



Children and Young People's
Centre for Justice

Children (Care and Justice) (Scotland) Act

Updated Briefing Paper 1 (Version 2)

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This is the first in a new series of briefings from the CYCJ that helps explain specific parts of the Children (Care and Justice) (Scotland) Act 2024.

Each briefing will focus on a specific section of the Act, explaining the rationale for the changes, the provisions within the Act, the preparations being made to support implementation, and the practical steps that will be taken when these sections come into effect. The aim is to enhance the awareness and understanding of the organisations and practitioners responsible for implementing these provisions. Successful implementation is crucial to achieving the Act's objectives of improving experiences and advancing outcomes for children.

This first briefing will focus on ending the usage of Young Offenders Institutions (YOIs). You can find out more [here](#).

Key Points

- Various sections of the Children (Care and Justice) (Scotland) Act 2024 commenced at the end of August 2024
- These provisions ended the use of YOIs for children in Scotland who have been remanded, committed or sentenced. Children who were held in YOIs on commencement moved to alternative provision, namely secure care, and there will be no new admissions of children aged under 18 to YOIs.
- The roles and responsibilities of children placed in secure care through a criminal justice route will likely remain broadly unchanged. The Scottish Government will, however, pay for the cost of any remand placements in YOI as of 28 August and any new remand placements in secure care from 28 August until the end of March 2025, with future years funding being considered. All other responsibilities for remand placements will however remain with the local authority.
- Children placed in secure care via a criminal justice route will now be treated as “looked after” children by the local authority.
- These changes will help Scotland to Keep the Promise and support the upholding of children’s rights as per UNCRC.

Rationale For Change

Under Article 37 of the UNCRC, “No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall conform with the law and shall be used only as a measure of last resort and for the shortest appropriate period”.

Various guidance has been published supporting community-based alternatives, where possible and appropriate, under the Whole System Approach (WSA).

Nationally and internationally, there is increased recognition of the significant detrimental impact of depriving children of their liberty, even for short periods, particularly if the child is held within custodial institutions. Under the WSA, the Scottish Government’s policy has been that, where a child in conflict with the law is required to be deprived of their liberty, the child should be placed in secure care, as opposed to a YOI. However, owing to the definition of a child adopted in children’s and criminal justice legislation, not all children have been able to access secure care, and for some 16 and 17-year-old children, placement in a YOI has been the only legal option where a court is satisfied deprivation of liberty is needed. Change to this position was committed to within the Scottish Government’s Youth Justice Vision and successive Programmes for Government since 2021. The Promise also called for the end of YOIs for children by the end of 2024.

Children (Care and Justice) (Scotland) Act provisions

The Children (Care and Justice) (Scotland) Act (“the Act”) provided the legislative vehicle for ending the use of YOIs for children, giving effect to a significant period of development and Parliamentary consideration. Sections 18, 19, 21, 22, 23 and 24 commenced at the end of August 2024, with some further provisions commenced in part solely as these related to ending the use of YOIs.

Sections 18 and 19 of the Act make provisions about the detention of children who have been remanded before trial, are detained after conviction but before sentence (known as committal), or on sentence. From now on, children will still be able to be deprived of their liberty where this is deemed necessary. However, the difference will be that this can no longer be in YOIs or prisons.

The options will now be:

- In cases of remand and committal, the place of detention will either be secure accommodation, if the court requires this, or a place of safety to be determined by the local authority, which could include secure accommodation (under section 51 of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”)).
- Where a child is sentenced by a court to detention under summary proceedings, this will be in a residential establishment chosen by the local authority for up to one year, which, again, could include secure accommodation. It has never been possible to place a child in a YOI under this route (under section 44 of the 1995 Act).
- Where any child is sentenced by a court under solemn proceedings the Scottish Ministers will direct where the child is to be placed – this will no longer be a prison or YOI but may be secure accommodation (under section 205(2) and 208 of the 1995 Act).

- Where a child has failed to pay a fine, they can be detained in a place chosen by the local authority for up to a month - it has never been possible to place a child in a YOI under this route (under section 216 of the 1995 Act).
- Where a child is sentenced under solemn proceedings, experiencing a mental disorder, and specific criteria are met, the child could be also detained in a hospital setting under a hospital direction (under section 20 of the Act).

Section 21 amends the definition of YOIs and “young offender” so that the terms do not apply to children under 18, and section 22 removes the duty on Scottish Ministers to provide remand centres as there are not any in Scotland. Section 23 requires local authorities to ensure that residential provision, including secure accommodation, is available for children who are required to be deprived of their liberty via the criminal justice system.

Under section 24, through the addition of section 17A to the Children (Scotland) Act 1995, where a child is detained in secure accommodation under sections 51, 205, 208 or 216 of the 1995 Act, for any length of time, the child will be treated as “looked after” by the local authority. This is for section 17 of the Children (Scotland) Act 1995, with resulting duties on corporate parents and affords consistency of treatment with children placed in secure care through the children’s hearings system. Section 17 puts various duties on local authorities, primarily to safeguard and promote the welfare of looked after children. Section 24 of the Act also provides that a child detained by order of the criminal court is treated as a looked-after child for sections 29, 30 and 31 of the Children (Scotland) Act 1995.

These sections are about the provision of after-care for looked-after children after they cease to be so looked after, including financial support for education or training, as well as about reviewing the cases of looked-after children, which will equally apply but does not include entitlement to continuing care. The relevant local authority who will be responsible for fulfilling these entitlements will have the same meaning as per section 201 of the Children's Hearings (Scotland) Act 2011 (legislation.gov.uk) i.e. the area where the child predominantly resides, or where the child does not predominantly reside in the area of a particular local authority, the local authority with whose area the child has the closest connection.

Children placed under section 44 of the 1995 Act are not included as there are already existing duties to treat these children as if they are subject to a Compulsory Supervision Order (CSO) (via section 44(3) of the 1995 Act when read with section 17(6)(b) of the Children (Scotland) Act). For more details on these responsibilities see The Looked After Children (Scotland) Regulations 2009 (legislation.gov.uk) and accompanying guidance Guidance on Looked After Children (Scotland) Regulations 2009 and the Adoption and Children (Scotland) Act 2007 - gov.scot (www.gov.scot).

Sections 18 and 19 of the Act also provide that Scottish Ministers may make regulations relating to children detained in secure accommodation through criminal justice routes, which may include providing that a child may remain in secure accommodation up to a maximum age of 19. This will enable any decision to be made on a case-by-case basis to ensure that the decision is in their best interests and not contrary to the best interests of other children in the setting. These sections of the Act, along with the range of other measures across different children’s care and justice policy topics and associated timescales for the commencement are under active consideration with partners.

Practical Implications for Children who were in YOIs on Commencement

Children who were already placed in a YOI before 28 August 2024 moved to secure accommodation between 28 and 31 August. Transitional commencement [regulations](#) ensured that children remanded under section 51 and those sentenced under 207 of the 1995 were able to move without their case having to return to court.

Fortnightly meetings chaired by the Scottish Government have been convened since May 2024 with secure care centres, the Scottish Prison Service (SPS), the Care Inspectorate, Social Work Scotland, Education Scotland and CYCJ. These were to prepare for the commencement and the safe transitioning of children from YOI to alternative provision.

Those meetings have continued after commencement and will be held for as long as required, in order to address any immediate challenges as they arise.

Decisions on placements are always made in the best interests of the child. Secure accommodation centres must consider if they can meet the needs of the child before accepting a placement and are responsible for ensuring the welfare of children is safeguarded and promoted whilst the child is in their care. As with all other placements, children moving from YOIs were matched to secure care places regarding the existing Care Inspectorate [Matching Guidance](#). Centres did not need to change registration to accommodate this move and had sufficient capacity to look after all such children.

[SAN Scotland – Secure Accommodation Network Scotland](#) contains data on the number of vacant beds, and this is updated daily. However, Scottish Local Authorities must contact secure care centres directly to confirm availability. The Scottish Government funding of up to 16 beds across secure care centres since January 2023 has provided financial support to centres, reduced the reliance of centres on cross-border placements, and created capacity in advance of the commencement of the Act. The number of beds which the Scottish Government is paying for is based on the [daily average](#) number of children in YOI in 2021/22.

Work is ongoing to ensure that procedures are in place to prevent any situation whereby all secure centres could refuse to accommodate a particular child. This includes a formal agreed process between the Scottish Government and secure accommodation providers to ensure that emergency discussions take place between all relevant partners, to ensure that a solution is reached in respect of remand or sentenced children. Social Work Scotland are considering how this process could be expanded for all children.

This activity has been in addition to the ongoing work of [Reimagining Secure Care](#) and the ongoing implementation of the [Secure Care Pathway and Standards](#).

Implications for Criminal Justice Secure Admissions

There will be no further admissions of children to YOIs - any child who is remanded or sentenced to be deprived of their liberty will be placed in secure care. Local authorities should be made aware of a child appearing at court through the current channels, which usually involves this information being shared promptly with criminal justice and children and families' social work services. This will be essential going forward and is a current area of practice focus.

Existing legislation, [policy](#) and [The Secure Accommodation \(Scotland\) Regulations 2013 \(legislation.gov.uk\)](#) inform the roles and responsibilities of children who are placed in secure care. These will require to be updated, however the roles and responsibilities remain largely unchanged. Particular attention should be drawn to the roles of the Chief Social Work Officer (CSWO) and head of the unit where a child is placed into secure care as a place of safety under section 51(1)(a)(ii), section 44, or section 216 of 1995 Act as detailed in [regulations 11, 12 and 13](#). Where a child is remanded under section 51(1)(a)(i) of the 1995 Act, the court requires the child to be placed in secure care - the CSWO has no jurisdiction to place the child elsewhere. However, where a child is remanded under section 51(1)(a)(ii) it is for the local authority to determine a suitable place of safety - this could be secure accommodation where the above regulations are met, and if the child is placed in secure care, the CSWO in reviewing the child's case can move the child to an alternative place of safety.

Roles and responsibilities for different legal routes are as detailed below:

Legal basis	Placement responsibility	Funding of placement	Transport responsibility	Review timescales
s.51 remand	Local authority	Scottish Government initially until March 2025 – agreement for future years still to be determined	Local authority	When placed into secure care as a place of safety by the local authority, CSWO reviews within 7 days, then as often as necessary, and at least within every 3 months.
s.44 sentenced summary proceedings	Local authority	Local authority	Local authority	As s.51
s.216 sentenced for fine default	Local authority	Local authority	Local authority	As s.51
s.205(2) sentenced punishment for murder	Scottish Government	Scottish Government	Scottish Government	Children and Young People's Placement Manager reviews within 4 weeks and then every 3 months (or more frequently if required), joining with LA reviews where possible.
Section 208 sentenced children convicted on indictment	Scottish Government	Scottish Government	Scottish Government	As 205(2)

Review timescales should be recognised as minimum requirements, with reviews undertaken more regularly as required based on the needs or circumstances of the child or local authority processes, remembering the UNCRC requirements that the child should be deprived of their liberty for the shortest period. Where possible, alternatives to deprivation of liberty should be considered as part of review processes, albeit where a child has already been sentenced the court will have required that the child is deprived of their liberty and therefore these options will be limited.

In addition to the above reviews, the child may also be subject to measures through the children's hearings system which would have its review timeframes as detailed in the [Children's Hearings \(Scotland\) Act 2011 \(legislation.gov.uk\)](#); [The Secure Accommodation \(Scotland\) Regulations 2013 \(legislation.gov.uk\)](#); and [The Children's Hearings \(Scotland\) Act 2011 \(Implementation of Secure Accommodation Authorisation\) \(Scotland\) Regulations 2013 \(legislation.gov.uk\)](#).

Even if the child is not a looked after child, under the provisions of the Act they should be treated as such. Local authorities should review the care plan of a looked-after child placed away from home in a residential establishment within 7 days, then 6 weeks of the placement, 3 months after and then within 6 months of the previous review. In the case of an emergency placement, the first review should be within 3 working days. Often these different review meetings are coordinated and in keeping with depriving a child of their liberty for the shortest period necessary, meetings may be held more frequently depending on individual needs and locality practices.

At the child's post-admission meeting, usually held within 72 hours, the responsible local authority should share any additional relevant information, including the child's justice social work report if developed, and assessments that were not shared pre-or-post-admission and outline existing care plans. Where the child does not already have a child's plan, this should be developed based on a comprehensive assessment of strengths, needs and risks, guided by GIRFEC principles and informed by appropriate structured risk assessment tool(s) and risk formulation. This meeting is an opportunity for the multi-disciplinary team to gain an informed understanding of how to meet the child's needs. An Individual Placement Agreement will also be completed.

During the first 72 hours, the multi-disciplinary team within the secure care setting will complete their assessment of the child which, along with the wider assessment of need and risk, will inform the team about the child's decisions on the support and interventions required for the child, which will be incorporated in the child's plan. All children should be prepared for their return to the community, with their transition planned and supported from the day they arrive at their secure care setting.

The core components and characteristics of throughcare support for children placed in secure care are detailed in [Children and Young People in Conflict with the Law: policy, practice and Legislation \(cycj.org.uk\)](#), with the Secure Care Pathway and Standards setting out what all children in or on the edges of secure care should expect across the continuum of intensive supports and services.

[The child's journey | Iriss](#) provides additional information and this will also be updated.

FAQs

Q. Will there be enough beds and how is this monitored?

This is being closely monitored and planned for. Demand for secure care and the number of children placed in YOIs fluctuates. SAN Scotland data is updated daily and this is monitored by the Scottish Government, who are also provided with weekly information on vacancies by each secure accommodation centre. As detailed above the Scottish Government have agreed to fund the cost of remand placements in the current 2024-25 financial year, from commencement. Local authorities must inform the Scottish Government through the childplacementmanager@gov.scot mailbox, when a child is remanded to secure care in order for the Scottish Government to fund this placement. Local authorities should also inform the Scottish Government when the placement comes to an end. The Scottish Government will then be invoiced by the secure centre on a monthly basis. All other responsibilities for remand placements, including development of the individual placement Agreement, will remain with the local authority. The Scottish Government will continue to be responsible for the placement of all children sentenced under solemn proceedings. This should mean that any concerns about bed availability are quickly identified

Q. What happens if the court wants to remand a child and there are no secure beds?

The Scottish Government have been funding up to 4 places in each centre, which should ensure capacity building across the estate and flex in the system and that there is always a percentage of beds available. This funding has been agreed until the end of March 2025. Any issues around availability should be raised with the secure care providers in the first instance and with the Scottish Government informed through the childplacementmanager@gov.scot mailbox or 07867 390282 (during office hours) or 07554 332310 (out of hours).

Q. How is the judiciary being communicated with and prepared for this change?

The Scottish Government have informed the Judicial Institute and have regular meetings with Crown Office and Procurator Fiscal Service (COPFS) and the Scottish Courts and Tribunals Service (SCTS). The Judicial Institute have issued guidance on this new Act for the judiciary, which will also serve as a reminder of the different legal routes for remand cases. SCTS have also issued guidance to their staff.

Q. What is being done to make sure secure care centres can meet the needs of all children, including those who commit the gravest of crimes?

Secure accommodation centres currently care for children, even in the gravest cases of offending, where a child faces a significant post-18 custodial sentence and/or where parts of a child's behaviour pose the greatest risk of serious harm. Secure care centres are experienced in supporting these children and are confident in their continued ability to do so.

The day-to-day care arrangements for each child are tailored to their strengths, needs, risks and vulnerabilities, and those of other children being cared for within secure care. Risk assessment, planning and management are at the core of the care and support provided. The Act also contains regulation-making powers to ensure that, as part of the approvals process for secure accommodation, Scottish Ministers will need to be satisfied that the service will ensure that a child is not placed in the same residential establishment as another child to which that child has committed an offence against or behaved in a way that has or is likely to have seriously adversely affected the health, safety or development of the other child. This is currently a consideration through the matching process and will not change.

The Head of Unit, managers of the centre, and CSWO have legally enshrined responsibilities, including ensuring the welfare of all children is safeguarded, such a placement is in the child's best interests and appropriate to the child's needs that must be upheld.

Q. Does this mean some children currently in a YOI will move to secure care and then have to return to a YOI?

Potentially yes dependent on the length of a child's period on remand or sentence and their age. However, this is unavoidable in a transition to the new framework. Consideration has been given as to whether the usage of YOIs should be retained for situations like this, but it was concluded this would not Keep the Promise. Regulation-making powers are contained in the Act which, once commenced, will allow a child who has been remanded or sentenced to secure care before the age of 18 to remain to a maximum age of 19, in specific circumstances and on a case-by-case basis.

Q. What will happen when a child turns 18?

Regulation-making powers are contained in the Act which, once commenced, will allow a child who has been remanded or sentenced to secure care before the age of 18 to remain to a maximum age of 19, in specific circumstances and on a case-by-case basis. Until these regulations commence, children will not be able to remain in secure care beyond their 18th birthday and therefore would have to move to a YOI on or before that date should their period on remand or sentence remain. Existing transitional arrangements for children moving from secure care to custody will continue to be utilised. Existing timescales for when children who have been sentenced can be released will also remain. Children in secure care are not eligible for release on a home detention curfew but plans for reintegration, including mobility, will be considered as part of sentence management.

Q. What will happen if no secure care centre will take a child who has been remanded or sentenced?

Discussions have been ongoing with the secure providers. An agreed process for action to be taken in such circumstances is being considered with the four secure care centres. This outlines the process to be undertaken with key partners to reach an agreed resolution, should there be a situation where there are concerns over a placement and there is a risk that a secure placement is not available. Other provisions have included the Scottish Government funding up to 4 places in each centre to ensure capacity across the secure estate and considerations of additional provision across the secure estate. The current admission guidance from the Care Inspectorate as followed by the secure centres is being considered for review.

Q. What about if a child's placement breaks down?

There have been occasions where serious incidents have resulted in a placement breakdown. In this situation, efforts would be made to address the needs or risks that were placing the child's placement at risk, including potentially exploring options like additional staff or services being put in place. The aim would always be to prevent this situation from occurring in the first place and discussions commencing at an earlier point when concerns are first raised, to ensure measures and steps have been put in place and to repair the relationships wherever possible. This is part of the agreed process which has been developed for sentenced and remanded children, but will be considered for all children. A child would not be able to be released if they had been sentenced owing to a placement breakdown.

Q. Will the same published data be available regarding children who are in secure care as there currently is for children in YOIs?

Not at present but this is an area of consideration.

Q. What is being done to address the challenges with secure transport?

There have been long-standing and complex challenges with secure transport. The Act does not change this, however, commencement of the provisions around no under 18s in YOI has brought these challenges more to light and there has been some confusion around who should provide transport for children. Scottish Ministers will continue to arrange and fund the transport of sentenced children using their current contract with GeoAmey. The responsibility of arranging transport for remand and all other children remains with the local authority. The Scottish Government is exploring any scope within the GeoAmey contract to be used more flexibly to include transport for children placed in secure care on remand. If agreed, this would be on a trial basis and there would be finite availability of journeys so this would be on a first come, first served basis.

Part 3 of the Act places a duty on Scottish Ministers to publish standards applicable to a “secure transportation service” concerning children and young people (aged under 19) who are to be taken to, placed, or kept in secure accommodation. This provision has not yet been commenced but when it does, standards must be published within one year. Providers of these services must meet the applicable standards and those commissioning must ensure this happens. Local authorities will be required to gather data and produce a 3 yearly report on how the service was monitored and to what extent the service met those standards, with Scottish Ministers required to publish a consolidated report. This work will build on the coproduced service specification.

Q. Is the overall commissioning and funding of secure care going to change?

The Scottish Government have commissioned CYCJ to explore potential options as to what a reimagined secure care should look and feel like for children in Scotland before, during and after secure care, aligning with legislative changes and in keeping with the longer-term aims of the Promise. A report is due to be published on 27 September and further consideration will take place with key partners about next steps. Commissioning and funding are likely to be part of these considerations.

Q. Are all children who have been remanded or sentenced to be treated as if they are looked after child, including if they are remanded for a short period, and will these children therefore have the same aftercare and continuing care entitlements through their local authority as other children and young people?

Where a child is detained in secure accommodation under section 51, 205, 208 or 216 of the 1995 Act, for any length of time, the child will be treated as “looked after” by the local authority. Statutory requirements for these children should be fulfilled and local procedures and arrangements, including for reviews followed. This will not require a child to be referred to the reporter-however it should be considered whether the criteria for a referral to the reporter is met. If the child/young person meets the statutory definition of a care leaver, they would have the same rights to aftercare entitlements as any other child or young person.

In respect of continuing care, as detailed in the Continuing Care Guidance under section 26A(5) of the 1995 Children (Scotland) Act as inserted by section 67 of the 2014 Children and Young People (Scotland) Act a local authority does not have a duty to provide Continuing Care to an eligible young person in certain circumstances, one of which is if the young person was accommodated in secure care immediately before ceasing to be looked after. Local authorities should however agree alternative support measures which meet the young person's needs.