

Children's Care and Justice Bill – Consultation on policy proposals

The Scottish Social Services Council is the regulator for the social work, social care and early years workforce in Scotland. Our work means the people of Scotland can count on social services being provided by a trusted, skilled and confident workforce.

We protect the public by registering social service workers, setting standards for their practice, conduct, training and education and by supporting their professional development. Where people fall below the standards of practice and conduct we can investigate and take action.

We:

- publish the national codes of practice for people working in social services and their employers
- register people working in social services and make sure they adhere to the SSSC Codes of Practice
- promote and regulate the learning and development of the social service workforce
- are the national lead for workforce development and planning for social services in Scotland
- are an ONS statistics provider.

Questions

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 / No

- If yes: what further information should be made available?
- If yes: are there specific circumstances when further information should be provided and what would those circumstances be?

Please give reasons for your answer

Answer

Yes. Information should be provided to people who have been harmed, such as parents/guardians/children as appropriate in relation to measures or outcomes relating to restrictive measures. The circumstances under which this information should be provided are those in which the harmed party would reasonably expect to be aware of any such restriction and

where not providing that information would be likely to cause further harm/uncertainty to the harmed party. The consideration of whether information relating to outcomes should be made available should be conducted on a case by case basis.

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 / No

Please give reasons for your answer

Answer

Yes. If the child is subject to measures that relate to the harmed party, it would be reasonable that the harmed party be made aware of what those measures are. The information should be conveyed in a way that poses a minimal risk to the child.

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 / No

- If yes, what additional supports do you feel are necessary?
- If yes, should this apply to all people who have been harmed or only in certain circumstances? (Please specify)

Answer

Yes. It is difficult to identify specific supports that are necessary as this will vary from case to case. However, supports in relation to physical and mental health may be necessary in a majority of cases.

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

Yes / No

- If yes, should this be available to all people who have been harmed or only in certain circumstances? (Please specify)
- If yes, who should be responsible for providing the single point of contact?

Please give reasons for your answers

Answer

Yes. A single point of contact for support should be made available for children who have been harmed. Children who have been harmed are likely to require support to deal with the trauma they have experienced. This support may need to be psychological support or formal intervention from mental health services. Therefore the single point of contact should be a trauma informed professional able to refer to mental health services as appropriate.

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?

Yes / No

Please give reasons for your answer

- If yes, please provide details of how they should be amended or enhanced

Answer

Yes. Enhancing existing measures so that the circumstances under which they are applicable may offer greater protection or sense of security to the people who have been harmed. However, the types of measures currently in place in the children's hearings system are appropriate for the system in that they seek to balance the need for protection for those harmed against the welfare of the child who caused the harm.

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

Yes / No

Please give reasons for your answer

- If yes, what should the new criteria for MRCs be?

Answer

The SSSC does not have a position on this.

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

Yes / No

- If yes, which option(s)?

Please give reasons for your answer, including any positive or negative implications of any of the proposals.

Answer

The SSSC does not have a position on this.

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.

Answer

The SSSC does not have a position on this.

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

Yes / No

•If yes, which option(s)?

Please give reasons for your answer, including any positive or negative implications of any of the options. We are particularly interested in implications for people who have been harmed

Answer

Yes. The various options set out in relation to the Scottish Government's Youth Justice Action Plan would likely reduce any negative effects on children, both who have harmed and who have been harmed, of participation in the criminal justice system.

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 / No

Please give reasons for your answer

Answer

No.

The SSSC has been working with national partners through the Children and Families Collective Leadership Group to identify how to reduce the numbers of children under 18 in YOIs. This group is supportive of the Scottish Government's proposal to raise the age of referral to the Principal Reporter to 18 for all children. The group is also supportive of the introduction of a presumption against children under the age of 18 in the criminal justice system, as far as this is consistent with the Lord Advocate's prosecution policy. While there may be cases where it is not possible or appropriate to avoid children under the age of 18 being placed in YOIs, all efforts should be made to divert children under the age of 18 away from custody. This should include a commitment that children under the age of 18 are no longer placed in YOIs for sentencing or on remand.

There may be cases where a child poses a significant risk to themselves or others and where a YOI may be the more appropriate option for mitigating that risk. Any assessment of that risk would need to be conducted on a case by case basis and should focus primarily on the welfare of the child.

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 /No

•If no, in what exceptional circumstances should use of a YOI be considered? Please give reasons for your answer

Answer

The SSSC does not have a position on this.

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

Yes / No

Please give reasons for your answer

•If yes, please provide details of how could this be achieved

Answer

The SSSC does not have a position on this.

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

•Yes to all changes

•Yes but only to some changes (please identify which ones)

•No Please give reasons for your answer

Answer

Yes to all changes.

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

Yes / No Please give reasons for your answers

•If yes, please provide details of how this could be achieved

Answer

Yes. The SSSC believes that simplifying the regulatory landscape in this area would be difficult without serious changes to the present regulatory regime. The current regulatory landscape is complex owing to the dual roles carried out by secure care services, namely care and education. However, improving information sharing between regulatory bodies would make it easier for users of services to engage with these services. Further information sharing would also mean that secure care services could better ensure that children's needs and rights are at the heart of decision-making. Focusing on the needs and rights of children would ensure that secure care is favoured over policy custody or YOIs.

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

Yes / No

Please give reasons for your answers

- If no, please provide details of how this could be changed

Answer

The SSSC does not have a view on this.

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
- Yes but only through certain routes
- No Please give reasons for your answer, including any positive or negative implications

Answer

Yes, through all routes. If it is deemed necessary, proportionate and in their best interest, it would be sensible that this option were open through all routes.

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

Yes / No

Please give reasons for your answer

Answer

Yes. This would bring the system in relation to secure care in line with that for YOIs.

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

Yes / No

Please give reasons for your answer

•If yes, please provide details of what this approach should look like

Answer

Yes.

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 / No

Please give reasons for your answer

Answer

Yes.

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

Yes / No

Please give reasons for your answer

•If yes, please provide details of these factors

Answer

N/A

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/ No

If yes, for all children or only those who are remanded or sentenced? If yes, how long for?

•For as long as the child's needs require it

- To a maximum length of remand or sentence (and if so what should this be?)

- To a maximum age (and if so what should this be?)

- For another period (please specify) Please give reasons for your answers

Answer

The SSSC does not have a position on this.

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

Yes / No

Please give reasons for your answer

- If yes, please provide details of what measures and provisions are needed and how you think this should operate in practice

Answer

Yes. The SSSC would welcome the opportunity to work with Scottish Government and the Care Inspectorate in developing these pathways.

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

Yes / No

Please give reasons for your answer

- If yes, please provide details of what measures and provisions are needed and how you think this should operate in practice

Answer

The SSSC does not have a position on this.

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

Yes / No Please give reasons for your answer

- If yes, please provide details of what measures and provisions are needed and how you think this should operate in practice

Answer

Yes. However, it would be important that any increase in the role of the Care Inspectorate takes into account the role of the SSSC. In particular in setting standards for practise and investigating fitness to practise failings of workers in residential child care services.

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 / No

- If yes, please provide details of how you think this should operate in practice

Answer

Yes.

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 / No

- If yes, please provide details of how this could be achieved

Answer

Yes. We would welcome the opportunity to work with Scottish Government to develop these standards further.

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?

Yes / No

- If no, what period do you think is appropriate?
- If a shorter review period, how should the Scottish Government to address the lack of review findings or data to inform such a change?

Answer

Yes.

Scottish Social Services Council

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