



Children and Young People's
Centre for Justice

AUGUST 2025

The Children (Care, Care Experience and Services Planning) Bill

CYCJ Response

Collaborating for rights-respecting justice
cycj.org.uk | cycj@strath.ac.uk

Contents

Overview	2
Summary of CYCJ position	2
1. What are your views on the aftercare provisions set out in the Bill?	2
2. What are your views on the corporate parenting provisions set out in the Bill?	3
3. What are your views on the advocacy proposals set out in the Bill?	4
4. What are your views on the proposals for guidance in relation to care experience?	5
5. What are your views on proposals designed to limit profits for children's residential care services?	5
6. What are your views on proposals to require fostering services to be charities?	6
7. What are your views on proposals to maintain a register of foster carers?	7
8. What are your views on the proposed changes to the Children's Hearings system?	7
9. What are your views on the proposed changes to Children's Services Planning set out in section 22 of the Bill?	14
10. Are there any other comments you would like to make in relation to this Bill?	14
References.....	17

Collaborating for rights-respecting justice

CYCJ is primarily funded by the Scottish Government and based at the University of Strathclyde.

Overview

The Children and Young People's Centre for Justice (CYCJ) very much welcomes the opportunity to respond to the call for views by the Education, Children and Young People's Committee on the Children (Care, Care Experienced and Services Planning) (Scotland) Bill.

The Bill is a part of the Scottish Government's commitment to delivering the Promise. It proposes changes on a range of areas, including to the Children's Hearing System and introducing greater support for those with care experience. It is currently at Stage 1 and more information can be found [here](#).

Summary of CYCJ position

Our response draws from our practice, participation, research and policy expertise and evidence. In summary, we welcome some of the provisions of the Bill, including the extension of aftercare support and access to advocacy. However, we note the minimal focus on justice issues, in particular noting the absence of both measures to keep children out of police cells and to raise the age of criminal responsibility, as well as areas which could be strengthened with a greater focus on participation. There is also a significant portion of the bill which has been transferred to secondary legislation and we believe there needs to be greater scrutiny and inclusive discussion to develop these areas.

1. What are your views on the aftercare provisions set out in the Bill?

The Children and Young People's Centre for Justice (CYCJ) works towards ensuring that Scotland's approach to children and young people in conflict with the law is rights-respecting, contributing to better outcomes for our children, young people, and communities. Over the past five years our work has centred on achieving the aims of, and making the practical challenges required to, fulfil the Promise. We very much welcome the opportunity to respond to this consultation in this light and we have drawn from our practice, participation, research and policy expertise and evidence.

CYCJ supports the idea of extending the provision of aftercare for a child looked after at any point of their life. This acknowledges the vulnerabilities and trauma that can be experienced by children in care, some of whom may have spent a significant period of their life in the care system, and the continued need for support after their transition out of care. Such support is crucial given what the evidence tells us about the challenges children and young people face in transitions to adulthood, which can be compounded where the child has come into conflict with the law, and the detrimental impacts on these young people's outcomes when this support is not available (CYCJ, 2025; Care Inspectorate, 2024). These children and young people currently can miss out on statutory entitlements to this support if they cease to be

Collaborating for rights-respecting justice

CYCJ is primarily funded by the Scottish Government and based at the University of Strathclyde.

looked after before their 16th birthday, with research (Lightowler, 2022; Henderson, 2017; Nolan et al., 2017) having highlighted the premature termination of CSOs remains an issue. This age-related threshold fails to recognise the support needs these children might have and can increase their vulnerability (CYCJ, 2025). However, we have concerns with resource considerations and the ability of individuals to claim this support, noting the lack of applicability of the United Nations Conventions on the Rights of the Child (UNCRC). We would also welcome greater clarity in regard to how this will intersect with the Children (Care and Justice) (Scotland) Act.

A key marker of the success of these proposals would be the consistent and effective delivery of aftercare advice, guidance and assistance across the whole of Scotland. The current picture, unfortunately, shows inconsistency in provision and access to entitlements. On average less than half of young people eligible for aftercare were receiving aftercare services in 2024, although there was significant variation across local authority areas (between 8% and 89%) (Doull, 2025). Without further context it is difficult to explain why there are such gaps and further attention to this could help to inform any future legislative change and the practical implementation to ensure these rights become reality. We are also concerned with footnote 17 in the financial memorandum which states that the estimated costs for aftercare are “steady state”, and therefore assumes there will be no extra staff costs to deliver the extended capacity, given the current inconsistency with aftercare provision across Scotland.

For this to happen, it is essential that young people are informed of their rights to aftercare support in accessible, timely, and youth-friendly ways and are supported to apply. There should also be early planning and the ability for the young person to seek a review to any decision, as well as embedding in practice what we know works in supporting transitions. Particular challenge points, such as access to housing, addictions and health support should warrant additional focus and attention. In this regard, CYCJ is concerned that the bill as drafted proposes to amend the Children (Scotland) Act (1995) to bring in the aftercare changes. This means that these proposals will be out of scope of the UNCRC as incorporated into Scots Law and, therefore, do not present the same opportunity for an individual to seek a judicial remedy for a perceived injustice in this area. CYCJ does not believe that having such a cornerstone of the care system as aftercare provision being out of the scope of UNCRC to be in keeping with the Promise.

As part of our work we are supporting agencies to prepare for the commencement of the Children (Care and Justice) (Scotland) Act 2024 and note this includes a provision regarding children detained in secure care accommodation to be treated as “looked after”, who must also be able to benefit from the extension of aftercare and corporate parenting provisions.

2. What are your views on the corporate parenting provisions set out in the Bill?

CYCJ welcomes the extension of corporate parenting to include those aged under 26 who have left care at any point in their life. As with the above aftercare provisions, this proposal

Collaborating for rights-respecting justice

CYCJ is primarily funded by the Scottish Government and based at the University of Strathclyde.

acknowledges the vulnerabilities and trauma that can be experienced by children in care, and that their continued need for support after their transition out of care cannot be met by only one agency. This requires all corporate parents to have these responsibilities and ensure that they can maximise their support for these children and young people.

3. What are your views on the advocacy proposals set out in the Bill?

CYCJ welcomes the proposal to provide lifelong advocacy for everyone care experienced, in line with the Promise. We note that children in conflict with the law are amongst the most vulnerable populations and are more likely to have experienced multiple, parental or traumatic bereavements (Finlay & Jones, 2000; Vaswani, 2008). It is now widely understood, through clear evidence, that experiencing adverse childhood experiences (ACE's) affects outcomes for children. Children placed in residential and secure care, far from home, experience further separation from birth or foster families, friends and communities. In the context of such vulnerabilities and isolation, the importance of voice and independent advocacy is very clear and can provide a positive template for accessing support throughout their life. The importance of advocacy is embedded through the [Secure Care Standards](#); before, during and after.

That said, the evidence shows there are continuing challenges to accessing advocacy which need to be addressed to maximise the impact of the Bill's proposal. Data from the Who Cares? Scotland snapshot for 2024 tells us that only 23% of children in residential accommodation and 44% of children in secure care accessed independent advocacy that year (Who Cares? 2024). Alongside this, the Who Cares? Scotland's Summer of Participation 2023 report identified that 50% of care experienced adults felt stigmatised when receiving support (Who Cares? 2023). Detailed consideration of barriers to accessing advocacy is critical in ensuring lifelong advocacy is accessible to those who need it at a time that they need it.

It is essential that young people are informed of their rights to advocacy in accessible, timely, and youth-friendly ways. Advocacy should enhance a child or young person's participation in decision making, and not overwhelm or overcomplicate it. In secure care and justice settings in particular, it is critical that young people do not experience advocacy as 'just another professional' but instead as someone who supports them to be heard, respected, and feel safe, in keeping with the United Nations Convention on the Rights of the Child. This requires investment in relationship-based, trauma-informed advocacy models

There is existing evidence in Scotland that integration of legal requirements and rights to advocacy supports access and uptake, which arguably goes some way to reducing stigma and other barriers. Section 122 of the Children's Hearings (Scotland) Act 2011 (implemented in November 2020) made legal the requirement that Children's Hearings ask that advocacy services had been considered. In 2023/24 it was reported that 10,200 children were referred to the Children's Reporter and figures in July 2024 suggest that a fifth of children had an advocacy worker at their Hearing (MacMillan, 2024). It is hoped that positive experiences of

Collaborating for rights-respecting justice

CYCJ is primarily funded by the Scottish Government and based at the University of Strathclyde.

advocacy and the associated benefits of voice and power in decisions about their lives, would encourage children (and their parents/families) to access advocacy later in life when such support would be beneficial again.

Significant resource allocation will be needed to achieve the Promise Report's call for advocacy services to be structurally, financially and psychologically separate from statutory organisations and service providers (2020: 115). As noted previously, it is widely understood that children in conflict with the law, and their families, will have experienced a higher number of adverse childhood experiences, including loss/separation from family, adults close to them having spent time in prison, or siblings in secure care. Trust and choice in an independent system of support is, therefore, imperative. Recent statistics capturing the views of those with lived experience of care suggested that 93% of those surveyed supported calls for independent, relationship-based, lifelong advocacy (Who Cares?, 2023).

Who Cares? recent report ([Action on Advocacy- state of the nation report](#)) outlines the scale, scope and uptake of a readily available pathway to independent, lifelong advocacy via their national helpline. Further data collection, in the context of more widely accessible advocacy, which is rooted in relational connection, as well as via a phoneline, would provide invaluable insight into the expressed needs of those with care experience throughout the lifespan. This could continue to support improved service responses in line with the ambitions of the Promise.

Additionally, there is a need to clarify whether the right to advocacy extends to settings currently excluded in the Bill, such as policy custody or during secure transport. CYCJ believes this independent advocacy should also be on an opt-out model to increase the likelihood of its use. We also note that the advocacy proposals contained in the bill are to be developed through regulations at a later stage. During their development, we believe there needs to be robust scrutiny, and ample space for evidence gathering and consultation

4. What are your views on the proposals for guidance in relation to care experience?

Given these proposals are to be developed at a later stage through guidance, we do not believe we are in a position to provide a firm commitment at this stage. Only to note, in a similar vein to our response to the advocacy proposals, we believe that there should be robust scrutiny, and ample space for evidence gathering and consultation during the development of this guidance.

5. What are your views on proposals designed to limit profits for children's residential care services?

CYCJ welcomes the proposed provision which seeks to address the profits that are being made at the expense of the Scottish care system budget. We are mindful of the conclusions of Independent Care Review which stated that "Scotland must avoid the monetisation of the care of children and prevent the marketisation of care" and "Scotland must make sure that its

Collaborating for rights-respecting justice

CYCJ is primarily funded by the Scottish Government and based at the University of Strathclyde.

most vulnerable children are not profited from” (Independent Care Review, 2020; p111). We are particularly mindful of the investigative journalism undertaken by Karin Goodwin of *The Ferret* who highlighted a Freedom of Information request that discovered just 15 of Scotland’s 32 local authorities had spent £218m on privately run residential homes (Goodwin, 2024). The true figure is likely to be far higher given the low response rate to the FOI request.

Imposing strict controls on the finances of organisations who are responsible for delivering residential care to children is therefore a small step towards achieving these ambitions. A key part of this will be reaching, through stakeholder engagement, a clear and workable definition of ‘profit’.

The unintended consequences of this provision may lead to some organisations forming the view that the limited opportunity to make profit makes their business venture unworthy. We suggest that if this were the case that this would be illustrative of values and principles that are not welcome within Scotland’s care system and that children would be better served through provision by more altruistic organisations. Nevertheless, this could result in the closure of existing service provision and further reduction in capacity, at a time when challenges are already noted, and thus any steps to minimise profit must be accompanied by investment by local authorities in ‘in-house’ provision that can meet the needs of Scotland’s most vulnerable children.

This is particularly important when supporting children in conflict with the law, and those who experience the most acute levels of risk. A survey of all 32 local authorities carried out by Gibson (2024) demonstrated that a lack of suitable resources prevented full implementation of the Whole System Approach and proved a barrier to both preventative services and intensive services respectively. By putting mechanisms in place to reduce the financial pressures on local authorities they will be better equipped to address these gaps.

We also question the exclusion of secure care provision and transport from these proposals. From our understanding of the legislation there is nothing to stop a private provider from being approved to deliver a secure care unit in the future. We also note the Scottish Government’s response to our Reimagining Secure Care report, indicating the potential for new service models to be delivered for children currently held in secure care, and consider that a private provider may also be considered to deliver this. We would also question why, by extension, secure care transport providers have also been excluded. We would consider the extension of these profit proposals to include these key players in the residential childcare landscape to be in keeping with the promise and act as a necessary bulwark against any future changes.

6. What are your views on proposals to require fostering services to be charities?

We did not respond to this question

Collaborating for rights-respecting justice

CYCJ is primarily funded by the Scottish Government and based at the University of Strathclyde.

7. What are your views on proposals to maintain a register of foster carers?

We did not respond to this question

8. What are your views on the proposed changes to the Children's Hearings system?

CYCJ completed the analysis of the Children's Hearings Redesign consultation and will draw upon this in our response, as well as our response to the consultation.

Single member children's hearings

CYCJ believes that any substantive decision should be made by a three member panel. We note the wide and contested views on this matter in the consultation analysis. However, our view aligns with various parts of the consultation feedback, including that panel type does not necessarily reflect complexity, the enormity of decisions that can be made by these panels and their impacts on the child and family involved and their rights, and the need for balanced, fair, transparent and accountability in all decision making. In terms of substantive decisions we are referring to, for example, making (or extending) an Interim Compulsory Supervision Order (ICSO) or an interim variation of a CSO. This decision can often involving very young children and address contentious issues, with distressing and emotive content being discussed, featuring differences of opinion and the involvement of legal representation.

We do believe, however, that single member panels could be appropriate for more procedural decisions, such as deeming an individual a relevant person or not, or deferring a hearing when it is clear that it will not proceed due to, for example, reports not being available. We believe there needs to be clear guidelines and criteria established to determine when a single member panel is appropriate.

Should the move to single member panels be pursued for any hearing type, the development of rules and the role of the National Convener in determining the size of the panel appropriate for a particular case will be crucial. At this stage we are unclear how this would work in practice given the number of cases that could potentially be being considered. This change will render the selection, training of, and support to chairs as even more important, as will the careful monitoring of single member decision making particularly in regard to bias, as identified in consultation responses. There is also a need to consider the longer impact to this potential change on subsequent children's hearings that take place following single member children's hearings. This could have a delay on decision making.

Remuneration of Children's Panel members

CYCJ disagrees with the proposals as drafted regarding the remuneration of panel members and note the variation of views on this from consultation responses. We would support some

Collaborating for rights-respecting justice

CYCJ is primarily funded by the Scottish Government and based at the University of Strathclyde.

measure of financial compensation for all panel members based on current expectations rather than a redesigned system, if this was likely to increase recruitment and retention, alongside attracting a wider pool of panel members. This would recognise the commitment made by all panel members and could attract a wider demographic and range of experiences, particularly those currently deterred due to financial reasons, or with experience of the care or justice system.

This would also help avoid some of the potential unintended consequences which may occur through the payment of chairs and/ or specialists only. These could include fractious power dynamics and decision making between panel members at hearing, and the development of a two-tier system of paid and volunteer panel members. This could impact the quality of decision making and deter the continued participation of ordinary panel members. Monitoring the impact of any change in remuneration on the quality of chairing and the professional experiences/qualifications of panel members will also be important. This should include ensuring this position is still being sought for the right reasons, particularly given that the financial memorandum states a panel chair's fee is modelled at £385 per day.

Specialist panel members with expert knowledge and qualifications could be helpful given the complexities of many hearings. We recognise the role of the National Convenor in this decision and recognise the importance of this process. As with paid chairs, monitoring the actual use of specialist members, alongside the impact of this remuneration on power dynamics and the wider autonomy of other panel members will be important, not least given this is also modelled on £385 per day. Further consideration on matters like how fulfilment of this role will be monitored and concerns addressed will be key, as will how this role would fit with the existing power to request an additional specialist report from the CHS report writers bank, providing specialist knowledge for consideration by all panel members.

Child's attendance

Like many other consultation respondents, we welcome the provision to remove the obligation on the child to attend their hearing whilst retaining the child's right to do so and ensuring that their participation remains meaningful and engaging. As detailed in our consultation response, the child's right to choose whether they attend or not must be respected and is in line with the United Nations' Convention on the Rights of the Child (UNCRC). Giving the child greater control over attending may also make them feel less adversarial towards the panel and processes and should mean fewer delays and remove the need for continued hearings which were previously dependent upon the child attending. Alongside this removal of obligation, however, children must be given real, supported choices about whether and how they engage, there must be sufficient attention given to other means of encouraging attendance, including alternative formats, such as video, written accounts, pre-recorded statements, or support from a trusted adult or peer.

The removal of the obligation for a child to attend their own hearing should not unintentionally become a default route to excluding children and young people from decisions about their lives and the panel must ensure their voice is fully reflected in a manner which suits them best. In keeping with the UNCRC, Children should be given real, supported choices about whether and how they engage, including alternative formats (e.g.

Collaborating for rights-respecting justice

CYCJ is primarily funded by the Scottish Government and based at the University of Strathclyde.

video, letters, pre-recorded statements, or support from a trusted adult or peer), alongside ensuring they are fully informed of the discussions that took place and that decisions are clearly explained.

We retain concerns about the continued power to require a child to attend their hearing as it undermines their right to participate in a manner of their choosing. As noted above, appropriate measures must be taken to ensure the views of a non-attending child are well represented and that panel members are provided with enough information to make a decision which they can be sure is in the child's best interests, in accordance with UNCRC Article 3. The policy memorandum states cases where a child is in conflict with the law or a decision to restrict or deprive the child or their liberty could be examples where a child is required to attend their hearing. Our concern is that this risks the creation of a two-tier approach which could undermine the fundamental ethos of the hearing system. Whilst we understand the significant implications of these decisions including in respect of child's rights and deem that children in these situations should be legally represented, we do not deem that this should mean the child has no choice in attending. As part of this process, the child must be made fully aware of the implications and seriousness of their situation, and the possible future implications, such as for a disclosure application or that their liberty will be restricted or deprived. The child must understand this and be informed of their right to a solicitor before they make their decision to attend in person and/or participate in an alternative way.

Preparation and engagement with the principal reporter

We would fully support children and their families having an opportunity to meet and speak with the reporter to have the procedural process of a grounds hearing, and the document that forms the statement of grounds explained and, in some cases, negotiated and resolved. Many children's hearings that take place which are an initial grounds hearing can be complex for families for a number of reasons, including the language used, the procedure around the process, and the reduced participatory opportunities for the child. Having the opportunity to discuss the statement of grounds would avoid the need for difficult conversations to take place within a full and crowded hearing and takes a more trauma-informed approach to children and their families. Reliving historical concerns that form evidence for statement of grounds is traumatic for children and their families and we are aware from the Better Hearings Report (CHIP, 2016) that children do not like their history repeatedly rehearsed amongst strangers and new people.

For younger children who wish to attend their hearing and who may struggle to understand legal jargon and processes, this meeting will potentially strengthen their understanding and ultimately their participation. Ensuring children are fully supported and represented at this meeting is crucial to upholding their rights. If the statement of grounds were to be discussed informally and agreed prior to the hearing, then this procedural part of the hearing could potentially take place at the commencement of the hearing. This then allows the conversation to focus on the care planning for the child and the intended outcomes for any compulsory supervision order (CSO) could be put in place, and would remove the focus from complex procedural matters.

Collaborating for rights-respecting justice

CYCJ is primarily funded by the Scottish Government and based at the University of Strathclyde.

We welcome other advantages that could come from a pre-hearing meeting such as establishing the method in which the child wishes to attend (such as in person or via video link). This is likely to positively increase their participation. Where a child's response is required for the statement of grounds, recording it in advance will also avoid the need for the child to attend the hearing if they do not wish to. Greater control over their participation would reduce distress for younger children, young people and parents and creates a more rights-respecting system.

In some local areas piloting pre-hearing contact with the reporter has proved positive for children and their families and a move to statutory engagement with the reporter will ensure consistency for all children.

However, we deem this change should come with some safeguards. Firstly, for children and families, there should be the opportunity for a supporter or legal representative to attend the meeting to ensure they are fairly and proportionately represented. Secondly, for the reporter, there needs to be support to address potential risks, such as something which had been agreed at the pre-meeting is then disputed at the hearing.

We would welcome more information on the practical considerations for this change and would highlight the potential unintended consequences of not meeting the policy aim of reducing formality, delays, and additional meetings. For example, if a family cannot or will not engage with that meeting, would this be treated in the same vein as the scenario where a family who do not wish to enter into resolution about the grounds. If that is the case then this is welcomed as it would reduce unnecessary and protracted delay.

The process in relation to establishing grounds

In general, for hearings where agreements can be made between the reporter, the child and their families, and there is no need to refer the grounds for proof, the bill's proposal is a welcome move as it should reduce decision making time, and allow for the implementation of care planning and avoid unnecessary legal complexity and processes. Our concern is whether this could dilute the seriousness of involvement of the hearing system and it will be crucial that children and families still understand this.

A major advantage of the pre-hearing meeting is that it would provide autonomous discretion to reporters with the amendment of grounds following discussion with children and families which could reduce the litigious process significantly. Reducing the time that it takes for cases to be established will potentially remove families and social workers feeling "in limbo" for long periods of time when, alternatively, pieces of work can be undertaken to improve and support the lives of children.

However, greater clarity and guidance is needed around these proposals, such as what the guidance would be for children who can accept grounds at a pre-hearing meeting, what would happen in the event of a panel member questioning the ability of that child to accept grounds, and how could this in turn undermine the pre-hearing concept. It needs to be reinforced that the step to refer to the sheriff for proof should only be taken when necessary and proportionate.

Collaborating for rights-respecting justice

CYCJ is primarily funded by the Scottish Government and based at the University of Strathclyde.

As noted previously, we do have some concerns over a single chairing panel member making a substantive decision. Where grounds are not fully agreed or accepted by all parties, this could be a complex discussion and would benefit from a three member panel. We also note that the compulsory supervision order (CSO) would not be considered at this hearing and therefore we question whether this change would really reduce the delays and negative impacts for the child and family. We would welcome more details on the process here, in particular around CHS recruitment for chairs, the support and representation of relevant persons and children throughout this process, the process for decision making, including being evidence-led, and the management of power balances.

We do hope that fact finding hearings would be more participatory for children than a court room style hearing to determine grounds, especially if they take place in a hearing centre, but we believe more detail is needed to create a clearer picture of what the actual process will be.

We are fully supportive of the bill creating a power that allows the principal reporter to apply directly to the sheriff to establish grounds where there is no reasonable prospect of agreement or constructive discussion about the statement of grounds. Eliminating the need for unnecessary grounds hearings pending a Sheriff's determination is a welcomed proposal. This will reduce delay and the need for additional hearings being arranged for the attendance of families. However, it is noted that the reporter still has to arrange a hearing to consider an interim compulsory supervision order – the hearing will still have to take place to consider that section 71A deals with that.

We are fully supportive of the bill removing the current requirement that where the child is not capable of understanding and the relevant persons agree to the grounds this must automatically be referred to the sheriff to make a determination on the grounds. When relevant persons are in agreement of the statement of grounds the additional unnecessary step of an application to proof is confusing and can be perceived as punitive. The streamlining of this process for these particular families will potentially improve communications, avoid protracted delay and families will benefit from the opportunity of support whilst motivation to engage is high when otherwise it can reduce whilst at proof.

Participation of Relevant Person

We welcome the slight expansion of the circumstances in which a relevant person, or their representative, could be temporarily excluded from a children's hearing for certain reasons and to remove automatic relevant person status if the high bar test is met. In this, we support the use of Article 8 of the European Convention on Human Rights. As detailed in our previous response, these provisions would support the upholding of the child's rights and wellbeing, needs-led and trauma-informed approach, if they are centred on the child's voice. It is essential that young people are supported to understand these decisions and to express their views on who should and should not be present. Any exclusion of relevant persons must be accompanied by clear, child-led communication and, ideally, the use of visual or creative tools to help children articulate how they feel and what they need. Participation

Collaborating for rights-respecting justice

CYCJ is primarily funded by the Scottish Government and based at the University of Strathclyde.

should not be reduced to attendance or procedural involvement; it should ensure emotional safety and agency.

Tests for referral to Principal Reporter and making of compulsory supervision order or interim compulsory supervision order

Notwithstanding the concerns raised in the consultation responses, CYCJ welcome the provisions to include “support”. This should help to focus consideration of what supports have or should already have been provided prior to referral to the Reporter, but we remain clear that referral should not be a means for accessing support and more children should not be brought within the hearings system, contrary to the Promise, for this purpose. We note, however, that this change does not align with the Hearings for Children report that the terms ‘control’ and ‘treatment’ require to be modernised, which CYCJ is supportive of, although we also acknowledge the parallel work on language detailed in the policy memorandum.

As detailed in our previous consultation responses, we have some concerns about the unintended consequences of the change of terminology from “it might be necessary for a compulsory supervision order to be made in relation to the child” to “it is likely to be necessary to make a compulsory supervision order in relation to the child”. This is a raising of the threshold and could be beneficial given the adverse implications of children being inappropriately referred and kept in the hearing system for long periods of time. However, it could also result in children who would benefit from the Children’s Hearing System not being referred to the Reporter. CYCJ can foresee situations where an agency lacks the required information or confidence to make an assessment of likelihood and therefore chooses not to make a referral.

Conversely, as this change is implemented in practice, we could see an increase in unnecessary referrals to the reporter with the adverse implications of system contact having been well established. We deemed this was a proposal where testing would have been beneficial to understand the impact of this change before this being contained within legislation. It is crucial that partners and referrers understand this change and that the existing requirements for referral remain. We question if legislative change is necessary to achieve the policy aim and instead whether more focus should be given to ensuring the existing referral criteria is understood and the provision of guidance, support and training to referrers/potential referrers.

If these proposed provisions and other changes are made, they will require to be supplemented with training and guidance for Children’s Reporters, social workers, police, other referrers and stakeholders, as well as information for children and families.

Information about the availability of children’s advocacy services in relation to Children’s Hearings.

CYCJ are supportive of these provisions. We deem there is wider work to be done to ensure all agencies with responsibilities under these provisions have a good understanding of the hearing system, in order to share and make available consistent information and resources. It is also important to promote alignment with the provisions under the Children (Care and

Collaborating for rights-respecting justice

CYCJ is primarily funded by the Scottish Government and based at the University of Strathclyde.

Justice) (Scotland) Act 2024 in relation to information and support to victims and the work being undertaken under the community confidence workstream of the Youth Justice Improvement Board. We note in the consultation responses the wide and varied views in respect of advocacy. The earlier and more flexible offer of advocacy is welcomed, although alongside this the child should still be informed of their choices and the offer of advocacy should not be at the expense of using a variety of child-centred ways to gain the child's view and share their voice. We also welcome the balanced sharing of information regarding hearings with advocacy workers, which is more respecting of the child's right to privacy.

The sharing of hearings scheduling information with advocacy workers

The proposal for the Principal Reporter to share scheduling information with advocacy workers is a positive step toward improving children and young people's participation. However, it is essential that children are enabled to understand what is being shared, why it is shared, and with whom. Young people have told us clearly that they value trust and transparency in how their personal information is handled. Participation is enhanced when young people are not only informed but also actively involved in shaping how their stories and experiences are shared and used. This could be further strengthened through co-produced guidance on respectful, rights-based information sharing.

Period for which interim compulsory supervision order or interim variation of compulsory supervision order has effect

CYCJ are supportive of this increased flexibility, whilst retaining the existing timescale where provisions need to be made urgently or where the child's circumstances require this. This could benefit all parties, not least the child by reducing the frequency of attending hearings where there will not be a substantive decision made. The learning from the emergency covid legislation shows that extensions were used proportionately and appropriately to promote the child's best interests and therefore the option to extend beyond 22 days is rights respecting and should be continued. The proposed 44 day period should ensure drift and delay remains minimised, which was a concern in consultation responses, and we would encourage hearings to reconsider at a juncture before the 44 days if at all possible.

The Reporter's ability to initiate a review

Although this new statutory power for the reporter could provide an opportunity to speed up the process for arranging a review, it should be clear it should only be used when the child, family and local authority will not undertake this task. It is noted that the families that come through the hearing system may not have access to the means or knowledge on how to go about requesting a review when it is necessary and it therefore removes the burden. We assume this could be at any time but further clarity on this would be welcomed.

Collaborating for rights-respecting justice

CYCJ is primarily funded by the Scottish Government and based at the University of Strathclyde.

9. What are your views on the proposed changes to Children's Services Planning set out in section 22 of the Bill?

CYCJ can see potential advantages and disadvantages to the proposed changes to Children's Services Planning. We would absolutely welcome any steps to move to a stronger whole family approach and to reduce the cliff edge experience for other support, such as housing and mental health. However, we do have concerns over how the governance and oversight would look. We are also worried that any merging of children and families within wider health and social care partnerships and adult justice social work would likely see the provision for children and young people deprioritised, as well as impacted through the potential loss of expertise specifically for children and young people in conflict with the law. This would also raise questions as to the alignment of integration joint board agenda with wider frameworks, such as with the Promise.

10. Are there any other comments you would like to make in relation to this Bill?

A central theme of the independent care review was ending the overcriminalisation of children and young people with care and justice experience. Whilst this bill as currently drafted makes some inroads in this direction, CYCJ believes there are significant areas which remain untouched, which we have outlined below. One key area is in raising the minimum age of criminal responsibility (ACR). The Independent Care Review (2020, p. 91) concluded that "Scotland must aim for the age of minimum criminal responsibility to be brought in line with the most progressive global governments alongside efforts to prevent criminalisation of all children". Yet, despite, the 2019 act raising the age from 8 to 12, Scotland is still behind its contemporaries (Donnelly, 2020), including the recommendations of the UN Committee on the Rights of the Child which calls for a minimum ACR of 14 and recommends that states opt for 15 or 16 (McAra & McVie, 2024).

Following three years of monitoring the implementation of the 2019 Act, Holyrood is approaching the end of the formal review period of the ACR and this Bill provides a timely opportunity to act on the evidence. McAra and McVie (2024; p.1) have produced a significant volume of evidence in favour of an increase in ACR, noting the "ethical and empirical case" for doing so. Not only are the number of incidents of harmful behaviour by children aged 12 and 13 very low, but evidence concerning child brain development demonstrates why the state should not hold children under the age of 16 criminally responsible for their actions.

Dyer et al., (2024) argue that the ACR in Scotland could be raised to 16 with very little impact on prosecutorial or court services. The most recently available Criminal Proceedings in Scotland statistics, covering 2022-23, show that only six children under the age of 16 were convicted in court that year; with two the year before, and seven the year before that (COPFS, 2024). The Children's Hearings System responds to the vast majority of children whose behaviour has caused harm to others or who present a significant risk.

Collaborating for rights-respecting justice

CYCJ is primarily funded by the Scottish Government and based at the University of Strathclyde.

The age of criminal responsivity advisory group, after examining the evidence produced over the 3 year review period agreed for an increase in the age of criminal responsibility to at least 14 in the first instance.

Increasing the ACR can go some way towards achieving this and avoid unnecessary criminalisation of children and subsequent entry into the care system.

Alongside ACR, there is no consideration in the bill to addressing the over representation of children with experience of care in police custody. The number of children detained in police custody in Scotland is extremely high, especially when compared to the much smaller number who actually end up in secure care. Over the last few years there has been consistently around 4,000 recorded incidents of children being detained in custody annually (Scottish Police Authority 2024). For 2023-24 this included 1,330 incidents for children until 16. We know from engaging with children and young people that being in police custody can be the most traumatic stage of their journey when they come into conflict with the law (Vaswani et al., 2024). "I was crying myself to sleep, I was taking an anxiety attack and I was an emotional wreck that night. Then I was just like crying all weekend, they would come in every so often and say "are you alright?" and I'd be like "aye" but even though I was greetin' they would just walk away [...]." (Vaswani et al., 2024). An inspection of police custody in March 2025 found children being held for disproportionate lengths of time, including a 13 year old for 6 hours and a 14 year old for 12 (HMICS, 2025).

We very much welcome the ongoing current work across Scotland to look at alternatives to police custody, including the use of places of safety. However, in accordance with section 4 of the Criminal Justice (Scotland) Act 2016, Police Scotland are still required to take an arrested person, regardless of age, to a police station. A small change to this legislation, such as including "or an appropriate alternative location" would allow for a child to be taken instead to an appropriate place of safety, where this was possible. This proposed change in legislation would therefore provide options to be creative, person-centred, and more trauma-informed, but would also allow for sufficient time for the establishment of provisions and resources to become embedded across Scotland.

CYCJ also believes this bill offers a great possibility to put restorative justice (RJ) on a firmer statutory footing, making it more consistently available across Scotland. This would be a crucial step forward in delivering the Scottish Government's vision of making RJ available across Scotland to all those who wish to access it, and at a time that is appropriate to the people and case involved.

The case for greater roll-out of RJ is very strong and strongly linked to the ethos of the Promise. The Action Plan highlights "sound evidence that RJ can empower and provide redress not only to those impacted directly by the harmful behaviour, but also to wider communities. It also encourages those who have done the harm to consider the impact of their actions at a human level, and so help reduce the chance of repeating the behaviour" (page 4). Internationally there is broad recognition that restorative justice forms a key part of rights-respecting and child-friendly justice and redress. In response to the UNCRC, the United Nations have made several general comments on the issue of restorative justice. For example, the urgency for member states to "introduce comprehensive juvenile justice

Collaborating for rights-respecting justice

CYCJ is primarily funded by the Scottish Government and based at the University of Strathclyde.

policies that emphasize restorative justice, diversion from judicial proceedings, alternative measures to detention and preventive interventions, to tackle social factors and root causes, consistent with articles 37 and 40 of the Convention” (part 88 in General Comment No. 20 (2016)).

CYCJ's practitioner-focussed survey report (2025) highlighted enduring inconsistencies across Scotland in both the delivery and understanding of definition of restorative justice. A legal mandate ensuring access to restorative justice services was consistent across Scotland would seek to ensure the needs of persons harmed and their voices are central, and supports a reduction in harmful behaviour across our communities. We could learn from our close neighbours in Northern Ireland, where the evidence base for the efficacy of restorative justice in healing individual and community harms has grown over many decades. Since their Criminal Justice Review (2000) when significant recommendations were made, Northern Ireland has incorporated restorative justice into their formal criminal justice system relating to children and young people; where its use is legislated for in pre-court and court ordered disposals, commonly referred to as 'youth conferences'. (Chapman & Zinsstag, 2012).

Whilst we do not endorse a replication of Northern Irish legislation, which compels children to take part in the process without the victim/person harmed involved, we believe equitable legal right to access RJ services would significantly benefit children and young people who come into contact with Scotland's justice system. We appreciate this would place a financial and systemic burden on local authorities across Scotland to deliver on this, so would welcome the requisite financial resources for this from the Scottish Government.

On a more general level, CYCJ believes the bill has a great opportunity to meaningfully embed participation especially in secure, residential, and justice-related contexts. We would recommend the development of a participation impact assessment framework across all new provisions; guidance co-designed with young people on attendance at hearings, relevant person status, and rights-based support; as well as resourcing for national and local youth advisory mechanisms to support implementation and hold systems accountable. We also believe there should be participation-related provisions in areas such as police custody and ACR, where children and young people often experience some of the most severe forms of disempowerment.

Finally, we would like to note our concern with the significant delineation of key aspects of this draft bill as secondary legislation, and worry it may take significant time for these provisions to come into force.

Collaborating for rights-respecting justice

CYCJ is primarily funded by the Scottish Government and based at the University of Strathclyde.

References

- Care Inspectorate. (2024). Matching Looked After Children and Young People: Admissions Guidance for Residential Services.
https://www.careinspectorate.com/images/Admissions_Guidance_for_Residential_Services.pdf
- Chapman, T. & Zinsstag, E. (2012). Conferencing in Northern Ireland: Implementing Restorative Justice at the Core of the Criminal Justice System. In *Conferencing and Restorative Justice: Challenges, Developments and Debates*: Oxford University Press.
https://www.academia.edu/7659501/Zinsstag_and_Chapman_Conf_in_NI_OUP_book_jan2012
- CHIP. (2016). The next steps towards better hearings. <https://www.chip-partnership.co.uk/2016/10/20/better-hearings-report/>
- COPFS. (2024). Criminal Proceedings in Scotland, 2022-23.
<https://www.gov.scot/publications/criminal-proceedings-scotland-2022-23/documents/>
- CYCJ. (2025). Capturing the organisation and delivery of restorative justice with children across Scotland: reported findings from a practitioner focused survey.
<https://www.cycj.org.uk/wp-content/uploads/2025/01/CYCJ-RJ-Survey-Report-2024-25.pdf>
- CYCJ. (2025). Section 16: Reintegration and Transitions. In *Children and young people in conflict with the law: policy, practice and legislation*. <https://www.cycj.org.uk/wp-content/uploads/2025/06/Section-16-Reintegration-and-Transitions.pdf>
- Donnelly, Dr M. (2020). Scottish Youth Justice and the Legacy of Kilbrandon: a provocation paper.
https://pure.strath.ac.uk/ws/portalfiles/portal/123163525/Donnelly_2020_Scottish_Youth_Justice_and_the_Legacy_of_Kilbrandon.pdf
- Doull, K. (2025). Looking beyond the data at continuing care and aftercare. CELCIS.
<https://www.celcis.org/knowledge-bank/search-bank/blog/looking-beyond-data-continuing-care-and-aftercare>
- Dyer, F., Gibson, R., Morrison, P., & Murphy, C. (2024). Youth Justice in Scotland: Still Fit for the Future? <https://pure.strath.ac.uk/ws/portalfiles/portal/247595601/Dyer-et-al-CYCJ-2024-Youth-Justice-in-Scotland-Still-Fit-for-the-Future.pdf>
- Finlay, I. G., & Jones, N. K. (2000). Unresolved grief in young offenders in prison. *The British journal of general practice: the journal of the Royal College of General Practitioners*, 50, 569-570.
- Gibson, R. (2024). Advancing the Whole System Approach: A Local Authority Survey.
<https://www.cycj.org.uk/wp-content/uploads/2025/01/WSA-survey-report-Dec-2024.pdf>

Collaborating for rights-respecting justice

CYCJ is primarily funded by the Scottish Government and based at the University of Strathclyde.

Goodwin, K. (2024, February 4). Councils spent £200m on profit-making residential care providers for children and young people. *The Ferret*
<https://theferret.scot/councils-200m-residential-care-children/>

Henderson, G. (2017). 16 and 17 year olds in the Children's Hearings System.
<https://www.scra.gov.uk/wp-content/uploads/2017/08/16-and-17-year-olds-in-the-Children%E2%80%99s-Hearings-System.pdf>

HMICS (2025). Custody Inspection Report Greater Glasgow
<https://www.hmics.scot/media/ke0hgirj/hmics-custody-inspection-report-greater-glasgow.pdf>

Independent Care Review (2020). The Promise Report. https://www.carereview.scot/wp-content/uploads/2020/03/The-Promise_v7.pdf

Lightowler, C. (2022). Improving Legal Support for Children and Young People in Conflict with the Law: A Scoping Study. <https://www.clanchildlaw.org/wp-content/uploads/2023/02/scopingreport-improvinglegalsupportforchildrenandyoungpeopleinconflictwiththelaw003.pdf>

MacMillan, K. (2024). Children's Hearings Advocacy Scheme Scotland-wide Provision. Research Scotland. <https://www.hearings-advocacy.com/wp-content/uploads/2024/11/Final-Evaluation-Report-September-2024.pdf>

McAra, L. & McVie, S. (2024) Raising the minimum age of criminal responsibility: lessons from the Scottish experience. Current Issues in Criminal Justice, 36:4, 386-407.
<https://www.tandfonline.com/doi/pdf/10.1080/10345329.2023.2272362>

Nolan, D., Dyer, F., & Vaswani, N. (2017). 'Just a wee boy not cut out for prison': Policy and reality in children and young people's journeys through justice in Scotland. Criminology & Criminal Justice, 18(5). <https://doi.org/10.1177/1748895817745347>

Scottish Police Authority. (2024). Independent Custody Visiting - Annual Report 2023-24.
<https://www.spa.police.uk/spa-media/vbrlwk0l/icvs-annual-report-2023-24.pdf>

Vaswani, N. (2008). Persistent Offender Profile: Focus on Bereavement. CJSW Briefing Paper 13: August 2008, Edinburgh

Vaswani, N., Moodie, K., and McEwan, D. (2024) [Children's Experiences of Police Custody and the Implications for Trauma-Informed Policing](https://journals.sagepub.com/doi/pdf/10.1177/14732254241282503). Youth Justice 1-18
<https://journals.sagepub.com/doi/pdf/10.1177/14732254241282503>

Who Cares? Scotland. (2023). Who Cares? Scotland's Summer of Participation Report.
<https://www.whocaresscotland.org/wp-content/uploads/2023/10/LRC-Report.pdf>

Who Cares? Scotland. (2024). Action on advocacy: state of the nation report.
<https://www.whocaresscotland.org/wp-content/uploads/2025/05/Action-on-Advocacy-state-of-the-nation-report.pdf>

Collaborating for rights-respecting justice

CYCJ is primarily funded by the Scottish Government and based at the University of Strathclyde.