



Consultation on the Prison population and penal reform: working towards sustainability

CYCJ response

August **2026**

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

Overview

The Children and Young People's Centre for Justice (CYCJ) welcomes this consultation and we agree with its premise that reforms are needed to reduce the prison population to a sustainable level. That said, though we agree with several of the proposals in principle, we stress that they must be more ambitious. This is an opportunity to further embed a truly child-centred approach to justice, in alignment with other frameworks, notably the Whole System Approach (WSA), Getting it right for every child (GIRFEC), and the United Nations Convention on the Rights of the Child (UNCRC). Alongside this must be the commitment to centre the rehabilitation and reintegration of young people at the heart of the response, recognising their continued neurodevelopment, as identified in the Scottish Sentencing Council Guidelines, alongside wider backgrounds and support needed for rehabilitation.

A truly rights-based, trauma-informed and preventative approach must also recognise that reform requires not just action in the justice sphere, but also commitment to address the wider structural inequalities which are closely connected to children and young people coming into conflict with the law. All of this, of course, requires sustained investment in community-based alternatives. Current funding and implementation challenges must be addressed, and new proposals must be matched with appropriate resourcing.

You can read the [consultation document here](#).

CYCJ response

Part 1: Delivering a more effective approach to custody: short sentences, remand and community sentences

Section 1: Strengthening the legislative test for the presumption against short sentences

Question 1 – Please share any views you have on the proposal that justice social work reports should be mandatory in all cases where a short custodial sentence is being considered.

The Children and Young People's Centre for Justice (CYCJ) believe that a justice social work report (JSWR) should be mandatory in all cases where a short custodial sentence is being considered for an offence committed when an individual was under the age of 26.

Short-term sentences can be very disruptive to the stability and wellbeing of an individual and can seriously undermine the protective factors which evidence shows are most likely to encourage desistance from crime, such as housing, education/employment opportunities and maintaining positive relationships (McAra & McVie, 2022). Despite a substantial drop

Collaborating for rights-respecting justice

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

over the past decades, there are still a significant number of young people in young offenders institutions (YOIs) in Scotland and research has identified the negative long-term impacts of being detained there (Dyer, 2025). This is coupled with the recognition that release from prison is a key vulnerability point, particularly associated with an increased risk of suicide, self-harm, offending and other negative outcomes (HM Inspectorate of Prisons for Scotland, 2019a).

A particular challenge for under 26s is that all of this is happening at crucial stages of their social and neurodevelopment. The Scottish Sentencing Council's (SSC) Sentencing Young People Guideline recognises this when it states sentencing must have regard to the intellectual and emotional maturity of the young person at the time of the offence (SSC, 2021b). The guidelines also identify that rehabilitation should be a primary consideration in the sentencing of any person who was under 25 at the time of their guilty plea or when a finding of guilt was made against them, offering an opportunity to change and move away from past offending (SSC, 2021b). By providing a holistic assessment of an individual's circumstances, levels of risk, and the range of disposals available to identify and tackle issues relating to offending behaviours and promote rehabilitation, a JSWR is an invaluable component part when sentencing a young person.

The consultation also notes that the ability of the prison estate to provide rehabilitative support has been seriously impacted by current conditions. As recognised by the Scottish Sentencing and Penal Policy Commission (SSPPC), this has meant an increase in hours spent by prisoners in their cells, thus limiting their ability to engage in rehabilitative courses, and worsening conditions have compounded risks, with reduced outcomes upon release, negatively impacting re-offending (SSPPC, 2026).

We suggest therefore that when a custodial sentence is being considered there should be changes made to the planning and assessment process that would allow the judiciary to have a realistic picture of what rehabilitative element a custodial sentence would have in the immediate, medium and longer term. At present the JSWR does this for community disposals but there is no mechanism for social workers completing JSWR reports to establish what the prison estate can offer which means sentencing decisions are being made without full consideration of rehabilitation, as required by the Sentencing Young People Guideline (SSC, 2021b). It is more common for workers to approach secure care centres which care for under 18s serving custodial sentences to gather this information, but making information for both more routinely accessible would be of use. Greater transparency on waiting times for all rehabilitative courses and activities within each prison would be of benefit and would help inform the decision of whether a robust community sentence would be more favourable in terms of both rehabilitation and public protection.

As is highlighted in the Sentencing Young People Guideline and the Scottish Government's JSW Guidance for JSWR and Court Based JSW Services 2026, child and human rights must be considered during sentencing and a JSWR is crucial for bringing this to the fore. UNCRC Article 37 states that deprivation of liberty for a child should always be a last resort and for the shortest period of time. Article 40 of the UNCRC, as elaborated on by General comment No. 24 (2019) on children's rights in the justice system, promotes the reintegration

Collaborating for rights-respecting justice

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

of children into society and the JSWR is well placed to discuss how this can be achieved for under 18s.

Additionally, under the UNCRC, children's views must also be sought and considered (Article 12), along with their best interests (Article 3), in any decision impacting them. This applies to all children impacted by a sentencing decision, particularly when custody is being considered. A JSWR allows for assessment of the person's circumstances and the impact of any disposal decision on children to be considered, in accordance with UNCRC.

Question 2 – Please share any views you have regarding the most effective ways to improve judicial and public confidence in community sentencing options - including their content, local availability and outcomes.

Despite there being a very strong argument in favour of transitioning to more community-based alternatives, we recognise the importance of ensuring both judicial and public confidence is maintained and increased where possible.

Improving public understanding for what community sentencing means and the evidence around its effectiveness is vital. As a useful starting point, recent research identified a majority of the Scottish public believe both that they have little to no understanding of sentencing and that at the same time sentencing is too lenient (Hockaday et al 2025). Other findings showed a close divide between opinions on the effectiveness of prison or community sentences to prevent reoffending, whilst participants viewed the former as more effective at protecting the public and delivering punishment, and identified the latter as more conducive to rehabilitation (Hockaday et al, 2025). However, whilst public opinion surveys indicate that a punitive approach can be popular, research has shown that once understanding has increased, through the use of scientific evidence, this view is softened (Rose et al, 2024). As highlighted by the consultation, there is a strong case for community alternatives, including reduced reoffending rates and greater access to rehabilitation support, as well as the wider societal and financial savings which stems from this. This is particularly the case for children and young people, given their ongoing stages of neuro and social development, alongside the need for individualised responses, given the overrepresentation of issues such as trauma and adverse childhood experiences.

A national communications strategy would be of particular benefit here to communicate the process around, and the merits of, community sentences. This could include the use of case studies. It is also vital to ensure that victims always receive clear, accessible information, with opportunities to participate where possible, and receive notifications and updates in a manner of their choosing.

However, to guarantee success in maintaining and increasing public and judicial confidence, adequate investment will also be required to be made in community justice infrastructure. Social Work Scotland's Setting the Bar report identified that for justice social workers, the 'indicative optimum' was between 20-25 cases (Miller and Barrie, 2022) and estimates by COSLA have the cost of supporting 1,000 people over a one-year period to be around £18m

Collaborating for rights-respecting justice

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

(COSLA, 2026). Current funding and implementation challenges must be addressed and through investment in robust, nationally available supports and resources to scaffold community disposals and ensure national consistency, confidence would be enhanced.

Findings from the Scottish Sentencing Council (2021) highlighted that community sentences, where appropriate, were commonly viewed by sentencers as providing a greater chance of rehabilitation and a more cost-effective alternative to prison. The survey did highlight areas for improvement, such as ensuring *all sentencers* have full awareness of what is available as part of community sentences, with recommendations that a database of resources be available. The paper also noted that one of the greatest challenges to judicial confidence in community-based disposals was concerns round limitations of resources to support their management and delivery (SSC, 2021a). This highlights the importance in prioritising and increasing spending on community-based supports such as justice social work and the availability of the biopsychosocial supports which personalised community disposals rely on.

Management of the process should also be of crucial consideration. Whilst we recognised the rationale behind the recent emergency early release of prisoners in Scotland, we believe that a more managed process of reform to reduce the prison population would be more likely to maintain public, and judicial, support. Releasing prisoners in a crisis situation, particularly when the media can identify some of those individuals, is likely to decrease public confidence.

Question 3 – Please share any views you have on the proposal that the legislative test in the presumption against short sentences should be strengthened.

It is difficult to overestimate the negative impact of short sentences for everyone involved - the individual, victims, communities and society. Whilst short-term sentences may fulfil the purposes of punishment and expression of disapproval of the person's behaviour, they fail to support the other aspects of sentencing: rehabilitation, protection of the public, and the opportunity to make amends (SSC, 2018). This is particularly the case given the impact overcrowding is having on the delivery of rehabilitative courses. As a result and given the legal position on prisoner release as set out by the Commission, we agree with the proposal that the legislative test in the presumption against short sentences should be strengthened. This will likely have an acute impact on children and young people as they are likely to have disposals for summary offences, be remanded, and made subject to short sentences (Scottish Sentencing Council, 2025; Lightowler, 2020; Scottish Government, 2025).

For under 18s we believe this should only be the interim position until referrals to the Scottish Children's Reporter Administration (SCRA) for all under 18s comes into force. At that point we believe that children should be removed from all summary cases, in keeping with the UNCRC, particularly article 37 around deprivation of liberty only as a last resort and for the shortest time possible.

Collaborating for rights-respecting justice

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

Question 4 – What do you consider would be the most effective way to strengthen the legislative test?

We support the full strengthening of the legislative test as outlined by the Commission to extend the presumption to 24 months and, when passing a sentence for a shorter period, the judiciary should provide a written note of all the available alternatives considered and why no other method of dealing with that particular individual was deemed appropriate.

This would be of particular benefit for children and young people. There is growing recognition of the need for a developmental approach to 18-25 year olds, given their continued neurodevelopment and the impact this can have on decision-making, including risk taking. The Scottish Sentencing Guidelines recognises that rehabilitation must be of primary consideration when sentencing young people, it is crucial to note that time detained is felt more acutely for children and young people as this represents a greater proportion of their life (SSC, 2021; Lightowler, 2020). Given the statistics detailed by the Commission this would also impact positively on women and their children. That said, as mentioned in the previous answer, we would hope that when referrals to SCRA for all under 18s come into force, that children should be removed from summary cases.

This should, however, be an initial step towards full implementation of the Commission's evidence-based proposed prohibition against sentences of less than 12 months, except under exceptional circumstances. We would welcome the opportunity for further engagement in setting out what exceptional circumstances should constitute. We deem having such exceptional circumstances outlined in legislation would assist understanding, transparency and the opportunity for legal challenge when these have not been upheld.

The experience of PASS thus far suggests legislative change on its own is unlikely to be enough. The Commission highlighted the wider factors that impact on the continued use of short-term sentences which require attention in tandem to legislative change. These include judicial training and enhanced understanding of what community-based sentences can afford alongside the limitations of custodial sentences in addressing social problems and rehabilitation. As set out in our response to question two, confidence needs to be built in respect of community-based sentences, such as through a national communications strategy and sharing positive examples, alongside sufficient resourcing to ensure delivery.

Question 5 – Please share any views you have on the proposal that when sentencing a person to a short sentence, sentencers should have an obligation to set out in writing the specific details regarding what other options have been considered, and why they concluded these would not have been suitable.

CYCJ believe this proposed obligation could deliver several important outcomes. It could help to promote full consideration of the range of options available and enhance transparency of the process, which could increase the knowledge and understanding of the individual and victim involved, alongside the wider community. This obligation could also promote a sharper focus on the person's current offence and circumstances, rather than as

Collaborating for rights-respecting justice

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

the Commission highlighted the perception that this was influenced more by previous custodial sentences. This is particularly important for children and young people given their ongoing neuro and social development, and greater ability to move away from offending behaviour. Learning for community justice partners will also be important but resource will be required here to support service development where required.

Robust monitoring and analysis of written decisions would provide crucial local and national data and should be fully considered ahead of legislative change commencing. This should also consider alignment with how other decisions are recorded and monitored, such as departure from the sentencing guidelines for young people.

Question 6 - Do you have any other comments in relation to the potential impact on victims, equality or human rights of these measures to further strengthen and support the use of the presumption against short sentences?

CYCJ is supportive of stronger safeguards regarding the use of short custodial sentences and clearer justification where custody is imposed. In practice, a well-resourced community response is often more effective in addressing risk of harm, supporting positive change and reducing harmful behaviour, and improving outcomes for victims.

We are supportive of the mandatory use of a justice social work report (JSWR) for all individuals who were under 26 at the time of their offence but recognise that as things currently stand, there may be unintended consequences of delay and remand in specifying a JSWR in every case. We are interested in possible routes to mitigate or avoid this, such as the use of short, abridged reports from court social work, use of corroborated oral updates, and developing proportionate shared service information processes. This could utilise learning from the development of bail supervision infrastructure and processes.

The primary route for all children should be the children's hearing system, held safely in their community, and through a child protection lens that is firmly located within GIRFEC, and UNCRC. This is in keeping with child-centred justice, which places the child at the heart of a multi-agency response, seeking to address underlying unmet needs (Foussard, Dyer and Davidson, 2026). Recognising that contact with justice systems can expose a child to a variety of harms, including increasing their chances of reoffending, this approach does not simply seek to make justice systems more child friendly. Instead, it shifts the focus from an institutional response to one geared around a child's rights, developmental capacities and vulnerabilities (Foussard et al, 2026). This requires the court to work within children's frameworks as opposed to putting the responsibility on children to adapt to an adult environment. Court processes and environments are not child centred and the provision of additional social work reports, or other adaptations to current environments and processes, while beneficial, will not change this fundamentally. Whilst children remain in this process, then any such reports should be aligned with the child's plan, and be holistic, developmentally informed, reflective of communication style and needs, and inclusive of important adults in the child's life who will have a significant role in the implementation of the plan. Furthermore, this child centred approach must be implemented and accessible for all

Collaborating for rights-respecting justice

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

children and not dependent on whether they have experienced trauma, care experience or another identified adversity, in line with the UN Committee on the Rights of the Child General Comment no. 20 (2016).

This consideration of a developmental understanding should apply to all individuals in the court system particularly given what is understood in terms of over-representation of adults with care experience, histories of abuse, acquired brain injuries, learning difficulties and neurodivergent individuals within custodial environments. This reflects a human rights-based approach as stated within the Scottish Government's Vision for Justice 2024-26 (Scottish Government, 2024). It also increases the opportunity for effective needs led intervention that can be tailored to the individual, recognising that similar needs do not always require identical responses.

These proposals should also be considered alongside the wider programme of reform for victim's rights in Scotland. Any expansion of community-based responses must strengthen the mechanisms that ensure victims receive timely information, understand the nature and purpose of disposals, have opportunities to communicate safety concerns, and can access appropriate support throughout the justice process. Particular consideration should be given to child victims, victims of domestic abuse, coercive control and other forms of interpersonal harm, recognising individual needs and preferences.

Section 2 - Extend the presumption against short sentences from 12 to 24 months

Question 7: Please share any views you have on the proposal that the presumption against short periods of imprisonment of 12 months or less be extended to 24 months or less.

CYCJ are supportive of the extension of PASS to 24 months as a proposal. We do note, however, that we believe this will only be successful if it is accompanied by more integrated and responsive services. Investment is required for all partners, including for integral third sector organisations, to provide the multi-agency, wrap-around support. A more joined up approach reflects the wider Public Service Reform agenda and would help strengthen the scaffolding around individuals, ensuring access to the right support at the right time. Evidence from children in conflict with the law illustrates the value of intensive multi-disciplinary teams in addressing underlying needs, reducing offending behaviour by and supporting development of skills and capacity to live more positive lives. Extending PASS should therefore be accompanied by reforms that improve collaboration, information sharing and access to support across the full continuum of services, rather than relying on justice as a potential access or trigger point.

Extending PASS to 24 months could also align with the vision set out in Reimagining Secure Care (RSC) (CYCJ, 2024a). The RSC vision highlights the potential of flexible, responsive and community-based support models. There is an opportunity to use the implementation of PASS 24 to support development of similar integrated approaches for older young people and adults, creating services that are more responsive to changing needs and levels of harm

Collaborating for rights-respecting justice

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

whilst reducing reliance on custody. This would reflect both a whole system approach across the life course and getting it right for everybody to create safer communities, reduce victims and re-victimisation and enable all individuals to contribute to society more positively.

As noted previously, steps are needed to overcome the challenges over the current implementation of PASS. Alongside this, safeguards will need to be in place to prevent up-tariffing, where a court deems it proportionate and necessary to impose a custodial sentence, and arrive at a longer sentence than would have been the outcome before.

Question 8 – Please share any views you have on the proposal that if the presumption against short sentences is extended to 24 months or less, summary sentencing powers should also be increased so that the maximum custodial sentence is also 24 months.

We do not see an automatic connection between these two proposals. Increasing summary powers could allow cases to be resolved quicker, reducing uncertainty for victims and witnesses and potentially reducing some periods spent on remand. However, these potential benefits must be weighed against the significance of allowing a sheriff sitting without a jury to impose up to two years imprisonment.

Increasing summary sentencing powers could lead to unintended consequences, such as sentence inflation or encouraging a transfer of more serious cases to summary from solemn procedure. It is also unclear what the impact would be on public confidence, victim experience and procedural fairness. We are concerned that these changes could challenge the presumption of children being allowed to pre-record their evidence, in line with the Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019. Currently this is only available for some solemn procedures.

Question 9 – Do you have any other comments in relation to the potential impact on victims, equality or human rights of the proposals related to extending the Presumption Against Short Sentences (PASS) from 12 to 24 months?

An extension of PASS has the potential to support better outcomes by reducing the use of short custodial sentences and, therefore, avoiding the negative consequences associated with them. However, doing so will raise separate equality and human rights considerations. Article 6 of the European Convention on Human Rights (ECHR) concerns procedural fairness and there should be a procedural rights analysis and case modelling process undertaken to provide greater understanding of the impact of such proposals.

Specific consideration must be given to the impact on children and young people. The focus should remain on avoiding criminalisation and making sure children are dealt with through child centred processes. Changes designed to improve efficiency should not result in more children being drawn into adult court processes, or in negative impacts on child victims/witnesses.

Collaborating for rights-respecting justice

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

Prior to any change being introduced, the Scottish Government should publish a full Equality Impact Assessment and Child Rights and Wellbeing Impact Assessment, including consideration of victim experience, sentencing practice and any unintended consequences. In accordance with best practice and frameworks such as the UNCRC, children and young people should participate meaningfully in that work.

Section 3 - Enhance and strengthen community sentences

Question 10 – Please share any views you have on how effective CPOs are in their current form and whether the legislation underpinning them is appropriate.

We do not believe CPOs to be effective for both children under 18 and young people 18- to 25. The rigid nature of the supervision can be too onerous for a child given their developmental capacity, including the requirements to complete unpaid work and engage in planned interventions. The majority of children in the justice system will have intersecting vulnerabilities such as poverty, neurodevelopmental conditions, poor mental health, trauma and experience of care. Significant concessions and supports are usually required in order to avoid breach, which can then risk undermining the credibility of the order. It feels very much that children are being placed into an adult oriented system that is not designed to meet their needs and promote healthy development.

In addition, given improved understanding of the needs and developing capacities of 18-25 year olds in the justice system, many of the above issues are becoming increasingly pertinent to that older age group as well. Indeed, recommendation 3.1 of the Commission's Report is to extend the Whole System Approach to under 25s. The Scottish Government's Youth Justice Vision and Priorities 2024-26 set out, where possible and appropriate, to extend this to those under 26 (Scottish Government, 2024). Findings from CYCJ's 2024 survey of local authorities, however, found significant barriers in the application of this to those under 26, with resources and finance being the top concerns (CYCJ, 2024b). Concerted work is needed to overcome these challenges, but evidence shows this preventative approach to be the most effective strategy for discouraging reoffending and addressing unmet need.

Further development of the Whole System Approach is important in order to reduce the numbers of children being placed on a CPO in the first place. This should include:

- Full implementation of the Children (Care & Justice) Act 2024 which will require all under 18s to be jointly reported to COPFS and SCRA. This should mean that more 16-17 year olds in conflict with the law are dealt with via the Children's Hearing system and avoid court altogether.
- Diversion from prosecution should still be a consideration for all under 18s where referral to SCRA is deemed not suitable.
- Complete recognition and protection of the rights of children in the court setting.
- The Sentencing guidelines for young people should continue to be the guiding framework for the courts, not only to minimise the use of custody, but to also consider

Collaborating for rights-respecting justice

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

whether a CPO is the most effective means to promote rehabilitation, taking full account of maturity and capacity.

- Courts should continue to actively consider Structured deferred sentences, particularly for those under the age of 26, as being a more effective disposal. Evidence from the Glasgow Youth Court identifies successful outcomes for this cohort (CYCJ 2023).

Question 11 - To what extent do you think the current framework allows sufficient flexibility to tailor CPOs to individual circumstances, including the roles of both sentencers and justice social workers?

Whilst there is some flexibility to tailor CPOs, a more individualised approach to children and young people would deliver better outcomes, including reducing reoffending. The relatively rigid expectations around regular office-based appointments can present a real challenge for children and young people. Often a big issue is ensuring timely access to the right supports that rely on services outside of social work, such as mental health, substance use, employability and housing. These services generally operate on a strict location based appointment system, which for all the above reasons children and young people struggle to comply with, often leading to a rejection of the service.

Unpaid work is probably the CPO condition that is most challenging in terms of flexibility, particularly when it comes to young people, and is in our experience the most common trigger to breach proceedings. During covid lockdowns there was a high degree of creativity and flexibility applied to this area, much of which has since been lost. We would advocate for a more flexible approach to unpaid work for children and young people that recognises them as a distinct group requiring more creative skills based opportunities, though still with a credible element of giving something back to the community. This flexible approach would allow for consideration of an individual's speech, language and communication needs, alongside any neurodevelopmental condition, which may impact factors such as receiving and recalling information, and timekeeping. Taking a restorative and relational approach which seeks to better meet the needs of this cohort would both reduce the risk of further offending, including allowing for a healthier development of empathy and responsibility.

In terms of the sentencer's role, other than to determine the length of the order, the conditions to attach, and frequency of review, there is little in the way of discretion. The Sentencing guidelines require rehabilitation to be the primary consideration, but when it comes to imposing a CPO, it does not create additional flexibility (SSC, 2021b). A sentencer can of course adopt a more child/young person-centred approach when it comes to CPO reviews, and when dealing with a breach of a CPO, taking into account individual factors when determining what action to take. We are aware of some good examples of sentencers showing genuine personal interest in the progress of a child's CPO. Youth courts are of course a means of developing more bespoke approaches to sentencing.

Collaborating for rights-respecting justice

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

Question 12 – Please share any views you have on how the current CPO legislative framework could be improved to ensure CPOs are a credible alternative to custodial sentences.

You may wish to consider:

- removing any unnecessary or ineffective requirements.
- adding new or revised requirements.
- addressing practical or legislative barriers to the use of existing requirements.
- any other changes.

We would not advocate for the use of any conduct or treatment requirements for children and young people. They are clearly not the most ethical and effective means by which to promote recovery, healthy development, and responsibility. We would not suggest any new or revised requirements.

We would advocate for greater legislative flexibility around the ‘other activity’ option as part of an unpaid work condition for those under 26. If a greater proportion of such an order could be used to encourage a young person into further education/vocational training, for example, then this would in our view be a more constructive use of time in promoting development.

Question 13 – Please share any views you have on the extent to which CPOs provide sufficient support to address the underlying causes of offending behaviour and whether there are any barriers to ensuring support needs are met.

We do not believe that CPOs provide the necessary support to address the underlying needs of children and young people in conflict with the law. Research has identified that children and young people who come into conflict with the law are overwhelmingly from disadvantaged backgrounds, many of whom have suffered adverse childhood experiences (SCRA, 2025). The Independent Care Review also identified how children with care experience were disproportionately criminalised and over-represented in the criminal justice system (ICR, 2020). The system overall typically fails to meet the needs of this cohort at each step along the process, from arrest right through to the termination of any order imposed. A CPO in itself is not a support service. The supervision element ensures that a social worker assesses needs and develops an intervention plan but they have limited time to spend directly with an offender, so this relies on a degree of agency and maturity on the part of the person to navigate and access a complex system of wider support. This is not a child-centred system and the rigid/punitive context of a CPO only works against the efforts by social work and others to engage meaningfully with them.

Too often services are predicated on a person needing to be on some form of statutory order before they are eligible for getting the support they need. The Whole System Approach seeks to dismantle that approach, using GIRFEC principles, to ensure that children and young people are more likely to get the help they need at the right time, thus preventing an

Collaborating for rights-respecting justice

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

escalation further into the system. For this reason, CYCJ would always advocate for more child-centred approaches to offending behaviour such as the Children's Hearing system, Diversion, and Structured Deferred Sentences.

Question 14 – Please share any views you have on the introduction of an Enhanced Combination Order model in Scotland.

In your response, please consider which elements (for example, psychological assessment or restorative approaches) would be most valuable, and any potential benefits or challenges.

As outlined in response to the previous question, we question the merit of an approach that requires an individual to be on some form of enhanced statutory order before they receive the necessary support. We know that children and young people in the justice system are not having their rights upheld due to a lack of services when they most need them, including speech, language and communication needs, neurodiversity, mental health, and psychological assessments. Failing to meet these needs impacts on a young person's ability to understand what is happening, to form relevant views, and to properly have these and their needs considered when decisions are being made about them. If this support was provided at the start of contact with the justice system, we believe that enhanced orders would not be necessary further down the line.

We also would advocate for Scotland to maintain a clear distinction as to the context in which restorative practices should be delivered. In particular we would not wish to see restorative justice being mandated by the court. This would remove the essential voluntary element of RJ, which must be protected in order to ensure that RJ remains a victim-centred approach.

Question 15 – Please share any views you have on the proposal to amend how CPOs are set out in law, so they are clearly framed as a sentence that can be used where justice social work intervention could address the underlying causes of offending behaviour.

CYCJ is strongly opposed to the notion of expanding the use of CPOs 'downwards' in order to draw more children and young people into a system that, even though well intentioned, is never designed to meet their needs. As set out in our response to question 10, the Whole System Approach must be applied with greater urgency and consistency in order to reduce contact with the formal justice system as much as possible for children and young people. Access to child-centred, universal and community-based services should be the overriding aim of the system and relying on a CPO to provide this kind of support is an indication of a failing system. On that basis, we would also not advocate for CPOs to be made potentially longer, or have higher levels of punitive conditions attached.

Question 16 – Please share any views you have on what changes, if any, would be required to make CPOs suitable and effective for more serious offending behaviour.

Collaborating for rights-respecting justice

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

Following on from earlier responses, a CPO is only as effective as the services that are delivered through it. Evidenced based approaches to responding to serious harm by children and young people prioritise genuine multi-agency care and risk management procedures, using a developmentally informed formulation, with meaningful involvement of the child and their family (Scottish Government, 2021). It should be rooted in child protection, and take a holistic approach to meeting identified needs, building on strengths, and promoting reintegration as much as possible. None of this approach is dependent on a child or young person being subject to a CPO, and we do not see the need to reform existing legislation or guidance in order for the best practice approach to be consistently implemented.

Question 17 – Please share any views you have on the proposal that there should be more opportunities to incentivise good behaviour on CPOs through reductions in, or early discharge from, unpaid work or supervision requirements.

Please give reasons for your answer including any views for how this could be achieved in practice, as well as any alternative suggestions to enable incentivisation of good behaviour on CPOs.

We agree that there is a chronic under-utilisation of the early discharge mechanism as an incentive to compliance in general. As identified previously, incentivising compliance for children and young people can be problematic, given their ongoing social and neurodevelopment and the impact that has on decision making and compliance. Nevertheless, such an option must be equally available to all age groups, and further thought should be given as to how this could be adapted to provide an achievable incentive to young people.

Question 18 – What changes, if any, do you believe are needed to improve breach processes for CPOs to ensure timely, proportionate, and consistent responses to non-compliance?

Given the earlier responses setting out all the reasons why children and young people often struggle to comply with a CPO, we would advocate for a more effective approach to the promotion of compliance with the under 26 cohort. The foundation for this is a good quality, developmentally informed, assessment which clearly sets out the strengths of the young person, factors which might undermine their ability to comply, and measures which could be taken to support compliance. That should inform a more individualised approach to determining what compliance should look like in a particular case. If breach proceedings are required, then particularly for young people this should be quick and efficient in order to allow for supports to be as uninterrupted as possible.

Question 19 – Please share any views you have on retaining Drug Treatment and Testing Orders as a distinct community disposal for addressing substance-related offending.

Outside our remit – didn't answer

Question 20 – Do you have any other comments in relation to the potential impact on victims, equality or human rights of these proposals to enhance and strengthen community sentences?

It is important that increasing the custody threshold does not just increase the threshold for community services or result in longer and more demanding CPOs. Whilst recognising there are several purposes of sentencing, serious harm should not necessarily mean adding requirements unless they serve a useful purpose.

The seriousness of the behaviour and its impact on victims are critical factors to consider but they should not determine access to support. Any requirements within a CPO must reflect assessed need, developmental capacity and potential for harm. Victim impact must be understood across different types of harm as well as the impact of cumulative harm rather than primarily being measured through physical injury. Thus, neither those harmed or those who cause harm should have to reach a higher threshold of seriousness before receiving appropriate help.

This risks services being prioritised for people on court orders, with the ripple effect of thresholds for support for everyone else then being raised. This can have the unintended impact of criminalisation becoming the route to help as stretched services are unable to provide support until the situation becomes serious enough to bring people into conflict with the law.

Certain groups are over-represented in the justice system, and their experiences may make requirements harder to comply with, potentially resulting in a breach, further marginalising them in the process. This may be more reflective of structural barriers rather than unwillingness to engage.

Section 4 - Electronic monitoring

Question 21 – Please share any views you have on the proposal that there should be a formal mechanism to enable bail cases with an electronic monitoring requirement to be brought back before the court or dealt with administratively in chambers. This would be used when administrative issues arise that may prevent the order being monitored, and currently require judicial consideration, but where there may be no evidence of criminality.

The introduction of a mechanism to quickly deal with any issues that arise during electronically monitored bail would be welcomed. Procedural or administrative difficulties should not automatically escalate to arrest where there is no evidence of increased risk of harm. This answer aligns with our response to question 20 and we would suggest this is an opportunity to create streamlined processes which could help reduce court and professional

Collaborating for rights-respecting justice

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

time needed, as well as being beneficial for individuals involved, namely victims and those subject to such measures.

Individuals should be informed of the issue, given an opportunity to respond, and supported to resolve difficulties. Courts should retain oversight of any changes that would increase restrictions or have implications for victim safety. The electronic monitoring provider, justice social work and the court should have clear duties to identify and resolve practical problems.

Question 22 – Please share any views you have on the proposal that there should be a power of arrest for breaching the order or licence relating to an exclusion zone?

There may be circumstances where a rapid response is required to protect an individual or specific group of people from harm, but it is disproportionate to assume that an electronic alert of itself should automatically result in arrest. It must be understood within a wider context of the individual concerned, such as the level of risk and harm, and any immediate concerns over victim safety.

There is a danger of framing the power of arrest as the main component of victim safety planning and creating a false expectation that every approach can be prevented, as well as placing responsibility on the victim to monitor for alerts. Electronic monitoring is an additional tool as part of victim safety planning that requires wider scaffolding such as a live safety plan, a named contact for the victim, and an agreed notification process.

For a child and young person, the experience of being arrested and taken to police custody can cause significant harm (Vaswani et al, 2024). Thus, processes should ensure that the solicitor and relevant social work service are notified, and that the child is provided with age-appropriate explanations and suitable rights-respecting, trauma-informed responses such as the use of alternatives to police custody where detention is deemed necessary.

Question 23 – Please share any views you have on the proposal that there should be other improvements to the system of electronic monitoring either to help facilitate any of the other reforms in this paper, or more broadly.

CYCJ's position on the use of electronic monitoring (EM) is that it must never be seen as a standalone intervention. It can contribute to the arrangements that allow people to remain safely in the community, but its effectiveness is dependent on the quality of support around it. Without appropriate supports alongside it, there is a risk it can widen control, create new breach routes and move punishment into the home.

EM has applicability across the consultation's proposals if used proportionately with meaningful supports and with updated procedures to enable breaches and non-compliance to be swiftly understood and responded to. It could support flexible responses where changing circumstances, risk or support needs require temporary adjustment to arrangements.

Collaborating for rights-respecting justice

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

Question 24 – Do you have any other comments in relation to the potential impact of these electronic monitoring proposals on victims, equality or human rights?

Elsewhere in our response we have highlighted various equality, human rights, and victim related concerns which would apply to these proposed changes. In relation to electronic monitoring specifically, we would highlight that being less restrictive than custody does not automatically make electronic monitoring necessary or proportionate. It still significantly restricts privacy, family life, freedom of movement, and should not be used where a less restrictive measure would be sufficient.

As noted elsewhere, an individual's circumstances need to be considered, including the impact of structural issues such as inequality and experiences of racism and discrimination. Electronic monitoring is easier to manage, for example, for someone with stable housing, a safe home, predictable routines, and a general level of trust in authorities. A lack of suitable housing or support must not lead to someone being remanded or imprisoned and previous negative experiences and other reasons for potential non-compliance should be considered through a trauma-informed, rights-respecting lens.

For victims, exclusion zones and alerts may offer some reassurance but need to be matched with rigorous planning, specialist support, and a detailed response procedure when an alert is triggered. This is especially important where there are concerns or evidence of inter-personal abuse, and coercive control.

As has been stated throughout this consultation, any use of electronic monitoring with a child must be fully compliant with the UNCRC, including consideration of their evolving capacities and right to participation, alongside providing the required support and scaffolding for the child to progress.

Clear safeguards are also needed around the collection, use and retention of location data, including access rights and the ability to challenge inaccurate information.

Section 5 - Bail and remand

Question 25 – Please share any views you have on the proposal that people should not be remanded to custody unless they have a reasonable prospect of a custodial sentence of 24 months or more?

Please give reasons for your answer, including whether there are any circumstances in which remand should remain available even where such a sentence is unlikely.

When considered in terms of rights, it is difficult to justify depriving an individual of their liberty when it is unlikely that they will receive a custodial sentence if convicted. As noted by the Commission in their report, 4768 remand journeys in 2024-2025 ended in departure from custody (SSPPC, 2026). We believe, therefore, a threshold tied to the likely disposal would strengthen proportionality and reduce avoidable detention. Remand below the proposed

Collaborating for rights-respecting justice

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

PASS 24months should remain possible only where the court identifies a clear, evidenced and substantial threat of harm that cannot be managed by any other less restrictive measures.

However, changing the legal threshold must be supported by timely bail assessments and consistent access across Scotland to supervision, safe accommodation, and practical support to attend court and comply with proportionate, understood, and realistic conditions. It is critical that services need to be developed to meet the needs of those who need them rather than for needs of the system.

In accordance with article 37 of the UNCRC, deprivation of liberty must remain the last resort and for the shortest appropriate time for children. Bail assessments and conditions must be developmentally appropriate with support available for the child and their family or carers to understand and engage with any conditions. Lack of suitable care, accommodation or adult support should never become the reason a child is detained. All of this should be accessible through the Whole System Approach. However, this remains inconsistent across Scotland, with some children still forced through adult processes and procedures.

Question 26 – Do you have any other comments in relation to the potential impact of this bail and remand proposal on victims, equality or human rights?

Subject to the limited exceptions noted in our response to question 25, this proposal would more closely align the use of remand with a human rights-based justice system. Remand removes a person's liberty before guilt has been determined and should not be used where the likely outcome of the case would not justify that level of restriction.

This proposal also creates the opportunity to apply more effectively the principles of whole-system working across bail and remand. That means more timely assessment, sharing information clearly and appropriately, with proportionate conditions, alongside practical and relational support, with services working together to address what may prevent someone attending court or complying with bail. It must not, however, result in people becoming subject to more restrictive conditions than necessary. Equity in this context would mean that the appropriate support each individual requires is provided, not that everyone is given the same support.

Gender responsive services for women must remain, and specialist responses for children and young people. However, the population affected by any changes will overwhelmingly be male and their over representation should prompt closer consideration of how expectations of masculinity, help-seeking, trauma, mental health, substance use, relationships and fatherhood may affect engagement, compliance and risk of harm.

Remand is not a sentence, and it must not be a substitute for effective victim support or community safety actions as highlighted within earlier question responses. Where remand is considered necessary, the court should articulate the specific and current risk of harm explaining why it is not manageable through bail conditions and support, with any such decision being reviewed at regular intervals. Victims' views should inform the assessments

Collaborating for rights-respecting justice

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

with victims' rights and that of an accused individual not placed as oppositional to each other.

Victims must also receive timely information regarding conditions, including what would happen following a breach. It is also crucial that they should not become responsible for monitoring compliance and the impact of coercive control, grooming and fear of harm must be actively considered and understood within the bail deliberations. Bail conditions must also not result in a victim or child having to adapt their lives or move accommodation. Measures of the impact of the proposed changes upon victims should include repeat harm, unwanted contact, displacement from home or everyday activities, and whether victims felt supported and informed.

There is also a risk of existing inequalities being carried forward into the proposed tests for remand or bail. Previous convictions and earlier contact with the justice system may influence whether an individual is considered likely to receive custody of 24 months or more. This must be scrutinised, especially where some groups and communities are already drawn into the justice system disproportionately. The Independent Care Review, for example, identified how children with care experience were disproportionately criminalised and over-represented in the criminal justice system (ICR, 2020). Alongside this, the Coalition for Racial Equality and Rights (CRER) recently noted an overrepresentation of black and minority ethnic children and young people in those stopped by the police in Scotland (CRER, 2025).

Part 2: Prisoner release arrangements

Section 6 – Automatic early release for long term prisoners

Question 27 – Please share any views you have on the proposal that the automatic release point for long-term prisoners (excluding those on extended sentences) should be amended to the two thirds point. Please include what the potential impacts could be on reoffending and rehabilitation into the community.

Returning the automatic release date to the two thirds point for long term sentences would provide a longer period of supported supervised return to their communities, on the presumption that meaningful support would be made available. The proposal will increase demand on already stretched community-based services. As noted in the consultation, had the change taken place on the 27th of February 2026, the consultation estimates this would have resulted in approximately 328 immediate releases and an 11% reduction in the long-term prisoner population. As noted elsewhere we welcome many of these proposals, but state that they must be accompanied by sufficient investment.

The level of support must be proportionate to the assessed needs and identified potential for harm. However as noted earlier, there are long standing issues around issues such as access to housing, mental health, substance misuse and alcohol support services, also

family supports, as well as access to training and employment opportunities. Longer periods on licence will be ineffective if the services required by assessment remain inaccessible.

This is particularly important for those who may have spent significant periods in custody, including developmentally important years. This additional period of supervision could provide valuable scaffolding. Whereas, for others it may, without the right supports, become a longer period of surveillance and increase the potential for recall. Recall, as with bail conditions and CPOs, should not result from unrealistic conditions, communication needs or failures by services to provide what was agreed.

The shifting demographics and increasing cohort of those involved in serious and organised crime, trafficking and exploitation, needs acknowledged in the response provided. A standard focussed intervention may not be sufficient, for example, for an individual who had been criminally exploited a child. Custody and community cannot be seen as separate environments, but part of the same response and a person's justice journey.

Question 28 – Please share any views you have on the proposal that if amending the automatic release point for long-term prisoners to the two-thirds point, those subject to extended sentences should be included.

CYCJ are not opposed in principle to the proposal but believe that further understanding is required to make a more informed decision. Extended sentences were previously under the same legislative procedures for parole prior to the 2015 Act coming into force, and more information on how this was managed, including incidences of recall and further serious harm, would be helpful. Alongside this, a greater understanding would be welcome as to whether the level of potential harm has increased proportionate to the doubling of the number of extended sentences since 2021.

Section 7: Short-term prisoner definition

Question 29 – Please share any views you have on the proposal to amend the definition of short-term prisoners from “less than four years” to “less than five years”.

Extending the definition to less than five years would bring Scotland more in line with the Council of Europe and other European jurisdictions in terms of a definitive time period for short-term prisoners. However, Scotland's automatic release at 30% for most short-term sentences without mandatory supervision seems comparatively unusual across European contexts and would place Scotland out of step with counterparts. We recognise that there are measures that can be added to short term-sentences to provide a period of mandatory supervision such as a Supervised Release Order (SRO) for a period of up to 12months post release and believe that each case will require an individualised response as appropriate to level of risk.

As reiterated throughout this consultation response, children and young people require developmentally informed assessment and intervention. Recognising developmental capacity and potential for change does not minimise the harm experienced by victims, but instead seeks to reduce the likelihood of further victims.

We did not respond to questions 30 and 31

References

Children and Young People's Centre for Justice (CYCJ) (2023). Youth Court Blueprint. Available at: <https://www.cycj.org.uk/wp-content/uploads/2023/11/CYCJ-Youth-Court-Blueprint-3.pdf>

Children and Young People's Centre for Justice (CYCJ) (2024a). Reimagining Secure Care. Available at: <https://www.cycj.org.uk/resource/reimagining-secure-care-a-vision-for-the-future/>

Children and Young People's Centre for Justice (CYCJ) (2024b). Advancing the Whole System Approach. Local authority survey 2024. Available at: <https://www.cycj.org.uk/wp-content/uploads/2025/01/WSA-survey-report-Dec-2024.pdf>

Children and Young People's Centre for Justice (CYCJ) (2025). Ending the overcriminalisation of children and young people. Available at: [Policy Paper - Ending the overcriminalisation of children and young people in Scotland - Children and Young People's Centre for Justice](#)

Coalition for Racial Equality and Rights (CRER), (2025). Racial Inequality in Scotland: State of the Nation - Volume 1. CRER. Available at: <https://www.crer.org.uk/crer-publications>

COSLA (2026). Local Government Statement on the Sentencing and Penal Policy Commission Report https://www.cosla.gov.uk/_data/assets/pdf_file/0032/75488/Local-Government-Statement-on-the-Sentencing-and-Penal-Policy-Commission-Report.pdf

Council of Europe. European Convention on Human Rights (ECHR). Available here: https://www.echr.coe.int/documents/d/echr/Convention_ENG

Dyer, F. (2025). Reimagining custody for children in Scotland. *Prison Service Journal*, 278, 34-40. <https://www.crimeandjustice.org.uk/reimagining-custody-children-scotland>

Foussard, C., Dyer, F., & Davidson, J. (2026). Available at: Towards Child-Centred Justice as a System-Level Paradigm Shift: Conceptualising a New Framework Through the Scottish Whole System Approach <https://journals.sagepub.com/doi/full/10.1177/14732254261431986>

Collaborating for rights-respecting justice

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

Gibson, R. (2024). Advancing the Whole System Approach: local authority survey 2024. Children and Young People's Centre for Justice Available at: <https://www.cycj.org.uk/wp-content/uploads/2025/01/WSA-survey-report-Dec-2024.pdf>

HM Inspectorate of Prisons for Scotland. (2019a). Report on an expert review of the provision of mental health services for young people entering and in custody at HMP YOI Polmont. HMPIS. Available at: <https://prisonsinspectoratescotland.gov.uk/publications/report-expert-review-provision-mental-health-services-hmp-yoi-polmont>

Hockaday, C., Lemesheva, Y., Ormston, R., McPherson, R., O'Loughlin, A., & Tata, C. (2026). Public Perceptions of Sentencing: 2025 Survey Report. Available at: <https://www.scottishsentencingcouncil.org.uk/media/lq0ppqpw/public-perceptions-of-sentencing-2025.pdf>

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

Lightowler, C. (2020). Rights Respecting? Scotland's approach to children in conflict with the law <https://cycj.org.uk/wp-content/uploads/2020/01/Rights-Respecting-Scotlands-approach-to-children-in-conflict-with-the-law.pdf>

McAra, L., & McVie, S. (2022). Causes and Impact of Offending and Criminal Justice Pathways: Follow-up of the Edinburgh Study Cohort at Age 35. University of Edinburgh.

Miller, E., & Barrie, K. (2022). Setting the Bar. Social Work Scotland. <https://socialworkscotland.org/reports/settingthebar/>

Rose, B., Kuiper, M., Folmer, C., & van Rooij, B (2024). Can criminology sway the public? How empirical findings about deterrence affect public punishment preferences. Available at: <https://pmc.ncbi.nlm.nih.gov/articles/PMC11655585/>

Scottish Children's Reporter Administration (SCRA) (2025). Children aged 12-15 years involved in serious offending referred to the Reporter [Children-12-15-involved-in-serious-offending_AMENDED-PUBLICATION-9.7.26.pdf](#)

Scottish Government (2021). Youth justice: risk assessment management framework and evaluation guidance. Available at: <https://www.gov.scot/publications/framework-risk-assessment-management-evaluation-guidance/>

Scottish Government (2024). Justice for children and young people: vision and priorities 2024-26. Available at: [Supporting documents - Justice for children and young people: vision and priorities 2024-26 - gov.scot](#)

Scottish Government (2025). Scottish prison population statistics 2024-25. Available at: <https://www.gov.scot/publications/scottish-prison-population-statistics-2024-25/>

Collaborating for rights-respecting justice

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

Scottish Government (2026), Justice Social Work Reports and Court-based Justice Social Work Services Practice Guidance. Available at: [JSW Guidance for JSWR and Court Based JSW Services](#)

Scottish Sentencing Council (2018). Principles and purposes of sentencing [guideline-principles-and-purposes-of-sentencing.pdf](#)

Scottish Sentencing Council (2021a). [Judicial Perspectives of Community-based Disposals issue paper](#)

Scottish Sentencing Council (2021b). Sentencing Young People. Sentencing guideline

Scottish Sentencing Council (2025). Sentencing young people guideline: one-year review [sentencing-young-people-guideline-one-year-review.pdf](#)

Scottish Sentencing and Penal Policy Commission (2026). Justice That Works: Report of the Scottish Sentencing and Penal Policy Commission. Scottish Government

Social Work Scotland (2026). Joint letter to MSPs re: Children (Care, Care Experience, and Services Planning) (Scotland) Bill at Stage 3. <https://socialworkscotland.org/wp-content/uploads/2026/03/Children-Care-Care-Experience-etc.-Bill-Letter-to-MSPs-at-Stage-3-17-March-2026-FINAL.pdf>

UN Committee on the Rights of the Child (2019). General comment No. 24 on children's rights in the child justice system. Available at: <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-24-2019-childrens-rights-child>

Vaswani, N. Moodie, K. and McEwan, D. (2024). [Children's experiences of police custody and the implications of trauma-informed policing](#), Youth Justice, 25(1), 108-125

Collaborating for rights-respecting justice

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