

Alternatives to Young Offender Institutions for children aged 16 and 17 not on Compulsory Supervision

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The Children's (Care and Justice) (Scotland) Bill will become an Act later this year. A core aspect of the act is to recognise all children under the age of 18 as children. In practice this means that any child requiring detention is placed in a children's resource, i.e. it removes the option of placement in a Young Offender Institutions (YOI).

In the interim period, there will still be means for children not to be detained in YOI. This would ensure their rights under UNCRC and Keeping the Promise (the commitment to end the use of YOIs by the end of this year) are upheld. In preparation for this change coming, it is beneficial to minimise the number of children in YOIs as far as possible.

Evidence shows that children aged under 18 in conflict with the law have an array of experiences that have contributed to their behaviour, including trauma and adversities. As a result, we need to see the whole child and not just their behaviour and respond to them through the lens of the Scottish Government's GIRFEC (Getting it right for every child) framework and acknowledge of the impact of trauma.

Currently, there are more children under 18 remanded or sentenced from courts in secure care centres than YOIs in Scotland. These centres are run by skilled practitioners who are used to managing the risks some children present.

For children subject to a legal order such as a CSO or section 25, where detention is indicated, the Chief Social Work Officer (CSWO) or Children's Hearing may currently authorise a secure placement. Where a child is not subject to any order this option is currently not available. This paper seeks to explore alternatives which would avoid those children being detained in YOI pending implementation of the Act.

In Court

When a child is not on a CSO, there is an **alternative to a YOI**:

Manageable in the community: when a child under 18 whose risk of reoffending has been assessed as manageable within the community, alternatives to remand should always be offered to the court.

When bail is opposed the child's social worker and legal representative should seek justification from the Crown on their reasons for doing so. The child should be afforded the opportunity to make specific representations of their views and best interests to the Court before the decision on bail or remand is made.

Deprivation of liberty is called for: where the Court determines that as a measure of last resort the child must be deprived of their liberty and remanded pending trial, as per the Whole System Approach guidance, there should be a presumption that no child be remanded to YOI and alternative provision should be offered.

For children who are not subject to a CSO a number of options are available, including:

- Bail the child to the care of the local authority where a decision can then be made by the local authority to place the child in secure care through section 25 (see below).
- If there are no available places in secure care and a child is remanded to YOI, a review date should be set to review this decision in the near future. This could allow for a placement within secure care to become available or an alternative package offered to the court.
- A robust community support package as part of bail, including supervised/Electronic Monitoring bail where available and increased support from the local authority.

If deprivation of liberty is being considered following conviction, the range of sentencing disposals should be commented on within the child's Justice Social Work Report. When a child appears in Court, the priority, wherever possible, should be to remit that matter to the Children's Hearing System for disposal where their needs can be best met.

Secure Care

The ability to place a child who is not subject to a CSO in secure care is governed by the Secure Accommodation (Scotland) Regulations 2013 (secure regulations). A local authority may provide accommodation for a child under the age 18 and not subject to a CSO if they consider that to do so would safeguard or promote the welfare of the child under section 25 of the Children (Scotland) Act 1995. This could only be done with their agreement where they are aged 16/17 years, or the agreement of the person with parental responsibilities and rights if under the age of 16.

Therefore, when at court, a child who is not currently subject to a CSO could be bailed to the care of the local authority, which would require the local authority to identify a suitable resource for the care of the child. Ideally this should be done prior to their appearance at Court so the child is accommodated prior to moving to secure care. If aged 16/17 the child can then agree to be accommodated in secure care under section 25, regulation 9. In addition to the agreement of the child, the CSWO and head of secure centre must be satisfied the child meets the secure care criteria in order to make this decision and it must be in their best interest. The child's solicitor should be advised of this decision as soon as possible.

If the CSWO makes the decision to use their emergency powers to place a child in secure care, the child is required to remain in there.

Children's hearings

When a local authority places a child aged 16/17 years and not subject to a CSO in secure care, this will trigger the Children's Hearings System's involvement, as the Children's Reporter is required to be notified as soon as the child is placed in secure care. The reporter will make the decision if a children's hearing is to be convened, and on what grounds, within 96 hours. This cannot be on offence grounds. The children's hearing can decide to make the child subject to an interim CSO or CSO with secure accommodation authorisation attached if they are of the opinion that the child meets the secure care criteria, and that a Movement Restriction Condition is not an appropriate measure. The Children's Hearings (Scotland) Act 2011 (Implementation of Secure Accommodation Authorisation) (Scotland) Regulation 2013 becomes the relevant legislative framework, and the review requirements contained within them will apply.

Whilst the current legislative framework lacks clarity over the definition of a child, there is guidance which allows for all 16/17 year olds to be classed as such by the children's reporter. Practice Direction 5, Appendix 2 of the Scottish Children's Reporter Administration practice guidance includes children referred by the CSWO under regulation 10 of The Secure Accommodation (Scotland) Regulation 2013, after the child has moved into secure accommodation under regulation 9.

For the purposes of the Secure Accommodation (Scotland) Regulations 2013, the definition of a child is anyone under the age of 18 (as defined by sections 75 and 93(2)(b) of the Children (Scotland) Act 1995). The regulations enable the CSWO to transfer someone under 18 into secure accommodation (provided certain conditions are met) and then refer them to the reporter. The 2011 Act must be read in such a way as to include these children within the definition of a 'child'."

To see the full report.

For further info/support contact CYCJ on 0141 444 8622 or email cycj@strath.ac.uk