



Victim Support Scotland Response – 17/06 2022

Children’s Care and Justice Bill – Consultation on policy proposals

Raising the Maximum Age of Referral to the Principal Reporter

[The Promise](#) is clear that more should be done to ensure children can stay within the welfare-based children’s hearings system. Children are usually referred to the Principal Reporter by police, social work or schools, but can be referred by anyone, such as a concerned relative. The Principal Reporter will then consider whether to convene a children’s hearing, that will determine whether compulsory legal measures of supervision are required for the child. The various grounds on which a child can be referred to the Principal Reporter are legislatively defined.

The recommendation to increase the maximum age of referral to include all children under 18 received unanimous support among [responses](#) to the consultation on raising the age of referral to the Principal Reporter in 2020. Whether on care and protection grounds or offence grounds, the Scottish Government’s intention is to enable this important structural shift. We are considering how this change can be supported. Currently the information and support provided to people who have been harmed varies dependent on whether the case is dealt with by the [children’s hearings system](#) or criminal justice system.

The Scottish Children's Reporter Administration Service (SCRA) offers a Victim Information Service for people who have been harmed, their parents or other relevant persons, where a child is thought to be responsible and has been referred to the Principal Reporter. The level and type of information which can be shared is:

- About the children’s hearings system;
- The outcome of the referral (i.e. whether or not a hearing was arranged and the outcome of the hearing); and
- About how Scotland treats children who do things which are against the law.

Information about the measures (conditions) on a Compulsory Supervision Order (CSO) or Interim CSO (ICSO) is not shared with the person who has been harmed.

Where a case goes on to be dealt with through the hearings system, people who have been harmed can be supported to access support organisations. However, people who have been harmed and their families have reported that the support available can be insufficient and access arrangements disjointed. A single point of contact for each individual who has been harmed might improve this situation. We are interested in views on this and in which organisation a single point of contact could be based.

Existing measures that can be attached to an order to protect people who have been harmed. For example, a condition of 'no contact' with a person could be used. In addition, a Movement Restriction Condition (MRC) could be used to specify that a child's movement is restricted away from a particular place, for example a victim's home address. A MRC monitors these limits to where a child can go through an electronic tag, alongside the provision of intensive support.

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

Yes

If yes, what further information should be made available?

Victim Support Scotland believes that the age of the child who has harmed should have no bearing on the information that is received by a victim of crime. As an organisation we would like to see victims being given more information than they are currently given when a child is reported through the children's hearing system. Whilst we understand that the children's hearing system is not the same as a court and is primarily designed to look at the best interests of the child being referred to it, we do not believe the information that a victim of crime would receive from a court would in any way be detrimental to the best interests of the child who has harmed.

With information related to the prosecutorial decisions taken to initiate or not initiate proceedings against a child, we feel that victims of crime should be entitled to know whether any proceedings have been initiated against the child in the same way a victim of crime should be entitled to know whether any proceedings have been initiated if the child were an adult. Where a decision has been made not to initiate proceedings then a full rationale should be given to the victim of crime, as to why that decision was taken.

A victim of crime or their family should also be entitled to know whether the child who has harmed them has accepted responsibility for their actions, either partially or fully. If a case was to be presented to a court, then a victim of crime would know whether the accused had pled guilty or not and therefore we believe that the place of the hearing should make no difference to this knowledge surrounding guilt or accountability.

If yes: are there specific circumstances when further information should be provided and what would those circumstances be? Please give reasons for your answer

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

Yes

Please give reasons for your answer

Any information related to a children's hearing and the outcomes of that children's hearing should be communicated to the victim of crime or their family. It is important for victims of crime to know when cases are heard and what the decisions were reached by the hearings. A victim of crime would be

entitled to this information if a case went to court and, indeed, would give evidence if the accused had pled not guilty.

Any information relating to a Compulsory Supervision Order (CSO) including whether there are conditions relating to the victim of crime contained within that order such as not to have any interaction with them, should be communicated to the victim of crime or their family. It would not be possible to provide support around their safety if the victim of crime was unaware of the contents relating to the CSO. In an adult context a victim of crime would (or should) know that an accused person has bail conditions which relate directly to them.

We would also highlight that in circumstances where a child who has harmed is placed in a secure care establishment, there is no provision for informing a victim of crime when that child is due to be placed back into the community or escapes from that establishment. As it currently stands a victim of crime would be told of a release from prison subject to certain criteria under the Victim Notification Scheme and in all cases where an individual has escaped custody. We do not consider that the provision of this information to a victim of crime would be detrimental to the best interests of the child who has harmed. It would however be of significant benefit to the safety and wellbeing of the victim of crime.

In support of our position a quote has been received from one of our reference group members (consisting of victims of crime, or their families) members:

'I think a victim should receive full information from any hearings outcome. It should be equal that the victim has the same information and treated the same as the offender.'

'I think it is important for victims to know what restrictions are in place and also what authority is responsible for monitoring offenders. It would make a victim feel safer e.g. if they are seen around certain areas, they are restricted of going etc. this will enable family and friends to be on the lookout and be able to reassure the victim of their safety. Also, if the offender knows the victim is aware of restrictions the offender knows if breached, they will be reported and go back to their secure facility.'

Victim Support Scotland would also advocate that the standards of service contained within the Victims Code should also apply to the Scottish Children's Reporter Administration as it does to other public sector organisation providing information to victims of crime. This would ensure that the needs of victims are considered equally when considering the rights and needs of the child who has harmed.

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

Yes

If yes, what additional supports do you feel are necessary?

Victim Support Scotland believe that victims of crime should be supported in the same way they are if a case is heard through the courts. Whether a case is dealt with through the courts or the children's hearing system, a victim of crime may require support throughout that process. We believe that Victim Information services should take a coordination role in providing whatever support is necessary depending on the needs of the victim involved.

As highlighted in the consultation document, the majority of victims will be children, some of whom will need specialist support. Multi-disciplinary approaches usually work well in child protection

matters, and the same approach should be considered for victims of crime where the need for additional support has been identified.

If Yes, should this apply to all victims or only in certain circumstances? (Please specify)

Victim Support Scotland believes offers of support should be offered to all victims of crime regardless of the crime committed or the age of the child who has harmed . Victims of crime can be affected in different ways, and it is therefore impossible to limit support to a particular set of circumstances.

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

Yes

If yes, should this be available to all people who have been harmed or only in certain circumstances? (Please specify circumstances)

Victim Support Scotland is of the opinion that in order to maintain a victim centred approach then victims of crime or their families should have a single point of contact for information relating to their case. We believe that a single point of contact should be trained in trauma-informed practices and be able to provide victims and witnesses with up-to-date information at whatever stage the case is at. This would require that single point of contact to be able to draw information from a variety of different agencies, to ensure a victim of crime has relevant information and does not have to engage with different agencies as the case progresses.

A multi-organisation coordinated approach was recommended by former Solicitor General, Dr Lesley Thomson QC, in a review entitled 'Review of Victim Care in the Justice Sector in Scotland'. In her review the former Solicitor General highlighted that one of the key messages from victims, witnesses and survivors of crime is that navigating the criminal justice system involves encountering many different professional bodies which often have their own eligibility criteria, organisational cultures, technical language, building locations and personnel. Those victims who have reported a crime have to both take in information given to them and provide information to others at multiple different points. This has the potential to retraumatise individuals by requiring them to retell their experiences again and again throughout their justice journey. This victim centred approach is now a key workstream of the Victims Taskforce.

If Yes, who should be responsible for providing the single point of contact? Please give reasons for your answers

Victim Support Scotland does not have a view as to which agency is best placed to act as a single point of contact for victims. We do have an opinion as expressed above that whichever agency is chosen, they must have trauma-informed practices and be able to have access to information related to the case, regardless at which stage the proceedings are at.

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

Yes

Please give reasons for your answer

We do not believe that the children's hearing system currently takes sufficient cognisance of victim safety or the wider elements of public protection into account, as it is currently drafted. If Children's hearings are going to be held for a wider range of offences and for older children who have caused harm, then victim safety and public protection should be more in line with what measures are available to courts in order to protect victims of crime.

We also believe that the majority of victims of crime who are harmed by children are children themselves and the whole process of how child victims of crime are dealt with needs to be radically reformed. The [Getting it Right For Every Child \(GIRFEC\)](#) principles and values are not only designed to assist and help children who have harmed but also to help and assist children who are victims of crime regardless of the age of the person who has caused them harm.

In relation to enhancing existing measures to protect children who have been harmed then we strongly support and advocate that for all children who have been harmed they should be supported through the Barnahus (Bairns Hoose) model. This would provide a child centred approach for children who are victims or witnesses of serious crime or abuse. We also believe that the use of this model for children who have been harmed should be enshrined within the Children's Care and Justice Bill.

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

The current stipulation that a Movement Restriction Condition (MRC) is only available when a child who has harmed meets the current criteria for secure care does not provide adequate protections for victims of crime and its use should be expanded to situations where, the child who has harmed is putting both themselves and the wider public at risk. We also believe that the vulnerability of the victim of crime should also be considered when it comes to considering an MRC.

We also note that currently there are no penalties for breaching a CSO. We would ask that consideration be given to having recourse to remitting a case to court where the level of offending, or non-compliance with a CSO or MRC has reached a stage of becoming dangerous to the child who has harmed or the individual victim of crime or the wider public.

We believe that the legislation should include the provision that child victims of crime regardless of whether the person causing harm to the child victim is an adult or another child then they should have the opportunity to get access to the 'Bairns Hoose' as stipulated in the Programme for Government which states that access to a 'Bairns Hoose' model would be delivered by 2025. This model provides a child-friendly environment providing trauma informed recovery, improving children's experience of the criminal justice system, and preventing them from being re-traumatised.

6. Should Movement Restriction Condition (MRC) orders be made available to children who do not meet the current criteria for secure care?

Yes

Please give reasons for your answer

Victim Support Scotland believes that a Movement Restriction Condition (MRC) should also be available to children who have harmed who do not meet the criteria for secure care. This should be in situations where there is a potential risk to a victim of crime, or the wider public. It is also important that the victim of crime, or their family should be informed that an MRC is in place and what conditions are attached to protect them. If a victim of crime or their family are not told about the existence of an MRC, or the specific contents, then they would not be aware what conditions have been applied for their safety or have the ability to influence conditions that would protect them.

An MRC should be specific to the child who has harmed and the victim of crime in the same way that bail conditions from a court should be specific to the perpetrator and victim. Considerations around the geography of the local area and schooling arrangements should all be designed to prevent further harm being experienced by the victim of crime.

If yes, what should the new criteria for MRCs be?

Maximising the use of the children's hearings system and supports to children beyond the age of 18

We are seeking views on maximising the use of the children's hearings system and to ensure supports to those children on turning 18. The differences between the children's hearings system and the criminal justice system, including their distinct purposes, must be respected and considered. Certain measures can only realistically be made available via one system or the other.

Scotland's future approach must be mindful of the challenges children can face in understanding the different systems they are involved in, and in complying with multiple orders.

Therefore, the Scottish Government is keen to gather views on the following illustrative options, as well as for respondents to put forward any suggested alternatives.

Possible options:

1. Enabling all children under the age of 18 to be remitted to the Principal Reporter for advice and disposal in their case even where they had initially been prosecuted and have pled, or been found, guilty. This would extend the existing legislative provision. The exception would remain in respect of an offence where the sentence is fixed by law. This option would support the reinforcement of the position in respect of remittal as detailed in the [Scottish Sentencing Council Sentencing Young People Guidelines](#).
2. Promoting wider use of the existing ability for the children's hearings system to require support to be offered to a young person on a voluntary basis following the termination of any CSO by virtue of that individual turning 18. This could be strengthened to include the need for the children's hearing to provide a closure report at the end of a child's CSO. This report could detail any identified needs or risks that remain. It could be shared with the implementation authority who would be responsible for assessing the support needed to address these needs or risks. This assessment and any subsequent provision of support could be provided under existing aftercare duties, where applicable.
3. Increasing the age to which children can remain subject to measures through the children's hearings system for a period beyond the child's 18th birthday. Consideration would require to be given as to what age this could continue to, and whether this would only be available for children who had already been referred to the Principal Reporter prior to turning 18. An extension of this nature may also support the optimisation of benefits of raising the age of referral to the Principal Reporter. Further considerations, not least in respect of the differential rights of young people as adults, the ethos of the hearings system, and the implications for services of any such change would need to be taken into account.

7. Should any of these three options be considered further?

Yes/No

If so, which options:

Option 1 Option 2 Option 3

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

In relation to Option 1, Victim Support Scotland would have concerns that where cases are remitted to the Children’s Hearing system from a court then any bail conditions would fall off. We would seek assurances that in these situations that a proper risk-based approach, taking cognisance of the safety of the victim, would be considered and that an alternative approach - perhaps a Movement Restriction Condition or similar alternative - should be put in place of the bail conditions. We would also seek to ensure that on all occasions the victim of crime is informed of any condition imposed to protect their safety or any removal of a condition that was in place to protect their safety and the rationale for removing said protection.

We have also concerns regarding the loss of victims’ voices in any transfer of proceedings from a court to a Children’s Hearing. A victim would lose the ability to see and hear what is happening regarding the harm they have suffered but they would also lose the ability to tell a court by way of a victim statement as allowed under section [14 of the Criminal Justice \(Scotland\) Act 2003](#) (the 2003 Act). A Victim statement gives victims of certain crimes the right to make a statement about the crime’s impact on them, to be submitted to the court after a conviction and prior to sentencing to inform the Judge or Sheriff as they make their sentencing decision. A Children’s Hearing system does not provide any means of a victim having their voice heard or being able to tell the person making a decision regarding the child who has harmed, what the effects have been on them of the child’s behaviour.

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

Victim Support Scotland believes that, for the sake of victim safety, it is vital that there is robust communication in place in situations where cases are remitted from one part of the system to another, such as from the Children’s Hearing System to court or vice versa. This is particularly true when it comes to the support/protection measures that were put in place by either body. These plans should be properly communicated and indeed where possible replicated as far as possible. Any transfer of a case should be properly communicated to a victim of crime and their family where relevant.

The Scottish Government's [Youth Justice Action Plan](#) committed to scoping out options for a future approach where no under 18s are in an "adult court" setting, through the development of a child-friendly approach. Any changes would be for cases where it had been determined that a child should be prosecuted and therefore could not have their case dealt with through the children's hearings system. Given the changes proposed elsewhere in this consultation, we would therefore anticipate a reducing number of cases.

In considering any changes, the legitimate societal interest in accountability where serious harm has been caused, to uphold the rights of people harmed and to account for any risks to public safety must be accommodated. It will also be essential that this builds on our understanding of children and young people's needs and experiences; the learning from existing and previous initiatives; and is clear about who this would apply to.

Any changes and identified resource requirements should also be considered in light of wider related initiatives within the overall justice system. These include the extension of the provisions within the Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019; the three-year rollout of the new Scottish Child Interview Model for Joint Investigative Interviews; and the commitment around access to holistic services within a 'Bairns' Hoose' by 2025.

The Scottish Government recognises that the independence of the Lord President is protected in legislation. It is for the Lord President, as head of the Scottish Judiciary, to make and maintain arrangements for securing the efficient disposal of business in the Scottish courts. This role must continue to be respected.

Change would also require the involvement of a range of stakeholders, including children with experience of the justice system and victims. At this stage, four suggestions for change present themselves, on which we are keen to gather views:

1. A re-examination of the decision-making framework between which system should deal with a child's case and the consequent interfaces between the children's hearings system and the courts.
2. The continued use of traditional court settings, recognising the local innovations that are already underway across different areas of Scotland to improve children's experiences.
3. Making changes to practice, conduct in court and support for all children, whilst retaining children in court settings.
4. [The Promise](#) stated that: "...Scotland must consider how to ensure that children have the totality of their cases dealt with in an environment that upholds their rights and allows them to effectively participate in proceedings. Traditional criminal courts are not settings in which children's rights can be upheld and where they can be heard". In light of this we would welcome views on any other proposals beyond options 1-3 that should be considered.

9. Should any of the four options be considered further?

Yes

If so, which options:

Option 1 Option 2 Option 3 **Option 4**

Please give reasons for your answer, including any positive or negative implications of any of the options. We are particularly interested in implications for people who have been harmed

As outlined in a previous answer Victim Support Scotland would strongly advocate that Option 4 should include the statutory provision of the Barnahus (Bairns Hoose) model to improve the experiences of child victims experiences.

The experiences of children in the legal system should be as trauma informed and as child friendly as possible, and designed specifically to ensure the experience does not cause the re-traumatisation of victims of crime. The support available in this environment would allow the child victim of crime the best opportunity to provide their evidence and optimise recovery in a child-friendly environment, whilst maintaining the integrity of the criminal justice process.

Children in custody

For children in conflict with the law, their rights, including to liberty must all be respected in line with the international standards and legislation. The deprivation of liberty of a child should be a last resort, to be used only for the shortest possible period of time.

The Scottish Government's [Youth Justice Vision](#) outlines that as far as possible, "no under-18s are detained in young offenders' institutions (YOI), including those on remand, with secure care and intensive residential and community-based alternatives being used". This builds upon [The Promise](#) findings and Programme for Government 2021-22 commitment. We are seeking views on ending the use of YOIs for all children.

Where any child is deprived of their liberty, this should be taken as an indicator of wellbeing needs and that the child may require support to promote positive outcomes. There are existing duties on local authorities to assess the needs and wellbeing of children where there are concerns and to provide support as necessary. There is also a duty to make a referral to the Principal Reporter where the existing criteria are met. Looked after children or care leavers have additional entitlements to support, including aftercare potentially up to the age of 26.

10. Where a child requires to be deprived of their liberty, should this be secure care rather than a young offenders' institution in all cases?

No

Please give reasons for your answer

Victim Support Scotland believes that each case should be determined on the individual facts and circumstances relating to the behaviour of the child who has harmed and the risk posed by the child. If the risk identified is of such concern that it places victims of crime in danger, then the child who has harmed should be placed in the most appropriate setting for the protection of themselves and others.

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

No

If no, in what exceptional circumstances should use of a YOI be considered? Please give reasons for your answer

Where the public's safety through crime or harm caused by the child is at risk, then they should be placed in the most appropriate setting to mitigate that risk. There should also be an element of public trust and confidence that they will be protected from those individuals who commit serious harm to others. In support of our position, we have provided comment from a victim of crime on our reference group.

'Yes, remanded in a secure care facility as opposed to YOI is beneficial to lower category offenders. This will enable them to be supported and helped. Absolutely no to murderers, rapists and violent brutal attacks. These offenders should know they are being punished and also from the victim's point of view, reassured their perpetrator is being punished. This sends a clear message that these dangerous individuals are going through a different system and clearly these types of crimes should never be seen to be accepted in our society. The safety of the public should be priority.'

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

Yes/No

If yes, please provide details of how could this be achieved. Please give reasons for your answer

Anonymity

A child's general right to privacy is given additional attention in cases where a child is in conflict with the law. In Scotland the identification of a child as either accused or acting as a witness in a criminal case is prevented. The judge has discretion to make an exception when the court is satisfied this is in the public interest. These provisions do not apply pre-charge when a child is a suspect or after the age of 18. In the children's hearings system, protected information must not be published if this is intended, or is likely, to identify a child, their address or school. Any other child connected with the case – including a child victim – has similar rights to anonymity.

Whilst the public may have an interest in knowing the identity of a child it has been argued that doing so is not justified, given the need to keep these children safe, support their rehabilitation and reintegration, and uphold their rights. There are also impacts for children's families. In England, it has been recommended that children should have lifelong anonymity through the review of youth justice, with this position supported by the UK's four Children's Commissioners.

Three interlinked proposals are being explored:

1) That the judge's discretion to make an exception to identify a child accused should be further limited. Instead of this being permissible when in the public interest, this should only apply when the

court is satisfied this is necessary for the purpose of protecting the public from serious harm and/or in the interests of justice.

2) That legislative change is made to enable a child's right to anonymity to apply from their first contact with the criminal justice system, including pre-charge.

3) That the post-18 automatic identification of children who have come into conflict with the law aged under 18 ceases. Where a child has been convicted of an offence aged under 18, their right to anonymity should be maintained into adulthood. This is unless it is determined subsequent to the child turning 18 that, for reasons of protecting the public from serious harm and/ or the interests of justice, such identification is necessary. That anonymity should persist until that young person turns 26.

13. Do you agree that the three above changes related to anonymity should be made?

No

Please give reasons for your answer

In relation to No 3 we would add that a victim of crime should be informed of any attempt to legally change the name of the child who has harmed prior to or post turning 18. The rationale for that condition being that person who has harmed may attempt to contact, or in some way re-traumatise the victim of crime under the guise of a new identity.

Secure Care

Secure care - provided by a secure accommodation service - is among the most intensive and restrictive form of child care available in Scotland, whereby children up to age 18 are placed in a locked care setting. This can occur through involvement of the children's hearings system or the criminal justice system, due to the level of concern about the risks, or actual significant harm, which elements of a child's behaviour pose to themselves and/or others.

In exceptional circumstances, the use of secure care is necessary and proportionate as the only means by which a child and / or others can be kept safe, having the potential to save a child's life, or change it for the better. Taking a child's liberty away is one of the most serious restrictions a state can impose on a child's rights. As such, children have the right to be protected from unlawful deprivation of liberty under a number of international human rights treaties:

Children in secure care should experience nurturing, relationship-based, high quality care where their needs and rights are understood and met. Support should be therapeutic and trauma-informed, with effective interventions available to keep children safe, meet their needs, promote healing, and achieve the best possible outcomes. Children's rights must be upheld in secure care, ensuring children have access to all they need for health, education, participation and relationships.

The regulatory landscape around secure care is complex. We consider it would be desirable to take the opportunity to simplify and clarify this and to make procedures for approval and registration of secure accommodation services more transparent. We are also considering whether the current legislative definition of “secure accommodation” offers the required precision.

Current routes to secure care are complex. Responsibilities for providing secure care, managing and funding children’s placement in secure care and associated costs vary depending on the route for placing a child. For example, when a child is placed in secure care on remand - where the court has decided that the child will go to a secure care centre until their court case takes place - the local authority is responsible. There is no placement commissioning mechanism or national oversight of placement decisions, demand for secure care or the needs of the children for whom secure care places are being sought.

When a child is being transported either to secure care or transported to critical appointments while living in secure care, this is often done through the use of secure transport. There are a range of challenges for local authorities in ensuring children who require secure transport can be provided with child-appropriate, timely, rights-based, trauma-informed services.

Currently children cannot currently remain in secure accommodation beyond their 18th birthday, regardless of their needs, vulnerabilities or the best interests, or any remaining sentence.

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

Yes/No

Please give reasons for your answers, including how this could be achieved

15. Do you feel that the current definition of “secure accommodation” meets Scotland’s current and future needs?

Yes/No

Please give reasons for your answers, including how this could be changed

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

No

Please give reasons for your answer, including any positive or negative implications

Victim Support Scotland believes that an additional category of ‘public safety’ should also be added to the criteria for determining whether secure care is appropriate. Where the public’s safety through crime or harm caused by the child is at risk then they should be placed in the most appropriate setting

to mitigate that risk. For the avoidance of doubt, a victim of crime would also fall under this definition and just because their safety has been considered, that does not necessarily mean the wider public safety is assured.

17. Should the costs of secure care placements for children placed on remand should be met by Scottish Ministers, rather than local authorities?

Yes/No

Please give reasons for your answer

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

Yes/No

Please give reasons for your answer, including what this approach should look like

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

Yes/No

Please give reasons for your answer

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

Yes/No

Please give reasons for your answer, including details of any factors you feel should be included

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

Yes

If so:

- For all children
- Only for children who are remanded or sentenced
- For as long as the child's needs require it
- To a maximum length of remand or sentence (please specify)
- To a maximum age (please specify)
- For another period (please specify)

Please give reasons for your answer

Victim Support Scotland believes that secure care should be available for people beyond 18 in certain circumstances. We believe that a risk-based approach should be adopted and the individual facts and circumstances of the harm the child is exhibiting should be a primary consideration as to where the child should stay. Where the public's safety through crime or harm caused by the child is at risk then they should be placed in the most appropriate setting to mitigate that risk.

Residential Care and Cross-Border Placements

Children and young people should be provided with a nurturing and loving environment, ideally in the family home. However, where this is not possible, then alternative provision must be available for children living in Scotland.

Children and young people can be placed in residential care settings in Scotland from other UK jurisdictions. These are known as cross-border placements.

[The Promise](#) was clear that the commercial practice regarding cross-border care placements must end. It is established that such placements can result in children and young people being separated and distanced from their families, peers, community support networks and services. This impacts on planning for the child and on their ability to maintain meaningful relationships. There are also concerns that this may impact on their human rights.

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 ensure the complexity of children's needs is appropriately matched to the care environment and provision they live in, we propose to introduce pathways and standards for residential care for children.

It may be appropriate that approval of any new residential childcare provision is considered in the context of local need as identified through the joint strategic needs assessment undertaken to inform each area's Children's Services Plan. We propose that as a prerequisite to applying for registration with the Care Inspectorate, providers should demonstrate that robust discussion has taken place with their local Children's Services Planning Partnership and that any proposed provision meets identified service provision needs.

Building on the current role of the Care Inspectorate, a future increased role is anticipated which ensures that through the registration criteria, notifications systems and inspection processes that there are explicit references to cross-border placements.

[The Promise](#) heard about children's experiences of restraint and the complexity surrounding this. It concluded "Scotland must strive to become a nation that does not restrain its children". Work is underway to Keep the Promise and there are standards and guidance to be followed around the use of restraint in care settings. We are however keen to gain views on whether any change is needed to existing law and guidance.

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

Yes/No

Please give reasons for your answer, including details of what measures and provisions are needed and how you think this should operate in practice

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

Yes/No

Please give reasons for your answer, including details of what measures and provisions are needed and how you think this should operate in practice

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

Yes/No

Please give reasons for your answer, including potential measures and provisions may be explored and how you think this should operate in practice

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

Yes/No

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

26. Whilst there are standards and procedures to follow to ensure restraint of children in care settings is carried out appropriately, and there has been lots of positive work carried out across the residential and secure care sector in recent years, do you think guidance and the law should be made clearer around this matter?

Yes/No

If Yes, please provide details of how this could be achieved

Age of Criminal Responsibility

The age of criminal responsibility (ACR) in Scotland was increased from 8 to 12 in December 2021, when the Age of Criminal Responsibility (Scotland) Act 2019 was fully commenced.

The policy intention of the Act focused on protecting children, reducing stigma and ensuring better life changes. Additionally, to align ACR with the current minimum age of criminal prosecution, and reflect Scotland’s commitment to international human rights standards so that:

- Children under 12 are not criminalised at a young age and stigmatised due to being labelled an “offender”.
- Children under 12 are not disadvantaged by having convictions.
- The age of criminal responsibility (of 12) aligns with longstanding presumptions around maturity, rights, and participation.
- The position of care-experienced children is improved (particularly children looked after away from home, whose behaviours are more likely to have been reported to police – and therefore attract a criminalising state response – than Scotland’s child population in general).

Under part 6 of the Act, a duty is placed on the Scottish Ministers to review operation of the Act in general, and with a view to considering the future age of criminal responsibility. The review period began in December 2021 and will last for a period of 3 years.

27. Do you agree with the timescales of the 3-year statutory review period?

Yes

If no, what period do you think is appropriate?

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

Victim Support Scotland believe that a shorter period of less than 3 years would not be sufficient to fully analyse

Impact Assessments

We propose to carry out impact assessments alongside the development of any new legislation which would be required to implement the changes proposed in this consultation.

These include a Data Protection Impact Assessment, Child Rights and Wellbeing Impact Assessment, Equality Impact Assessment (related to the protected characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation). We would be interested in your views on these areas to help us in developing these and any other necessary assessments.

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

Please outline

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

Please outline

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

Please outline