

## **Scottish Government Children's Care and Justice Bill – Policy Proposals, Consultation Response June 2022**

Children's Hearings Scotland (CHS) welcomes the policy proposals within the Children's Care and Justice Bill. CHS has been actively involved in discussions leading up to the publication of this consultation. In preparing this response, CHS has consulted with the CHS volunteer Community and discussed it with our stakeholders. The Bill will have significant practice, policy, and resource implications for CHS. Raising the age of referral on care and protection and offence grounds will help children in a welfare-based hearing system. This will support CHS's aspiration of keeping as many children as possible out of the adult criminal justice system and increase the safeguards that will protect them from harm and support them to achieve their full potential.

### **About Children's Hearings Scotland**

A children's hearing is a legal tribunal made up of trained Panel Members who volunteer their time and skills to safeguard and protect the rights of children in Scotland. Children's hearings are tribunals in which children, families, professionals, and Panel Members work together to identify what help children and young people need to reduce offending, protect them from harm, and help them achieve their full potential. Panel Members make legally binding decisions as to whether compulsory measures of supervision are needed to address the risks to children and young people's welfare and ensure that their needs are properly met.

The Children's Hearings (Scotland) Act 2011 introduced the role of National Convener to oversee appointment of the Children's Panel Members who make decisions at children's hearings. CHS was established to support the National Convener to deliver their statutory functions to protect the best interests of children. These functions include the recruitment, selection, training and support of volunteer Panel Members who are empathetic and highly skilled. Maintaining the independence of CHS and the National Convener is an essential statutory requirement. CHS is governed by a Board of non-executive members accountable to Scottish Ministers and the Scottish Parliament.

The CHS vision is a Children's Hearings System where everyone works together, making sure that all children are cared for and protected, and their views are heard, respected and valued. CHS's responsibility is to improve outcomes for children in Scotland by supporting around 3,000 volunteers to make high quality decisions about their future and hold to account the statutory bodies responsible for implementing these decisions.

CHS is committed to keeping The Promise to Scotland's children, by working with our partners to make the improvements identified in the Independent Care Review. At the heart of this

commitment is a deep understanding of what matters to children and their families, listening to them, understanding the impact of trauma and poverty, and enshrining children's rights in everything that CHS does.

**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**

It is important that the public has a good understanding of the Children's Hearings System and the Kilbrandon principles on which it is based. Transparency about the system's response to harmful incidents is essential if public confidence is to be maintained. Providing victims with a window into the system and offering an opportunity for questions to be asked and answered will help build trust and understanding. It is important to recognise that information important to the person who has been harmed may not be limited to details about their specific case. The Children's Hearings System is a credible and evidence-based alternative to the criminal justice system, but despite being a cornerstone of Scotland's approach to youth justice for over fifty years, there is more that needs to be done to raise awareness amongst the public about its purpose. CHS would welcome the opportunity to continue to work with key partners in the system to increase public awareness of its role, purpose and what information it can and cannot share.

In terms of sharing information to people who have been harmed by a child, the level of information provided should be on a case-by-case basis and the best interests of the child must remain the primary consideration. CHS would caution against information being routinely shared. We are mindful that any information must be shared in a way which minimises the risk of re-traumatisation of the victim. We would also like to see consideration given to when this information can be made available. Some victims, especially if the crime occurred when they were a child, may want to understand what happened with their case many years later.

It is critical that the sharing of information with someone that has been harmed by a child is never done when it has the potential to compromise the safety of the child or the victim. Managing expectations of what can be shared, and under what conditions, is crucial from the onset.

**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**

Yes, in limited circumstances and there needs to be a robust risk assessment process established. Where the measures attached to a Compulsory Supervision Order impact the victim, CHS supports the sharing of this information as long as it does not compromise the safety of the child. These decisions must be considered on a case-by-case basis. The complexity of these cases requires a nuanced approach. The sharing of information should be part of supporting, informing, and empowering victims. It should not be another process 'done to' victims. There are elements of the way that information is provided in the court system that would be difficult to replicate within the ethos of the Children's Hearings System. For example, the Victims' Code for Scotland makes provision for Victim Impact Assessments which would be at odds with our 'needs not deeds' approach.

Were a children's hearing to include a measure of no contact, this could potentially be shared with the victim as could a Movement Restriction Condition stipulating the child must stay away from specified locations such as the victim's home, school or work. When to share this information and who decides what should be shared is more complex. At present, the implementation authority will be aware if there is a measure of no contact. In cases where that measure is required to protect someone other than the child who is subject to the order, we do not believe this should be left to individual social workers to decide whether or not this can be shared.

There is a need to balance the needs of the victim with the child's right to privacy (UNCRC Article 16). There may be occasions when sharing this information is proportionate and appropriate, there may be times when it is not. Further consideration should be given to it being a decision of the children's hearing whether or not to share certain information. This would ensure the subject child's Article 12 right to be heard would be taken into account before their private information is shared.

The Victims' Code for Scotland entitles victims to apply for the Victim Notification Scheme whereby victims can be informed of release dates of prisoners. While CHS does not propose such a scheme for notification of the termination of orders or placements to the victim, the geographical location of the person who caused them harm could be important information to the victim of the offence. The fact there is a measure which requires the child to live outwith their local area, for example, if placed in secure accommodation, should also be considered for sharing with the victim, despite it not affecting them directly.

### **Support following referral**

**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)**

CHS supports improving the support available to those who have been harmed yet acknowledge the wide breadth of circumstances this could include. In terms of a child who

has been harmed, the Barnahus model would be an appropriate way to ensure the victim's needs are met therapeutically and holistically alongside the Children's Hearings System, rather than by it. Child Protection systems should ensure the multi-agency needs of the child are understood and addressed, such as education or housing.

Where the person who has been harmed is an adult, there may be a need for closer working between other agencies such as Victim Support Scotland and the Children's Hearings System. The relational support required would exceed the remit of SCRA's Victim Information Service and it is likely that additional support would be needed from third sector victim support agencies that operate successfully in the criminal justice sector.

**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**

CHS can see the merit of having a single point of contact but would need further detail about what this might look like to make an informed assessment. CHS supports further exploration of the proposal. There are various offers of a 'single point of contact' throughout the criminal justice system. Including the Victim Information and Advice service offered by COPFS, the Victim Information Service offered by SCRA, the support offered by Victim Support Scotland and the various liaison services run by Police Scotland. These services are commissioned in different ways and offer varying degrees of involvement. In this context, and with a Barnahus model in line for the future, it will be important that any new single point of contact avoids becoming counterintuitive in its aim by adding another layer of professional involvement for both the person who has been harmed and the child who has been referred to the Children's Hearing System.

### **Children's hearings measures**

**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**

- **If yes, please provide details of how they should be amended or enhanced**
- Please give reasons for your answer**

It is not possible to fully respond to answer this question without seeing the detail of what amendments or enhancements are being proposed. The fundamental purpose of the Children's Hearing System is to consider orders to support the needs of the child who has been referred. This core focus is the system's strength, and was given clear support by The Promise. Children's hearings may already require that the child comply with any other specified condition under section 83(h) of the Children's Hearing Act (2011), or that the local authority carry out any specified duties in relation to the child under section 83(i). The addition of any new measures which do not benefit the child, but another individual will need considerable thought to ensure they align with the ethos of the system.

The Children's Hearing System is not the place to support or redress harm that has been caused to a victim. The best interests of the child subject to the order are the paramount concern. We acknowledge that many children who offend have themselves been offended against previously, and that the Children's Hearings System supports many children who have been harmed by others. All measures are available to support children who have been offended against where compulsory measures are required for their care, protection, treatment or control.

**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?**

A Movement Restriction Condition (MRC) should be used where it protects children who do not meet the criteria for secure care, and where there is a clear evidence basis that it will help safeguard the child. An MRC restricts a child's liberty and should not be used as a punitive measure. Examples would include ensuring a child is in a safe place to protect them from someone that poses a risk to their safety such as in child criminal or sexual exploitation, or preventing a child from taking part in risk taking behaviours.

The supporting information alludes to using MRCs to better protect victims. A Movement Restriction Condition is not the complete solution. However, they could be better utilised as part of an intensive support package, as part of a comprehensive child-centred care plan. The efficacy of an MRC alone is limited; it is the intensive supports which accompany an MRC which improve outcomes. As such, it must be acknowledged that any increase in the use of MRCs, reduction in the test for their use, or promotion within revised guidance for decision-makers must come with significant resources to provide the intensive support required.

**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.**

All three options should be considered further.

Option 1: CHS fully supports the Kilbradon principles and is in favour of providing a non-punitive, 'needs not deeds' approach for all children involved in offending behaviour. What is unknown to date, is how effective the current measures and supervision provided by the Children's Hearings System are at addressing the reasons behind the offending behaviour of children currently referred for advice and disposal under s49 Criminal Procedure (Scotland) Act 1995. Furthermore, while keeping children out of the adult justice system is clearly a priority, addressing the underlying causes of the behaviour must remain the primary objective. It must be acknowledged again that a compulsory supervision order alone does not bring about the changes required to improve the outcomes for children and young people. It is the support, supervision, and monitoring which accompany the order which have the ability to bring about change. Significant new resources would likely be required to ensure there is sufficient capacity in children's and adults services to provide the intensive, relational support children and young people need and deserve.

Option 2: At present, on terminating a compulsory supervision order, children's hearings must make a statement that a child continues to require support if they believe this to be the case. This support must be provided by the local authority if the child is willing to accept it. What is largely unknown is whether this support is provided, what rights and options the child has if this support is not made available and whether the children's hearing's identification of ongoing needs makes any impact on the outcome for the child once supervision has ended. Before a closure report is seen as a viable option, further exploration of the efficacy of the existing provision is required. To ensure we are getting it right for children and young people, clear accountabilities and resources for providing ongoing support are essential along with a route for recourse if the support is not provided. CHS believe this could work well alongside existing aftercare responsibilities but only if there is a statutory duty for authorities to provide the care stipulated in the plan, where the young person chooses to accept it.

Option 3: To optimise the benefits of increasing the age of referral to the Principal Reporter, the Children's Hearings System needs time to address the behaviours which led to the referral. In theory, retaining young people in the Children's Hearings System post-18 would enable this.

There should not be a cliff edge resulting in no access to services when a child reaches 18. This realisation for a 17 year old can be stressful and traumatic and therefore not in the child's best interest. The current Pathways model for care experienced young people up until the age of 26 provides a framework for how young adults are supported. More effective transition planning and increased resourcing is essential. Providing support for young people over the age of 18 would be a considerable shift for children's hearings and Panel Members; one which would challenge the bridge between children's and adults' services, have considerable resource implications for CHS and one which may see young people referred to the Children's Hearings System as a means to provide support which should be provided on a voluntary basis, without the need for a compulsory supervision order. CHS would welcome the opportunity to explore this further, with partners and people with lived experience.

CHS is keen to be involved in further exploratory work in all three areas.

**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**

When court-based processes are involved, they can become elongated and slow. That risk needs to be guarded against. Panel Members noted that there should be a faster turnaround of grounds referred to court, which are already seen to be slow. This needs to be considered when adapting the interfaces. The 'no order' principle means that no court or children's hearing should make an order relating to a child unless the court or children's hearing considers that to do so would be better for the child than making no order at all. This is in recognition of the impact of compulsion and that intervention by the hearing system is, in itself, an intrusion of rights to private and family life. Referral to the hearing system therefore should not be conflated with certain, supported intervention. Police and other bodies can

already refer to the system where there is cause for concern that might not amount to an offence. For example, misuse of drugs and alcohol are already distinct grounds that could merit a hearing in themselves. An area that merits further exploration is considering how disposals can address the root causes of referrals, for example, persistent poverty.

The Children's Hearing System offers a child friendly, trauma informed alternative to the court system. The experience of children and families accessing both the hearing system and the courts is often complex. Further exploratory work is required to improve the interfaces between these two systems.

## **Youth justice**

### **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**

Option 1: CHS would support a review of the joint reporting process. Significant steps have been taken in Scotland over recent years to ensure children and young people are treated as such when addressing offending behaviours. For example, the intention to fully incorporate UNCRC, the Scottish Sentencing Council Sentencing Young People Sentencing Guidelines and continued meaningful discussions around raising the age of criminal responsibility. It is the appropriate time to review the Lord Advocate's Guidelines and the overall joint reporting process, consistency, and efficacy.

Option 2: As part of the redesign work CHS would welcome the opportunity to be involved in improving the interfaces between the Courts and the Children's Hearings System. There is learning from existing pilots and research which could support the redesign process but investment in improvement should be part of the redesign transformation work that is already underway.

Option 3: What is described here is a children's hearing. CHS would not support a second 'hearing system' which is exclusively utilised to address the highest tariff criminal cases; we would prefer to maximise the use of the existing Children's Hearings System for all children. It must be acknowledged that this proposal would require significant resourcing to make it a reality. That investment in the existing Children's Hearing System would be the better option 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" [The Promise].

### **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**

CHS supports ending the use of Youth Offender Institutions (YOIs) for those under 18. YOIs as they are currently set up cannot be aligned with the UNCRC and are not an appropriate place for a child. Scotland's current approach, which allows for the imprisonment of children as a matter of course, fails to recognise this. The use of prison for children on remand is

particularly unacceptable and fails to recognise the inherent vulnerabilities of children, regardless of their own actions. Were YOIs to remain an option in future, CHS believe they must only be used when a child has been found, or pled, guilty to an offence, never for remand.

The key issue in terms of secure care replacing YOIs is the quality of the care offered by the establishments. Secure care providers and the regulatory body responsible for enforcement must ensure that the rights of the child are maintained; for example to a family life, therapeutic support, and access to education. The needs and rights of the child in secure care must be the primary consideration and there is scope for a more robust inspection and regulation to ensure that the human rights of children in secure care are fully realised.

**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**

There should be an explicit statutory prohibition on placements that are incompatible with children's rights. There is a significant body of evidence that placing children in custody deprives children of their rights, is traumatising and does not lead to positive outcomes. YOIs cannot uphold children's rights and therefore should not continue to be used.

In exceptional cases, placing a child in a secure setting with other children may be to the detriment of the rights of other children living there. In such cases, risk assessments should be undertaken and alternative therapeutic settings made available. CHS believes a modernisation of the secure estate would be preferable, and more able to meet children's needs, than the incarceration of any children who offend.

**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**

Yes, local authorities should provide enhanced support to children and young care leavers who are remanded or sentenced as part of their corporate parenting responsibilities. These young people are particularly vulnerable and should be provided with a consistently high level of support and supervision. Care experienced young people are much more likely to have criminal convictions than their peers, and often do not have the family and social networks to support them when they come into conflict with the law.

**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**



CHS supports the provisions in the proposals for greater anonymity for children who come into conflict with the law.

## **Secure care**

**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**

The regulatory landscape relating to secure care is complex and should be simplified, clarified, and most importantly, improved. There should be consistency in service regardless of a child's route to placement. Maintaining a system where children subject to a compulsory supervision order have access to secure care when others do not for similar behaviours risks children entering the system to provide access to support when this should be available regardless. Secure care must be available to all children under 18 who need it.

All children who are deprived of their liberty in residential secure accommodation, irrespective of the registration status of the accommodation, should expect their rights to be respected and to be treated with the upmost of care and respect as outlined in Article 5 of ECHR and the Secure Care Pathway and Standards Scotland. These standards should apply to all children living in Scotland before, during, and after a secure placement.

**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**

The definition of care in the Public Services Reform (Scotland) Act 2010 focuses on an accommodation service which restricts the liberty of children. There is also a definition of secure care in the Children’s Hearings (Scotland) Act 2011; section 85 which defines a secure care authorisation as “an authorisation enabling the child to be placed and kept in secure accommodation within a residential establishment.” The language currently used is very system oriented, CHS would like to see greater recognition of the trauma informed therapeutic value of secure care and believe that this should be explicitly referenced in the definition. These services should be central to how secure care is understood and how it is delivered. It is important that that a definition focuses on the therapeutic value for the child and is positioned as something that is very different to imprisonment.

**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**

All children should be afforded the same rights to therapeutic secure support in keeping with the United Nations Convention on the Rights of the Child.

**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**

CHS would hope that remand in secure accommodation must be viewed as the best option for the child, and that this would be in very limited number of cases. Any restrictions on a child's liberty, particularly at the pre-trial stage, must have clear national guidance or criteria. In the small number of cases where this is in the child's best interests, Scottish Ministers should fund the costs of secure care to ensure consistency of approach for all children in Scotland.

The current financial model for secure care risks incentivising providers to keep children in secure care in order to make their services financially viable. The current national contractual arrangement requires providers remain at 90% occupancy to break even. Unfortunately, it is difficult to conclude that the rights of children is a primary consideration under these conditions. If the proposal for Ministers to fund secure care removes the financial element of the decision making this has the potential to be a positive move. Investment is needed to ensure that secure care is available to meet the needs of every child and should not be based on levels of occupancy. Funding for placements must be removed from standard demand and capacity assessments. The need for secure care may ebb and flow, and funding should not evaporate when placements are left unfilled. Creativity should be exercised where providers have gaps in occupancy levels, for example by diverting resources to preventive and early intervention programmes. Decision-makers should always be assured that if a child needs secure care, it will be available in the place and at the time that meets the needs of the child.

**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**

Consistency in threshold would support better understanding of what secure care is and why it should be used, including amongst Panel Members who authorise placements. There is a limited estate of secure care homes in Scotland and therefore a national approach in terms of threshold, criteria and quality of provision should be established. Lack of geographical spread can result in children being separated from key relationships when entering secure care. Panel Members must balance this when making decisions for some children but not others, depending on their location. For the outcomes for all children to be improved by secure care, we need to ensure that we are not starting out by limiting support systems, community attachments and personal connections for some children and maintaining these for others.

**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**

As Corporate Parents, CHS recognises the need to support those who have been involved in the hearing system beyond the age of 18. If a young person is benefiting from therapeutic support in a secure care setting it would be counter-intuitive to remove them based solely on the fact they have turned 18. There should be a care plan that supports the transition from secure care to a suitable community-based alternative where it safe to do so. Care experienced young people have a right to remain in care until they are 21; this upper age limit could also apply to secure care.

**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**

Yes. The co-production of the Secure Care Pathways and Standards showed the value and learning that can be taken from people with lived experience of care. To be effective the pathways and standards for residential care need to have adequate resources to ensure the standards are met, monitored and enforced. The experiences of children should be at the heart of any new pathways or standards. Following the model of the Secure Care Pathways and Standards would ensure children's needs are met and will shape the standards of their care in future. Children and their families need to have clear expectations of what care they will receive in Scotland, regardless of the provider. CHS agree that national standards with robust accountability and enforcement provisions are an effective way to ensure high standards.

**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**

In principle children should reside in their communities if at all possible. Local strategic needs assessments, as part of the children's services plans, should help ensure that high quality provision of residential care is available for children when required. However, caution needs to be exercised to ensure that local strategic needs assessments are designed to meet the needs of the children living in that area. Cross-border placements, for example, have demonstrated that access and provision can be distorted when providers provide a service for out of authority / jurisdiction implementation authorities. Irrespective of the implementation authority, all children in residential care in Scotland must be afforded the same rights and protection.

**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**

Inspection, scrutiny and enforcement is crucial in maintaining high quality residential care. A high performing scrutiny body must ensure that residential care providers have high quality and caring staff teams, a stimulating and safe physical environment and offer high quality therapeutic support.

**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**

Yes, all children in residential care in Scotland must have access to the same levels of service and protection. We support access to local advocacy on the basis of clear evidence of the beneficial impact advocacy has shown in the context of children's hearings. However, access to advocacy services alone should not be seen as a silver bullet for protecting the rights of children in cross-border placements. The Care Inspectorate's recent report highlighted that many children in cross-border placements "do not have their rights protected" and this results in poorer outcomes. As a bare minimum, a designated advocate is essential for children who are so far from home, navigating a second legal and care system. When advocacy is offered, there must be checks and balances to ensure that it is offered throughout the placement, and that the child and their family fully understand their right to access it, its purpose, and the protection it can offer them. CHS also believes that further consideration should be given to whether Scottish legal representation may be beneficial for children from other parts of the UK placed in Scotland. To ensure all children and young people living in cross-border residential and secure care placements receive the same, consistent offer of advocacy support, we believe there should be a legislative requirement to do so, similar to section 122 Children's Hearings (Scotland) Act 2011.

**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?**

As a member of the Age of Criminal Responsibility Advisory Group, CHS is committed to reviewing the age of criminal responsibility. In order for the Children's Hearings System to become the primary setting to support all children who offend we need to ensure public support and understanding of the ethos and effectiveness of the system. Scotland has not only raised the age of criminal responsibility but has made significant changes to the way we approach children under the age of criminal responsibility. The statutory review period is required to evidence the effectiveness of these changes. CHS supports raising the age of criminal responsibility further in keeping with Kilbrandon's founding principle of "needs not deeds". Scotland currently has a significantly lower age of criminal responsibility than the European average of 14.

**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?**

Clearer details are required about the proposals to be able to answer this fully. There will be complex data protection issues with sharing information with victims of offending or consents required if the Children's Hearings System is to support adults as well as children.

**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?**

A key issue for CHS is ensuring that there are appropriate measures and resources made available to the Children's Hearings System as a result of raising the age of referrals to include 16 and 17 year olds. CHS believes that this is a progressive step that will better protect the rights of all children, however, it must be acknowledged that parental responsibilities and rights vary depending on the age of the child and this will require further consideration to determine whether the Children's Hearings System is able to provide the same service to all children or if further reform is required. Increasing the age of referral to the Principal Reporter also increases the likelihood that more young parents may be subject to compulsory supervision at the same time as their own children.