

## ABERDEEN CITY COUNCIL

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<b>COMMITTEE</b>	Education and Children's Services.
<b>DATE</b>	24 January 2023
<b>EXEMPT</b>	No
<b>CONFIDENTIAL</b>	No
<b>REPORT TITLE</b>	Children's Care and Justice Bill
<b>REPORT NUMBER</b>	CFS/23/023
<b>DIRECTOR</b>	Eleanor Sheppard
<b>CHIEF OFFICER</b>	Graeme Simpson
<b>REPORT AUTHOR</b>	Graeme Simpson
<b>TERMS OF REFERENCE</b>	1.1.1

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### 1. PURPOSE OF REPORT

- 1.1 To advise elected members on the proposals set out in the Children's Care and Justice Bill and the potential implications for Aberdeen City.

### 2. RECOMMENDATIONS

That the Committee:

- 2.1 Notes the intended outcomes of the Children's Care and Justice Bill and some of the implications Aberdeen City Council will need to consider upon its approval; and
- 2.2 Notes the Education & Children's Services Committee instruction for the Chief Social Work Officer to update Committee on the progress of the Bill when the outcome of the Secure Review is concluded, anticipated Autumn 2023.

### 3.1 CURRENT SITUATION

- 3.1.1 The Scottish Government published the Children's Care and Justice Bill in the spring of 2022, which they have since consulted on. The Bill has been developed in-line with the findings presented in The Promise, GIRFEC policy and takes account of the Scottish Government Vision and Priorities for children in conflict with the law. The questions asked during the consultation on the Bill provide a helpful insight into how the change in legislation may impact service delivery in the future.
- 3.1.2 The outcomes the Bill seeks to deliver are:
- keeping children out of formal systems where possible.
  - where formal systems are required, to ensure this is available through the age-appropriate children's hearing system;
  - where children do come into contact with the criminal justice system, ensuring approaches are trauma informed and appropriate to their age and stage of development.
  - where a child requires to be deprived of their liberty, to ensure that this only happens in age-appropriate care facilities;
  - cross-border placements should only occur in exceptional circumstances where the placements are in the best interests of the child;
  - improved protection, support and information for people who have been harmed.

## **3.2 Raising the Maximum Age of Referral to the Principal Reporter**

- 3.2.1** A consultation held in 2021 on raising the age of referral to the Principal Reporter to include all 16 & 17 year-olds gained widespread support from consultees for the age increase. This potential change will increase access to age-appropriate supports and may prevent 16 & 17 year olds from entering the criminal justice system. In real terms this means that support would be delivered in an age-appropriate and trauma informed environment instead of through the criminal justice system.
- 3.2.2** The consultation on the Bill noted that the ethos and core principals of the hearing system will be maintained, principally that children and young people who offend, as well as those who require care and protection, should equally be considered 'children in need'. Currently when a child who has harmed others is referred to the Principal Reporter minimal information is shared with the person(s) harmed (for example, if child A had a condition not to contact child B, child B wouldn't be aware of this). However, the consultation made proposals that such conditions be shared and that non-compliance could trigger a review hearing, similar to when someone breaches a court order. This could potentially have the effect of eroding the core principles and ethos of the hearing system by reducing the protection available to the offending child and officers await the Scottish Government response to the consultation to support proactive planning in this area.
- 3.2.3** The consultation proposed a Victim Support Coordinator Role offering a point of consistent contact for victims. This role would take effect from the point of harm to conclusion of any action taken and any ongoing support needs. We know that where a child has harmed, the person harmed is often a child and that a range of supports may be put in place depending on their needs. Not all children harmed will require social work intervention and as such shouldn't be escalated into formal systems unnecessarily. The Service welcome this proposal.
- 3.2.4** The draft Bill seeks to end 'cliff edge' points where a child 'ages out' of support regardless of where needs are best met. The consultation sought views about support for young people after their 18<sup>th</sup> birthday and asked if the Children's Hearing system should be able to assess and refer young people for voluntary support from social work, or other services, post 18. Many of the proposals align with the intentions set out in Plan 21-24 and are welcomed by the Service. This potential change would have resource and service delivery implications requiring significant system change at a national and local level which will require careful planning if endorsed.

## **3.3 Children and Criminal Justice System**

- 3.3.1** The Bill proposes changes to the traditional court setting to better meet the needs of children. There are innovations taking place across Scotland and this is an attempt to gain consistency of approach nationally. The increase in age of referral to children's reporter is expected to result in far fewer children being dealt with through court settings. However, to support the small number of children who do end up in court settings there is need to ensure that their needs are met in an appropriate, trauma responsive environment.
- 3.3.2** Deprivation of liberty should be a measure of last resort and for the shortest period possible. The Promise, Scottish Government's Youth Justice Vision and Justice Committee all agree that children should not be detained in prison settings. The

question is therefore raised about children who are currently remanded being held in secure care, regardless of offence type and a need for statutory prohibition on placing any child in a prison setting even where the child faces a significant custodial sentence. This will potentially result in a need to strengthen the duty on local authorities to deliver intensive community-based support to children and care leavers and will have considerable implications for the Service.

- 3.3.3 This Bill also considers anonymity and protection of the identity of children in conflict with the law. The consultation asks for consideration of whether anonymity should persist until the young person is 25, far beyond the current age of 18.

### **3.4 Secure Care**

- 3.4.1 This Bill outlines changes to the regulatory landscape of secure care in Scotland. There is recognition of the need to update the definition of secure care along with proposing a new national model for considering the placement of children in secure care. Additionally, there is a question as to whether children could remain in secure care after their 18<sup>th</sup> birthday. The Bill proposes that the placement of all under 18-year-olds in a Young Offender's Institute (YOI) should end and that secure care should otherwise be used.

- 3.4.2 The proposal that children on 'remand' should be in secure care raises questions about the population of secure care, the availability of beds and who should pay for the places. Currently remands to secure care for 16 & 17-year-olds are only available to be accessed by those young people who are part of the Children's Hearing and funded by the local authority. Those placed on remand in a YOI are funded by the Scottish Government.

- 3.4.3 The above creates an inconsistent picture across Scotland with some local authorities not paying for 'remand' places in secure care for children. It also excludes access to secure care for other equally vulnerable 16/17-year-olds. The secure estate operates on a national contractual basis with spot purchasing beds as required. To reach a break even point the secure estate needs to run at 90% occupancy. This model has created an approach where it is impossible to match children to the best model of provision and fit to their needs. It has also resulted in providers 'selling' placements to other parts of the UK. This has led to children and young people from Aberdeen City being placed a distance from their home area.

- 3.4.4 Given the above the Bill seeks to address the regulatory mechanisms around the placement of children and young people from out with Scotland in secure and residential placements in Scotland. Officers await further detail on how such changes would be taken forward.

### **3.5 Age of criminal responsibility (ACR)**

- 3.5.1 Changes to the Age of Criminal Responsibility (ACR) came into effect on 21 December 2021, increasing the age from 8 years to 12 years. The ACR Act has a built-in review period of 3 years plus a year for Scottish Ministers to review and publish a report on the impact of the change.

- 3.5.2 The evidence for a further increase, to 14 years, has already been gathered to bring Scotland in line with most of Europe. The review period means that this can't happen for some time. The Bill proposes a shorter review period to allow for earlier consideration of this further change.

### 3.6 Summary

3.6.1 The Children’s Care and Justice Bill is a welcome step toward ensuring children in justice systems are supported in the most appropriate, child centred way. The Bill continues to be considered within the Scottish Parliamentary process and is likely to be subject to some revision with the Final Bill expected to be presented in 2023. The Bill has significant local implications including:

- the systems we have in place for 16 & 17 year olds, particularly those who have not had recent care experience and who enter the Criminal Justice System;
- the role of Children’s Social Work being legitimately accepted as recognising that childhood does not stop at 16 years;
- the skills and approaches which need to be factored into both the Children and Justice Social Work workforce to ensure the intentions of these outline proposals can be fully realised.

### 4. FINANCIAL IMPLICATIONS

4.1 There are no financial implications arising out of this report. As noted the Bill, when enacted, will have significant financial implications for the Local Authority however until the Bill is approved it is not possible to say with certainty what this will be.

### 5. LEGAL IMPLICATIONS

5.1 There are no legal implications arising from this report.

### 6. ENVIRONMENTAL IMPLICATIONS

6.1 There are no environmental implications arising from 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?
<b>Strategic Risk</b>	No significant related risks.	L	n/a	Yes
<b>Compliance</b>	Failure to comply with our statutory duties risks undermining the Council and social work service.	L	Managers across Children’s Social Work are aware of the legislative proposals and further guidance and support will be provided prior to implementation to ensure compliance	Yes
<b>Operational</b>	Compliance with the statutory framework provides assurance	L	Leadership supports compliance with	Yes

	to the young person, their family and to social work staff that the use of secure care must always be considered as a last resort.		the statutory duties Council needs to deliver on ensuring participation and engagement with young people in their planning within a risk informed approach.	
<b>Financial</b>	No significant related financial risks from this report. However implementation of the Bill will have clear implications.	L	At this point it is unclear what resources will accompany the Bill to support its implementation.	Yes
<b>Reputational</b>	Failure to comply with our statutory duties risks undermining the reputation of the Council.	L	Independent inspection of Children's Services continues to evidence strong compliance with our statutory duties.	Yes
<b>Environment / Climate</b>	n/a		n/a	Yes

## 8. OUTCOMES

<b><u>COUNCIL DELIVERY PLAN</u></b>	
	<b>Impact of Report</b>
<b>Aberdeen City Council Policy Statement</b>	<p>Ensuring the effective planning for children and young people for whom secure care might be considered has a direct relevance to the delivery of the following statements contained within the Partnership Agreement:</p> <ol style="list-style-type: none"> <li>1. Ensure local education services identify young people with mental health problems and help them get early support and help, where appropriate, to transfer to adult services.</li> <li>2. Ensure the Council follows best practice as a corporate parent to get the best outcomes for looked-after young people, those in kinship care and those with additional support needs such as autism, developmental disorders or mental health problems.</li> <li>3. Continue to seek to support young people to receive care in Aberdeen, through fostering, adoption and other services and seek to reduce "out of authority" placements.</li> <li>4. Commit to closing the attainment gap in education while working with partners across the city.</li> <li>5. Work with the city's universities, North East Scotland College and businesses to increase educational and training options and the number of care experienced young people and young people from deprived communities, going onto positive destinations, including further and higher education, vocational training and apprenticeships.</li> </ol>

<b>Aberdeen City Local Outcome Improvement Plan</b>	
<b>Prosperous People Stretch Outcomes</b>	<p>Ensuring the effective plan for 16 &amp; 17 year-olds for whom secure care might be considered is relevant:</p> <p>5. 90% of children and young people will report that they feel mentally well by 2026.</p> <p>6. 95% of care experienced children and young people will have the same levels of attainment in education, emotional wellbeing, and positive destinations as their peers by 2026.</p> <p>7. 95% of children living in our priority localities will sustain a positive destination upon leaving school by 2026.</p> <p>8. 25% fewer young people (under 18) charged with an offence by 2026.</p>
<b>Regional and City Strategies</b>	Ensuring the effective planning for 16 & 17 year olds for whom secure care might be considered is relevant to Aberdeen City Council Delivery Plan, the Local Outcome Improvement Plan, and the Children's Services Plan.
<b>UK and Scottish Legislative and Policy Programmes</b>	Ensuring the effective planning for 16 & 17 year old young people whose behaviour has brought them into conflict with the Law supports the Scottish Government's commitment to #KeepthePromise. This wide ranging and ambitious programme impacts on a range of statutory duties on the Council in relation to vulnerable and care experienced children including those contained in the Children(Scotland) Act 1995, Children's Hearings (Scotland) Act 2011, Children & Young People (Scotland) Act 2014, Child Poverty (Scotland) Act 2017 and Children (Scotland) Act 2020.

## 9. IMPACT ASSESSMENTS

<b>Assessment</b>	<b>Outcome</b>
<b>Impact Assessment</b>	This report provides members with an appreciation of the outcomes the Care and Justice Bill seeks to deliver. Until the Bill has completed its passage through Parliament it is not possible to determine the impact of the new duties and powers that Aberdeen City Council will be required to deliver. As such a full Equality and Human Rights Impact Assessment does not require to be completed.
<b>Data Protection Impact Assessment</b>	Not required.

## 10. BACKGROUND PAPERS

None

## 11. REPORT AUTHOR CONTACT DETAILS

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