarity on the Bill's provisions, once Parliament has agreed amendments at Stage 2.

There are some provisions of the Bill that do require clear prioritisation in terms of commencement strategy. For example, in order to Keep the Promise in terms of delivery against Change Programme ONE 2021-24<sup>12</sup> we must end the use of YOIs in terms of prohibiting new placements by the end of 2024. We are in active dialogue with secure care centres to ensure this decarceration target can be achieved as quickly as possible, should the Bill be passed.

The next implementation group in January will again discuss with statutory duty bearers and delivery partners the sequencing of commencement of provisions, continuing to build towards a plan of what is required to support successful implementation of parts of the Bill in the period between 2024 and 2026.

The committee has received repeated evidence from stakeholders and witnesses regarding the various necessary and progressive demands being placed on statutory duty bearers and delivery partners in the next period within the current challenging resource context. That is another reason supporting the early delivery of the key reforms within this Bill, so that partners can move on to the other deliverable priorities in the years from 2024 to 2030. The implementation group and associated bilateral single agency discussions will be key to further assisting our plans and timelining for commencement and implementation. I would be happy to provide further information to the Committee on these issues after the group's next meeting in January.

## **Legal advice on the Bill's provisions**

Committee members asked me on 1 November about legal advice I may have received in relation to the impact of this Bill on victims' rights. As the Committee is aware, it is a breach of the Ministerial Code to discuss legal advice.

In taking forward any proposed legislation, the Scottish Ministers need to be satisfied that it is within legislative competence and is lawful. The provisions of the Bill have been subject to public consultation, wider engagement with stakeholders and underpinned by relevant impact assessments. The Government is satisfied that the Bill's provisions are properly informed and will ensure that victims' rights are respected and further enhanced.

---

<sup>12</sup> [change-programme-one.pdf \(thepromise.scot\)](#)

A full Children's Rights and Wellbeing Impact Assessment has been completed for the Bill, and that will be updated as necessary, responding to any changed policy implications of the Bill provisions – where those are affected by amendments adopted as the Bill proceeds.

### **Cross-border placements**

I can now confirm that my further meeting with the Minister for Children, Families and Wellbeing, David Johnston MP, is scheduled to take place 20 December to discuss in more detail the developments around Cross-Border placements. I would be happy to provide further information to the Committee following that meeting.