

ABERDEEN CITY COUNCIL

COMMITTEE	Education and Children's Services
DATE	18 February 2025
EXEMPT	No
CONFIDENTIAL	No
REPORT TITLE	The Children (Care and Justice) (Scotland) Act 2024
REPORT NUMBER	F&C/25/011
EXECUTIVE DIRECTOR	Eleanor Shepherd
CHIEF OFFICER	Graeme Simpson
REPORT AUTHOR	Andrea McGill
TERMS OF REFERENCE	2.1.1 & 2.2

1. PURPOSE OF REPORT

- 1.1 The Report seeks to provide the committee with assurance that as far as is currently possible the relevant planning and scoping activity is being progressed to fully consider the implementation of the Children (Care and Justice) (Scotland) Act 2024.

2. RECOMMENDATIONS

That the Committee:-

- 2.1 note the Children (Care and Justice) (Scotland) Act 2024 received Royal assent in June 2024;
- 2.2 note the implications on systems, processes and resources, as far as they are currently known, of the enactment of the Children (Care and Justice) (Scotland) Act 2024;
- 2.3 note the action plan document attached as Appendix 1;
- 2.4 note that the ending of placing children in Young Offender Institutions came into effect in August 2024; and
- 2.5 instruct the Chief Social Work Officer to provide Committee with a Service Update in the planning for implementation of the Act once the plan for enactment and associated funding is made known by the Scottish Government.

3. CURRENT SITUATION

3.1 Background

- 3.1.1 The Children (Care and Justice) (Scotland) Act 2024 (the Act) received Royal Assent in June 2024. The Act makes provision about the care of children (who are not involved in the criminal justice system) and the treatment of children within the criminal justice system, as well as the interrelationship between the

care system and the criminal justice system. [Children \(Care and Justice\) \(Scotland\) Act 2024](#)

3.1.2 The legislation has the intention of ensuring the better integration of national policy with legislation which aims to improve systems which protect, intervene and where necessary accommodate children. Reflected in **Getting It Right for Every Child (GIRFEC)**; findings of The Independent Care Review, The Promise and the United Nations Convention on the Rights of the Child (UNCRC). The implementation of the Act will progress over the next 16-month period, with full enactment expected by March 2026.

3.2 Overview of the Children (Care & Justice) (Scotland) Act 2024

3.2.1 The legislation contains a series of measures aimed at improving children's experiences of the care and justice systems, whether victims, witnesses or children who have caused harm. The Act has the following progressive intentions;

- Improve opportunities for prevention and early intervention
- Systems are age and stage appropriate and rights respecting
- Equal access to the children's hearings system, safeguarding all children in the justice system, including victims
- Age of Referral to Principal Reporter raised to 18 for all referral grounds
- Secure accommodation replaces Young Offenders Institutions (YOI) for 16/17-year-olds (from August 2024) for children remanded or sentenced to custody
- Children placed in secure accommodation through a remand or sentencing pathway will be considered Looked After Children
- Children in secure accommodation through remand or sentenced pathway will be able to remain in secure accommodation past age 18 but not beyond 19 where assessed as suitable and appropriate
- Secure transportation standards and regulation to be developed
- Cross-border placements are better regulated and matched to children's needs
- Children will no longer be held in police cells, where a child is being kept for the next court day this will be in a "place of safety"

3.2.2 Part 1 of the Act deals with aspects of the children's hearings system, with the main change being the meaning of "child". This will mean all under 18-year-olds, will be children for the purposes of the children's hearings system, without any distinction made between children over 16, who are subject to compulsory supervision orders and those who are not.

3.2.3 Other changes made by Part 1 relate to:

- Placing a duty on children's hearings to have due regard to the effects of trauma on children;
- Changes to conditions required for use of Movement Restrictions Conditions (MRC's)
- Allowing prohibitions to be part of Compulsory Supervision Orders (CSOs) with Panel members able to attach prohibitions in the following categories:
 - i. prohibition on a child entering a specified place or description of places

- ii. prohibition on the child approaching, communicating with or attempting to approach or communicate (directly or indirectly) with a specified person or class of person
- Placing a duty on the Principal Reporter to inform people harmed by a child referred to children's hearing of their right to request information about the disposal of a child's case.
- Providing support to persons in the children's hearings system, providing guidance for children after they turn 18 up to age 19 years

3.2.4 The above measures will ensure that children are able to access systems designed with their needs in mind. The age of referral to the Scottish Children Reporters Administration (SCRA) on both offence and welfare-based grounds, will be raised to 17.5 years. Raising the age of referral for all children has the aim of preventing 16- and 17-year-olds not on a Compulsory Supervision Order (CSO) entering the adult justice system.

3.2.5 The majority of children in conflict with the law have experienced developmental trauma, abuse and other adversities. This change will ensure all children have the same protections. Provisions will continue for some children to be dealt with through the Criminal Justice System, with the discretion of Lord Advocate and Procurator Fiscal being retained to begin criminal proceedings to prosecute children in court.

3.3 Secure Accommodation

3.3.1 UNCRC Article 40(3) (b) provides that *state parties shall establish measures for dealing with children in conflict with the law without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected and where judicial proceedings are required, these should take place in a child-specific institution and international human rights standards require that separate and specialist child justice systems must be established, different to the criminal systems applicable to adults;*

3.3.2 The Act will ensure that responses to children where their liberty must be deprived is proportionate, age appropriate and focused on the needs and best interests of the child. The Act ensures practice is aligned with UNCRC intentions and when children are deprived of their liberty, placements in Secure Accommodation are accessed, the option of a YOI removed.

3.3.3 *Children who require the care and protection of secure accommodation for reason of remand or sentence will be afforded the same protections and rights as any child in secure accommodation and be treated as a looked after child with accompanying aftercare entitlements should they be a "care leaver".* The requirement for a child to leave secure accommodation at 18 will, in certain circumstances, cease.

3.3.4 The use of Youth Offender Institutions (YOI) ended in August 2024 with any under 18s in YOI, moved into secure accommodation. These children will now have the statutory status of Looked After Children and the duties to them which this confers up to the age of 26 years. No child can be placed in YOI for any reason and any child who is sentenced or remanded to custody is placed in secure accommodation. The child's local authority is responsible for sourcing

the placement and arranging secure transport. The Scottish Government have committed to funding court imposed secure placements until the end of March 2025. Beyond this date funding arrangements are unclear. At a cost of circa £7,500 per week this poses a significant risk to local authorities.

- 3.3.5 There were no Aberdeen children in the transfer group and no incidences of a 16/17-year-old being remanded to a YOI for circa 3 years. Our use of secure accommodation placements has followed the Chief Social Work Officer route, relating to a small number of young people whose needs for safe containment are reflected in care planning approaches. Data for December 2024 indicated two children in secure accommodation with one child placed in secure care due to concerns relating to their welfare.
- 3.3.6 At a national level there is anecdotal evidence that since the change in relation to the use of YOIs was enacted in August 2024, there has been an increase in Courts giving active consideration to the use of secure care. Given the lack of long term funding arrangements for these placements, as noted, this places significant financial pressure on local authorities. Additionally, while the principle of enabling some young people to remain in secure care beyond their 18th birthday is supported, the funding for these placements has not been resolved.

3.4 Support to Victims

- 3.4.1 The Act places a statutory duty on Scottish Ministers to provide support, by way of a single point of contact for all victims. There are also additional measures available through the Children's Hearing System aimed at providing enhanced protective and preventative measures. The Principal Reporter will have enhanced discretion to share information with person or persons harmed by a child referred to the Children's Hearing System.
- 3.4.2 This discretion needs to be balanced with protecting the rights and welfare of the child who has caused harm. The guidance of how this will work in practice is still awaited and will be critical to ensuring the needs of both groups are adequately protected.

3.5 Cross Border Placements

- 3.5.1 Cross Border Placements refers to the practice of children, from mainly English Local Authorities, who are unable to access a suitable placement in their jurisdiction, leading to them being placed with a provider in Scotland. The legislation enhances safeguards and regulatory frameworks in these placement arrangements. There are no private providers operating within Aberdeen City offering cross-border placements.
- 3.5.2 Evidence presented to the Independent Care Review and reflected in The Promise, suggested that the funding model for providers to accept children from other parts of the UK cannot be sustained. This recognised that it was not in the children's best interests to be transported to an unknown place with no connections or relationships. Such placements can result in children being separated and distanced from their families, peers, community support networks and services. This adversely impacts on planning for the child and their ability to maintain meaningful relationships.

3.6 So what - Implications and Intentions

- 3.6.1 The intentions of this Act are part of a progression of policy measures intended to ensure that justice systems which deal with children recognise their distinct needs (and those of young people aged 18 years, moving into early adulthood.) The Act contains wide ranging measures to ensure age-appropriate justice is delivered, ensuring children in Scotland are kept out of prison and supporting safe, proven care-based alternatives. In terms of the implications for Children's and Justice Social Work, the following are being anticipated:
- more 16 and 17-year-olds referred to the Scottish Children's Reporters Administration (SCRA)
 - Panel members can instruct a local authority to provide support and guidance post 18 years but not beyond 19 years in some cases.
 - More young people will be considered care leavers and qualify for Aftercare support and pathway planning guidance from Children's Social Work;
- 3.6.2 The above implications will place new and significant additional demand and financial spend to support the needs of this group of children. The allocation of funding to local authorities to support the enactment of this legislation is still to be determined by the Scottish Government. This is limiting the extent to which local planning can be progressed. The range of responses to this group needs to be supported by a local action and implementation plan (Summary Action Plan Appendix 1) . Work has been progressed to map out the key areas of activity and change that will be required. This is being developed in collaboration with colleagues in Justice Social Work but also via the very positive links we have established with the Children and Young People's Centre for Justice who are supporting the Scottish Government to develop practice guidance to accompany the Act.
- 3.6.3 The focus for change includes but is not limited to;
- Scoping Early and Effective Intervention options for 16/17-year-olds
 - Workforce development needs of Children and Justice Social Work and partners needs has been initiated with above in mind, while aware of national drivers still to be determined
 - We anticipate many of the 16/17-year-olds referred to SCRA will have higher levels of support need and require assessments of these needs within a context of understanding and managing risk.
- 3.6.4 During the development of this legislation, there have been local dissemination activities with the objective of assisting the multi-agency partnership to be prepared for changes incumbent from the legislation. This activity continues with the following;
- Further dissemination of key messages and practice actions utilising in person and practice note updates, tracked against full implementation;
 - Briefing sessions for leaders and managers across the multi-agency partnership with enhanced focus on Children's and Justice Social Work
 - Presentation to Children Service Board
 - Action planning log initiated and shared with Chief Officer
 - Development of Improvement Charter work based on the intentions of the legislation, which has tested systems readiness

- Information gathering of data around 16/17-year-olds currently involved in both Children and Adult systems and attempts at forecast levels of demand by inclusion of data re 16/17-year-olds homelessness needs.

3.6.5 Scottish Government have not indicated the level of funding local authorities will receive to enact the many and significant additional duties. Due to linked related activity around the future of Children's Hearings partners in SCRA and Children's Hearing Scotland we are aware of the additional resource allocation which may be awarded to them to fulfil additional functions. So far this is not the case for local authorities.

3.6.6 In the consultation phase of this Act the Scottish Government undertook national forecasting activity which has been challenged by Social Work Scotland and CoSLA as being inaccurate. This activity is understood to be ongoing.

3.6.7. To support planning for the enactment of the Act, we have further developed our local data. Combined Justice Social Work and Children's Social Work data tells us that for 2022-2024;

- Bail Supervision Order was not used as a measure for any 16/17-year-old
- 5 Reports for Court were undertaken for 16/17-year-old young people
- Outcomes from those 5 reports; 1 child was remitted to the children hearing; 4 were admonished
- One 16/17-year-old was made subject to a Community Payback Order in 2023/24
- 39 occurrences of children cited to appear in court from police custody or on undertaking in the period 1st April 2024 to 29th November 2024.
- 10 instances of children being kept in police custody for next court day, 9 of these children were care experienced
- 50% of the above group were diverted from prosecution
- In the period October 2023 – September 2024 133 children were referred to SCRA on offence grounds. There were no Children's Hearings arranged in respect of offence grounds
- 52 16–17-year-olds (59 referrals) were jointly reported to SCRA and Crown Officer Procurator Fiscal Service (COPFS) 31 were referred to the Reporter and 21 were retained by COPFS

3.7 Summary and Next Steps

3.7.1 This legislation will leverage significant and transformational change predominantly, but not exclusively, in relation to the legal responses to how the needs of 16- & 17-year-olds who are in conflict with the law are supported. The legislation will ensure fewer children will be dealt with in adult justice systems. These transformational suites of measures will align legal systems with the needs and developmental responses linked to childhood and the need for children to be protected and not prosecuted.

3.7.2 An implementation plan has been developed and will be overseen by Senior Managers from Children and Justice Social Work. This plan will continue to evolve and be reviewed as the practice guidance that will accompany the Act is developed. The Children's Services Board will receive further reports on the

planning for enacting the Act as the Scottish Government's plan for implementation becomes clearer.

- 3.7.3 Key actions currently focus on delivering awareness raising sessions for key groups of the multi-agency workforce. Our planning has identified workforce development needs. There will be a need to update and modify local practice guidance and processes to align to the Act taking account of the Scottish Government's implementation plan. This has already been done in response to the positive move away from placing 16- and 17-year-olds in Young Offender Institutions. Our implementation plan includes scoping of how additional interventions could be developed in response to the complex and intensive support needs of this group.

4. FINANCIAL IMPLICATIONS

- 4.1. The Scottish Government plans to enact the Act are currently unclear. Whether the Act will be enacted all at once or on a staged basis is unclear. The detail of what needs to be delivered by the Local Authority in terms of this legislation is not clear. Additionally, whether the funding the Scottish Government provides local authorities will be sufficient to ensure they can deliver on the new and significant new duties is currently not known.
- 4.2 Currently aspects of the grant provided to local authority Justice Social Work services covers the needs of 16- & 17-year-olds who come before the Courts. How we respond to the needs of this group, taking account of the duties set out in the Act, is a continuing focus of discussion at a local and national level. There is knowledge and skills across both Children's and Justice Social work which need to come together to ensure we effectively respond to the needs of this group of children.
- 4.3 While the Scottish Government have agreed to directly fund the placement of any child who is sentenced or remanded to secure care, this commitment is only assured until 31 March 2025. Beyond this date funding arrangements are unclear. We also are mindful that the Courts may be more willing to place a child in secure care increasing the financial risk. This data is being tracked at a Scottish Government level.

5. LEGAL IMPLICATIONS

- 5.1 The Children (Care and Justice) (Scotland) Act 2024 is new legislation. The legislation has replaced and/ or amended aspects of primary legislation which frame the operation of the Children's Hearings. These will impact on referral systems and processes within children's social work and across the multi-agency partnership and Justice Social Work. There is now a legal duty to consider how we meet the needs of children in conflict with the law and those who need care and protection up to 18 years old.

6 ENVIRONMENTAL IMPLICATIONS

- 6.1 There are no environmental implications arising from the recommendations of this report.

7. RISK

Category	Risks	Primary Controls/Control Actions to achieve Target Risk Level	*Target Risk Level (L, M or H) *taking into account controls/control actions	*Does Target Risk Level Match Appetite Set?
Strategic Risk	The United Nations Convention on the Rights of the Child (UNCRC) articles are primary drivers	Staff workforce development to offer knowledge and information in operationalising rights in practice.	L	Yes
Compliance	No significant risk identified at this time. Funding to support delivery of the new duties set out in the Act is unclear and may impact on our capacity to deliver on the new expectations.	Services across all multi-agency partners will be aware of the key messages and requirements and ensure compliance. We continue through professional associations to advocate the need for adequate funding to support the financial settlement.	L	Yes
Operational	Partnership practice, process and systems adaption will be identified and actioned to realise our duties	Action and implementation planning and development with Leadership supports to ensure awareness of new duties; capacity and responses are in place. We have identified areas of development for the workforce and this will be addressed as the guidance that will accompany the legislation is published.	L	Yes
Financial	There is currently an absence of clarification on the plan for implementation and funding from Scottish Government on all parts of the Act which impact on Local Authority provision including	We continue through professional associations to advocate the need for adequate funding to support the financial settlement.	H	No

	placement costs e.g. secure remand and sentence costs.			
Reputational	Children in conflict with the law can bring significant media interest and scrutiny of services delivered to children and young people. It is important that services have the resource required to ensure they can deliver early and effective support to children and families.	A draft implementation plan has been developed. This includes scoping of how additional interventions could be developed in response to the complex and intensive support needs of this group.	L	Yes
Environment / Climate	No significant risk identified	N/A	N/A	Yes

8. OUTCOMES

Council Delivery Plan 2024			
			Impact of Report
Aberdeen City Council Policy Statement <u>Working in Partnership for Aberdeen</u>			<i>Influence the experience of discrimination and disadvantage experienced by children in conflict with the law</i>
<u>Local Outcome Improvement Plan 2016-2026</u>			
Prosperous Outcomes	People	Stretch	<p><i>The proposals within the report support Stretch Outcomes 5/7 of the LOIP 5. By meeting the health and emotional wellbeing needs of our care experienced children and young people they will have the same levels of attainment in education and positive destinations as their peers by 2026.</i></p> <p><i>7. 83.5% fewer young people (under 18) charged with an offence by 2026. The report serves to outline how children are defined in reference to UNCRC and consequently will be better protected and receive system specific supports should they conflict with the law or have welfare needs leading to referral to SCRA. There will be no young people remanded to YOI; more young people should be able to access preventative support should they conflict with the law. The experience of victims of crime will improve with additional safeguarding</i></p>

9. IMPACT ASSESSMENTS

Assessment	Outcome
Integrated Impact Assessment	New Integrated Impact Assessment has been completed
Data Protection Impact Assessment	Not required
Other	Not Required

10. BACKGROUND PAPERS

- 10.1 <https://www.legislation.gov.uk/asp/2024/5/contents>
<https://www.cycj.org.uk/wp-content/uploads/2024/09/Children-Care-and-Justice-Scotland-Act-Briefing-Paper-1-Updated.pdf>

11. APPENDICES

- 11.1 Appendix 1 attached.

12. REPORT AUTHOR CONTACT DETAILS

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Appendix 1

Children (Care and Justice) Act 2024

Summary Action Plan January 2025 - March 2026

Action Plan scope on following key themes;

- **Workforce skills, knowledge, awareness**
- **Partnership, planning and commissioning**
- **Legislation, local procedure, guidance, process change**

What we need to consider	What we will do	When will we do this
<p>Support understanding and incremental consolidation into their practice of Children’s Social Work and Justice Social Work and partnership Workforce in terms of knowledge, awareness, skills and confidence in response to this legislation;</p> <p>Relationship with SCRA and Children’s hearings; Legislative process change in what is required by CHS;</p> <p><i>Increase in referrals to reporter for all grounds and a reduction in the number of children in court at summary level.</i></p> <p><i>Expectation of higher tariff of offence types being referred to Reporter.</i></p>	<p>Produce, disseminate materials and arrange sessions re; workforce guidance materials on implications on practice of.</p> <p><i>Age of referral to Principal Reporter to increase to 18 (17 ½ in effect) on all grounds. All under 18s will be eligible for referral on ALL grounds. No new grounds have been added as result of this legislation.</i></p> <ol style="list-style-type: none"> 1. Communicate date of commencement of this element of the Act once known. 2. Meeting with Police to agree template for EEI referrals 3. Initial briefing note shared in 2023, latest update September 2024, updates will continue as required, addressing the 	<p><i>Build on earlier implementation actions from March 2024 and progress with a calendar of dates from February 2025 until March 2026, addressing each of these themes 1-3 a-g.</i></p>

<p><i>Workforce to understand the legislation to be able to respond to the change above</i> <i>Place of safety</i></p> <p><i>To end inequality of right to a solicitor.</i> <i>Notification to local authority of child in police custody.</i> <i>Childs parent or carer will also be alerted that child is in legal custody</i> <i>Current practice is that the local authority is informed of a child in custody, clarity of who receives notification and actions required needed.</i></p>	<p>technical aspects of these three significant amendments.</p> <ul style="list-style-type: none"> a. Movement Restriction Conditions - MRCs b. Prohibitions to CSOs. c. New duty on children’s hearing to have regard for the effects of trauma on the child d. Supervision or guidance post 18 use of appropriate place of safety and remove children from police cells. e. Solicitors for those being interviewed – 16/17 year olds will no longer be able to waive the right to having a solicitor present when being interviewed at police station. f. Meet bimonthly with Snr JSW and CSW leads to collate, analyse data, identify planning and resource implications and agree what is in local scope for change plan. g. Scope with Police Partnership Team what could be considered an alternative to use of Police Custody and a local option for place of safety. 	<p><i>Locally produced Children’s Rights materials, accessible by Children who may be considered for these supports a-e by October 2025.</i></p> <p><i>January 2025-January 2026</i></p> <p><i>March 2025-September 2026</i></p>
<p>What has changed in how we respond to young people where there are high levels of concern for their safety and the safety of others; Secure Accommodation Authorisations</p> <p>New criteria for secure accommodation authorisations is reflected in local processes;</p>	<p>Update CSW officer guidance on authorisation of secure placements; ensure that tests for restriction and deprivation of liberty are understood by Children’s Social Work.</p> <p>Update Secure Guidance and process</p>	<p><i>Awaiting the production of National Guidance and clarity on funding provisions by Scottish Govt for Secure placements.</i> <i>Share with Chief Social Work Officer and Snr Management Teams March /April 2025</i></p>

<p>Provision of Secure accommodation post 18 years. <i>Children detained in secure accommodation for any reason will be treated as a looked after child and given the associated rights</i></p> <p>Planning and resource development scoping given the changes to definition of secure accommodation allowing a person can remain in secure post 18 but not beyond 19. Intention is to prevent the cliff edge moments for children. <i>Children may remain in secure accommodation post 18 if placed there via remand or sentenced pathway. Scottish Government not committed to funding remand places post March 2025</i> therefore potential significant financial impact for LA. All children in secure accommodation via remand or custody pathway become looked after children regardless of length of stay.</p>	<p>Change in conditions for secure accommodation intended to decouple use of MRCs from need for secure accommodation. All other measures likely to have to have been considered prior to consideration for secure accommodation including MRCs therefore use of MRCs may increase as a result.</p> <p>Share findings and recommendations from National Workstrands <i>Reimagining Secure Care</i></p>	<p><i>Identify and scope local demand link to draft planning and resource implications March 2025.</i></p> <p><i>Review local guidance and Process in scope by June 2026 and identify partner support to begin amendments</i></p> <p><i>Consider financial modelling and await further instruction from Chief Social Work Officer April 2025, when SWS may have offered clarity to Chief Social Work Officers as to their role and financial implications.</i></p>
<p>Support to Victims</p> <p>Requirement for Principal Reporter to inform person harmed of their right to request information (with certain exceptions) and enhances the information that can be shared.</p>	<p>Possible Impact</p> <p>Enhanced information shared could lead to increased reports of non-compliance with conditions of CSO.</p>	<p>Action for SCRA <i>CSW Liaison with Principal Reporter at 6 weekly liaison and also as part of Youth Justice sub group monitoring function, planned impact note to Children Service Board by June 2025, quarterly updates to follow until March 2026 to clarify and describe progress of Children’s Hearings Redesign work.</i></p>

<p>Single point of contact (SPOC) to be created to provide information and support for people who have been harmed where the child's case is dealt with via the hearing system.</p>		
<p>Nationally lead provisions. (Secure Transport Review; Cross Border Placement Regulations.; Welfare of children in criminal proceedings; Changes the definition of a child for the purposes of criminal proceedings)</p>	<p>Whole Systems Approach Lead Officer will assume a strategic leadership role in attending the National Youth Justice Improvement Group and disseminating their guidance along with guidance produced directly by Scottish Govt in the implementation of the legislation.</p>	<p><i>January 2025-March 2026 and under review in terms of the national implementation calendar.</i></p>