



## Children (Care and Justice) (Scotland) Bill – Education Committee Consultation Response

March 2023

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### Information about your organisation

*Children 1st is Scotland's national children's charity. We have over 130 years of experience of working alongside families to prevent problems from escalating to the point of crisis, to protect children from harm and to help children and families to recover from the trauma associated with childhood adversity by providing relationship-based practical and emotional support.*

At Children 1st our ambition is for every child in Scotland to be safe, loved and well, together with their family. As a charity we offer emotional, practical, and financial support to help families to put children first and campaign to uphold the rights of every child.

We support the whole family when they need it, for as long as they need it. We offer help to prevent families reaching crisis point, to keep children safe and to support children and families to recover from trauma and harm.

Our response to this consultation is informed by our experience of working alongside child victims and witnesses and survivors of abuse and harm and our role administrating the Safeguarders Panel on behalf of the Scottish Government.

### Children's Hearing System

**The Bill widens access to the Children's Hearings system to all 16 and 17 year olds. What are your views on this? Please provide your response in the box provided.**

We strongly support increasing the maximum age of referral to the Reporter to 18. The current limits on access for over 16s puts Scotland's practice out of sync with the basic premise of the United Nations Convention on the Rights of the Child (UNCRC) which is that "a child means every human being below the age of 18 years".

Extending access is in line with our understanding of trauma, the significant gaps in respecting the justice, care, protection and recovery rights of 16 and 17 year olds and the principles of the UNCRC, including [General Comment 24](#) and the [Council of Europe guidelines](#) on child-friendly justice.

While offence-based referrals will form an important part of the Committee's consideration, it is important that parliament fully reflects on the implications for referrals based on care and protection needs. While



compulsion should not be seen as necessary for 16 and 17 year olds to get access to services, we know that many older children are often not able to access the support they should be entitled to.

In raising the age of referral, it is also important to recognise the broad age range children's hearings cater for, and the wide range of different needs those children may have. The needs of an infant will be, of course, vastly different to the needs of an older child. Bringing more older children into the system will bring new dimensions to the hearing room, in particular considering the increased independence older children may want.

Children 1st has been commissioned by the Scottish Government to operate the national Safeguarders Panel since its inception in 2012. This Panel includes a diverse range of independent professionals based across Scotland, who can be appointed by a children's hearing to provide a separate, rights-based perspective on the best interests of the child. While we believe that Safeguarders are well equipped to take this role on for more older children, there will be further training and upskilling required, for example around issues such as housing and risk of homelessness and young parents, alongside recruitment.

We continue to advocate for the value and recognition of using Family Group Decision Making with children, young people and families to prevent compulsory measures of supervision and unnecessary state intervention. There is strong international evidence of using a strength-based approach with families and their wider support networks to ensure children and young people are safe and loved in their families.

**The Bill suggests that the law should be changed so that most offences committed by 16 and 17 year olds will be dealt with through the Children's Hearings system in future. What are your views on this? Please provide your response in the box provided.**

Under Article 40 of the UNCRC, children have a right to access child friendly justice. This means a system response that takes account of their age. As research such as the [Rights Respecting? Scotland's approach to children in conflict with the law Report](#) published in 2020 shows, Scotland's current practice of treating older children as adults under adult systems fails on this measure, and therefore it is right that the children's hearing system is extended to the full age range.

In our experience, too many conversations around justice in Scotland are framed as an "either/or" scenario – that is, a system that either protects the rights of a person who has offended or the person who has been harmed. We would urge the committee and the parliament to avoid this framing. Separate responses and resources may be needed due to legislation and specialised support, but all children should have their rights fully respected. In cases where a young person may have been harmed by another young person who has been referred to the children's hearing system, more should be done to extend support for their recovery and protection.

There is evidence that the type of risk-taking behaviour that can lead to offences being committed by 16 and 17 year olds is characteristic of this age group. It can also be a result of coping mechanisms that



have been developed in order to process trauma and deal with distress in the absence of appropriate support and help. [In response](#) to previous Scottish Government consultations on this question, we have stressed the need for proper support that wrap around all children and families and help them to recover from their experiences, to take responsibility for behaviour that harms or affects others and to uphold their rights under the UNCRC (particularly Article 3 on best interests; Article 12 on hearing their voices; Article 19 on protection from abuse; and Article 39 on access to recovery support). Such support does not exist consistently across Scotland and this gap should be addressed urgently as part of this Bill's implementation.

While the hearing system should offer a more child friendly response, it is also important to recognise that criminal records can still be recorded as a result of a referral to the children's hearing system. The stigma and impact of a criminal record can be lifelong, and should clearly be recognised as a potential outcome following an offence based referral to the children's hearings system.

**The Bill makes several changes to Compulsory Supervision Orders. What are your views on these proposed changes? Please provide your response in the box provided.**

The purpose of a Compulsory Supervision Order is to address the child's needs. Through our work with children and families, we know that there is nowhere near enough access to strength-based support. These services are pivotal to a welfare-based approach, and the aim of the children's hearing system cannot be realised without it. The changes to Compulsory Supervision Orders should be considered in this context.

Our long experience of supporting children to overcome adversity and recover from trauma has taught us that children accused of causing others harm, have often been victims of adversity and trauma. There must be consideration of their circumstances, experiences and support needs.

Statutory services are extremely stretched, and barriers to support are increasing as a result. At Children 1st, we work hard to provide easy to access, community-based support that is focussed on working alongside families to overcome whatever challenges they are facing. Our preventative, holistic support helps children and families to live safe, well and together. Despite the Scottish Government's commitment to a programme of transformational family support through the Whole Family Support and Wellbeing Fund, access to these services is still very limited and provision is patchy and inconsistent. Existing whole-family support services in Scotland operate in an environment of uncertainty and under the shadow of constant risks to funding.

It would be helpful to see an elaboration of the types of circumstances the Scottish Government anticipate would be covered by the additional measures for Compulsory Supervision Orders that have been included in the Bill. The enforceability and monitoring arrangements around the new provisions are not yet clear enough, which prompts the question of what value they add to the options already available under a Compulsory Supervision Order.



It is also important not to overstate the impact the proposed additions would have in terms of protecting those who have been harmed or are at risk of harm. Even a Movement Restriction Condition, which involves electronic monitoring, does not necessarily mean a breach will be followed by immediate action. Clarification about what will happen in response to a breach would help the Committee to consider whether these orders are appropriate both in terms of the right to privacy for the child on the Order, and children who may be at risk of harm. If there are no arrangements to practically monitor or enforce these conditions beyond normal local authority monitoring arrangements, these should not be presented as 'protective' options for other people. Overstating the potential impact these measures could have in terms of public protection will not help inspire trust and confidence in the system, and indeed would detract from the founding Kilbrandon principles that outline the children's hearing's purpose.

As already stressed, this does not mean that victims or those at risk of harm should be deprived of support or protection – but a Compulsory Supervision Order, which is there for the purpose of addressing the needs of the person who has been referred, may be limited in what it can do.

We welcome the option to continue support beyond the age of 18, where it is appropriate and agreed to do so. This could be a welcome softening of the 'cliff edge' around support, though it will still be important to consider the interaction between adult and child services, such as mental health and wellbeing services. It is also important to recognise that the reality of this continuing support as an option will be very dependent on proper resourcing.

**What impact (if any) do you think the Bill could have on young people who have been harmed by another young person? Please provide your response in the box provided.**

Article 39 of the UNCRC says that children and young people have the right to recovery following experiences such as neglect, exploitation or abuse. This recovery should be supported in an environment that promotes their health, self-respect and dignity of the child. Through our work supporting children and families to recover from trauma and harm, we are often told about experiences that fall short of this.

As outlined in earlier answers, the Bill appears to seek to address some concerns of victims and witnesses through measures that can be applied by the children's hearing. However, it is not clear how effective these measures will be in practice. In any case, work to support victims and witnesses to recover needs bolstered outwith the hearing context.

When a young person has been harmed and this leads to a Children's Hearing, the victim or witness should be protected from the potential trauma of evidence gathering and/or cross examination within a proof hearing, and should not be required to re-share their experience more than is absolutely necessary. Children 1st are working to open Scotland's first Bairns Hoose, based on the Scandinavian Barnahus model, learning from this work should be used to support the implementation of the Bill in this area. Our work to bring Barnahus to Scotland has been informed by hundreds of children, young people and families with experience of the current care, protection and justice system. They consistently tell us



that the disjointed systems supposed to protect them most often cause them further harm and trauma and fail to help them recover from their ordeal.

In response to previous consultations on these issues, we have also highlighted the specific needs of children who have experienced domestic abuse and peer-on-peer abuse and the importance of safety planning and recovery support especially when a child who may have caused harm is in the same community or school setting as them. Ensuring child victims are offered support to recover at an early stage is preventative in and of itself.

We also note that in our services, and beyond, there is a significant increase in children who are sharing that they are survivors of harm caused through online activity. We would encourage the Scottish Government to consider what additional protective and recovery provisions should be in place for children who have experienced this type of harm.

**The Bill makes changes to the current law around when information should be offered to a person who has been affected by a child's offence or behaviour. What are your views on what is being suggested? Please provide your response in the box provided.**

Information sharing can have a powerful role to play in any justice system, and children and young people often report that current practice is not adequate. This is despite Article 13 of the United Nations Convention on the Rights of the Child clearly setting out a right to receive information. In our work supporting children and their families we are often told that individuals have to chase information themselves, and we know that this can lead to anxiety and distrust in the system.

There are significant parts of this Act which set out a new legislative framework for listening to children's voices, sharing information with them, explaining decisions and providing additional opportunities for feedback which may be helpful to review as this Bill progresses. Children 1st is keen to ensure that parallel processes for listening to children's voices being developed in the civil and criminal justice systems, in the Children's Hearings and as part of Bairns Hoose development are cognisant of each other. It is not helpful to be developing completely separate systems that attempt to do the same or similar things in different ways. A trauma-informed lens must be applied when reviewing how victims and witnesses are kept informed. Currently, children and their families tell us that they have to wait for a long time to hear about the outcome of cases in the criminal justice system and their experiences of going through court processes are often re-traumatising and sometimes even more traumatic than the event itself. Not knowing what is happening and hearing about matters from other sources compounds feelings of powerlessness and badly impacts recovery. Children and families tell us that they want to be asked their views about how the process works—including what the next steps are, what the possible outcomes may be and what information they will receive and when. They tell us that this would make the process easier to navigate and understand, gives them a sense of control and efficacy and would support recovery from their experiences.

It is important to recognise that the information gap is not just about the individual outcome of a particular case. There is a lack of access to clear, basic information about the system and how and why decisions



are taken within it. Too often, people have to search for information like this themselves. Information about the general operation of the system should be freely and easily available to all children and young people, and their families, in a way that is understandable regardless of their age.

The change proposed by the Bill simply adds a duty for the Reporter to make people aware of an entitlement that already exists. While this could help make practice more consistent, not enough is yet known about the way this decision will be approached by the Reporter, the kind of information that can and will be shared and the way that the rights of all will be protected and upheld, including the right to privacy (Article 16 of the UNCRC) for the person whose information is being shared and the right to recovery (Article 39 of the UNCRC) for the person who is being harmed.

For example, there is no clarity in the Bill as drafted that information will be shared in a way that is sensitive to any trauma being experienced. We would strongly encourage the Scottish Government to share more information about the operation of these provisions in practice as the Bill moves forward, not least so that the views of children and young people affected may be sought about the types of information that could be shared and the manner in which this should be handled.

While the Promise states clearly that everyone involved in the Hearings System “must be properly trained in the impact of trauma, childhood development, neuro-diversity and children’s rights”, we know that this is not yet always the case. It is important that sharing information in and around a hearing is not seen as an administrative task but as an opportunity to help guide those who have been harmed towards meaningful recovery. This means it should be guided by open and transparent trauma-informed protocol, by people who are trained to engage with those who have experienced harm and include signposts to support should the individual need it.

There is clear evidence in favour of creating direct links between justice and recovery, such as the Scandinavian Barnahus model which is currently being introduced to Scotland with Children 1st and partners leading practice developments. The work to introduce the Barnahus model to Scotland is highly relevant to helping improve the experiences of children who come into contact with the care and justice services (the intention for the Bill as set out in the Policy Memorandum and in the Programme for Government). However, there is no clear alignment between the work on Bairns Hoose and the contents of the Bill as it stands. This is surprising given the commitment to roll out the Bairns Hoose model for all child victims and witnesses of violence was set out in the Programme for Government 2021/22 and 2022/23.

It will be important to understand how the Bairns Hoose which will be opened by Children 1st later this year - and future upscaling of this work in line with the Scottish Government’s Programme for Government commitment to ensure access to a Bairns Hoose is available to all eligible children by 2025 – will be linked to the children’s hearing system.

**Do you wish to say anything else about the proposals to increase the age at which young people can be referred to a Children’s Hearing? Please provide your response in the box provided.**



Children 1st welcomes the introduction of the Children (Care and Justice) (Scotland) Bill and recognition of the need to provide additional support to some of Scotland's most vulnerable children. We believe that the rights of children who cause harm must be upheld and also support the recognition that many children who harm are victims of hurt and harm themselves.

We are clear that Scotland's support for a children's rights approach does not always extend beyond rhetoric to action and that the implementation of core policies and legislation that affect children is often applied inconsistently due to a lack of resources and focus. There is a significant implementation gap, and we have previously suggested a review of provisions that have been passed by the Scottish Parliament but left unimplemented, such as those in the Children (Scotland) Act 2020. This Bill must be accompanied by significant resources to uphold all children's right to support and recovery— by directly addressing the existing lack of trauma- recovery support services—and to meet the core recommendations identified in The Promise and future- proofed for full, and direct incorporation (to the maximum extent possible) of the UNCRC.

This Bill is being put forward at a time of significant policy debate and upheaval. This includes realising the Scottish Government's ambitions to ensure children have access to a Bairns Hoose by 2025; the creation of the National Care Service; work on transforming the Children's Hearings through the Children's Hearings Working Group, chaired by Sheriff Mackie; the incorporation of the UNCRC into Scots law and the prospect of a Promise Bill to consolidate further changes by the end of this parliamentary term.

These changes present real opportunity to improve the children and families' experience of care and justice. However, children and families often share real frustration with us because of the fractured care and support landscape in Scotland. Without careful planning in and around this Bill, there is a real risk of adding more fractures to an already disjointed system. We strongly encourage those considering the bill to think about this Bill in the whole context, and from the perspective of the children and families who should be at the heart of these policy ambitions.

For example, Children 1st is working with our partners Victim Support Scotland, University of Edinburgh and Children England (with funding from the People's Postcode Lottery) to pilot Scotland's first [Bairns Hoose](#) through a test, learn and develop approach, which will be operational in 2023. The [Bairns Hoose](#) brings together justice, health, social work and recovery support, 'under one roof' to best meet the needs of child victims and witnesses. There are important questions around the chronology of implementation and synchronisation that need clear answers as the Bill progresses.

In particular, it is important to ensure that the additional measures outlined relating to child victims and witnesses are linked to the ongoing work to uphold children's rights to care, protection and justice set out in the National Bairns Hoose Standards (currently being developed by Healthcare Improvement Scotland and the Care Inspectorate); the implementation of Special Measures for child victims and witnesses in court proceedings within the existing system while a Bairns Hoose is being developed; the availability of recovery support for both child victims and witnesses and children who are suspected or accused of



causing harm; and to policy development relating to how children and families will receive support in a Bairns Hoose.

There is a vast amount of evidence available from children and young people who have experience of the justice system, who have shared their views on the importance of information sharing, and the processes that could uphold their rights to care, justice, protection and recovery. Our Recovery from Abuse services are working alongside children and families who face the challenges of interacting with the justice system every day. Children 1st have compiled and shared these views in the context of our work on the Bairns Hoose through our [Sharing Stories for Change](#) report and by our participation group [Changemakers](#). We would also highlight [Power Up, Power Down](#), the partnership project between Scottish Women's Aid and the Children and Young People's Commissioner for Scotland, the [Everyday Heroes Project](#) and the [Rise Report](#) by Scottish Women's Aid and the [State of Children's Rights](#) report produced by Together Scotland (Scottish Alliance for Children's Rights), which provides an authoritative overview of children's rights as they stand in Scotland.

## Criminal Justice and Procedure

**The Bill makes several changes to existing Criminal Justice and Procedure. These are related to raising the age at which young people can be referred to the Children's Hearings System. Do you have any comments on these proposals? Please provide your response in the box provided.**

We encourage the Scottish Government to consider the responses of other organisations with particular specialist insight into youth justice, secure and residential care and children's rights in these areas, including CYCJ, the Children and Young People's Commissioner for Scotland, the Promise Scotland and Together Scotland (Scottish Alliance for Children's Rights), which we are a member of.

**The Bill changes the law so that young people aged 16 and 17 who are accused of or found guilty of an offence can no longer be sent to a Young Offenders' Institution or a prison. What are your views on these proposals? Please provide your response in the box provided.**

Children 1st strongly support the Bill's intention to remove all children from Young Offenders' Institutions, which are fundamentally incapable of fully respecting children's human rights.

While the removal of children from Young Offenders' Institutions is a welcome step, it is essential that there are clear, transparent and practical safeguards to ensure that the alternative is genuinely different. Therapeutic support will be an important part of this alternative response, and this should be included in the definition of secure care, and the Secure Care Standards developed in conjunction with children and young people with relevant experience should be central to the approach going forward.

Children 1st refer to the recommendations set out in The Promise, which set out a reflective narrative and series of recommendations, including that Scotland must fundamentally rethink the purpose, delivery, and infrastructure of secure care. This built on the work of several other projects and reports including the 'Securing Our Future' report in 2009 and CYCJ's 'Secure Care in Scotland: Looking Ahead'





report in 2016, 'Rights Respecting? Scotland's approach to children in conflict with the law' report from 2020, work on the Secure Care Standards and other valuable workstreams

## Residential and Secure Care

**The Bill changes the way in which secure accommodation is regulated. It would also introduce regulation for cross-border placements (for example, a child placed in Scotland as a result of an order made in England). What are your views on the proposed changes? Please provide your response in the box provided.**

We would refer to responses of other organisations with greater expertise in issues around Secure Care services such as WhoCares? Scotland, CYCPS and the CYCJ.

## Impact Assessments

**Do you have any comments on the impact assessments accompanying this Bill? Please provide your response in the box provided.**

The sheer range of Articles engaged in the Children's Rights and Wellbeing Impact Assessment for this Bill shows how central the UNCRC should be in the committee's consideration.

We would note with concern that modelling in the financial memorandum appears to take a restrictive interpretation to raising the age of referral, stating that 17.5 would be "the likely practical cut-off for offence referrals". We would urge the committee to reflect on what this "practical cut-off" would mean for the experience of those who are older, and whether they would experience child friendly justice as they are entitled to (in line with the Council of Europe guidelines on child-friendly justice and General Comment 24 to the UNCRC).

As outlined in earlier answers, would also raise concerns about the extent to which the Article 39 right to recovery has been effectively addressed, and whether this can be properly dealt with in the context of a children's hearing. We would also reiterate that the State of Children's Rights report produced by Together Scotland (Scottish Alliance for Children's Rights) provides an authoritative overview of children's rights as they stand in Scotland and should be used by the committee as a key reference document in their work.

**If you have any questions or comments about our response, please do not hesitate to contact our Policy Manager Lily Humphreys at [lily.humphreys@children1st.org.uk](mailto:lily.humphreys@children1st.org.uk).**