

CEL CIS's Response to the Scottish Government's Consultation on a Children's Care & Justice Bill

Introduction

CEL CIS, the Centre for Excellence for Children's Care and Protection, is based at the University of Strathclyde and is a leading improvement and innovation centre. We improve children's lives by supporting people and organisations to drive long-lasting change in the services they need, and the practices used by people responsible for their care. We welcome the opportunity to respond to the Scottish Government's consultation on policy proposals for a Children's Care and Justice Bill. Concerted effort and attention is required to the implementation of key proposals relating to children's care and justice, for Scotland to be able to progress in enhancing children's experiences of having their rights upheld, and realise the visions articulated by [The Promise](#) of the Independent Care Review, and Scotland's Vision and Action Plan for Youth Justice.

Our submission has been developed with engagement from policy consultants with care experience, brought together with research evidence, practice and policy experience and expertise offered through our long-standing, cross-organisational networks. These networks are made up of people across the children's and social care workforce, including leaders working across the spectrum of children's services and other public services in support of children, young people and their families, adults with care experience, as well as other communities of lived experience. This submission has also been informed by the work of the Children and Young People's Centre for Justice (CYCJ), whose expertise on the needs of children and young people in conflict with the law we greatly respect.

Everyone will need support at some time in their lives, especially if they experience adversity. Children and young people in need of care and protection have encountered difficulties in their lives, often experiencing trauma, abuse, and neglect. This is especially true for children in conflict with the law, who have often had adverse childhood experiences including neglect, abuse and bereavement. It is vital that children in conflict with the law are able to access welfare-based, non-punitive support to meet their care and protection needs, so that any needs that might be behind and driving their behaviour can be addressed.¹ Children and adults with care experience are often disproportionately affected by the criminal justice system. For children in residential care, they are more likely to have increased contact with the police and be involved in formal processes in the justice system, where they may be criminalised and given convictions for behaviour that would often otherwise be resolved in a family home.²

Anyone in need of support should be able to access the support that is right for them when they first need help. Not meeting the needs of children when they first need support can result in these needs compounding as they grow older, causing distress and making it harder to live in a happy, healthy way. This can affect a person over their lifetime, and this also has an impact on their community, as they may need more

¹ CYCJ (2016) [Key messages from the Centre for Youth and Criminal Justice](#). Glasgow: CYCJ

² Scottish Government (2016) [The Report of the Advisory Group on the Minimum Age of Criminal Responsibility](#). Edinburgh: Scottish Government; The Howard League of Penal Reform (2016) [Criminal Care](#). London: The Howard League of Penal Reform; Moodie, C. & Nolan, D. (2016) [Between a rock and a hard place: Responses to offending in residential childcare](#). Glasgow: CYCJ

support from services. Providing this support is vital to upholding The Promise, to upholding human rights including children's human rights as well as the rights of victims. Access to support also underpins the changes proposed to the Children's Hearings System and the criminal justice system in Scotland, as well as to the high-quality provision of care for all children living in Scotland, including in secure care.

Any changes progressed as a result of this consultation must consolidate alignment across the Scotland's policy landscape for children, young people and families. Enacting the changes proposed here to enable more children to be supported by the Children's Hearing System must be coordinated with the Hearings System Working Group, which includes representation from Children's Hearings Scotland (CHS), the Scottish Children's Reporter Administration, The Promise Scotland and the Scottish Government (in an observational role). The purpose of this group is to guide the redesign of the Children's Hearings System to uphold The Promise and the United Nations Convention on the Rights of the Child (UNCRC), set out by [Plan 21-24](#) and [Change Programme ONE](#).

Any changes to the Children's Hearings System must incorporate findings from evidence showing that the outcomes for children in conflict with the law improve when they are offered support and diverted from any formal systems, including the Children's Hearing System. The importance of access to early and/or ongoing support for children, young people and families across Scotland is critical to implementing these improvements, and to upholding the rights of children in conflict with the law and any child who experiences harm.³

There is a need for sustained attention to implementation, listening to and acting on what those with lived experience of these systems tell us in the first instance. Only in this way can we ensure that policy intention translates into meaningful change to experiences and makes a difference to children, young people, families and communities. Evidence from implementation science shows that embedding such change requires sustained effort by dedicated local 'change teams'. These teams must have the knowledge, skill and support to enact change, including support from leadership and other decision makers that is pivotal to enabling a culture of facilitation of complex change. To be successful, these teams must; map current systems and procedures; engage stakeholders at all levels (including communities with lived experience); identify and address barriers and build readiness for change; and design and scale up service/practice change. The task to support change cannot be layered onto existing responsibilities if it is to be effective. Sufficient and sustained resourcing of the change agenda is required, including supporting the workforce, and/or commissioning services, to meet the needs of people consistently across Scotland.⁴ The requirement to adequately resource services to support children is a recommendation of the Committee on the Rights of the Child following the Day of General Discussion focused on children's rights in alternative care.⁵

³ McAra, L., & McVie, S. (2010). Youth crime and justice: Key messages from the Edinburgh Study of Youth Transitions and Crime. *Criminology and Criminal Justice*, 10(2), (pages 179-209).

⁴ Fixsen, D.L, K.A. Blasé, and M.K. Van Dyke (2019) *Implementation Practice and Science*; CELCIS (2020) [The Permanence and Care Excellence \(PACE\) programme Improvement in practice: leading positive change for children's services](#), Glasgow: CELCIS; For further information CELCIS, [Active Implementation: making a meaningful difference](#)

⁵ Committee on the Rights of the Child (2022) [2021 Day of General Discussion Children's Rights and Alternative Care Outcome Report](#)

Our recommendations:

- We emphasise the importance of preserving the ethos of the Children’s Hearings System through a welfare-based approach to children in conflict with the law. This approach must:
 - uphold children’s right to privacy and to support that enables recovery from any trauma that has driven their harmful behaviour; and also
 - uphold the rights of any person harmed by a child to access support that they need to recover from harm they have experienced.
- Planning of changes within the Bill must be co-ordinated with other relevant policy change and improvement work, such as establishing the Barnahus model in Scotland, and the Victims Taskforce.
- Change to the decision-making processes around the formal systems which children in conflict with the law interact with, to increase the number of children supported by the Children’s Hearing System rather than the criminal justice system.
- All children who require this should be able to access support at the earliest opportunity to reduce the need to deprive them of their liberty. Young Offenders Institutes are not suitable places for children. Where it is necessary to deprive a child of their liberty, in all cases, the child should be cared for in a therapeutic, trauma-informed environment.
- Sufficient resource must be in place to enable high-quality care for all children living in Scotland who require secure care.
- Children in secure care should experience the same rights to Continuing Care as other children receiving care
- Focus on early intervention and community-based alternatives which can prevent the need for secure care.
- All children living in Scotland must receive the high-quality support that is right for them, including children living in Scotland on cross border placements from other parts of the UK.

Question 1: Where a person has been harmed by a child whose case is likely to proceed to the children’s hearings system, should further information be made available to a person who has been harmed (and their parents if they are a child) beyond what is currently available?

Yes.

CELCIS agrees that further information should be provided to people who have been harmed by a child whose case is likely to proceed to the Children’s Hearings System than is currently provided, but this should only be general information about the Children’s Hearing System. This information should be provided in the context of person-centred support that meets the needs of the person harmed and supports their recovery. To uphold the rights of children supported by the Children’s Hearings System, who all have care and protection needs, no information about a child’s hearing should be shared, including the support measures put in place as a result of that hearing, except in extremely limited circumstances where no other measures can mitigate risk. Further information about the rare circumstances where it may be appropriate to disclose some information is outlined in our response to question 2.

Supporting any child who has been harmed, or has any other care and protection needs, requires trauma-informed, relationship-based support from practitioners they trust, who themselves need the support, capacity and skills to meet that child’s needs. This is true for children who have experienced adversity, including abuse, neglect, or harm from

other children, or children who have engaged in behaviour that harms others, who are likely to have experienced a high level of adverse childhood experiences including neglect, abuse and bereavement, themselves.⁶ Trauma-informed practice to support the needs of all children who have experienced harm is integral to Scotland's GIRFEC approach, referrals to the Reporter being one part of a range of multi-agency approaches to support children. Ensuring that all children and young people who require support can access the support they need is vital to recovery from harm, upholding all of their rights, and preventing the escalation of difficulties they may face. This support may come from formal systems such as the Children's Hearings System, from other statutory services like social work, from universal services, for example mental health services, or from third sector providers, such as youth work services or specialist services for children who have experienced child sexual exploitation. To ensure there is equitable access to support across Scotland, the infrastructure to resource these services must be in place.

The ethos of the Children's Hearings System

The ethos and principles behind the Children's Hearings System is to meet the wellbeing needs of children by responding to their 'needs not deeds' through non punitive support, recognising that it is not possible to separate the life experiences of children who engage in offending behaviour from those requiring care and protection.⁷ By contrast, the focus of the criminal justice system differs from the Children's Hearings System and has not been designed to meet the developmental needs of children. The differences in purpose of these two systems means that the dissemination of information about processes differs. Information about Compulsory Supervision Orders (CSOs) given to children in Hearings cannot be disclosed to the general public, and in the rare circumstances where a child has harmed another child, the victim would not take part in, nor be given information about, the outcome of another child's Hearing. Respect for the privacy of children involved in the Children's Hearings System is integral to its ethos, the support offered, and to upholding children's rights. In the criminal justice system however, information about sentencing by the courts is made public, meaning that anyone harmed by a person, as well as the general public, will be aware of the outcome of a case before the court, including the possibility of a custodial sentence.

Recommendations of Dorrian Review and Victims Taskforce

Recently, the Scottish Courts and Tribunals Service commissioned a cross-justice review group of the management of sexual offences (known as the Dorrian Review). This [2021 report](#) of the review outlined the improvements required to improve how sexual offences are managed within the criminal justice system and the Children's Hearings System, including how victims can be better supported through trauma-informed systems. Whilst this review is specific to sexual offences, the recommendations for improvements to the Children's Hearings System will be relevant for learning about how to support people who have other experiences of harm and require trauma-informed support. Recommendations include improvement to the provision of general information about the Children's Hearings System to people who have been harmed by a child supported by the Children's Hearings System.

"Broader information for complainers is required, addressing how the Children's Hearings system, and associated referral proceedings, work, explaining in particular the restrictions applicable to the provision of information and the reasons for these, all with a view to helping mitigate complainers' concerns, and

⁶ McEwan, D. (2017) *Understanding the relationship between brain development and offending behaviour. Info Sheet*. Glasgow: CYCJ,

⁷ HMSO (1964) *The Kilbrandon Report*, Edinburgh: HMSO

enabling them to appreciate the requirement of confidentiality in these proceedings”⁸

This information should include conversations with the person who has been harmed at the earliest opportunity to explain that a case may go through the Children’s Hearings System.⁹ The Dorrian Review also recommends that there should be a review of information currently available to victims of sexual offences, including information from the Scottish Children’s Reporter Administration’s (SCRA) Victim Information Service. The Victim Taskforce, which includes organisations that support victims,¹⁰ is also progressing a range of actions to improve the experiences of victims and identify the importance of access to information about how a case is progressing through criminal justice or other formal systems to people who have experienced crime.

Providing information about the Children’s Hearings System and children’s developmental needs to the public

In addition to improvements to the way that general information about the Children’s Hearings System is provided to people who have experienced harm, there is also a need for dissemination of information and engagement with the wider public about the ethos of the Children’s Hearings System, how it works and why it is important, alongside information and education about the developmental needs of children whom it supports. It is important for all members of the public to have an understanding of, and confidence in, how and why the Children’s Hearings System supports children who have engaged in harmful behaviour. Increasing this level of knowledge and confidence will enable communities to better support children or adults with support needs, whether they have engaged in harmful behaviour or experienced harm from a child.

Rights of children harmed by other children

Children who have been harmed by other children have a right to access services that can support their recovery under Article 39 of the UNCRC. They also have the right to be protected from violence and abuse, under Articles 19 and 34. To uphold these rights requires improvements to the way in which children who have experienced harm experience the Children’s Hearings System, as well as the criminal justice system, including the support and information they receive to understand how the Children’s Hearings System works to address the harm that they have experienced and support the child that harmed them not to do so again. This should also include general information about the efficacy of the Children’s Hearings System, and wider support for children and families in Scotland to prevent children from harming other children. Importantly, this support must extend not just to information and knowledge about support to address harmful behaviours, but specialist support for children who have been harmed, such as support for children who have experienced sexual abuse. We urge consideration of greater support for victims of harm, as outlined in our response to questions 3 and 4.

Rights to privacy and information in the Children’s Hearings System

Children in conflict with the law, including children who have harmed other children have in the vast majority of cases experienced harm themselves.¹¹ Evidence shows that, whilst not all children and young people who are victims of crime have carried out harmful behaviour, children and young people who offend, particularly with offences such as physical violence, drug or property related crime, are more likely to also be

⁸ Lord Justice Clerk’s Review Group (2021) *Improving the Management of Sexual Offence Cases*, Edinburgh; Scottish Courts and Tribunals Service, (page 18)

⁹ Ibid.

¹⁰ Ibid.

¹¹ Cops, D., & Pleysier, S. (2014). Usual suspects, ideal victims and vice versa: The relationship between youth offending and victimization and the mediating influence of risky lifestyles. *European Journal of Criminology*, 11(3), 361–378

victims of these offences.¹² In addition to their rights to recover from the trauma they have experienced, children have rights under Article 40 when they are involved in justice systems. This includes rights to be treated in a manner which “promotes their dignity and worth”; the right to be treated by justice systems which take into account the child’s age; “the desirability of promoting the child’s reintegration and the child’s assuming a constructive role in society”; and the right that the child’s “privacy is fully respected at all stages of the proceedings”¹³.

Guidance from international rights frameworks, including the UNCRC and associated General Comment 24,¹⁴ and the Guidelines on child-friendly justice from the Committee of Ministers of the Council of Europe (CoE), of which the UK is a member, confirms the importance of upholding rights to privacy in the context of publication of information about children in conflict with the law in the media.¹⁵ This guidance includes information about how to uphold rights by providing information and advice on the systems and procedures involved in the justice system; support mechanisms; possible consequences of in-court or out-of-court proceedings; the availability of protective measures; and mechanisms for review of decisions, reparations, support services.

The guidance also suggests, “where applicable” information may be provided about the “charges or the follow-up given to their complaint” and “the general progress and outcome of the proceedings or intervention”¹⁶. However, this relates to justice approaches that are different to Scotland’s Children’s Hearings System, either because they relate to adult focused systems, or are justice focused systems which are specific to children, whereas the Children’s Hearings System is a *welfare focused* system. Interpreting guidance based on child friendly justice systems in the context of the Children’s Hearings System requires careful consideration of how to ensure **all** children’s needs are met and rights are upheld.

Question 2: Where a person has been harmed by a child who has been referred to a children’s hearing, should SCRA be empowered to share further information with a person who has been harmed (and their parents if they are a child) if the child is subject to measures that relate to that person?

Yes – in limited circumstances.

Meeting the needs of a person who has been harmed will always require support from a person or people they trust, with the skills to help them recover from trauma, and understand formal systems like the Children’s Hearings System. This should include helping them to understand general information about how the Children’s Hearings System offers distinct support to children based on the child’s developmental needs. This general information alongside appropriate specialist, trauma-informed support will often be enough to uphold rights to recovery for people who are harmed by children, without

¹² Cops, D., & Pleysier, S. (2014). Usual suspects, ideal victims and vice versa: The relationship between youth offending and victimization and the mediating influence of risky lifestyles. *European Journal of Criminology*, 11(3), 361–378. <https://doi.org/10.1177/1477370813500886>

¹³ United Nations General Assembly (1989) *Convention on the Right of the Child*. Geneva: United Nations Commission on Human Rights

¹⁴ Committee on the Rights of the Child (2019) [General Comment no 24 on children’s rights in the child justice system](#)

¹⁵ Council of Europe (2010) [Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice](#), (page 61)

¹⁶ Council of Europe (2010) [Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice](#), (page 21)

breaching the privacy of vulnerable children supported by the Children's Hearings System to recover. The need to ensure that this support is available consistently across Scotland is outlined in our response to question 3.

Information about the measures to support a child in the Children's Hearings System must only be shared, if at all, in the very rare circumstances where no other supportive measures or practices can ensure the welfare and safety of another person. For example, if a child supported by the Children's Hearings System were subject to measures that stipulate they may not have any contact with a person they have harmed, that child would experience support through practices to assess and address the risk of further harmful behaviour such as via the Framework for Risk Assessment, Management and Evaluation (FRAME), and Care and Risk Management (CARM). As part of the assessment of risk, it may be determined in some cases that this support may not adequately and fully mitigate risk of further harm. These circumstances may then require a robust assessment of the need to disclose such information to the person harmed on the basis of protecting the welfare or safety of that person. In this example, this information would comprise the details of a measure to not contact them.

Such decisions should never be taken arbitrarily, based on criteria such as the type of harm caused or the measures put in place. Necessary safeguards must be developed and implemented to support the decision-making process and ensure robust assessment of the need and lawfulness of sharing information. This should never involve a single person deciding alone. Instead, consideration should be given to a process of independent review similar to that set out in the Age of Criminal Responsibility (Scotland) Act 2019 (Independent Review of Disclosure of Information) Regulations 2020 used to determine if information relating to a time when a child under the age of 12 should appear on an enhanced disclosure record as part of a PVG check.

The Children's Hearings System is equipped to address any ongoing risk to a person who has been harmed by a child supported by the Children's Hearings System. This includes measures available to the Children's Hearings System, which are outlined in our response to question 5, as well as the co-ordination of support via practices such as Framework for Risk Assessment Management and Evaluation (FRAME) and the Care and Risk Management (CARM) Framework. When making a decision, a children's hearing regards the need to safeguard and promote the welfare of the child throughout their childhood as the paramount consideration. However, if there is a need to protect the public from serious harm this can be considered as a primary rather than the paramount consideration. It will be crucial to ensure risk is mitigated through current supportive measures available to the Children's Hearings System before the sharing of information is considered, so that a child's privacy is only breached in rare and regulated circumstances, where no other available support can mitigate the risk to another person.

Right to Redress

Like anyone who experiences harm, people harmed by children have a right to redress. Children have rights under the UNCRC including a right to be protected from harm, and redress when this right is not upheld is a crucial part of UNCRC implementation.¹⁷ Everyone has rights under the ECHR, including a right to redress when these rights are breached. The specific rights of victims of crime are set out in the [Victims' Code for Scotland](#). The right to redress and the right of children supported by the Children's Hearings System to privacy do not need to be in conflict, rather, mechanisms will need to be considered to enable access to redress without breaching the privacy rights of

¹⁷ Kilkelly (2019) *The UN convention on the rights of the child: incremental and transformative approaches to legal implementation*. *The International Journal of Human Rights*, 23:3, 323-337

children being supported by the Children's Hearings System. ***Information about measures to support a child in the Children's Hearings System should not be disclosed purely to enable redress, because sharing such information must only occur on the basis of mitigating risk of further harm.***

Question 3: Where a person has been harmed by a child who has been referred to the Principal Reporter, should additional support be made available to the person who has been harmed?

Yes.

For children harmed by other children, as well as any children who have carried out harmful behaviour, the success of any changes made based on this consultation will depend on the availability of high quality, relationship-based and skilled support that meets their needs, including from universal and community services, as well as from specialist or intensive support services. However, evidence including research,¹⁸ accounts from children and young people,¹⁹ as well as practitioners, is clear that too often the support people need – whether this is co-ordinated by statutory systems or by children themselves, is not available.²⁰ Though the needs of adults are considered in our response, we focus primarily on the needs of children and young people.

Whilst the involvement of a person who has been harmed by a child in the Children's Hearings System differs from their involvement if matters were being dealt with in the criminal justice system, for example, as a witness, there is still a need to ensure that relationship-based, trauma-informed support is available.²¹ For a child harmed by another child, it is pertinent to also consider the gaps in support for these children in the criminal justice system. For example, inconsistent support to child witnesses, and limited opportunities to feedback on their experiences, as well as the detrimental impact delays to proceedings have on children's wellbeing and their access to therapeutic support.²²

The development of Barnahus is a crucial step to ensuring trauma-informed support is accessed by children who have experienced harm, supporting their recovery and enabling them to give evidence as a witness in a child centred and trauma informed setting. However, we would note that Barnahus is in the early stages of development, and until it is fully implemented and accessible to all children who need it, other improvements to the availability and accessibility of support needed by children must be actioned as soon as possible.

¹⁸ Galloway, S (2020) Challenges from the Frontline – Revisited, Supporting families with multiple adversities in Scotland during a time of austerity, NSPCC; Galloway, S., Love, R., & Wales, A. (2017) [The Right to Recover: Therapeutic services for children & young people following sexual abuse, An overview of provision in the West of Scotland](#), NSPCC; National Youth Agency (2021) Initial Summary of Findings from the National Youth Sector Census

¹⁹ Independent Care Review (2020) The Promise (page 45). Independent Care Review (2020) [Evidence Framework](#). (page 45)

²⁰ There are gaps in available evidence around current service provision for children and adults in Scotland. We have included anecdotal evidence from the networks of practitioners and people with lived experience which CELCIS hosts and/or is a member of. The gaps in support for children and adults, including both within the third sector and for support is accessed through statutory systems such as Children's Hearings or Child Protection measures has been a consistent message from these networks.

²¹ McNamee, H., Molyneaux, F., Geraghty, T (2012) [Key stakeholder evaluation of NSPCC Young Witness Service remote live link](#), NSPCC; Plotnikoff J. and Woolfson, R. (2019) [Falling short? A snapshot of young witness policy and practice](#), NSPCC

²² Victims Taskforce (2022) Victims Taskforce papers: January 2022, Scottish Government

Children who have been harmed by children currently experience barriers to accessing the services they need for recovery. Despite the underpinning GIRFEC approach in policy, in practice there is not always a consistent pathway for assessing and meeting the needs of these children. We are particularly concerned about the children whose needs fall between thresholds for accessing support from statutory services. Statutory child protection approaches have historically focused on children harmed within families or children whose parents are not able to support them to recover from harm, and so access to support via these approaches can be more difficult for children who have been harmed by another child, and when their parents appear more able to support them after they have been harmed. Whilst there have been improvements to the recognition and assessment of these experiences, with new child protection guidance incorporating guidance on contextual safeguarding approaches,²³ implementation of these changes in Scotland is new. As improvements to the recognition and assessment of this type of harm are implemented, appropriate services will still need to be available to children to be referred to after assessment. This must include contextual safeguarding services, which are especially important to supporting some children in conflict with the law, for example, children experiencing child criminal exploitation.²⁴

Barriers to accessing assessment from statutory approaches mean that many children who have been harmed by other children will be referred to third sector services, but the provision of these services varies across Scotland. Research by the NSPCC in 2017 mapped service availability for children in the west of Scotland who disclosed sexual abuse, and identified significant gaps in services across this local area, in particular for children under 12, for specialist child focused services (rather than services for adult survivors), services children with disabilities, specialist services for child sexual exploitation, and specialist intensive and multiagency or therapeutic services for children.²⁵ A recommendation of this research was to carry out further mapping exercises over other parts of Scotland, and mapping exercises for services that support children involved in harmful sexual behaviour, because not enough was known about what services are available throughout Scotland, but little progress had been made since the publication of this research.

Similarly, access to support through Child and Adolescent Mental Health Services (CAMHS) is inconsistent across Scotland, and across many areas children must demonstrate an extremely acute need to meet service thresholds to access services, and/or be placed on long waiting lists. These services were stretched before the COVID-19 pandemic, but the impact of the pandemic across health services, as well as a rise in need due to lack of preventative support and interventions, has resulted in further strains on service provision.²⁶ Research on CAMHS services for children involved in conflict with the law and/or involved in harmful behaviour across England, Wales and Scotland in 2015 identified geographical inequalities in the available provision, with children across significant areas of Scotland without access to any provision.²⁷ This

²³ Scottish Government (2021) [National guidance for child protection in Scotland 2021](#)

²⁴ Iriss (2021) [Child protection in the 21st century: a role for contextual safeguarding](#); Carole Murphy (2021) [Contextual Safeguarding: A framework for responding to the extra-familial abuse of children](#), Glasgow: CYCJ

²⁵ Galloway, S., Love, R., & Wales, A. (2017) [The Right to Recover: Therapeutic services for children & young people following sexual abuse, An overview of provision in the West of Scotland](#), NSPCC

²⁶ Public Health Scotland (2021) Child and Adolescent Mental Health Services (CAMHS) waiting times Quarter ending 30 June 2021, Glasgow: Public Health Scotland; Children and Young People's Commissioner Scotland (2020) Independent Children's Rights Impact Assessment, Edinburgh: Children and Young People's Commissioner Scotland; Christina McMellon, C. and MacLachlan, A. (2020) APPENDIX 2: Mental Health: Children's Rights Impact Assessment (CRIA), Edinburgh: Children and Young People's Commissioner Scotland

²⁷ L.M. Peto, M. Dent, M. Griffin & N. Hindley (2015) [Community-based forensic child and adolescent mental health services in England, Scotland and Wales: a national mapping exercise](#), The Journal of Forensic Psychiatry & Psychology, 26:3, 283-296,

highlights the importance and urgency of adequate funding for CAMHS services, as well as funding for community-based and/or third sector services to support children and young people's mental wellbeing, including preventative support before concerns reach crisis. These issues have been highlighted by the Scottish Parliament's Health, Social Care and Sport Committee when they reported on their inquiry into the health and wellbeing of children and young people. The Committee recommended the Scottish Government conduct a mapping exercise of current capacity across statutory and third sector mental health services, as well as prioritise investment to increase the capacity of CAMHS and reduce waiting times.²⁸

Access to support underpins the efficacy of the Children's Hearings System, and is one of the core recommendations of The Promise. To ensure that all children and adults in Scotland have equitable access to the support they need, there is an urgent need to resource and plan for the provision of all necessary supports across Scotland. This will require sustained funding and an accurate understanding of the support currently available. There are significant gaps in evidence around the provision of support in Scotland that must be urgently addressed.

Question 4: Should a single point of contact to offer such support be introduced for a person who has been harmed?

Yes.

CELCIS supports the proposal to offer people who have been harmed by children who are supported by the Children's Hearings System to have one clearly identified person who will either support them, or co-ordinate support for them. This person must be situated in an organisation which has the expertise and capacity to support them to recover from any trauma. Enacting this change will require planning to ensure that any new function to provide this support is available equitably across Scotland to every person who requires it, and this will require commensurate attention to how this is resourced.

Children and adults who have been harmed and experienced trauma require skilled support from someone that they trust. Offering this support from a single person could enable them to develop a trusting professional relationship, though we would emphasise that it will be important for children and adults to have choice in whether they would like to access this support. Delivering this support to a consistently high standard will require the person delivering it to have the requisite skills to work with children and/or adults who have been harmed, such as understanding of child development, the impact of trauma; specialist skills to support a child or adult who has experienced certain types of harm, such as sexual abuse or violence; the skills to understand formal systems such as the Children's Hearings System; and the skills and capacity to understand and support access to the different types of support that might be required for the person they are co-ordinating support for. The skill, capacity and supervisory support that will be required to co-ordinate this support should not be underestimated.

Careful consideration must be made to which organisation would be equipped to host a role that encompasses this skillset to provide this support. It is important that this support is led by what the child or adult who has been harmed needs, rather than being linked to the system that child who has harmed is supported through. For instance, it

²⁸ Health, Social Care and Sport Committee (2022) [Health and Wellbeing of Children and Young People](#), Edinburgh; Scottish Parliament

would be necessary for support to begin when a person discloses harm, not when a child is referred to the Children's Hearings System, and this support should not end if a hearing does not take place, or after a hearing has taken place. Therefore, it may be necessary for specialist children's or adult victim advocacy organisations to hold this role, with training around the Children's Hearings System, and/or liaising with SCRA to share information to enable that agency to act as a single point of contact. It would be necessary to ensure that requisite resourcing was in place for any organisation providing this role, across all of Scotland.

Though there are benefits of a single point of contact, such an approach also poses a risk that if that practitioner does not have the capacity and skills to co-ordinate support, the child or adult requiring support will not access what they need. These risks can be mitigated with effective support and supervision of this role from a skilled manager, as well as through clinical supervision, and this must be considered in any planning and resourcing of this role. Planning around the resourcing and workforce capacity to provide this role, must consider the wider context of strains to the workforce caused by COVID-19 pandemic and the ongoing recovery from it.

Question 5: Should existing measures available through the children's hearings system be amended or enhanced for the protection of people who have been harmed?

No.

The Children's Hearings System was founded to meet the wellbeing needs of children with care and protection needs, to responding to their 'needs not deeds'. This fundamental ethos of the Children's Hearings System enables children with care and protection needs to be supported through welfare-based, non-punitive approaches to understand and support them, including addressing what may be driving behaviour that is harmful. This approach recognises that it is not possible to separate the life experiences of children who engage in offending behaviour from those requiring care and protection.²⁹ To uphold the rights of children, to address and reduce harmful behaviour, to help children recover from any experiences of trauma, as well as to reduce any instances of harmful behaviour in the future, it is crucial to preserve the ethos of the Children's Hearings System in any changes made to it, including changes to available measures, and not replicate the functions of the criminal justice system.

The current measures available through the Children's Hearings System ensure that people who have been harmed by children are protected. In particular, measures to not have any contact with a particular person. These measures are accompanied by evidence-informed practices to support children who carry out harmful behaviour, and to assess and address risk to any other person in their community, such as through the Framework for Risk Assessment, Management and Evaluation (FRAME), and Care and Risk Management (CARM). These approaches can be utilised as part of the [Whole System Approach](#), which is Scotland's approach to meeting the needs of children and young people involved in offending. It is underpinned by GIRFEC and involves intensive and ongoing community support to children, young people and their families. The Whole System Approach is crucial to ensuring that the small number of children who engage in harmful behaviour are supported to address their behaviour, as well as the causes from which this behaviour stems.

²⁹ HMSO (1964) The Kilbrandon Report, Edinburgh: HMSO

We would highlight the importance of resourcing to support any measures that restrict behaviours. Victims and the organisations that support them have raised concerns about the efficacy of bail conditions, available in the criminal justice system to restrict behaviour and movement, saying that they can too often be insufficiently monitored and enforced, and can be applied inappropriately in the context of domestic abuse.³⁰ It is important that relevant learning is applied to the Children's Hearings System in considering changes in this area, within the context of the ability for welfare-based intensive support to address the drivers of harmful behaviour.

Question 6: Should MRCs be made available to children who do not meet the current criteria for secure care?

Yes – in limited circumstances.

When supporting children in conflict with the law, the primary consideration should always be the provision of support at the earliest opportunity, to reduce their interaction with formal systems. With regard to Movement Restriction Conditions (MRCs), the provision of early and ongoing support to children should mitigate the need for children's liberty to be restricted. In the circumstances where the most effective and appropriate support for children in conflict with the law is an MRC, we recognise and respect the expertise of CYCJ. As such we support their position that extending the use of MRCs, in very limited circumstances and with significant safeguards, would enable some children's needs to be better met and their rights upheld, than at present. However, a trauma and developmentally-informed approach to supporting the welfare of children should be cautious of any changes to extend the circumstances in which a child's liberty can be restricted. Upholding the rights of all children always requires attention to their needs.

Children have distinct developmental needs, and their comprehension of complex formal systems and decisions differs from adults,³¹ which can affect their meaningful participation in formal justice settings, as well as their understanding of, participation in and adherence to, any conditions or outcome of these processes, such as bail conditions or conditions to not contact someone.³² A high proportion of children who are in conflict with the law have speech, language or communication needs,³³ which can further impact their ability to understand, participate and be invested in formal settings. The majority of children who engage in offending or harmful behaviour have experienced trauma and adversity, especially for the small number of children who are involved in serious acts of harm. It is important that formal systems to address this behaviour do not further traumatise children so that this behaviour can be addressed. The Children's Hearings System has been developed to consider those specific needs, with child-friendly settings and skilled practitioners who can support them, which is why it is so crucial to retain and value a fundamental distinction between Children's Hearings System and criminal justice system. Improvements are required to ensure the processes in the Children's Hearings System sustain these ambitions, and we acknowledge the ongoing work of the Children's Hearings Working Group.

³⁰ Victims Taskforce (2020) Themes from 'Victims Voices' feedback presented at the Victims Taskforce December 2020, Scottish Government

³¹ McEwan, D. (2017) *Understanding the relationship between brain development and offending behaviour. Info Sheet*. Glasgow: CYCJ

³² Lightowler, C. (2020) *Rights Respecting? Scotland's approach to children in conflict with the law*. Glasgow: CYCJ (page 5)

³³ Vaswani, N (2014) [Speech, language and communication difficulties](#). Glasgow: CYCJ

The support co-ordinated by the Children’s Hearings System that children and their families receive is crucial to upholding their rights to recover as well as reduce the need for liberty to be restricted. This is necessary to enable these children to recover from trauma and for their care and protection needs to be met so that they will grow into adulthood feeling loved and valued by Scottish society. For children who have such significant care and protection needs that consideration is being given to restricting their liberty through the use of an MRC, they will require intensive and ongoing support, as well as the use of practices that assess and reduce risk to communities.

The desire to do to everything that is needed to support children who are in conflict with the law must span all parts of the workforce who come into contact with them. This support will be most effective when it is delivered by skilled, trauma-informed and relationship-based practice which builds up trust and understanding of the needs of a child in order to reduce harmful or risk behaviour and recover from any experiences that have driven it. Offering preventative support outside of formal systems, including the Children’s Hearings System, is the most effective way to address these behaviours.³⁴

Question 7: Should any of the above options be considered further?

Yes.

General comment on the support of children in conflict with the law

The support offered to children who have care and protection needs and their families, including children who are in conflict with the law, is fundamental to any approach to address their needs and behaviours, and the causes behind these. This support underpins all of changes proposed in options for this question. All children in Scotland who require this should be able to access to high quality support appropriate to their needs, from the earliest point as well as when support is co-ordinated through a formal mechanism such as a CSO. This is set out in the GIRFEC model. Research has highlighted the gaps and inconsistency in support available in Scotland, and the need for support for children and their family is a core recommendation of The Promise.³⁵

Under the principle of minimum intervention, no child should be subject to formal intervention solely in order to access support that they require. However, this can sometimes be the case where demand for support services is higher than provision, and, in some cases, criteria to access these services prioritise children supported through formal approaches. This can mean that children cannot access support when they first need it, which can mean that they must seek support through a formal intervention.

Evidence, including anecdotal accounts from practitioners, shows that children are not always able to access to support co-ordinated through formal mechanisms such as CSOs. Any changes to the decision-making processes to increase the number of children supported by the Children’s Hearings System rather than the criminal justice system must be coordinated with improvements to the support that is available to meet the

³⁴ Fyfe, I., Biggs, H., Hunter, S., McAteer, J. Milne, D. Cooper, S., Martin, C., Meechan, M. Thomas, A. (2018) The Impact of Community-based Universal Youth Work in Scotland

³⁵ Galloway, S (2020) Challenges from the Frontline – Revisited, Supporting families with multiple adversities in Scotland during a time of austerity, NSPCC; Galloway, S., Love, R., & Wales, A. (2017) [The Right to Recover: Therapeutic services for children & young people following sexual abuse, An overview of provision in the West of Scotland](#), NSPCC; National Youth Agency (2021) Initial Summary of Findings from the National Youth Sector Census; Independent Care Review (2020) The Promise (page 45); Independent Care Review (2020) Evidence Framework, Feb 2017-Feb 2020 (pages 45-47)

criteria of a CSO. This will be even more important if changes are made to increase the number of children supported by the Children's Hearings System. The need to improve the availability of early and preventative support has been highlighted by the Children's Hearings Working Group as well as The Promise.³⁶

There is also a need for more research on the availability of support for children's needs in Scotland, to provide more robust evidence than anecdotal evidence. Understanding more about the availability of the support that children, young people and their families require will be critical to addressing gaps in support and meeting the recommendations of The Promise.³⁷ This research must listen to children's experiences so that we can ensure that we are meeting their needs with high quality and appropriate support at the right time, rather than solely relying on data about how many children are routed to the Children's Hearings System, criminal justice system or experiencing EEI measures. The Bright Spots programme, discussed in our response to question 29, is an example of this type of research.

Option 1

"Enabling all children under the age of 18 to be remitted to the Principal Reporter for advice and disposal in their case even where they had initially been prosecuted and have pled, or been found, guilty. This would extend the existing legislative provision to cover all children charged under summary and solemn proceedings and not be dependent on a child being subject to measures through the children's hearings system. The exception would remain in respect of an offence where the sentence is fixed by law. This option would support the reinforcement of the position in respect of remittal as detailed in the Scottish Sentencing Council Sentencing Young People Guideline". (p28)

CELCIS strongly supports the proposal in option 1 for all children under 18 to be remitted to the Principal Reporter, even where they had initially been prosecuted and have pled or been found guilty in the criminal justice system.

The Children's Hearings System was set up in recognition of the fact that it is not possible to separate the life experiences of children who engage in offending behaviour from those requiring care and protection. Duly, it takes account of a child's developmental and individual needs, as well as their family circumstances, and offers non punitive support.³⁸ This differs from the criminal justice system, which has not been specifically designed to take account of the various stages of children's development and their specific needs. In practice this means that it can be difficult for children to understand, participate effectively and engage meaningfully in criminal justice settings. This can affect their interaction with justice services, their compliance within justice settings, and may produce adverse outcomes both for them and for their communities. These difficulties are compounded for children who have experienced trauma and/or those with speech and language difficulties, who are disproportionately represented in the population of children in conflict with the law, as are those with care experienced children.

37% of children who come into contact with the formal justice system because they are in conflict with the law, are routed through the criminal justice system.³⁹ However, the needs of children in these circumstances, and their families and communities, are best met by the delivery of child-focused support, provided by a skilled workforce within the

³⁶ Independent Care Review (2020) The Promise (page 39)

³⁷ Independent Care Review (2020) The Promise (page 45)

³⁸ HMSO (1964) The Kilbrandon Report, Edinburgh: HMSO

³⁹ Lightowler, C. (2020) *Rights Respecting? Scotland's approach to children in conflict with the law*. Glasgow: CYCJ (page 5)

Children's Hearings System. This system also provides a faster route to support children than afforded by the criminal justice system. The change proposed by option 1 should enable more children who in conflict with the law and who need support from a formal system, to receive support they need to address their behaviour from the Children's Hearings System.

Any approach which aims to increase the number of children supported by the Children's Hearings System must also consider the quality of the support offered. The need for improved support offered by the Children's Hearings System has been highlighted by The Promise.⁴⁰ This has resulted in establishment of the [Hearings System Working Group](#), which includes representation from Children's Hearings Scotland (CHS), the Scottish Children's Reporter Administration (SCRA), The Promise Scotland and the Scottish Government (in an observational role). The planning of any change as a result of this consultation must be co-ordinated with the ongoing work of this group.

Any changes must also take into account evidence that highlights how the outcomes for children in conflict with the law improve when they are offered support and diverted from any formal systems, including the Children's Hearings System, via the Whole System Approach, which includes support such as Early and Effective Intervention (EEI) mechanisms.⁴¹ We welcome the intention set out in the consultation paper to continue to extend the Whole System Approach so that it is available to young people up to the age of 26 when appropriate, and urge for continuous effort to implement this approach consistently across Scotland. The importance of providing sustainable access to early and/or ongoing support for children, young people and families across Scotland is critical to the successful implementation of these improvements, and to upholding the rights not only of children in conflict with the law but also of any child who is harmed by them.

To maximise the number of children supported by the Children's Hearings System rather than the criminal justice system, to support changes to raise the age of referral to the Principal Reporter to 18, and to support the proposed change in option 1, there is a need to ensure the existing guidance is understood and implemented consistently by the agencies involved. Understanding and enacting this guidance is impacted by two key factors: 1) the complex legislative landscape around the age at which a person is defined as a child in Scots Law; and 2) a need for increased understanding and skills in the developmental needs of children, particularly children who have experienced trauma which affects their behaviour and/or older children. Improvements to how guidance is followed, as well as the implementation of any other changes to decision-making processes will also require culture change in all organisations involved in decision-making and support for children in conflict with the law.

Learning from the implementation of existing guidance on decision making about whether a child should go through the criminal justice system or the Children's Hearings System, will be relevant to support any statutory changes to the remittance of children to the Children's Hearings System, as proposed by this consultation for the bill. In the context of the barriers to implementation of existing guidance, we would also propose further changes to support decision-making around whether the behaviour of a child who has caused harm is brought before the criminal justice system or is be addressed by the Children's Hearings System. These changes are outlined in our response to question 9.

Option 2

⁴⁰ Independent Care Review (2020) The Promise (page 39)

⁴¹ McAra, L., & McVie, S. (2010). Youth crime and justice: [Key messages from the Edinburgh Study of Youth Transitions and Crime. Criminology and Criminal Justice](#), 10(2), 179-209.

"Promoting wider use of the existing ability for the children's hearings system to require support to be offered to a young person on a voluntary basis following the termination of any CSO by virtue of that individual turning 18. This could be strengthened to include the need for the children's hearing to provide a closure report at the end of a child's CSO where this is being discharged or ceasing only by virtue of the child turning 18. This report could detail any identified needs or risks that remain. It could be shared with the implementation authority who would be responsible for assessing the support needed, including on a multi-agency basis, to address these needs or risks. This assessment and any subsequent provision of support could be provided under existing aftercare duties, where applicable". (p28)

We concur with the *intentions* behind option 2 set out here in the consultation paper, that support must not arbitrarily end when a child turns 18. Increasing the use of existing abilities for providing support on a voluntary basis will be important to meeting the needs of all children and young people.

Evidence shows that a child's developmental needs are not always congruent with their chronological age, particularly when they have experienced trauma and adversity in their childhood. It is not the case that on reaching the age of 18, young people are immediately able to operate autonomously, and particular attention should also be paid to specific care and support for young people aged 18-26.⁴²

There is a need to consider the detail of how any new reporting duties within a children's hearing would be implemented, and their effectiveness monitored, so that practice across Scotland is consistent. These considerations should be informed by learning from other areas of practice, in which gaps between policy intention and practice around reporting have been evidenced, such as Continuing Care and throughcare for care experienced young people.⁴³

To implement these proposed changes requires access to appropriate services that support children and young people. In addition to the need to assess and remedy gaps in services, there is a need to ensure services that meet the developmental needs of young people turning 18 are consistently available. This must anticipate how trauma and not addressing the needs of these young people may have had an impact on them, and as such may require relationship-based support that is more intensive, specialised and/or open ended in order to be effective. This will require a commissioning structure for services that are not short term, with the requisite resource for the workforce to be skilled and supported to carry out this work. In keeping with the principle of minimum intervention, the services that young people need should be available from their earliest point of need, through community-based, universal or specialist services, including youth work, and not require involvement with formal systems such as the criminal justice system or Children's Hearings System. This equally applies to the need for support for younger children. The requirement for states to ensure that services to support children and their families are adequately funded, including investment in the workforce, is also a recommendation of the Committee on the Rights of the Child following the Day of General Discussion focused on children's rights in alternative care.⁴⁴

Option 3

⁴² Lightowler, C. (2020) *Rights Respecting? Scotland's approach to children in conflict with the law*. Glasgow: CYCJ

⁴³ Lough Dennell, B; McGhee, L; Porter, R. (2022) [Continuing Care: An exploration of implementation](#). Glasgow: CELCIS

⁴⁴ Committee on the Rights of the Child (2022) [2021 Day of General Discussion Children's Rights and Alternative Care Outcome Report](#)

"Increasing the age to which children can remain subject to measures through the children's hearings system for a period beyond the child's 18th birthday. Consideration would require to be given as to what age this could continue to, and whether this would only be available for children who had already been referred to the Principal Reporter prior to turning 18. An extension of this nature may also support the optimisation of benefits of raising the age of referral to the Principal Reporter. If measures cannot extend beyond a child's 18th birthday, there will be limits to the range of support that can be provided to those who are referred close to this upper age range. Further considerations, not least in respect of the differential rights of young people as adults, the ethos of the hearings system, and the implications for services of any such change would need to be taken into account". (p29)

In principle, we support increasing the age at which children can access support through the Children's Hearings System beyond their 18th birthday. Children and young people must be able to access the support they need based on their needs, and this support must not end abruptly. This is important because for support offered by the Children's Hearings System to be effective, it must be able to continue for a sufficient amount of time to allow a care plan to be implemented that will meet a child's individual needs. This is unlikely to happen if a child is referred to SCRA and brought to a hearing several months before their 18th birthday for example, as this would leave little time for meaningful change. Further detailed consideration and planning around the details of this significant change will be required. This work should be led by children and young people with lived experience, be evidence-based, and be joined up with other relevant policy and improvement agendas, such as the Hearings System Working Group and The Promise, for example.

The efficacy of any measures to support a child, young person and their family, especially measures on a voluntary basis, will depend on access to right support. Young people who have experienced trauma, or have had negative or fragmented experiences of support in their lives, are even more likely to need support for as long as they need, offered by practitioners they trust, who have the time and capacity to build relationships, and for these practitioners to have the specialist skills, support and be based in services commissioned to offer this support consistently over sufficient time periods.

In Scotland, a person attains 'majority' when they reach 18 years of age.⁴⁵ It may therefore be problematic for compulsory measures to be imposed on someone who is over 18 and it may be more appropriate for support to be offered on a voluntary basis, regardless of the referral grounds (welfare or offence based). It is important that there is flexibility for young people to change their minds about receiving support from the Children's Hearings System on a voluntary basis. Evidence and learning from other practices that enable young people to have choice about what support they receive as they grow up, highlights the importance of flexibility around these choices and decisions to allow for the development of young people's skills in autonomous decision-making. This is especially important if young people have experienced trauma, which can mean their developmental age does not correlate to their chronological age, or if they have had negative experiences of services, which may mean they turn down offers of support before they are ready for that support to end.⁴⁶

Evidence about children and young people's pathways through systems of formal support shows that often these journeys can be complex. It is concerning that evidence shows

⁴⁵ Age of Legal Capacity (Scotland) Act 1991, Age of Majority (Scotland) Act 1969

⁴⁶ Lough Dennell, B; McGhee, L; Porter, R. (2022) [Continuing Care: An exploration of implementation](#). Glasgow: CELCIS.

that the use of child protection mechanisms to support children can dwindle before a child reaches 16,⁴⁷ meaning that children and young people may have care and protection needs that go unaddressed by the time they reach the age of 18. Therefore, there may also be some cases where it is in a young person's best interest, and would best meet their needs, to be referred into the Children's Hearings System for the first time after they have turned 18. For instance, if their developmental needs were assessed to be best met by the support the Children's Hearings System can offer. How this would work in practice will need careful consideration, alongside consideration of how support would change as a child grows up to meet their developmental needs. Currently, services for children and adults are separate, and young people can often experience a gap between these services or a premature end to support, which is especially detrimental to young people who are care experienced. The proposals for a National Care Service are in the early stages, but any development of this option for this Bill to take forward would need to be co-ordinated with any changes involved in the creation and development of a National Care Service.

Question 8: Please give details of any other ways in which the use of the children's hearings system could be maximised, including how the interface between the children's hearings system and court could change

No answer provided.

Question 9: Should any of the above options be considered further?

Yes.

- Option 1
"A re-examination of the decision-making framework between which system should deal with a child's case and the consequent interfaces between the children's hearings system and the courts..."
- Option 2
"The continued use of traditional court settings, recognising the local innovations that are already underway across different areas of Scotland to improve children's experiences..."
- Option 3
"Making changes to practice, conduct in court and support for all children, whilst retaining children in court settings..."
- Option 4
"The Promise stated that: "...Scotland must consider how to ensure that children have the totality of their cases dealt with in an environment that upholds their rights and allows them to effectively participate in proceedings. Traditional criminal courts are not settings in which children's rights can be upheld and where they can be heard". In light of this we would welcome views on any other proposals beyond options 1-3 that should be considered" (p34)

⁴⁷ Scottish Government (2022) [Children's Social Work Statistics Scotland 2020/21](#) Edinburgh: Scottish Government

We support option 1 to re-examine decision making frameworks around whether children's hearing or criminal justice systems should deal with a child's case, to maximise the number of children supported by the Children's Hearings System. Any changes should support, and will also require requisite attention to, the implementation of guidance around decision making frameworks, as well as ensuring that available support is in place for children before and whilst they require support from the Children's Hearings System. Even if these changes are progressed, it is likely that cases involving a small number of children will be brought before the courts in the criminal justice system. Urgent improvements are required to ensure these settings are child friendly to ensure Scotland upholds children's rights and the UK's commitments as a member of the Council of Europe (CoE). Accordingly, CELCIS supports the changes laid out in option 3 as the minimum required to uphold the rights of children.

Evidence, including what children and young people say about their experiences, is clear that court settings and the criminal justice system do not uphold their rights or meet their developmental needs to address what may be driving their behaviour. This can also mean that children who have experienced trauma and/or have speech and language difficulties cannot meaningfully engage and participate in the criminal justice system, impacting their compliance with outcomes, for example bail conditions or Community Payback Orders. The timescales involved in court settings have a particularly detrimental impact on children, including children harmed by other children. This underlines the importance of ensuring there is early support for children, including Early and Effective Intervention, as well as ensuring more children who need to can access support through the Children's Hearings System rather than the criminal justice system. This will require attention to the implementation of existing guidance, as well as changes to decision-making processes around whether cases involving children who have harmed are brought before the courts in the criminal justice system or are addressed by the Children's Hearings System.

CELCIS continues to support proposals to raise the age of referral to the Principal Reporter to 18, and we welcome the commitments outlined in this consultation paper to enact this change. Further change is needed to the decision-making process to enable more children to be supported either outwith formal systems, or if support from formal systems is needed, by the Children's Hearings System rather than the criminal justice system. CELCIS supports the suggestion made by CYCJ to update guidelines so that joint reporting to the Principal Reporter and Crown Office and Procurator Fiscal Service (COPFS) only occurs in circumstances where a children's case is likely to be prosecuted under solemn matters, with a presumption that where a case is jointly reported, there must be justification by the COPFS for this to be routed to the criminal justice system, rather than that child be supported by the Children's Hearings System. We would add that any justification should not be based solely on the type of offence but should include wider considerations such as the risk to the public, the developmental needs of the child, their family context and their experiences of trauma. This is because evidence shows that in the rare circumstances when a child is involved in behaviour that causes serious harm, it must be recognised that significant trauma is a near universal experience for these children.⁴⁸ The Children's Hearings System is best equipped to meet needs that have resulted from significant trauma, to support them to recover and cease their harmful behaviour. CELCIS also supports CYCJ's recommendation to extend the criteria for referring children and young people for support via EEI measures. Once enacted, support for implementation of these changes will be required, as has been outlined in our response to question 7.

⁴⁸ CYCJ (2016) *Key messages from the Centre for Youth and Criminal Justice*

CELCIS supports the recommendations of The Promise around the changes needed to support children in conflict with the law. Whilst there is a need to support changes to decision-making and the implementation of these changes to minimise the number of children routed to the criminal justice system, we understand that some children will still be before this system. As such, we welcome the changes proposed by option 3 to make improvements to court settings to ensure they better meet the needs of children. Enacting these changes is the minimum action required to meet uphold children's rights given in the UNCRC (Articles 39 and 40), stipulating rights to recovery from trauma and to juvenile justice. We would also draw attention to the need for any changes to comply with the Guidelines on child-friendly justice from the Committee of Ministers of the Council of Europe (CoE).⁴⁹

The planning of these changes must be co-ordinated with other relevant policy change and improvement work, such as establishing the Barnahus model in Scotland, and the Victims Taskforce, as some of these changes, such as reducing timescales before a case progresses, a trauma-informed workforce and child friendly settings, will also improve the experiences of people harmed by children. There is an urgent need for alignment across the wider policy agenda for children, young people and families in Scotland. Research and experience gathered from the networks of practitioners across Scotland that we host, facilitate or CELCIS a member of,⁵⁰ shows us that the number of proposed and recent changes to this policy landscape can be confusing and detract from the planning required to co-ordinate and resource these changes, as well as the clarity needed by the workforce to enact practice change.

There will be a need for sustained attention to the implementation of these changes, including sufficient resourcing to do so. In addition to listening to and acting on what children and young people tell us, it will be important to consider evidence from implementation science, and learning from the implementation of similar changes in doing so, such as around Continuing Care entitlements.⁵¹ In particular, the need for sustained attention to culture change around the needs of children in conflict with the law in all organisations who come into direct or indirect contact with these children in the criminal justice system, as well as ensuring this workforce has the skills, support and capacity to understand what children need, including children who have experienced trauma.

We would also highlight the need for all children and young people involved in the criminal justice system to be able to access the supports they require to meet their wellbeing needs when involved in the Children's Hearings System, including if they are deprived of their liberty, as well as to recover from trauma and to support integration into their communities. All of these children must be able to access the support that is right for them for as long as they need it. This is also vital in order to uphold their rights under the UNCRC. The consequences of not meeting the needs of this group of children and young people are grave. These children and young people may be extremely

⁴⁹ Council of Europe (2010) [Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice](#).

⁵⁰ Lough Dennell, B; McGhee, L; Porter, R. (2022) [Continuing Care: An exploration of implementation](#). Glasgow: CELCIS.

⁵¹ Fixsen, D. L., Naoom, S.E., Blasé, K.A., Friedman, R.M., & Wallace, F (2005) *Implementation Research: A synthesis of the literature*. Tampa, FL: University of South Florida, The National Implementation Research Network; Fixsen, D.L, K.A. Blasé, and M.K. Van Dyke (2019) *Implementation Practice and Science*; Lough Dennell, B; McGhee, L; Porter, R. (2022) [Continuing Care: An exploration of implementation](#). Glasgow: CELCIS.

vulnerable as a result of experiences of profound and repeated trauma which may not have been addressed at an earlier opportunity resulting in a crucial need for care and support. Premature deaths in custody are one of the unacceptable, dire consequences of not meeting these needs.⁵² Many of the changes proposed in this consultation are welcome, but it will require sustained effort to resource and fully implement these. This must include attention to ensuring that the landscape of support is sufficiently resourced to meet the needs of every child, young person and family in Scotland who needs support, from the first time they need support and throughout their recovery from that experience of harm.

Question 10: Where a child requires to be deprived of their liberty, should this be secure care rather than a YOI in all cases?

Yes

CELCIS agrees that *in all cases*, in circumstances where a child must be deprived of their liberty, this should be in secure care rather than a YOI. The rationale for our position, including the rights basis and evidence, is outlined in our response to question 11.

Question 11: Should there be an explicit statutory prohibition on placing any child in a YOI, even in the gravest cases where a child faces a significant post-18 custodial sentence and/or where parts of a child's behaviour pose the greatest risk of serious harm?

Yes.

Our focus should firstly be to ensure children are not deprived of their liberty. Where this is absolutely needed, their liberty must be deprived for no longer than is necessary. In these cases, we agree with The Promise Scotland that Young Offenders Institutes (YOIs) are not suitable environments for children.⁵³ Secure care can provide the same security as YOIs but is a more suitable environment to provide the trauma-informed care that children need.

It is also important to recognise that such grave cases are rare. Most young people in secure care are placed there for their own protection rather than as a result of offences they have committed.⁵⁴ At any one time, around 90% of children in secure care are there through the Children's Hearings System. The Children's Hearings System is not a criminal justice setting; rather, it is a welfare-based system, focusing simultaneously on individual needs and deeds.⁵⁵

The changes proposed for this Bill could lead to more children being placed in secure care on offence grounds. This could have practice implications for secure care settings, and it is important that care is taken to ensure that secure settings retain their ethos of providing environments of therapeutic care for children who are displaying extreme vulnerability or distress. Despite relatively small numbers of children currently held within HMPYOI Polmont, we nonetheless recognise that this statutory prohibition could

⁵² Lightowler, C.(2020) *Rights Respecting? Scotland's approach to children in conflict with the law*. Glasgow: CYCJ

⁵³ The Independent Care Review (2020) *The Promise*. Independent Care Review

⁵⁴ Gough A. (2016) *Secure Care in Scotland: Looking Ahead*. Glasgow: CYCJ.

⁵⁵ Lightowler, C. (2020) *Rights Respecting? Scotland's approach to children in conflict with the law*. Glasgow: CYCJ.

put significant strain on an already stretched secure care estate and workforce and suggest that investment (both financial and leadership) is provided towards alternatives to secure care and custody.

Children with care experience are more likely than their peers to experience police contact and criminalisation, despite no evidence that they commit greater offences than other children. Therefore, more needs to be done to ensure police involvement remains the option of last resort in responding to offending.⁵⁶ When offending behaviour takes place, a culture shift across policy, practice and public fields is needed in order to recognise the value in diversion from prosecution.⁵⁷ Legislation can play an important role here in challenging public perceptions towards children in conflict with the law. Continued support to the care workforce to understand and embed frameworks such as CARM (Care and Risk Management) and FRAME (Framework for Risk Assessment Management and Evaluation) will enable practitioners to follow effective risk management practice and help divert children from prosecution. Diversion from prosecution allows children to avoid unnecessary contact with the justice system, and the lifelong negative impact this can have on their lives, and our communities.⁵⁸

We must also consider changes to process. Current eligibility criteria for early intervention services, for example, can require children to be experiencing high levels of need before being able to access a service, therefore we urge investment in services that meet the needs of children before they experience acute vulnerability.⁵⁹ Early and Effective Intervention requires multi-agency collaboration and partnership-working is crucial to success, as well as appropriate, proportionate and timely information sharing to enable children to access appropriate interventions at the earliest stage, before concerns escalate.⁶⁰

We must also focus attention and resource on ensuring young people receive appropriate transition support into, during and following secure care. This means an end to young people leaving secure care into hostel or hotel accommodation; instead, being provided with stable accommodation and the wraparound relational support they need to thrive. This should include intensive community-based support, and, where needed, 'step-down' or similar residential accommodation.⁶¹ In addition to these material and practical needs, like all children, care experienced children need care, love and trusting relationships in their lives. They need educational opportunities and connections within their communities that allow them to reach their full potential. Providing these emotional supports is just as important as supporting material and practical needs.

Question 12: Should existing duties on local authorities to assess and support children and care leavers who are remanded or sentenced be strengthened?

Yes.

⁵⁶ Moodie, K; Nolan, D. (2016) ["Between a rock and a hard place": Responses to Offending in Residential Childcare](#). Glasgow: CYCJ.

⁵⁷ Scottish Government (2011), *Diversion from Prosecution Toolkit-Diverting Young People from Prosecution, Young People Who Offend: Managing High Risk and Transitions*. Scottish Government: Edinburgh

⁵⁸ Community Justice Scotland (2020) *National Guidelines on Diversion from Prosecution in Scotland*. Community Justice. Edinburgh: Community Justice Scotland

⁵⁹ Gillon F. (2018) *Early and Effective Intervention (EEI) in Scottish Youth Justice: Benevolent Principles and Unintended Consequences*. Glasgow: University of Strathclyde.

⁶⁰ McEwan, D (2018). *Early and Effective Intervention and the Named Person Service*. Glasgow: CYCJ.

⁶¹ Walker, M., Barclay, A., Hunter, L., Kendrick, A., Malloch, M., Hill, M., & McIvor, G. (2005). *Secure Accommodation in Scotland: Its Role and Relationship with 'Alternative' Services*. Scottish Executive.

We agree that existing duties on local authorities to assess and support children and care leavers who are remanded or sentenced should be strengthened. This will have implications for resourcing, and attention must be paid to this in planning processes. Learning from the ongoing challenges to implementation to address the needs of our young people, such as for the provision of Continuing Care, must also be considered so that any changes are able to be experienced by every child who has the need and right to this in Scotland.

All children cared for in secure accommodation in Scotland have the same right to receive high quality care regardless of their route to secure care. If changes are progressed to ensure that all children who are required to be deprived of their liberty are cared for in secure care rather than a YOI, then these children should have access to the same entitlements to support during and after being in secure care as other children. The proposed changes would mean that there would be more children cared for in secure care not subject to a CSO. Changes should be made to ensure these children have access to the same entitlements under the Children and Young People (Scotland) Act 2014, such as Corporate Parenting, Continuing Care, and Aftercare, as children for whom there is a CSO in place.

Too often, care experienced children experience an abrupt ending to the support they need when they leave care, this is especially true for children leaving secure care.⁶² All care experienced children have care and protection needs and are likely to have experienced trauma and adversity; however, emerging evidence shows that children cared for in secure settings are likely to have experienced multiple difficulties such as neglect, trauma, bereavement and abuse.⁶³ It is imperative that these children do not experience an abrupt end to the care and support they require when they leave secure care. The consequences of not meeting these needs can be seen in the over-representation of care experienced people in the criminal justice system, reduced economic activity, as well as a lifelong need for health or other support, including benefits, mental health or homeless services.⁶⁴ Concerted effort and investment are required to ensure all these children and young people have access to relationship-based support into adulthood, with graduated transitions that meet their individual needs at their developmental stage.

If the proposals outlined are progressed, consideration must be made during planning stages to meet the financial cost of providing this support, with local authorities provided with ringfenced funding from the Scottish Government. This must include both the resource requirements for local authorities to fund secure care for every child who is required to be deprived of their liberty, and to cover the requirements to enable these children to be classed as 'looked after' in statute under the Children and Young People (Scotland) Act 2014, with entitlement to continuing care, aftercare and to support from their corporate parents. The financial costs of implementing legislation, particularly continuing care duties, have been highlighted as a barrier to ensuring every child and young person eligible for these supports receives them.⁶⁵

In addition to financial resourcing, these changes will also require practice guidance so that practitioners are able to understand and enact these changes. In particular, the

⁶² Scottish Institute for Residential Child Care (2009) [Higher Aspirations, Brighter Futures: NRCCI Commissioning Report](#). CELCIS, Glasgow: www.celcis.org

⁶³ Gough, A. (2016) Secure Care in Scotland: Looking Ahead, Key messages and call for action

⁶⁴ Independent Care Review (2020) Follow The Money (page 21)

⁶⁵ Centre for Child and Family Research (2012) [Evaluation of the Staying Put: 18+ family placement programme](#), Loughborough University; Community Care; Sweetman, L. (2015). [Staying Put in Independent Foster Care: working together, getting it right](#). Nationwide Association of Fostering Providers.

specific supports that are likely to meet the aftercare and continuing care needs children and young people leaving secure care, which can differ from the support required by their peers when leaving other types of care. In addition to meeting resource needs for corporate parents to uphold these entitlements, such as for mental health services and intensive community-based support, there must be continued effort to drive culture change in organisations that are corporate parents, including those who first interact with children and young people in conflict with the law such as Police Scotland, to instil the values that are core to corporate parenting approaches.

This guidance, as well as planning of this change in general, should incorporate learning from the challenges to the implementation of other policies such as Continuing Care duties.⁶⁶ This learning includes; the recommendation that all stakeholders articulate and prioritise continuing care as the default provision for young people; improved national finance and resource planning to guarantee care setting capacity; the need for local authorities to plan finances to guarantee every eligible young person's continuing care entitlement; and clarification of the role of the Scottish Government and regulatory bodies in monitoring continuing care provision.

Question 13: Do you agree that the three above changes related to anonymity should be made?

"Three interlinked proposals are being made:

- 1. That the judge's discretion to make an exception to identify a child accused should be further limited. Instead of this being permissible when in the public interest, instead this should only apply when the court is satisfied this is necessary for the purpose of protecting the public from serious harm and/or in the interests of justice.*
- 2. That legislative change is made to enable a child's right to anonymity to apply from their first contact with the criminal justice system, including pre-charge.*
- 3. That the post-18 automatic identification of children who have come into conflict with the law aged under 18 ceases. Where a child has been convicted of an offence aged under 18, their right to anonymity should be maintained into adulthood, unless it is determined subsequent to the child turning 18 that, for reasons of protecting the public from serious harm and/ or the interests of justice, such identification is necessary. That anonymity should persist until that young person turns 26". (p40)*

Yes but only to some changes.

We are in agreement with options 1 and 2. Option 3 should be amended so that children in conflict with the law can have lifelong anonymity, and so that no decisions about the identification of children are based on arbitrary chronological age thresholds and/or public interest.

All children have a right to privacy under Article 16 of the UNCRC, and people of all ages have a right to privacy under Article 8 of the ECHR.⁶⁷ Children who are in conflict with the law have the right to be "treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human

⁶⁶ Lough Dennell, B; McGhee, L; Porter, R. (2022) [Continuing Care: An exploration of implementation](#). Glasgow: CELCIS.

⁶⁷ United Nations General Assembly (1989) [Convention on the Right of the Child](#). Geneva: United Nations Commission on Human Rights; European Court of Human Rights (2021) [Guide on Article 8 of the European Convention on Human Rights](#) Council of Europe.

rights and fundamental freedoms of others". This involves a range of rights, including the right to a fair trial in a child-friendly setting, and the right for a child "to have his or her privacy fully respected at all stages of the proceedings"⁶⁸. The right to privacy is expanded on in General Comment 24, which is unequivocal regarding children's right to lifelong privacy: "there should be lifelong protection from publication regarding crimes committed by children". The rationale in this guidance is based on reducing stigma and barriers to education, housing and other crucial rights which will also promote integration.⁶⁹

This guidance is underlined by the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, known as the 'Beijing Rules', which state that "the juvenile's right to privacy shall be respected at all stages to avoid harm being caused to her or him by undue publicity or by the process of labelling. In principle, no information that may lead to the identification of a juvenile offender shall be published"⁷⁰. In addition to these United Nations rights frameworks, the Council of Europe (CoE), of which the UK is a member, also gives guidance on the anonymity of children involved in justice systems, indicating that the Beijing Rules must be adhered to for children in conflict with the law.⁷¹ Evidence shows that children who are in conflict with the law have disproportionate experiences of significant trauma and adversity,⁷² and anonymity will be important in supporting a child to recover from that trauma.

These international rights frameworks, to which Scotland is bound and further committed to upholding when the UNCRC is incorporated into Scots law, set clear direction to around the anonymity of children in conflict with the law. This requires the implementation of options 1 and 2 as proposed under the terms of this new bill, the extension of option 3 so that children in conflict with the law can have lifelong anonymity. To meet our commitments under international rights frameworks there must be no arbitrary age threshold for revoking anonymity, whether this is 18, 26 or any other age.

Question 14: Do you agree that the regulatory landscape relating to secure care needs to be simplified and clarified?

No option selected.

We do not feel able to provide a conclusive answer to this specific question based on information provided within this consultation. More information should be provided to assess any current regulatory issues before any work is undertaken.

It is essential that there is a robust regulatory environment for *any* setting where a child's liberty is restricted and we believe it is appropriate that secure care centres are approved and licenced by the Scottish Government, as well as continue to be inspected by both the Care Inspectorate and Education Scotland.

There are already robust regulations in place to safeguard children's rights in Scotland; however, these approaches can be strengthened through continued investment in

⁶⁸ United Nations General Assembly (1989) [Convention on the Right of the Child](#). Geneva: United Nations Commission on Human Rights

⁶⁹ Committee on the Rights of the Child (2019) [General Comment no 24 on children's rights in the child justice system](#) (page 12)

⁷⁰ United Nations General Assembly (1985) United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) (Article 8)

⁷¹ Council of Europe (2010) [Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice](#). (page 61)

⁷² CYCJ (2016) *Key messages from the Centre for Youth and Criminal Justice*. Glasgow: CYCJ.

advocacy services and independent legal advice for children and families. A focus on cultural changes to promote respect for children's rights, along with comprehensive actions to prevent rights breaches must be seen as a priority. Doing so is closely aligned with GIRFEC, which is underpinned by a preventative approach, and aims to support children to reduce the escalation of difficulties and the need for formal state intervention. In addition to upholding rights and offering support when it is first required, the Independent Care Review also emphasised the need for regulators to work together to foster the culture change needed to value the relationships that matter to children.⁷³

Question 15: Do you feel that the current definition of "secure accommodation" meets Scotland's current and future needs?

No.

We recognise there is a continuing lack of clarity on the purpose, role, and function of secure care in Scotland and that this lack of clarity impacts on the equity and parity of care that children receive.⁷⁴

There are two key changes that can be made to this definition. The current definition of secure care states it as accommodation provided for the purpose of restricting the liberty of children, in a residential environment. Children experience their liberty being deprived in secure care settings, rather than restricted, so we urge a reconsideration of this current wording.

The current definition also firstly states that the purpose is to restrict liberty, rather than reflecting the need for therapeutic care. We suggest that the definition recognises the primary need and function of secure care to be the provision of therapeutic care.⁷⁵ The current definition does not reflect the reality that most children are likely to be looked after in secure care on welfare grounds.⁷⁶ Any reconsideration of the definition of secure care is being reconsidered, this should be co-produced alongside practitioners and care experienced young people.

The Independent Care Review found that, whilst there are many improvements that can and should be made to secure care environments, it also recognised that this form of care is sometimes necessary to provide a safe, caring and secure environment for young people with very complex needs.⁷⁷ We agree with The Promise that the underlying principle of secure accommodation must be the provision of therapeutic, trauma-informed support that serves the best interests of children.⁷⁸ Language and definitions are important and the current definition feeds into the inconsistent use of secure care, which children feel the impact of. Public and professional perceptions of secure care must also be challenged. Many stakeholders, including young people, still perceive and experience secure care as a punitive option, with some young people described 'doing their time' in secure care.⁷⁹

⁷³ The Independent Care Review (2020) *The Promise*. (page 28)

⁷⁴ Gough A. (2016) *Secure Care in Scotland: Looking Ahead*. Glasgow: CYCJ.

⁷⁵ Scottish Government (2013) *The Secure Accommodation (Scotland) Regulations 2013*. Edinburgh: Scottish Government

⁷⁶ Gibson (2021) *ACEs, Distance and. Sources of Resilience*. Glasgow: CYCJ

⁷⁷ The Independent Care Review (2020) *Evidence Framework*.

⁷⁸ The Independent Care Review (2020) *The Promise*. Glasgow: Independent Care Review

⁷⁹ Gough A. (2016) *Secure Care in Scotland: Looking Ahead*. Glasgow: CYCJ.

The Secure Care Pathway and Standards set out an achievable vision of what high-quality care should look and feel like for children in secure care settings in Scotland.⁸⁰ These standards have our full support, and we urge focussed attention and investment in their implementation as a matter of priority. [STARR](#) is a group of children, young people and adults with experience of secure care who inform, challenge and shape policy and practice around secure care. This group was a lead partner in the development of the Secure Care Pathway and Standards, and their expertise will be important to the development of any changes to secure care.

Question 16: Do you agree that all children under the age of 18 should be able to be placed in secure care where this has been deemed necessary, proportionate and in their best interest?

Yes through all routes.

Every child under the age of 18 should have equitable access to care and support. Secure care is among the most intensive and restrictive form of alternative care, therefore depriving a child of their liberty should always be a last resort and done so only when necessary and in their best interest; however, when these conditions are met, it is essential that a child's right to the best possible care is upheld. This requires intensive support that safeguards their rights in a safe, trauma-informed care environment, as well as access to 1:1 educational support that is less available in, for example, a YOI setting. Tailored mental health provisions are also more readily available to children in secure care than they are in a YOI.⁸¹ Children should only be placed in secure care for as long as is necessary and to meet their specific needs, and they must receive appropriate transition support during and following secure care.

We urge a focus on early intervention and community-based alternatives which can prevent the need for secure care. This takes strategic, coordinated investment in community and social resources so that offending behaviour can be prevented, as well as capacity-building and multi-agency support for children who are displaying extreme vulnerability or distress.⁸²

We support raising the age of referral to the Children's Reporter, which will enable more children to access secure care as part of an order taken by the Children's Hearings System. Whilst depriving a child of their liberty should always be a last resort, if this is necessary and in the best interests of the child, it does not matter whether that child is 15, 16 or 17.

Question 17: Should the costs of secure care placements for children placed on remand be met by Scottish Ministers?

No.

We suggest that local authorities retain responsibility for the costs of secure care placements for children on remand and urge Scottish Government as a corporate parent

⁸⁰ Scottish Government (2020) [Secure Care Pathway and Standards](#), Edinburgh: Scottish Government

⁸¹ Gough A. (2016) [A Safe Future? Finding a way forward for the secure care sector in Scotland](#). Glasgow: CELCIS.

⁸² Lightowler, C. (2020) [Rights Respecting? Scotland's approach to children in conflict with the law](#). Glasgow: CYCJ.

to ring-fence the resources required for local authorities to effectively provide care for children placed on remand.

Children who commit offences are still rights-holders and deserving of trauma-informed care and support. Despite this, secure care is currently not well-utilised for children on remand. We are aware there are considerable financial and operational pressures on local authorities as purchasers of secure care. The four independent charitable secure care centres as providers also experience financial pressures in having to respond and react to the spot-purchase model of care.⁸³ Under current legislation in Scotland, local authorities are responsible for providing secure care services and we would suggest that funding should be provided by Scottish Government to local authorities, so that they can uphold the rights of children in their care.⁸⁴

The number of children on remand has increased over time, and there continues to be a higher proportion of children on remand than the adult prison population, therefore we ask for an urgent consideration of this rights issue, to ensure that children on remand and those who have been harmed are provided with fair and supportive access to justice.⁸⁵

It is imperative that any decisions taken on a child's care are made with the child's interests at heart. Secure care is an environment that can provide care and support, whilst retaining safety and security; however, this should only be used when it is the most appropriate disposal and all other alternatives have been considered.⁸⁶ The longer-term costs of 'poor' care can be considerably more than 'good' care, with outcomes for care leavers being much poorer than their non-care experienced after peers. and outcomes for young people who move on from care settings at a younger age being poorer still. This also has significant long-term financial implications for the public finances.

The longer-term lifetime impact for communities and care experienced adults include limited or depressed economic activity, an over-reliance on state welfare support, mental health services, costs associated with homelessness and other related factors. Specifically, the longer-term costs of not being in employment, education or training are currently estimated at around £56,000 per annum. Adding specialist support for young adults involved with mental health or justice services can be even more costly.⁸⁷

Question 18: Is a new national approach for considering the placement of children in secure care needed?

Yes.

Scottish Government Good Practice Guidance on Implementation of Secure Accommodation Authorisation recognised in 2013 that "depriving a child of their liberty infringes on one of their most fundamental human rights and impinges on associated

⁸³ Gough A. (2016) *Secure Care in Scotland: Looking Ahead*. Glasgow: CYCJ.

⁸⁴ Lightowler, C. (2020) *Rights Respecting? Scotland's approach to children in conflict with the law*. Glasgow: CYCJ.

⁸⁵ Lightowler, C. (2020) *Rights Respecting? Scotland's approach to children in conflict with the law*. Glasgow: CYCJ.

⁸⁶ CYCJ (2012) *National Standards for Youth Justice Provision, Appendix 1 to the Guide to Youth Justice in Scotland*. Glasgow: CYCJ.

⁸⁷ Coles, B, Godfrey, C, Keung, A, Parrott, S & Bradshaw, J 2010, *Estimating the life-time cost of NEET: 16-18 year olds not in Education, Employment or Training*. York: University of York.

rights to freedom of association and family life⁸⁸. For this reason, any decision to place a child in secure accommodation can only be justified because it is in their best interests and/or because it will protect the rights of others. Despite this guidance, we are aware that there is a varied and inconsistent use of secure care across different local authorities in Scotland, as well as its use from local authorities in England.⁸⁹

We know from research evidence, practice knowledge and engagement with care experienced people, that the current approach does not work for many children. The current 'market' of secure care is a system of 'spot purchase' placements, which leads to an absence of systematic planning or commissioning of services. This market model means that secure care centres effectively must act in competition with each other, rather than collaboration. It is children who experience the impact of this system, whereby decisions are made based on cost, not in the interest of the child.

The only consideration of value for a care 'system' is one which provides positive outcomes for children. The current approach to provision can also lead to short-term decisions being made⁹⁰ the type and longevity of care for a child which can include decisions supporting an abrupt end-of-placement, transitions, and what is known as a 'cliff edge' when children leave secure care.⁹¹

The vision of Scotland's Secure Care Strategic Board is that "Scotland is striving to become a country where all children and young people; whatever the vulnerabilities and risks associated with their distress and actions; are cared for as children and where no child or young person is deprived of their liberty."⁹² However, we know this vision does not match the reality that children in secure care currently experience. We urge full implementation of the Secure Care Pathway and Standards as a matter of urgency, to help realise this vision and meet our aim of providing consistent care for our most vulnerable children.⁹³

Standards of care must be consistent across providers and all areas of Scotland, so that children experience the same chance of outcomes as their non-care experienced peers wherever they live. Currently, their experiences differ significantly across the 32 local authorities in Scotland, and across public, private and voluntary sector provision. There is a lack of consistent resourcing for specialist, therapeutic care services which means some children are being moved across local authority boundaries and outside of their local communities in order to receive the support that they need.

We believe that the marketised model of care contributes to this inconsistent use of secure care.⁹⁴ Children, young people and families are those who experience the effects of this marketised system of care. We agree fully with The Promise that Scotland must make sure that the vulnerable situations children can be in are never something that can be profited from and believe that the 'value' in any care system is only ever the outcomes and more positive experiences for those in its care.⁹⁵

⁸⁸ Scottish Government (2013) [Good Practice Guidance - Implementation of Secure Accommodation Authorisation \(Scotland\) Regulations 2013](#), Edinburgh: Scottish Government

⁸⁹ Gough A. (2016) [Secure Care in Scotland: Looking Ahead](#). Glasgow: CYCJ

⁹¹ Scottish Institute for Residential Child Care (2009) [Higher Aspirations, Brighter Futures: NRCCI Commissioning Report](#). CELCIS, Glasgow: www.celcis.org

⁹² Scottish Government (2021) [Secure Care Group Purpose and Vision](#)

⁹³ Scottish Government (2020) [Secure Care Pathway and Standards](#), Edinburgh: Scottish Government

⁹⁴ Gough A. (2016) [Secure Care in Scotland: Looking Ahead](#). Glasgow: CYCJ.

⁹⁵ Independent Care Review (2020) [The Promise](#), Glasgow: Independent Care Review (pg.111)

We also agree with the intention to move away from the use of secure care as an emergency placement, recognising the re-traumatising effect this can have.⁹⁶ While there was a considerable decrease in the use of emergency beds in 2020 (209 uses in total, a decrease of 47% from 398 in the previous year), this figure is likely to significantly impacted by the COVID-19 pandemic and its associated public health restrictions.⁹⁷ We fully agree with The Promise's intention that care needs to be planned and that transitions never feel like an emergency to the children experiencing transitions.

Furthermore, we recognise there is a lack of shared understanding as to what is meant by "alternatives to secure." Critical to realising The Promise is investment in preventative, alternative, complementary and 'step-down' (also known as close support) services. In consulting with a group of care experienced people in the development of our response to this consultation, the group were keen to stress that it is relationships, not geography, that supports young people in their transitions from secure care and into the community. This reinforces what we know from research, which has outlined how careful planning is needed to navigate complexities in terms of children and young people's relationships with family and/or friends, or with others in the community, in their transition from secure care, as well as practical and material support.⁹⁸ Children are often at significant risk upon leaving secure care and returning to the community they came from, as this can involve reconnecting with sources of former trauma, adversity, poverty, and stigma. We therefore urge further investment in the transitions support that children need before and after secure care.⁹⁹

We know from information shared from practice and Scottish Government data that there is an inconsistent use of secure care accommodation across local authorities in Scotland. Some local authorities have developed intensive and close support residential childcare or/and wraparound services as alternatives to secure care, but these services both in practice and in capacity vary from authority to authority, adding to the 'postcode lottery' of support that children receive. Current issues in care workforce turnover, retention and resourcing challenges have all led to many critical services being stripped back or suspended. National attention is required to support and value the care workforce, recognising the critical role they play in supporting the needs of our most vulnerable children and families.

Question 19: Is provision needed to enable secure transport to be utilised when necessary and justifiable for the safety of the child or others?

Yes.

Secure transport should only be used where necessary. Currently too many children are transported with or by professionals who are strangers to them. Provision must consider not just the type of transport, but also the care and relational support that children deserve during their journeys. Provision should be made to ensure someone the child knows and trusts can be with them on their journey to secure care.¹⁰⁰ This could be the child's social worker or a member of staff at the secure care centre or a residential

⁹⁶ Gough A. (2016) [Secure Care in Scotland: Looking Ahead](#). Glasgow: CYCJ.

⁹⁷ Scottish Government (2022) [Children's Social Work Statistics Scotland 2020/21](#) Edinburgh: Scottish Government

⁹⁸ Miller, M. and Baxter, K. (2019) [Talking Hope Report](#). Glasgow: CYCJ.

⁹⁹ Gough A. (2016) [Secure Care in Scotland: Looking Ahead](#). Glasgow: CYCJ.

¹⁰⁰ Scottish Government (2020) [Secure Care Pathway and Standards](#), Edinburgh: Scottish Government

home; however, we are aware that secure care providers, for example, find this challenging to resource.

Children entering secure care will have experienced significant trauma and it is essential that their needs are always considered at what is often a distressing point in their lives. Skilled, trauma-informed practitioners are needed to support children in these challenging circumstances. Implementation of Scotland's Secure Care Pathway and Standards vision will ensure children are treated with dignity, compassion, sensitivity, and respect no matter the reason as to why they are going to secure care. This requires professionals to be trauma-informed and to be able to respond to children's needs and behaviours with care, compassion, and sensitivity. We also support the development of a national specification for secure transportation, which applies the principles of the UNCRC, The Promise and the Secure Care Pathway and Standards, is developed in partnership with key stakeholders and in consultation with children who have travelled by secure transport.

Question 20: Are there any other factors that you think need to be taken into account in making this provision for secure transport?

Yes.

Scotland's Secure Care Pathway and Standards outline a vision of improvement for children's journey to secure care; however, we know from practice experience and from consultation with care experienced people, that their transport journey to secure care can often add to the trauma they are experiencing.¹⁰¹

To address this, full implementation of the Secure Care Pathway and Standards should be actioned at the earliest possible opportunity. Children should also be provided with the details of where they will stay and given information that explains what to expect. Wherever possible, this should be done in a planned and considered way. Children should be provided with information about their rights and how these will be upheld during their care. These rights should be explained by someone they know and trust, in advance of their stay in secure care

Question 21: Do you agree children should be able to remain in secure care beyond their 18th birthday, where necessary and in their best interests?

Yes.

We believe that children should be able to remain in secure care beyond their 18th birthday, where necessary and in their best interests, for as long as their needs require it. However, we reiterate that children should only be deprived of their liberty where it is absolutely necessary and in their best interests.

In these circumstances, children in secure care should experience the same rights to Continuing Care as other children receiving care; however, we know that too often children in secure care experience a 'cliff edge' of support when they turn 18. The [Staying Put Scotland](#) approach enables care leavers to remain in stable care until such time as they are ready to move on.¹⁰² It emphasises young people's entitlement to

¹⁰¹ Scottish Government (2020) [Secure Care Pathway and Standards](#), Edinburgh: Scottish Government

¹⁰² Scottish Government (2020) [Staying put Scotland](#), Edinburgh: Scottish Government

support into adulthood and offers them the option to return to care, if and when they encounter difficulties. The central elements here are the importance of relationship-based practice and extended and graduated transitions. Staying Put also emphasises how planning decisions should be based on the needs of individual children and young people. A child's care should be based on their developmental stage and individual needs, yet we know that too often decisions are made using bureaucratic, chronological, or budgetary constructs.¹⁰³ We would encourage flexibility so that decisions to remain in secure care can be made on a case-by-case basis and upon the circumstances of the needs of each individual child.

In addition, compared to YOIs, secure care provides more age-appropriate facilities, offering more relationship-based and therapeutic, trauma and attachment informed support. Critical to this is a far higher ratio of staff to children and a child-centred environment and design.¹⁰⁴ We agree with The Promise Scotland that whilst secure care should be used as an alternative to YOIs, it should not be routinely used to support children who would be better served by community-based, trauma-informed care.

Relationships are critical to meeting the needs of children yet we know that artificially imposed thresholds and relationship disruptions can inhibit the development of these secure and supportive relationships. We need to see the removal of a focus on the continuity of 'placements' (which has significant implications for secure care and often residential care facilities), to a renewed focus on ensuring that supportive relationships are maintained and facilitated.¹⁰⁵

Consideration must be given to the resource impacts of the change suggested by this question in the consultation. Currently, secure care centres would have significant capacity challenges in supporting children to remain in care beyond their 18th birthday. We know how the financial costs of implementing Staying Put consistently have been raised as an issue for local authorities facing significant cuts in their budgets, and in particular children's services on whom the financial burden is assumed to fall.¹⁰⁶ Short-term pressures on budgets create challenges for local managers and decision-makers, leading to decisions that are made based on children's chronological age (i.e. under 18), rather than their development needs. Resourcing restrictions must not absolve local authorities, and other corporate parents, of their legal and ethical responsibilities towards care experienced children, young people and care leavers and the obligations to meet their needs and uphold their rights.¹⁰⁷

Section 7 – Residential Care and Cross-Border Placements

General comments on matters raised in Section 7

The term 'cross-border placement' is used to describe a circumstance where a child in care moves from their local council or county area in the UK to another nation in the

¹⁰³ Lough Dennell, B; McGhee, L; Porter, R. (2022) [Continuing Care: An exploration of implementation](#). Glasgow: CELCIS.

¹⁰⁴ Gough A. (2016) [Secure Care in Scotland: Looking Ahead](#). Glasgow: CYCJ.

¹⁰⁵ Lough Dennell, B; McGhee, L; Porter, R. (2022) [Continuing Care: An exploration of implementation](#). Glasgow: CELCIS.

¹⁰⁶ Centre for Child and Family Research (2012) [Evaluation of the Staying Put: 18+ family placement programme](#), Loughborough University; Community Care; Sweetman, L. (2015). [Staying Put in Independent Foster Care: working together, getting it right](#). Nationwide Association of Fostering Providers.

¹⁰⁷ O'Connor, U., Kinlen, L., Horgan, G., McCord, J. and Keenaghan, C (2012) Understanding Policy Development and Implementation for Children and Young People, The Children and Youth Programme: NUI Galway

UK¹⁰⁸. We share the significant concerns highlighted by a number of organisations including the Children and Young People’s Centre for Justice (CYCJ), Scotland’s Children and Young People’s Commissioner’s Office (CYPCS), The Promise Scotland, and the Care Inspectorate, in relation to cross-border placements, where children are moved away at considerable geographical distance from their home, their family, their friends, and their community for care to meet their needs.

As such, we welcome the attention given to cross-border placements within this consultation, particularly given the clear message from The Promise that, in order to uphold children’s human rights, Scotland must stop the sale of care placements to local authorities outside of Scotland.¹⁰⁹ Perhaps because of the current and ongoing efforts of the Scottish Government to resolve the legal matter of the recognition of cross-border Deprivation of Liberty Safeguards (DOLS) orders under Scots law, and the overarching focus on justice that has, this consultation takes too narrow a perspective in its focus on cross-border placements.

Whilst the rights and needs of children deprived of their liberty in cross-border placements must be given robust attention, so too must those of all children placed at distance from home or across borders under any circumstances, including those living in residential, foster and kinship care, as well as in secure care or under circumstances under which their liberty is restricted. A recent thematic review of children placed on DOLS orders in Scotland by the Care Inspectorate found that the children’s experiences were generally positive and the support in place was robust.¹¹⁰ Unfortunately these findings are not mirrored in the inspectorate’s exploration of practice, outcomes and children’s rights in cross-border and distance placements more broadly.¹¹¹ While the Care Inspectorate requires notification when a child moves into a residential care service from another UK jurisdiction, there is otherwise a concerning lack of data and understanding of the numbers, circumstances, needs and experiences of children living in ‘cross-border’ placements in Scotland. This is an area of research currently being progressed by CELCIS, alongside colleagues from elsewhere in the UK.

Not only are there differences in terms of children’s eligibility for some services and support depending on the legal basis of their cross-border placement (for example, aftercare), there are concerns that children in cross-border placements do not have the same access to their rights and protections as care experienced children already living in Scotland. For example, they may have limited support to understand their rights, limited opportunities to have a say in decisions about their care, and limited access to advocacy.¹¹² These protections are imperative for children living at a distance from home, across a border, given the serious implications of such arrangements on their opportunities to see and spend time with family. The immediate loss of the proximity of these relationships can be traumatic, and over the longer term can cause damage to how relationships fare in the future, neither of which upholds children’s rights¹¹³, nor keeps The Promise. Similarly, children’s friendships can be damaged or lost through such

¹⁰⁸ The Promise Oversight Board (2022) [Report ONE](#). The Promise Scotland.

¹⁰⁹ The Independent Care Review (2020) [The Promise](#). Independent Care Review

¹¹⁰ Care Inspectorate (2022) [Short thematic review of children and young people placed on Deprivation of Liberty Orders](#). Dundee: Care Inspectorate

¹¹¹ Care Inspectorate (2022) [Report on Distance Placements](#). Dundee: Care Inspectorate

¹¹² Children’s Commissioner for England (2019) [Pass the parcel: Children posted around the care system](#). London: Children’s Commissioner; The Children’s Commissioner for England. (2020). [The Children that no one knows what to do with](#). London: Children’s Commissioner for England

¹¹³ The Independent Care Review (2020) [The Promise](#). Independent Care Review; Lightowler, C. (2020) [Rights Respecting? Scotland’s approach to children in conflict with the law](#). Glasgow: CYCJ; The Children’s Commissioner for England. (2020). [The Children that no one knows what to do with](#). London: Children’s Commissioner for England

moves, having long term implications for children’s propensity to invest in future relationships and their experience of friendships going forward.¹¹⁴ The consequences of cross-border placements on their relationships can be significant throughout the rest of a child’s life.

The final report of England’s Independent Review of Children’s Social Care published in May 2022 recognises the need for change to address the challenge of the shortage of homes and availability of care for children when and where they need it.¹¹⁵ Whilst there are circumstances in which it is in the best interests of a child to move across borders, for example, a where a kinship or foster family relocates to a different part of the UK, care planning decisions determining that children should be cared for in cross-border arrangements made solely on the basis of a lack of resources closer to their home and family connections, are far from acceptable. Such decisions should be based on a thorough, early, assessment of the child’s views and needs, and subsequent planning to meet these needs, including matching with the best placement. Recent findings from the Care Inspectorate’s exploration of cross-border and distance placements highlight failures in upholding children’s rights through inadequate planning, poor practice, and a lack of information sharing between local authorities.¹¹⁶ These are concerning findings, highlighting -sharing and matching before children and young people are moved across borders. Even where assessment and multiagency planning are more robust, are further complicated by distance and different legal and policy landscapes.¹¹⁷ The impact of the disruption cross-border care imposes on children’s lives should not be underestimated. In addition to the impact on the family relationships and community connections, cross-border care often comes with significant disruptions to children’s rights to access health services, education provision and care specific to their needs. A lack of continuity in specialist mental health care or counselling services, for example, could have a profound impact on a child or young person’s wellbeing, both in the immediate term, and potentially longer term if the experience of an abrupt end to a supportive relationship impacts on their future inclination to invest in such relationships with professionals.

The Scottish Government acknowledges that ongoing work to address the legal issues associated with the recognition of DOLS orders under Scots law is a short-term solution to a very particular issue and does not address the need for fundamental and sustained change in the regulation of cross-border placements. These more fundamental issues are not sufficiently addressed within this consultation.¹¹⁸ Whilst the proposals here may result in some advancements in the monitoring and regulation of residential services accepting cross-border placements, and to children’s access to advocacy, we are concerned that the proposals here do not amount to what is fundamentally required to end practices of children being inappropriately placed across borders, far from home, family, and friends. Nor do they reflect adequate steps to ensure that in the rare cases when cross border ‘placements’ are in a child’s best interests, these decisions are consistently robustly planned, with all support and services put in place, a child’s rights are upheld, and roles, responsibilities and accountability arrangements are clear and agreed. We understand inadequate provision in England is driving cross-border placements into Scotland.¹¹⁹ We support the view of The Promise Oversight Board that a

¹¹⁴ Roesch-Marsh, A. & Emond, R. (2022) [Care experience and friendship](#). IRISS Insight 63. Glasgow: IRISS

¹¹⁵ MacAlister, J. (2022) [The independent review of children’s social care: Final report](#), p123

¹¹⁶ Care Inspectorate (2022) [Report on Distance Placements](#). Dundee: Care Inspectorate

¹¹⁷ Lightowler, C. (2020) [Rights Respecting? Scotland’s approach to children in conflict with the law](#). Glasgow: CYCJ; Children’s Commissioner for England (2019) [Pass the parcel: Children posted around the care system](#). London: Children’s Commissioner

¹¹⁸ Scottish Government (2022) [Factsheet: Cross-border placements of children and young people into residential care in Scotland: policy position paper](#); Scottish Government (2022) [Policy Note: The Cross-border Placements \(Effect of Deprivation of Liberty Orders\) \(Scotland\) Regulations 2022](#).

¹¹⁹ Competition & Markets Authority (2022) [Children’s Social Care Market Study Final Report](#). London: CMA

clear, collaborative plan between the Scottish and UK governments to address the issue is lacking¹²⁰, and recommend this is pursued as a matter of priority.

Question 22: Do you agree with the introduction of pathways and standards for residential care for children and young people in Scotland?

No.

The rationale for introducing such 'pathways and standards' for residential care is not clearly established in the consultation document, nor something highlighted as an area of need by the Independent Care Review, nor since by The Promise Scotland in their plans or Change Programme.

We unequivocally support the introduction of [Secure Care Pathways and Standards](#) as the need for such standards in relation to secure care is well evidenced and a key recommendation of the Secure Care National Project,¹²¹ to clearly set out for the first time what all children in 'or on the edges' of secure care should expect, and what their rights are, across the continuum of intensive supports and services.¹²²

Evidence shows that effective, therapeutic residential care can be ensured by trained staff using evidence informed models of care. The knowledge, values, and principles which underpin each residential service's model of care must be explicit and consistently understood in order for practice to be high quality, uphold children's rights, and meet their needs. This should be in place in every residential care service.¹²³ The Promise is clear that the focus for change in residential care should be on enabling children's important relationships to flourish; and ensuring all residential care services are underpinned by values and approaches that uphold the rights of children, and provide therapeutic and attuned care.¹²⁴ The current landscape of policy, guidance and standards which regulate residential care are already designed to facilitate this including the incorporation of the UNCRC to further uphold children's rights; implementation of the GIRFEC approach to safeguard children's holistic wellbeing; the application of rights-based Health and Social Care Standards^{125;126}. Developing new pathways and standards risks being an unnecessary distraction from focussing on sustained implementation of current standards and guidelines to ensure all children in residential care receive high quality care attuned to their needs and in line with the aspirations of The Promise.

The preceding text provided around this question (page 56 of the consultation document) links the suggestion of pathways and standards for residential care to cross-border placements, as a means of ensuring "the complexity of children's needs is appropriately matched to the care environment and provision they live in". This is not an appropriate or adequate solution to ensuring children's needs are met, nor does it address the concerns highlighted by CYPSC that current practice of cross-border placements creates a "second class" of children in care in Scotland, who are not subject to the full oversight, support, and human rights protections of the Scottish statutory

¹²⁰ The Promise Oversight Board (2022) [Report ONE](#). The Promise Scotland.

¹²¹ Gough, A. (2016) *Secure Care in Scotland: Looking Ahead* Key messages and call for action, Glasgow; CYCJ

¹²² Nolan, D. (2020) [Info Sheet: Secure Care Pathway and Standards Scotland](#). Glasgow: CYCJ

¹²³ Porter, R.B., Mitchell, F., & Giraldi, M. (2020) [Function, quality and outcomes of residential care: Rapid Evidence Review](#). CELCIS, Glasgow

¹²⁴ The Independent Care Review (2020) [The Promise](#). Independent Care Review

¹²⁵ Care Inspectorate & Healthcare Improvement Scotland (2017) [Health and Social Care Standards: My support, my life](#). Edinburgh: Scottish Government

¹²⁶ Care Inspectorate (2019) [A quality framework for care homes for children and young people and schoolcare accommodation \(special residential schools\)](#). Dundee: Care Inspectorate

systems.¹²⁷ For example, in terms of education provision, under Scots law, all 'looked after' children are automatically assumed to have additional support needs under the Education (Additional Support for Learning) (Scotland) Act 2004, which entitles them for consideration of a Coordinated Support Plan. Depending on the legal underpinnings of their 'placement', children in cross-border care may or may not share this legal entitlement. Similar points can be made in terms of children's eligibility for various provisions under the Children and Young People (Scotland) Act 2014 (the 2014 Act), such as Corporate Parenting (Part 9), Continuing Care (Part 11), and Aftercare (Part 10). Whilst it is crucial that all children are supported to understand their rights and what they can expect from their care, it is difficult to see how a single set of pathways and standards in this context would be beneficial for this purpose, without first establishing agreement that all children living in Scotland should all have equitable access to services and ongoing support. It may be helpful to develop specific information, in a suitable format, for children coming to live in Scotland from elsewhere, as their journey differs from children who have always lived in Scotland. However, this should come from a starting point of all care experienced children living in Scotland having the same rights and access to care and support as one another (including to aftercare and continuing care).

Rather than a blanket 'pathway' for children supported by residential care, what is required is an approach which primarily meets the needs and upholds the rights of each of them as unique individuals, and regardless of where they were living previously. In the exceedingly rare circumstances in which placements across borders into residential care in Scotland are in a child's best interests, these should always involve full consideration of the child's views, and use robust processes of 'matching' to identify the right residential care setting, utilising the Care Inspectorate's [Admissions Guidance for Residential Services](#) (2021). These apply in all cases, including cross-border placements, and aim to ensure children are only moved to places where they can be assured of receiving the support they need to thrive and experience stability. The roles and responsibilities for all areas of the child's care and support (in the present and for the future) must be clearly planned and identified prior to placement, with the full involvement of the child at the centre. This must include arrangements for seeing and spending time with their family and friends; their opportunity to learn and access education; healthcare; leisure and interests; any specialist support they may need; and planning for their developing interdependence. Clarity of roles and responsibility can be complicated in cross-border arrangements, not least due to the differing policy and legislative contexts in different UK jurisdictions. This can, at best, lead to confusion and, at worst, to the abdication of responsibility in meeting children's needs and upholding their rights. Therefore, robust accountability arrangements and mandatory processes are required to ensure plans and responsibilities are clear, and ensure children are never left without the services and supports they require because they have moved across borders. The need for concerted attention by states to establish (or strengthen) cross-border information and coordination systems is also a recommendation of the Committee on the Rights of the Child following the Day of General Discussion focused on children's rights in alternative care.¹²⁸

Question 23: Do you agree that local strategic needs assessment should be required prior to approval of any new residential childcare provision?

¹²⁷ CYPCS (2022) [The Cross-border Placements \(Effect of Deprivation of Liberty Orders\) \(Scotland\) Regulations 2022 Briefing for Education, Children and Young People Committee](#) (ECYP/S6/22/14/3, Annexe C), (page 19)

¹²⁸ Committee on the Rights of the Child (2022) [2021 Day of General Discussion Children's Rights and Alternative Care Outcome Report](#)

Yes.

Children who need support from residential care services in Scotland should be able to access this locally, where this meets their needs, so that their local connections and important relationships are not damaged by being forced to move elsewhere. The Independent Care Review identified a need to change how Scotland commissions services, to ensure services and provision are designed on the basis of need, and strategically planned using clear data reflecting the needs of children in Scotland's local authorities. Decisions on funding models should not be based on the acceptance of children from elsewhere in the UK.¹²⁹ The Promise Plan 21-24 is clear that by 2024, national strategic planning processes will be in place to ensure "children who are cared for away from their family of origin belong to a loving home", and that such planning processes will reflect the needs of Scotland's children, underpinned by expectations that more children will remain with their families through more effective early help and family support.¹³⁰

Cross-border placement issues aside, a number of complex issues can affect the provision of residential services, including commissioning arrangements and 'spot purchase' models where Scottish local authorities do not have 'in-house' provision available when a child they are responsible for requires a residential service. Using specialist external provision as opposed to local authority provision is generally costly, with financial restraints contributing to failures to ensure children are able to 'stay put' under continuing care.¹³¹ In addition to consideration of local strategic needs for developing new provision, there are other matters which require attention to ensure the vision set out in The Promise for residential care is realised: crucially recruitment and support to the residential care workforce. Caregivers are responsible for ensuring children experience positive, caring relationships and that their rights are upheld day-to-day. To consider meaningfully how residential care can provide high quality support, it is important to focus on relationships and interactions.¹³²

It is set out in statutory guidance on [Children's Services Planning](#) (under Part 3 of the 2014 Act) that for successful planning to be achieved in Scotland, a joint strategic needs assessment should be undertaken by all community planning partners, based on evidence, data, and children's views. Current and future needs should be assessed, and plans should be based on such assessment. As one part of children's services, residential childcare provision should already be part of such processes, and as such evidence of the need for new provision should be routinely considered. Where residential service providers who are not local community planning partners develop plans to locate services in an area, we agree there should be thorough engagement in local planning processes and evidence of need for the service clearly set out by providers developing such plans.

The consultation document recognises that number of residential settings in Scotland has increased and led to more capacity to provide cross-border placements. This suggests a need for robust scrutiny of strategic needs assessments in order to ensure planning reflects the needs of Scotland's children. As the consultation document identifies, the Care Inspectorate may be well placed to participate in such scrutiny as

¹²⁹ The Independent Care Review (2020) [The Promise](#). Independent Care Review

¹³⁰ The Promise (2021) [Plan 21-24](#). The Promise (page 32)

¹³¹ Lough-Dennell, B; McGhee, K. & Porter, R. (2022) [Continuing Care: An exploration of implementation](#). Glasgow: CELCIS

¹³² Porter, R. B., Mitchell, F., & Giraldi, M. (2020) [Function, quality and outcomes of residential care: Rapid Evidence Review](#) CELCIS, Glasgow

part of their role in registering services, but there is also a need for full consideration of how final decisions are made, and by whom, especially where there are disputes between a local area and a residential care provider about the evidence (or lack thereof) of strategic need.

There may be rare circumstances where the development of particularly specialist residential provision cannot be evidenced solely by local need, for example specialist residential schools. The development of such provision will need to attend not only to local needs, but national demand for such specialist care and what additional demand, if any, they may place on (and therefore children's experience of and access to) local services such as health and education.

There is also a continued need to challenge any push-back from local communities in relation to the development of new residential care services, which can be driven by stigma when plans to develop children's residential care houses become public. For children to be judged, labelled, and rejected by communities where they are not even yet living is unacceptable, and must be strongly challenged at all levels of the local authority, and society, throughout the planning and development of new provision, with the opportunity taken to work with communities to understand the needs of children.

Question 24: Do you agree that there should be an increased role for the Care Inspectorate?

Yes.

Considerable recent work by the Care Inspectorate to understand children's experiences of cross-border placements has been extremely welcome, and very valuable in raising the profile, providing evidence and understanding of the issues, and recommending solutions.¹³³ The Independent Care Review highlighted the need for the Care Inspectorate, as well as other regulators, to work together to embed culture and process changes to enable children and young people to experience safe, loving relationships; and called for meaningful collaboration across regulators so that all areas of the workforce (for example, prisons, education and the third sector) share a common language and understanding of care, rights and relationships. Whilst we agree there is benefit to an increased role for the Care Inspectorate in terms of ensuring children in cross border placements experience high quality care and have their rights upheld, this is a responsibility which is shared with all corporate parents. To improve care experiences, all stakeholders (including in other UK jurisdictions) must work together to reduce instances of children being placed at distance and across borders, unless in the exceedingly rare cases where this is in their best interests. Where cross border placements are in children's best interests, these arrangements require robust scrutiny from the Care Inspectorate like all care placements in Scotland. What is also required (given the complexity which comes from differing legislative and policy contexts in cross-border cases) is thorough, clear, co-ordinated multiagency planning to meet the child's needs and uphold their rights, where roles, responsibilities and accountability are clear and mutually understood.

As already outlined in our response, children being cared for under cross-border arrangements in Scotland may have experienced significant trauma in their lives. They have, by definition, been separated from their home communities. They may face

¹³³ Care Inspectorate (2022) [Report on Distance Placements](#). Dundee: Care Inspectorate

additional barriers to realising their rights. However, all children need the same things to thrive.

We do not agree that services should be required to obtain special registration to care for children from outwith Scotland: if the service is high quality enough to provide care for children living in Scotland, it should also be high quality enough to provide care to children from elsewhere in the UK. The Care Inspectorate already utilises standards and assessment frameworks when services apply to provide residential care; carries out inspections when services are registered; uses and disseminates quality frameworks (which are regularly reviewed and updated); and provides matching guidance for use in placement planning (including cross-border 'placements') to ensure the needs of the child can be met by the service. These frameworks, standards and scrutiny are designed to ensure high quality care for all children, regardless of where they originally lived.

When a child or young person moves to a residential service in Scotland from another UK jurisdiction, the provider is required to notify the Care Inspectorate. Whilst we do not agree there is a need for special registration of services accepting placements from other UK jurisdictions, there is a need to monitor the notifications the Care Inspectorate receive, and pay attention to any services who appear to regularly, frequently or predominantly provide cross-border placements. In such cases, additional scrutiny and/or inspection should be triggered to ascertain the reasons for this, and ensure standards are being upheld.

Additionally, we are aware of concerns that local authority areas in Scotland are not always aware that children from elsewhere in the UK have been placed in a residential service in their area. It is not the responsibility of the Care Inspectorate to notify Chief Social Work Officers (CSWO) of such placements, this is the responsibility of the placing authority. However, consideration should be given to whether notifications of cross-border placements sent to the Care Inspectorate could be cross-checked with information held by local areas, to ensure all parties who need to be aware of the arrangement in order to provide care for children have this information. This would be an additional safeguard and must not detract from the responsibilities of placing authorities to provide notification themselves, as part of a much more in-depth process of care planning (which must also apply to children placed across borders in foster or kinship care too, of whom the Care Inspectorate will not be aware).

The requirements contained in Sections 8, 9 and 10 of the [Cross-border Placements \(Effect of Deprivation of Liberty Orders\) \(Scotland\) Regulations 2022](#) set out requirements for notifications of placement details for children under DOLS orders. These must be sent to a number of individuals or organisations, including the CSWO, Health Board, the receiving local authority's Director of Education and the Principal Reporter. They also require specification of how the placing authority will ensure all the services the child requires will be provided. We suggest this approach should form the basis of requirements for *all* cross-border placements, in order that plans for children's care are proactively made and mutually understood.

With further regard registration of services, this section of the consultation document says:

"It is useful to consider restrictions imposed upon a person's activities as a spectrum ranging from no interference with liberty, escalating to measures of restriction and ultimately to deprivation of liberty." (p55)

There are also references in the consultation paper to the need for more stringent oversight and scrutiny of residential care provision as restrictions of liberty increase (p55), and also proposals concerning the definition and regulation of secure care in

Section 6 (pages 44-45). However, line with [Schedule 12 of the Public Services Reform \(Scotland\) Act 2010](#) (the 2010 Act) currently residential services in Scotland may either not restrict children's liberty or must be registered as secure care settings. Rather than a 'spectrum', there is clear delineation between care which restricts children's liberty, and care which does not. Secure accommodation is the only type of care setting in which restriction of liberty is authorised, and such settings must be approved by Scottish Ministers.¹³⁴ We would be extremely concerned if there is an intention is to, for example, amend the 2010 Act to introduce new category of services operating in a 'middle ground' where some restrictions of children's liberty are permitted. This seems wholly contrary to the visions outlined in The Promise and the Youth Justice Vision for Scotland. If this were being considered as a possibility, far more transparency and a focussed consultation on this would be required.

Question 25: Do you agree that all children and young people living in cross-border residential and secure care placements should be offered an advocate locally?

Yes.

The Promise is clear that until fundamental changes are made to the 'care system', and The Promise is kept, to ensure all those with least power and agency are able to access all that to which they are entitled, there must be advocacy and legal representation available to all children in care.¹³⁵ As previously outlined in our response, children living in cross-border arrangements are often at heightened risk of experiencing infringements to their rights.¹³⁶ As such they must be able to access information about the role of advocacy, and to access advocacy as well as legal advice and representation. Advocacy should be in place for children from the earliest possible stage, i.e. before moving across the border into Scotland. The assurance of access to an advocate locally is welcome as an additional safeguard for situations where existing advocacy is not sufficient or is absent. We suggest these proposals are strengthened to stipulate that a local advocate should be provided, rather than offered. The onus should be on corporate parents and services to make sure advocacy is provided as a matter of course, not on children to request it, or receive a one-off offer of this. Access to independent advocacy across Scotland has been described as a 'postcode lottery'¹³⁷, and we are aware of work underway between the Scottish Government and The Promise Scotland to address this, as well as to scope and make recommendations about lifelong advocacy for care experienced people to Scottish Ministers by 2023.¹³⁸ To properly uphold the rights of children and young people placed cross-border, there is a need for concerted planning to ensure enough practitioners in Scotland with the additional legal knowledge about the law in other parts of the UK, and the expertise to support children in cross border placements, are available.

¹³⁴ The liberty of children placed into Scotland under DOLS orders from other UK jurisdictions can lawfully be restricted in a range of ways, if these are specified in the DOLS Order. Examples of such restrictions are set out in the Care Inspectorate's short thematic review of DOLS orders and include being supervised at all times; restriction of internet use; searching of room or possessions; and being prevented from leaving placement. (Care Inspectorate (2022) [Short thematic review of children and young people placed on Deprivation of Liberty Orders](#). Dundee: Care Inspectorate)

¹³⁵ The Independent Care Review (2020) [The Promise](#). Independent Care Review

¹³⁶ Children's Commissioner for England (2019) [Pass the parcel: Children posted around the care system](#). London: Children's Commissioner; The Children's Commissioner for England. (2020). [The Children that no one knows what to do with](#). London: Children's Commissioner for England

¹³⁷ Together (2022) [State of Children's Rights in Scotland](#). Edinburgh: Together, p119

¹³⁸ Scottish Government (2022) [Keeping the promise to our children, young people and families](#). Edinburgh: Scottish Government

Question 26: Whilst there are standards and procedures to follow to ensure restraint of children in care settings is carried out appropriately, do you think guidance and the law should be made clearer around this matter?

Yes.

While the legislative underpinnings are already clear and robust, there would be benefit from the co-production and implementation of updated practice guidance regarding the physical restraint of children in residential care settings.

The subject of physical restraint in the context of children's residential care is emotive, challenging, and complex, and at the forefront of all considerations is the overarching need to uphold children's rights to safety and to protection from violence. While children should only be physically restrained in exceptional circumstances where there is no other means of securing their welfare (or that of another person)¹³⁹, the Independent Care Review heard from children and young people about experiences of either being (or witnessing others being) physically restrained which were frightening, traumatic, felt unfair and were painful.¹⁴⁰ The Promise sets out a clear aim for Scotland to become a nation that does not restrain our children.¹⁴¹ Reaching this aim requires not only a focus on the occurrence and management of specific incidents within residential care settings, but concerted effort across society to implement The Promise in full, so that all children feel loved and receive the individualised, responsive, trauma-informed care they need to feel safe and prevent crisis situations where physical restraint is the only means of preventing harm.

The existing legal and children's rights frameworks around the use of physical restraint in residential childcare are clear, robust, and principally include:

- In Scots law, the [European Convention on Human Rights](#) places obligations on all public authorities to act in accordance with the Convention. Article 3 prohibits 'inhumane or degrading treatment or punishment' and Article 8 (Right to respect for private and family life) concerns a person's rights to their physical integrity.¹⁴²
- The United Nations Committee on the Rights of the Child [General Comment 24](#) (2019), Section 95(f) of which pertains to the use of restraint and sets out that physical restraint is only to be used when the child poses imminent threat of injury to themselves or others, when all other means have been exhausted, and never to secure compliance or deliberately inflict pain. Additionally, General Comment 19 sets out the need for training for staff, and monitoring and evaluation of all incidents of restraint.
- In accordance with the [Children \(Scotland\) Act 1995](#), local authorities have overarching duties to all children 'in need' (Section 22) or 'looked after' (Section 17) by them to safeguard and promote their welfare.
- [The Regulation of Care \(Requirements as to Care Services\) \(Scotland\) Regulations 2002](#) sets out specific duties and requirements relevant to the physical restraint of children in residential care settings, including the need for provision of services in a manner respectful of the dignity of service users

¹³⁹ Regulation 4(1)(c) of [The Regulation of Care \(Requirements as to Care Services\)\(Scotland\) Regulations 2002](#)

¹⁴⁰ The Independent Care Review (2020) Evidence Framework 2017-2020: Participation and Engagement Report. Independent Care Review

¹⁴¹ The Independent Care Review (2020) [The Promise](#). Independent Care Review

¹⁴² European Court of Human Rights (2021) [Guide on Article 8 of the European Convention on Human Rights](#) Council of Europe.

- (Regulation 4(2)(b)); that no service user is subject to restraint unless it is the only practicable means of securing the welfare of that or any other service user, and there are exceptional circumstances (Regulation 4(1)(c)); and that records must be kept by service providers about any occasions where restraint has been used, including why it was necessary and who authorised it (Regulation 19(3)(a))
- The [Children \(Equal Protection from Assault\) \(Scotland\) Act 2019](#) which came into force in Scotland in 2020, and removed the common law defence of 'reasonable chastisement' if a parent or carer were charged with assault of a child in their care. The effect of this legislation was to uphold all children's rights to protection from violence and make all forms of physical punishment of children by parents or carers illegal. The protection from violence in the form of punishment by carers already existed for children in residential care establishments, where the physical punishment of children was already illegal. Regulation 10 of the [Residential Establishments – Child Care \(Scotland\) Regulations 1996](#) set out rules about sanctions, and explicitly refer to all corporal punishment being an offence of assault.

The recognition within the consultation document that the use of physical restraint, on rare occasions, may be necessary to keep children safe is welcome. As we continue to work towards the aim set out by The Promise, where Scotland does not restrain our children, effort must be concentrated on continued support to the workforce to ensure a caring, relational, and trauma-informed response to any challenging behaviour or distress. Focusing on changes in legislation to outlaw the use of physical restraint in residential care would not be of benefit, and would run the risk of real harm as an unintended consequence. Prohibiting physical restraint would create a 'gap' by the removal of a practice used to prevent harm to children that could result in:

- children (and staff) being hurt or harmed;
- increased 'placement' moves or breakdowns where a service is unable to keep a child safe;
- exposure to harm for staff leading to increased staff turnover, impacting on children's access to consistent relationships;
- increased fear from staff of litigation if they physically intervene, and fear in terms of their physical interactions with children, particularly if this leads to 'no-touch' policies, which have been widely criticised¹⁴³; and
- increased police involvement and risk of children being criminalised, where residential care services are unable to intervene to ensure safety so are left with no option but to contact the police.

Scotland's existing practice guidance ([Holding Safely](#)) on the use of physical restraint in residential care was published in 2005, (with additional sections added in 2013)¹⁴⁴. This remains a valuable resource and includes guidance on reducing the use of restraint and creating the caring conditions and culture which enable such reduction. It would be timely to update this guidance, considering policy, practice, and research developments to our understanding of the complexity of physical restraint, creating and maintaining relationships and environments which actively reduce the likelihood of restraint, and the use of effective approaches which ensure children's rights are upheld if physical restraint is required. Guidance should support the complex and nuanced decisions which

¹⁴³ Warwick, L. (2022). "Depends who it is": Towards a relational understanding of the use of adult-child touch in residential child care. *Qualitative Social Work*, 21(1), 18-36; Piper, H., Powell, J., & Smith, H. (2006). Parents, professionals, and paranoia: the touching of children in a culture of fear. *Journal of Social Work*, 6(2), 151-167

¹⁴⁴ J Davidson, D McCullough, L Steckley and T Warren (eds) (2005) *Holding safely. A guide for residential child care practitioners and managers about physical restraining children and young people*. Scottish Institute for Residential Child Care, Scottish Executive and Social Work Inspection Agency.

residential care workers must make in the moment and should also outline required training standards. The development of updated guidance should be a thoroughly inclusive process, capitalising on the experience, wisdom and views of children, young people and families, and the residential childcare workforce. Guidance alone does not lead to practice change so there continues to be a need for concerted attention and resource to be planned and in place from the earliest stages to support the implementation of guidance to ensure changes in practice.

Significant work is underway across the residential childcare sector to reduce instances where children are physically restrained to a minimum, to better define what is meant by physical restraint, and gather data on, and evaluate, how it is used. The work of [the Scottish Physical Restraint Action Group](#) (SPRAG) is particularly notable. We are aware that SPRAG will be responding to this consultation and we would encourage full consideration of their response which will be informed by a group of individuals and organisations, who have a wide range of specialist knowledge and experience in this complex practice area.

We share concerns raised by The Promise Oversight Board about a lack of data available to understand and evaluate how physical restraint is being used and experienced in residential child care.¹⁴⁵ Continued work is needed to change this information gap. CELCIS are members of SPRAG, and through SPRAG's work which all residential care services must use, requiring more information than has previously been collected. This will result in the routine collection of richer data by the Care Inspectorate, and continued exploration of how this data can be made available and used for improvement is required. Whilst this ongoing work is welcome in the context of residential care, the inconsistent approach taken to the practice of physical restraint of children in different settings (including how it is defined and regulated) is a cause for concern. Only through joined-up working, and clear and consistent approaches across care, education, and health services, can the true picture of how and whether children are physically restrained be understood, and instances reduced. Our understanding is that consultation is imminent by the Scottish Government on guidance about restraint and seclusion within school settings. These two consultation processes must be aligned, keeping the child at the centre, and ensure that siloed working is not further entrenched.

Question 27: Do you agree that the review of the 2019 Act should take place, as set out, with the 3-year statutory review period?

No.

December 2024 is too long to wait before beginning a formal review, and this period should be shortened. Careful attention must be paid within the review to the emerging understanding from the work underway of what system changes are necessary, how they can be implemented, and how enough community resources and specialist services can be made available for all children who require them. Only in this way can we ensure children's needs are consistently responded to in a way which is non-criminalising and upholds their rights.

The current minimum age of criminal responsibility in Scotland (12 years of age) breaches international standards, and as such fails to uphold children's rights. Both the Council of Europe's Commissioner for Human Rights and the United Nations Committee on the Rights of the Child are clear that the recommended minimum age of criminal

¹⁴⁵ The Promise Oversight Board (2022) [Report ONE](#). The Promise Scotland.

responsibility should be set to *at least* age 14.¹⁴⁶ The evidence demonstrating the need to raise the age of criminal responsibility has been clearly articulated both during and since the passage of the Age of Criminal Responsibility (Scotland) Act 2019 (the 2019 Act), and includes increased knowledge about child and adolescent development, the impact of trauma and adversity, and better understanding of effective practices where children's behaviour causes harm or is in conflict with the law.¹⁴⁷ Developments in policy and legislation reflect an understanding of the validity of this evidence, internationally with the publication of the United Nations Committee on the Right of the Child's General Comment 24, and, in the Scottish context, through the passage of the 2019 Act. It is disappointing that the 2019 Act aligned with an outdated absolute minimum age of 12. The opportunity to ensure that Scots law meets the current requirements of minimum international standards protecting children's rights cannot be further delayed, especially as Scotland progresses on its journey towards incorporation of the UNCRC into domestic law. The review period of the operation of the 2019 Act is currently scheduled to last until December 2024, followed by a further one-year period during which Scottish Ministers can prepare and publish a report for Parliament. The current timescale for potential change is therefore December 2025. Shortening this is the first necessary step to bring about change and increase the minimum age of criminal responsibility in Scotland to uphold international rights standards.

To uphold children's rights and bring about meaningful change, it is not sufficient to change the law without ensuring commensurate attention, planning and resource to enable effective implementation. We note from the consultation document that the Scottish Government's Age of Criminal Responsibility Advisory Group is not yet in a position to provide recommendations on an increase to the minimum age, nor on the specific systems change necessary to support any increase. The reason for this given is that the operation of the existing arrangements are still in their early stages, for example, understanding the implementation of new procedures and operational guidance such as the [Age of Criminal Responsibility \(Scotland\) Act 2019 Operational Guidance for Social Work and Police](#) (published in December 2021). Such understanding is key to the process of learning and ensuring continual improvement. The short timescale since the 2019 Act fully commenced is acknowledged, and as such learning from implementation to date will be limited, but this learning is ongoing and will continue to develop and inform any future review to build in consideration of the implementation of raising the age further. An emergent approach should be developed, and supported by additional resource, to ensure considerations about how to enable raising the current age to a minimum of 14 can be the forefront of the current, ongoing work, alongside the implementation monitoring already in place. We are aware that some important work aligning with such an approach is already underway¹⁴⁸, including collating police and social work information about service interactions between children under 14, and ongoing (currently unpublished) research into offending by 12-15 year olds by SCRA. Information such as this will ensure a robust understanding of the prevalence and needs of children aged 12 and 13 in conflict with the law in Scotland to inform planning to effectively implement a higher age of criminal responsibility.

¹⁴⁶ Council of Europe Commissioner for Human Rights (2019) [Letter to Scottish Parliament Equalities and Human Rights Committee](#); UNCRC (2019) [General Comment 24 on children's rights in the child justice system](#).

¹⁴⁷ Lightowler, C. (2020) *Rights Respecting? Scotland's approach to children in conflict with the law*. Glasgow: CYCJ; McEwan, D. (2017) *Understanding the relationship between brain development and offending behaviour. Info Sheet*. Glasgow: CYCJ; Hollingsworth (2013) 'Theorising Children's Rights in Youth Justice: The Significance of Autonomy and Foundational Rights'. *Modern Law Review* 76: 1046-1069; McAra L. and McVie S, 'Youth Crime and Justice: Key messages from the Edinburgh Study of Youth Transitions and Crime', (2010) *Criminology and Criminal Justice* 211-230.

¹⁴⁸ Scottish Government (2021) [Age of Criminal Responsibility Advisory Group minutes: June 2021](#)

Similarly, through our involvement in subgroups of the Age of Criminal Responsibility Advisory Group, and discussion with a range of stakeholders, we are aware of learning about key areas requiring continued attention to ensure all children have their rights upheld. As the number of children requiring a response to harmful behaviour using new protocols and guidelines developed due to the passage of the 2019 Act (e.g. 'ACR interviews', or utilising a place of safety) is very low, practitioner experience and confidence in using these is also likely to benefit from development, through training and ongoing coaching.

Additionally, a continued focus should be kept on how cultural change and public attitudes in understanding the needs of children in conflict with the law can be progressed. There is a particular need to ensure a developmental and trauma-informed lens is applied to understand and meet the needs of all children, with a particular need to tackle stigma about children who are involved in harmful behaviour (which may be more entrenched when it relates to older children). Such stigma may lead to children's experiences of formal systems feeling criminalising in all but name.

Question 28: What, if any, do you see as the data protection related issues that you feel could arise from the proposals set out in this consultation?

As detailed in our response to the substantive questions posed, the development of any proposals involving sharing information about a child must ensure this can only occur in accordance with human rights and data protection law.

Question 29: What, if any, do you see as the children's rights and wellbeing issues that you feel could arise from the proposals set out in this consultation?

To embed children's rights and wellbeing into decisions and policymaking, a Children's Rights and Wellbeing Impact Assessment (CRWIA) for the proposed bill should be considered at the earliest possible stage.¹⁴⁹ Whilst it is disappointing that there has been no CRWIA published with respect to the policy proposals at this stage, we note the intention to carry out impact assessments alongside the development of new legislation. Throughout our response we have highlighted a range of ways in which the rights and wellbeing of children could be impacted (both positively and negatively) by the various proposals set out in this consultation, which will be important to consider in the development of the CRWIA.

We would highlight children's rights under Article 12 of the UNCRC for a child's views to be given due weight in all matters that affect them.¹⁵⁰ Article 12 has relevance to the planning of the proposed changes. Effective decision making and planning of change depends on evidence and data to ensure those changes meet the needs of the people they concern. The Promise highlighted the limits of current data collection around care experienced children and young people, which often only records information about a single 'episode of care' that reflects the care system and processes rather than information about the child's life.¹⁵¹ This is especially true for data collection, as well as research about children in conflict with the law, which will often include limited information such as a child's age or offence, but rarely asks that child or young person about what information is important for them to convey. A rights-respecting approach to

¹⁴⁹ Scottish Government (2015) *When and how to best use the Child Rights and Wellbeing Impact Assessment (CRWIA): Guidance for Scottish Government Officials*. Edinburgh: Scottish Government

¹⁵⁰ United Nations General Assembly (1989) [Convention on the Right of the Child](#). Geneva: United Nations Commission on Human Rights

¹⁵¹ The Independent Care Review (2020) [The Promise](#). Independent Care Review (page 13)

children in conflict with the law must include data collection and research that listens to and understands their experiences and what matters to them.

CELCIS's [Voice and Inclusion Project \(VIP\)](#) is an ongoing participatory research project with children and young people who have been involved in the Children's Hearings System that began in 2021. During exploratory stages, children and young people altered the project from one iterating issues in the Children's Hearing System into a solution-oriented project focused on implementation of practice changes. The [Bright Spots](#) programme is another example of a rights-based approach, with relevance for research with children in conflict with the law, as well as any children harmed by other children. Bright Spots is currently being piloted in Scotland within three local authorities through a partnership between CELCIS and Coram Voice. It enables local authorities to listen to what is important to care experienced children and young people locally regarding their wellbeing, quality of care, and collects anonymised nationally comparable data within Scotland to better understand care experienced children and young people's wellbeing.

Question 30: What, if any, do you see as the main equality related issues that you feel could arise from the proposals set out in this consultation?

CRWIAs require the consideration of whether there will be "different impacts on different groups of children and young people"¹⁵², and if so, whether any mitigation of these impacts is required. Equality issues arising from the proposals developed for the bill will need to be assessed through the process of undertaking a CRWIA.

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¹⁵² Scottish Government (2015) *When and how to best use the Child Rights and Wellbeing Impact Assessment (CRWIA): Guidance for Scottish Government Officials*. Edinburgh: Scottish Government, p6