



Law Society
of Scotland

Written Evidence

Children (Care and Justice) (Scotland) Bill

17 March 2023



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Criminal Law Committee and Child and Family Law sub committee welcome the opportunity to consider and respond to the Children (Care and Justice) (Scotland) Bill¹. The Committees have the following comments to put forward for consideration.

Consultation questions

Question 8 - The Bill widens access to the Children's Hearings system to all 16 and 17 year olds. What are your views on this?

We support the raising of the maximum age for referral to the Principal Reporter, so that 16 and 17 year olds who are not subject to a Compulsory Supervision Order (CSO) can also access this system. We are of the view that there is no sound basis for the two-tier approach which exists in the system at present. However, we would caution that there are challenges with the Children's Hearings System in general, including volunteer panel members who are not experienced in dealing with children accused of a crime, and potentially have not received the appropriate level of training (including trauma informed training) which is required to fulfil their role. Concerns have also been expressed that children feel judged by panel members and feeling that panel members are not genuinely concerned about them, as well as a lack of understanding, and the very different socio-economic and age profile of panel members compared to the majority of children they see².

Question 9 - The Bill suggests that the law should be changed so that most offences committed by 16 and 17 year olds will be dealt with through the Children's Hearings system in future. What are your views on this?

As above.

¹ [Children \(Care and Justice\) \(Scotland\) Bill \(parliament.scot\)](https://parliament.scot)

² [Scotland's approach to children in conflict with the law \(cvcj.org.uk\) at page 58 and 59](https://www.cvcj.org.uk)

Question 10 - The Bill makes several changes to Compulsory Supervision Orders. What are your views on these proposed changes?

We have no comment to make here.

Question 11 - What impact (if any) do you think the Bill could have on young people who have been harmed by another young person?

We have no comment to make here.

Question 12 - The Bill makes changes to the current law around when information should be offered to a person who has been affected by a child's offence or behaviour. What are your views on what is being suggested?

We are of the view that it is reasonable for information to be given about conditions to keep the child away from specific persons or places or to restrict the child to a property during specific times. Comparably, this information is available to potential witnesses from the Victims Information and Advice service (VIA) provided by Crown Office and Procurator Fiscal Service (COPFS) within the current system if a child or young person is prosecuted in the criminal courts.

Question 13 - Do you wish to say anything else about the proposals to increase the age at which young people can be referred to a Children's Hearing?

No.

Question 14 - The Bill makes several changes to existing Criminal Justice and Procedure. These are related to raising the age at which young people can be referred to the Children's Hearings System. Do you have any comments on these proposals?

Further to our comments above, we are supportive of proposals to raise the minimum age of referral to the Principal Reporter.

Question 15 - The Bill changes the law so that young people aged 16 and 17 who are accused of or found guilty of an offence can no longer be sent to a Young Offenders' Institution or a prison. What are your views on these proposals?

At present, local authorities are responsible for the funding of secure care of children and young persons pre-sentence, thereafter this becomes the responsibility of Scottish Ministers. Currently, 16 and 17 year olds not subject to Supervision Orders/ Interim Supervision Orders remanded by a court have to go to a Young Offenders Institution (YOI) rather than secure accommodation. We submit that a review of the whole system would make it possible for all young persons of equivalent age to receive equal treatment. We are of the view that diversion of 16 and 17 year olds from YOI's to secure accommodation would free up some resources allowing Scottish Ministers to reapply funding secure placements which is hoped would solve the issue of the current secure accommodation providers requiring to accept cross border children as a way of maintaining financial viability.

Question 16 - Bill changes the way in which secure accommodation is regulated. It would also introduce regulation for cross-border placements (for example, a child placed in Scotland as a result of an order made in England). What are your views on the proposed changes?

We consider that the introduction of Pathways and Standards for residential care of children in Scotland would be of benefit. We also consider that providing a link to Social Care and Social Work Improvement Scotland would provide a degree of transparency and predictably whilst also ensuring that standards of best practice are being adhered to. We are of the view that diversion of 16 and 17 year olds from YOI's to secure accommodation would free up some resources allowing Scottish Ministers to reapply funding secure placements which is hoped would solve the issue of the current secure accommodation providers requiring to accept cross border children as a way of maintaining financial viability.

Question 17 - What are your views on the proposals set out in Part 4 of the Bill?

We have no comment.

Question 18 - Do you have any comments on the impact assessments accompanying this Bill?

We have no comment.



For further information, please contact:

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