

# Children (Care and Justice) (Scotland) Bill

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## Financial Memorandum

### Introduction

1. As required under Rule 9.3.2 of the Parliament's Standing Orders, this Financial Memorandum is published to accompany the Children (Care and Justice) (Scotland) Bill, introduced in the Scottish Parliament on 13 December 2022.
2. The following other accompanying documents are published separately:
  - Explanatory Notes (SP Bill 22-EN);
  - a Policy Memorandum (SP Bill 22-PM);
  - a Delegated Powers Memorandum (SP Bill 22-DPM);
  - statements on legislative competence by the Presiding Officer and the Scottish Government (SP Bill 22-LC).
3. This Financial Memorandum has been prepared by the Scottish Government to set out the costs associated with the measures introduced by the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

### The Bill – What the Bill will do

4. The Bill covers a wide range of topics. Therefore the financial implications for each element have specific considerations particular to those measures and the bodies involved with delivery. The Bill does display some common themes and interlinked measures. But due to the distinctive nature of the costs associated with each section, this document is structured to explore the cost implications in line with the Bill's policy areas – rather than the legislation in its entirety – which is as follows:
  - Part 1 will enable all children under the age of 18 to be referred to the Principal Reporter removing existing restrictions on eligibility for 16 and 17 year olds. It also contains some related measures, geared to assisting the raising of the age of referral.
  - Part 2 relates to children in the criminal justice system, including the framework on reporting of criminal proceedings involving children, remittal between the courts and children's hearings, children in police custody and

looked after children status in relation to detained children. Part 2 also makes provision for ending under 18s/children being detained in young offenders institutions (YOI), with secure accommodation services being the normal alternative where a child requires to be deprived of their liberty. There is also a regulation making power around extending secure accommodation until the age of 19 in certain circumstances.

- Part 3 helps ensure that the statutory definition of secure accommodation, adequately reflects its purpose. It also provides legislative clarity to reinforce that support, care and education must be provided to children accommodated there. Moreover, it provides regulation making powers regarding the approval framework of secure accommodation services by the Scottish Ministers. The intention being to make that clearer and more transparent. Part 3 also makes provision around regulation and recognition of cross border care placements.

5. Many of the measures across these Parts are interlinked in terms of policy and delivery. Therefore, considering their financial implications according to the sequencing of Bill sections does not make sense for costing purposes. Whilst the running order of the Bill has been framed for legislative purposes, following that structure in order to quantify costs would be confusing for the reader and lead to a high degree of duplication. Therefore, this financial memorandum is drafted around the interlinked policies and resourcing implications which stem from them, rather than rigidly adhering to the Bill structure.

6. The Bill also has common strategic aims which set a useful context in which to approach costs to Scotland. These include: promoting the approach of the United Nations Convention on the Rights of the Child (UNCRC);<sup>1</sup> Scotland's Getting it Right for Every Child (GIRFEC);<sup>2</sup> whole system approach ethos; keeping The Promise;<sup>3</sup> ensuring more children can benefit from the welfare-based ethos of the Kilbrandon principles which underpin the hearings system; and the Youth Justice Vision.<sup>4</sup>

7. Therefore, in looking at the implementation costs, it is important to recognise the wider backdrop of the benefits these change programmes are engendering and potential savings to public expenditure. The negative costs to society, both economic and social, of offending and crime are well documented. For instance, The Promise *Follow the Money*<sup>5</sup> report estimates the cumulative private costs, physical and emotional (psychological) harm, lost output and public service costs (at 2016 population level) to be £3.9bn. By helping address the underlying causes of a child's conduct and looking more holistically at the circumstances surrounding any offending behaviour – in-

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<sup>1</sup> [The United Nations Convention on the Rights of the Child](#)

<sup>2</sup> [Getting it right for every child \(GIRFEC\) - gov.scot \(www.gov.scot\)](#)

<sup>3</sup> [The-Promise\\_v7.pdf \(carereview.scot\)](#)

<sup>4</sup> [A Rights-Respecting Approach to Justice for Children and Young People: Scotland's Vision and Priorities \(www.gov.scot\)](#)

<sup>5</sup> The Promise Follow the Money <https://www.carereview.scot/wp-content/uploads/2020/02/Follow-the-money.pdf>

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line with the Kilbrandon ethos on which the children's hearings system was founded – Scotland can help them desist, reintegrate and rehabilitate.

8. The costs associated with Bill implementation should also be seen against wider trends indicating effective early intervention and whole system approaches in Scotland having a positive effect. Over the last 12 years, this move to a more preventative approach has delivered a 75% reduction in children referred to the Children's Reporter on offence grounds, an 85% reduction in the number of children and young people prosecuted in Scotland's courts, and a 93% reduction in 16- and 17-year-olds being sentenced to custody. These positive reductions, with their benefits for children and their communities, are emblematic of an early intervention approach and the results of a sustained collective commitment by key partners across a range of sectors, professions and disciplines.

## Parts 1 and 2 – Raising the age of referral to the principal reporter / criminal justice procedure

9. In line with UNCRC's incorporation into Scots Law and the treatment of under-18s as children, section 1 removes statutory barriers to 16 and 17 year olds being referred to the Principal Reporter. The Bill consultation<sup>6</sup> queried whether the children's hearings system should have remit post-18, to prevent 'cliff edges' where a young person transitions from one forum to another. However, further analysis has confirmed fundamental barriers to such an approach, in terms of maintaining the hearings system as a model solely pertaining to children and designed around them, and in terms of the rights of adults. Therefore whilst the Bill enables under-18s to be referred, due to the time taken for a referral to the Reporter to progress and for a hearing to convene and put meaningful measures in place which can take effect, this essentially means in practice children up to around 17-and-a-half will have the ability to be referred. As such, the cost implications of this change have been forecast throughout this document on that premise.

10. There are a significant number of variables which make the resource and cost impacts of this change difficult to forecast with a high degree of precision. The constitutional independence of the Lord Advocate and Procurators Fiscal to pursue criminal proceedings and to prosecute children in court are obviously not affected by the Bill. Therefore, whilst the overall objective of the Bill is to create a framework whereby more children are able to be referred to the children's hearing, prosecutorial discretion means the legislation can make no direction in this regard. As such the Lord Advocate's guidelines to the Chief Constable on the Reporting to Procurators Fiscal of offences alleged to have been committed by children,<sup>7</sup> and the agreement between the Crown Office and Procurator Fiscal Service (COPFS) and the Scottish Children's Reporter

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<sup>6</sup> <https://www.gov.scot/publications/childrens-care-justice-bill-consultation-policy-proposals/>

<sup>7</sup> [Lord Advocate's guidelines](#)

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Administration (SCRA) on Decision making in cases of children jointly reported<sup>8</sup> will be the mechanisms which primarily influence this.

## Approach taken to cost estimates

11. In order to give an illustrative example of the costings associated with the Bill against this backdrop the Scottish Government has had to make some necessary assumptions. For instance, that the majority of summary court cases involving those aged 16-17.5 could be referred to the hearings system. However, this is subject to considerable variables. It is therefore not possible to forecast precise numbers, and thus the Scottish Government has used two principal sources to forecast a window of estimates:

A) Projections from SCRA and Children's Hearings Scotland (CHS) – the Scottish Government has had detailed engagement with both bodies based on the current trends for younger age groups.

B) Figures for the number of children in this age group currently prosecuted at court under summary proceedings.

12. On source A, in-depth engagement with SCRA and CHS has taken place in development of the Bill and in forecasting the prospective impacts. SCRA has supplied estimates based on existing trends of referrals of children to age 16 (average from previous four financial years) both of an increase in the number of referrals to the Reporter and the resulting additional hearings.

13. For offence-based referrals, SCRA have interwoven this with data they obtained from COPFS regarding prosecutions of children aged 16 and 17 (previous three financial years) to give an overall projection. This is predicated on the basis that 17.5 years is the likely practical cut-off for offence referrals as this will allow time for grounds to be accepted or established where required, any order to be made and services put in place.

14. Taking all of this information into account, SCRA forecasts an additional 3,900-5,300 referrals of between 2,600-3,400 children as a result of extending the age of referral as proposed in the Bill. Referrals do not always lead to a hearing being convened. In terms of hearings, the forecast is an additional 80 to 150 hearings on offence grounds and 650 to 1,200 on non-offence (which have a higher conversion rate from referral to hearing) yearly. Equating to 730-1,350 additional hearings per year.

15. For the higher 1,350 hearing estimate, CHS predict this would lead to an additional 900 review hearings, 75 hearings when referred for proof, 40 where the sheriff has referred them back to a children's hearings following appeals, and 50 pre-hearing panels. Adding these to the original 1,350 hearings would bring an upper estimate of 2,415 total additional hearings per year. The proportion taken for the lower

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<sup>8</sup> [Decision Making in Cases of Children Jointly Reported](#)

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730 hearings is expected to lead to an additional 575 hearings giving a total of 1,305. Therefore, this implies a range of between 1,305 and 2,415 additional hearings annually.

16. For source B, Scottish Government data-sets on the number of 16 and 17 yr-olds prosecuted under summary procedure show an average of 1,085 over financial years 2018/19, 2019/20. The effects of the Covid-19 pandemic have impacted on statistical trends over recent years, across a host of public bodies and services. Therefore a pre-pandemic snapshot has been used.<sup>9</sup> For Justice of the Peace courts, the average figure over the same period is 181. Proportionally, a high number of these (around 60%) relate to Road Traffic Offences. As outlined in the policy memorandum accompanying the Bill, it is likely that these will be retained in the criminal justice system for prosecution anyway given that measures such as penalty points and disqualification from driving are not available in the hearings system, albeit measures have been included to support remittal for advice and/or disposal. Therefore, 40% of Justice of the Peace prosecutions are expected to be included (which equates to 72 cases). This leads to an overall annual reduction of 1,157 court cases.

17. It is not possible to pre-empt decisions of independent prosecutors and therefore a degree of variability exists. The Scottish Government considered forecasting these on various assumptions (i.e 50%, 70% and 90%) of summary cases now being referred to the Reporter. However, given the discrepancy in forecasts this would create from source A and source B, projections are taken forward on the basis of all summary court numbers. Although it is challenging to account for the discrepancy in figures from sources A and B, one reason may be that summary court figures do not capture COPFS direct disposals which divert from prosecution or those where no action is taken, whereas these could be captured in future referral forecasts. Moreover, the same child may be subject to a number of different referrals. Whilst a child may also be subject to a number of different prosecutions in the criminal justice system (if these happened at different times and so were not taken forward as one court case), it is considered that the potential for multiple referrals is greater. This may also contribute to the difference in forecasts and the resulting wide window of estimation.

## Costs to the Scottish Administration

18. The Scottish Government has no direct influence or remit over the prosecution of offences in Scotland or decisions on referrals made by the Principal Reporter. These are made independently based on the individual circumstances of each case. However, the bodies discharging these duties, COPFS, SCRA and the Scottish Legal Aid Board (SLAB) are mainly funded by the Scottish Government. With the exception of social work services delivered by local authorities. Therefore the funding forecasts have

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<sup>9</sup> These Scottish Government data-sets capture the age of the child at the time of sentence/disposal, and not at the time of first consideration by the Procurator Fiscal. Therefore the child is likely to have aged in the intervening period. The forecasts for source A are at the first point of referral. Therefore, to best illustrate a like-for-like comparison the criminal justice figures run to 18, rather than cutting off at 17.5.

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implications for the Scottish Government in terms of future budget setting regarding the organisations involved.

## Costs to the Scottish Children's Reporter Administration

19. The number of variables with any given referral to the Reporter are considerable. Also, the outcome of a referral could range from no further action taken, to a hearing being convened which subsequently leads to a number of continued, deferred or review hearings. However, whether a hearing is convened or not, there will be a resource requirement for SCRA as a result of the referral.

20. SCRA have used trend data and professional assessment to forecast cost implications of raising the age of referral. This includes administrative and whole time equivalent (WTE) staffing costs, as well as premises and case records IT functions. This equates to £2.3m per year.

21. To assist those who have been harmed, section 6 of the Bill places a duty on the Principal Reporter to advise a person entitled to receive information of their right to that information, subject to certain exceptions. This reframes the existing provisions which give the Principal Reporter the discretion to advise a person entitled to information of that right.

22. In practice, SCRA's Victim Information Service already undertakes this where possible. However, SCRA predicts that placing this on a statutory footing, in addition to the increase in number of referrals and potentially different offending profiles of older children, will see an increase in workload. The costs of re-organisation and expansion to accommodate this is forecast to be £0.1m. Therefore overall costs to SCRA of £2.4m per year.

## Costs to Children's Hearings Scotland

23. Additional costs will be incurred by Children's Hearings Scotland (CHS), the body that recruits, trains and supports volunteer panel members who administer children's hearings. Based on the above forecasts CHS has undertaken modelling encompassing detailed consideration such as additional panel members and staff, training and IT. This is estimated at £0.45m per year if the existing panel model is used.

24. It should be noted that, for SCRA and CHS, there will be other operational considerations, such as the potential for an alternative panel model to deal with more complex cases, which they may pursue. However, these would not be mandated by the Bill and will be subject to other decision forums taking place – not least the Hearings System Working Group – and so any such resource or cost implications are not hypothecated in this Financial Memorandum.

## Costs to the Scottish Legal Aid Board

25. The Scottish Legal Aid Board (SLAB) manages and administers the legal aid system in Scotland. Legal aid helps pay for legal advice and representation for those who would not otherwise be able to afford it. This is a demand-led budget. Legal aid support for children's hearings operates differently from that in the criminal courts. For the latter, a fixed fee is paid to the solicitor, with possible add-on fees depending on the stage the case reaches. Whilst, in the former, a 'time-and-line' system operates whereby the solicitor claims for the individual items of work done in each case. Moreover, it is not only children who are entitled to publicly funded legal assistance; other relevant persons involved in the child's circumstances – such as parents or siblings – are also entitled to legal aid, subject to the statutory eligibility tests.

26. The Scottish Government has engaged with SLAB, which supplied data on forecast increases in legal aid costs. This was derived from SLAB records of the volumes of criminal legal aid and advice by way of representation (ABWOR)<sup>10</sup> granted for summary cases<sup>11</sup> regarding 16-17.5 year old, which shows it was granted for 1,057 cases (again, this is different from the numbers of children forecast in scenarios A and B above, yet is consistent with the general window of estimates). Using these numbers, and taking reductions from criminal legal aid<sup>12</sup> from overall new costs regarding children's legal aid, the net costs are forecast at £1.03m per year.<sup>13</sup>

## Costs to the Scottish Ministers regarding independent advocacy

27. Professional independent advocacy support is available to children in the hearings system, in order to help them express their own needs and views, conveying to the hearing what they would like to happen. It is distinct from, and in addition to, legal aid and assistance. The service is not mandatory. The child at the centre of the hearing is informed of its availability and then has the option to take it up.

28. The Scottish Government introduced a national children's hearings advocacy scheme in 2020. It has since been expanded to support the right of siblings to participate on contact issues in children's hearings and for children and young people placed in residential settings in Scotland under Deprivation of Liberty Orders (DOLs).

29. The Bill makes no specific provision in this regard. However, in raising the age of referral to the Principal Reporter, it is envisaged there will be an increase in advocacy support required for 16 and 17 year olds. This is a demand-led service and it is not envisaged that every child attending a children's hearing will want to make use of the service. Many will be content to provide their views themselves or will have other people

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<sup>10</sup> Summary criminal legal aid is used for pleas of not guilty by the defendant in summary procedure cases. ABWOR (advice by way of representation) summary complaint legal aid is used for guilty pleas by the defendant in summary procedure cases.

<sup>11</sup> From year 2019-20 and the 12 months to July 2022 inclusive

<sup>12</sup> These include summary criminal (not guilty pleas) [1st instance], ABWOR (guilty pleas) [1st instance], court grants [1st instance]

<sup>13</sup> Figure includes the current fee offer to legal aid solicitors of a general 10.3% increase, which would proceed before the commencement of this legislation.

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they would rather choose to support them. It is delivered via a blend of grant funding and spot-purchasing, with the table below displaying recent allocations.

Funding year	Committed Funds	Actual Spend
2019/20	£203,000	£112,489.83
2020/21	£1.5 million	£906,416.18
2021/22	£1.8 million	£1,411,806.56
2022/23	£2 million	TBC

30. Although it is challenging to predict the precise increase in costs which may result from the framework set out in the Bill, findings from current provision show that older children do not necessarily seek independent advocacy in the same way as younger children.

31. Current modelling<sup>14</sup> shows an assumption of around 10% uptake. Current uptake rates of younger children also endorse this forecast. Therefore, based on the window of 730-1,350 additional hearings a prediction of 73-135 additional children seeking advocacy support – at a cost of between £32,850 and £60,750 per year – is assumed.<sup>15</sup>

## Costs regarding safeguarding

32. Additionally within the hearings system process, a safeguarder may be appointed. Their role is to safeguard the best interests of a child, keep them at the centre of proceedings, and inform decision-making through independent information gathering (including, as appropriate, the child's and others' views), as well as objective and analytical reporting. Whether a safeguarder is needed is individual to each child's needs and circumstances. It is for the children's hearing or sheriff (where children's hearing proceedings are at court) that is considering the child's case, to appoint a safeguarder where they feel one is needed. A panel is currently under a legal duty to consider whether or not to appoint a safeguarder in each case.<sup>16</sup>

33. This is a demand led service. Inevitably costs fluctuate on a case-by-case basis. However, pre-pandemic safeguarders were appointed in approximately 4.2% of children's hearings.

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<sup>14</sup> Based on SCRA official statistics for 2018-19 (which provided a baseline for the introduction of the children's advocacy service in November 2020) and earlier pilot activity.

<sup>15</sup> Based on the Scottish Government's current spot-purchasing costs at a £30 hourly rate for an average of 15 hours per hearing, equating to £450 per hearing.

<sup>16</sup> [Children's Hearings \(Scotland\) Act 2011 \(legislation.gov.uk\)](https://legislation.gov.uk)

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Year	Number of children’s hearings held	Number of safeguarder allocations	Allocations as a percentage of hearings held
2019/20	30,363	1,364	4.5%
2018/19	31,653	1,305	4.1%
2017/18	32,553	1,327	4.1%

34. Safeguarders claim fees and expenses for individual appointments from the Scottish Government. Prior to the pandemic, the average annual cost of fees and expenses for safeguarder appointments was approximately £1.6m from 2016 to 2020. In 2020, a 5% uplift was applied to their fees. Therefore annual costs are anticipated to return to an average of approximately £1.7m as the hearings system returns to pre-pandemic operating levels.

35. Taking into account administration, training and performance monitoring, there is an approximate cost of around £1,500 per safeguarder appointment. The range of costs can vary widely dependent on the nature of the individual appointment; expenses incurred in the course of a safeguarder’s duties; or whether there are additional costs incurred such as independent legal advice which may be required, dependent on the case.<sup>17</sup>

36. Based on the estimate of an additional 730-1,350 hearings per year at a 4.2% appointment rate, between 30 and 60 additional safeguarder allocations per year are forecast. It is therefore anticipated an increase in safeguarder fees of £45,000-90,000 per year.<sup>18</sup>

**Movement restriction conditions**

37. Movement restriction conditions (MRCs) can be placed on a child by a hearing as part of a Compulsory Supervision Order (CSO) or Interim CSO. The Measures in the Bill to alter the test for MRCs to reflect that injury to others may not be physical, but emotional or psychological, to enable an MRC to restrict a child approaching a specified person or place and to decouple the MRC criteria from that for secure accommodation may have a bearing on the number of such conditions imposed.

38. However, use of MRCs within CSOs is currently relatively low (average of 26 per year – 2 per month – over the past 4 financial years). Costs in relation to the electric

<sup>17</sup> [Safeguarder Fees Expenses Allowances \(children1st.org.uk\)](http://children1st.org.uk)

<sup>18</sup> The majority of safeguarder appointments relate to younger children. Therefore the additional referrals focussing on a higher age range may well have a lower impact than anticipated.

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monitoring are met by the Scottish Government. Internal figures (over the past four financial years) show average annual costs of £13,719 for electronic monitoring.

39. Yet there will be other costs, particularly for local authority social work, of support around the MRC, not least owing to the requirement that 24 hour support is available as part of an MRC. However, the intention behind the Bill is not to promote wide-scale use of MRCs. Decisions are made independent of government on a case-by-case basis and subject to practice guidelines. The Bill does not make specific direction as to such decisions and therefore it is not deemed appropriate or useful to hypothesise any cost implications. The Scottish Government commits to monitoring any evidence from third parties during parliamentary scrutiny concerning possible forecasts for MRC usage and any resulting cost implications.

### Cost implications for the criminal justice system

40. The number of children in the criminal justice system – and the associated costs in that setting – is scheduled to reduce due to the expansion of the hearings system to a wider age-group on offence grounds.

41. Scottish Government official statistics provide for the average costs associated with taking a case through the criminal court process. Within this context, and purely for illustrative purposes, the Scottish Government has considered the figures on average costs of court proceedings. The unit expenditure of criminal procedure in Scotland (2016/17 prices) equates to £430 for sheriff court summary proceedings and £243 for Justice of the Peace courts (when legal aid costs are discounted, which are covered above). These figures are £503 and £274 when expressed in 2022/23 prices. These are average figures and do not account effectively for complexities associated with allocation of costs relating to marginal costs. The Scottish Government considered the merits of seeking to map the financial implications of the Bill for the criminal justice system based on these figures for the Scottish Administration, but notes that any savings purportedly identified would not represent a net overall saving, given the overall scale of the court programme and ongoing and general costs arising for those involved in the criminal court process in terms of staffing costs, court building costs etc.

42. The table below summarises the costs above, estimated for the Scottish Administration.

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Parts 1 and 2 of the Bill (diversion to children’s hearing system from criminal justice system)			
Scottish Administration			
Falling on	Nature of costs	One off	Recurring from f/y 2024/25
SCRA	Increase in referrals to the Reporter	N/A	£2.4m p/a
CHS	Increase in children’s hearings	N/A	£0.45m p/a
SLAB	Legal aid and assistance	N/A	£1.03m p/a
SG	Advocacy	N/A	£0.03-£0.06 p/a
SG	Safeguarding	N/A	£0.05m-£0.09m p/a
Net Cost			
Scottish Administration	Above	N/A	£3.96m-£4.03m p/a

### Costs to local government

43. Social workers provide support for children’s hearings in various forms, for example: meeting with children and families; providing evidence and reports to the hearings processes; attending hearings; liaising with others involved in the care of the child; implementing orders; and providing aftercare and support. Any increase to the number of children’s hearings will add to requirements for such supports.

44. However, social work services also provide support when children or young people go through the criminal justice system. Therefore there would be a reduction in requirements via this forum. There is variation on structure and delivery models across local authority social work services for children aged 16 and 17. Some councils would deliver this via their children and families social work service, whereas others via justice social work. The Bill does not affect this discretion on delivery.

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45. The social work support required for children's hearings varies significantly on a case-by-case basis depending on the needs of the child and the complexities of the case. It is therefore difficult to provide precise cost estimates.

46. In order to quantify a likely range of costs, the Scottish Government liaised with Social Work Scotland (SWS) to estimate an amount of social work time required for any additional referrals and hearings. These time estimates are: work for initial inquiry (10 hours); work for initial hearing and substantive hearing (17 hours); work for continued hearing (10 hours); and work for review hearing (21 hours).

47. Each additional referral would require at least an initial inquiry and would therefore generate an average of 10 hours of social work support. For those referrals that require hearings, it is estimated that all hearings will require the social work support of initial hearing and substantive hearing (so 17 hours social work support). And, due to lack of other available evidence, it is assumed that 50% of hearings will require social work support for continued hearings and review hearings (so the additional 31 hours).

48. Using the above forecasts, the 3,900–5,300 additional referrals will require between 39,000 and 59,000 hours of social work support, while the 730–1,350 additional hearings will require between 23,725 hours and 43,875. Combining the support required for referrals and hearings, this is a total of between 62,725 hours and 102,875 hours.

49. It is estimated the annual cost of a full time social worker amounts to £52,000 (this includes salary plus employment costs). This equates to an estimated cost of £29 per hour (35 hours per week x 52 weeks).<sup>19</sup> Combining the information above, the implied additional cost of social work support would be between £1.8m and £3m per year.

50. On reductions to social work support in the criminal system, SWS indicate that involvement does not usually take place until the court requests a justice social work report. As such there is not an equitable comparison for the work needed before a report is requested such as where a Reporter is making initial inquiries, or a child is looked after so a child care review is needed before a care plan can be agreed for presentation to a children's panel. However, SWS estimate a cost of £447 per social work report is assumed. Based on the above reductions in criminal court cases of 1,157 savings of £0.52m would be expected. Therefore equating to net £1.28m-£2.48m per year.

51. It is recognised the Bill could generate extra capacity implications for local government regarding any increases in the number of compulsory orders as more children are channelled via the hearings system, rather than criminal courts. And likewise, any increase in aftercare entitlements. However, given the number of variables

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<sup>19</sup> This information is taken from work done for the Bail and Release from Custody (Scotland) Bill as introduced to the Scottish Parliament on the 8 June 2022. This methodology was agreed with representatives of justice social work for that Bill.

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it has not been possible to give forecasts. The Scottish Government commits to monitoring any evidence from third parties during parliamentary scrutiny concerning possible forecasts and any subsequent cost implications.

Parts 1 and 2 of the Bill (diversion to children’s hearing system from criminal justice system)			
Local Government			
Falling on	Nature of costs	One off	Recurring from f/y 2024/25
Local authorities	Social work support for increase in referrals/hearings	N/A	£1.3m-£2.5m p/a

**Movement restriction conditions**

52. In addition to cost considerations regarding the Scottish Administration on MRCs above, these also generate other costs, such as for local authority social work, of support around the MRC, not least owing to the requirement that 24 hour support is available as part of an MRC. However, as outlined above, the intention behind the Bill is not to promote wide-scale use of MRCs and it does not make specific direction regarding their use. Therefore specific cost implications are not estimated here.

**Extending voluntary measures post-18**

53. The Bill makes provision for the ability of a children’s hearing to make a statement about supervision and guidance of the young person up to age 19 in certain circumstances. The consultation on the Bill outlined the desire to avoid ‘cliff edges’ of support regarding transition from one system to another as a child turns 18. As set out in the Policy Memorandum accompanying the Bill, there are barriers to the hearings system being able to have remit regarding an individual post-18 in relation to compulsory measures.

54. Yet, to assist with the broader policy aims in relation to the transition, the Bill allows the hearing to decide, when terminating an order and the child becoming 18, that ongoing supervision and guidance would be helpful. If the young person will accept it, a local authority will have duties to provide it. However, children on a compulsory order will already have care leaver status and aftercare entitlements. These are existing duties local authorities provide and the Bill makes provision for a young person to be notified of them. Therefore, no additional cost is forecast

## Sections 12, 13, 14 – Children at court

### Costs to the Scottish Administration

55. Section 14 extends existing duties and introduces new powers on courts where a child has been accused of, has pled or been found guilty of an offence. These include: restricting association with adults charged with an offence when waiting in the court; taking steps to remove the child from undesirable surroundings; and considering steps to better facilitate participation of the child in proceedings by tailoring court conduct and practice, building on a wide range of existing legislative and non-legislative measures.

56. This section also extends options for the sheriff or court where a child accused is involved, to sit in a different building or room from that in which they usually sit, or on different days from those on which other courts in the building are engaged in criminal proceedings. They also expand the scope for courts to put in place ‘closed court’ settings for the child accused, including, where the court considers it appropriate, in the case of a child who was co-accused with an adult.

57. Scotland’s court estate is varied, covering urban and rural settings. Some are historical buildings with features that represent the systems, procedures and times in which they were built. Others are more modern buildings with features which may lend themselves to more flexibility. There are also different requirements in different types of cases, including for example security measures and the presence of a jury in solemn proceedings.

58. Such considerations have been taken into account in the Bill’s provisions, as has the constitutional independence of the judiciary. The fact that courts will of course maintain discretion as to whether they put in place certain measures, means that it is not possible to make specific forecasts on the regularity by which such considerations will be implemented. Therefore, no specific funding assumptions can be drawn and any attempt to do so may be misleading and seen to cut across judicial discretion.

59. Regarding anonymity for children involved in court proceedings, sections 12 and 13 make provision in relation to those accused and/or convicted, and also as those as victims and witnesses in certain circumstances. Children under 18 are already afforded such measures via section 47 of the Criminal Procedure (Scotland) Act 1995 which prohibits the publication of the name, address, school or any particulars calculated to lead to the identification of a child who is an accused, victim or witness in criminal proceedings. The Bill extends this to pre-trial and enables consideration of extending reporting restrictions into adulthood. However, as with now, court discretion exists to dispense with restrictions on identify disclosure and the Bill introduces a new non-exhaustive list of factors for consideration.

60. Reporting restrictions on the accused will only be able to be removed by the court on disposal of the proceedings. The provisions also afford rights of appeal to any child or person to challenge a court decision to disclose identity. Such an appeal would derive cost implications. However, there is no quantifiable measure on which to base

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forecasts of this. It could be assumed that a court decision to dispense with a presumption of anonymity is more likely in solemn procedure, where the gravity of offending is likely to be higher which impacts the balance of the public interest test, where the number of under 18s appearing is low.

61. Moreover, the presumption of reporting restrictions applying to witnesses under 18 years old will remove the need for the court to make a direction in situations where the witness is under 18 and no other party to the proceedings is under that age, as is currently the case. This could create savings and efficiencies for the court, although again these are challenging to quantify given the lack of established data-sets concerning the ages of all those involved in court cases across Scotland.

## Section 15 - Remittal to the children's hearings system

62. Section 15 increases the opportunities for children to be remitted to the children's hearings system when they have been found, or pled, guilty in the courts. This builds on current ability of courts to remit, with different frameworks proposed:

- Where a child is being dealt with in the High Court, the court may refer for advice and then thereafter may remit for disposal (with the ability to remit for disposal straight away if considered appropriate).
- Where a child is being dealt with in solemn proceedings in the sheriff court, the court can either request advice from a children's hearing, remit the case to a hearing for disposal, or dispose of the case without remittal for advice (only where remittal for advice would not be in the interests of justice).
- Where a child is being dealt with in summary proceedings, the court must seek advice as to disposal and then thereafter may remit for disposal (with the ability to remit for disposal straight away if considered appropriate).

63. Certain exceptions also exist, such as for offences fixed by law and where a child is in close proximity to their 18<sup>th</sup> birthday, whilst there is a specific framework for certain road traffic offences and sexual offences.

64. At present, around 5% of cases involving children whose cases could be remitted to the hearings system by a court are.<sup>20</sup> Quantifying the number being remitted under the Bill framework is challenging. However, raising the age will also increase the number of 16-17.5 year old children going to the hearings system in the first instance, reducing numbers in the courts. Moreover, the Bill allows for remittal to a hearing by the court immediately where the court considers this appropriate, streamlining the process and ceasing requirements for court to sit in consideration of the case beforehand if it does not deem this necessary. This should lead to savings on court time/resource. However, given the level of discretion to the court and lack of data upon which to

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<sup>20</sup> Remittal from Court, CYCJ, Fiona Dyer, [Remittal from Court \(cycj.org.uk\)](https://www.cycj.org.uk)

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forecast how often the remittal framework will be used no direct costs have been derived. The Scottish Government commits to monitoring any evidence from third parties during parliamentary scrutiny concerning possible forecasts for remittal and any resulting cost implications.

## Costs on other bodies, individuals and businesses

### Children in police custody

65. Section 11 makes provision around police custody and extends functions in a range of areas to ensure they apply to all those under 18, which they already do for children under 16 or subject to measures through the children's hearings system. This includes notifications to parents and local authority social work that a child is in custody and helping ensure a solicitor is present during police interviews. It also extends considerations for keeping children in a place of safety prior to attendance at court. Although this makes clear this should not be in a police station, the provisions retain existing exceptions. One of which is that keeping the child outwith a police station would be impractical, unsafe or inadvisable due to their state of health (physical or mental). Engagement with Police Scotland has taken place and feedback indicates from January to June 2022 there were 805 occasions when 16 and 17 years olds were held in custody for court, including 97 where they were subject to compulsory measures of supervision (therefore 708 for the circumstances outlined above). However, no change is being made to the current definition of a place of safety which can include secure accommodation (although not routinely used) the home of a suitable person, any other suitable place where the occupier is willing, a hospital or surgery and residential or other establishment provided by a local authority. Due to existing exceptions and definitions being retained, no direct cost implications stemming from the Bill are quantified.

## Parts 2 and 3 – Children deprived of liberty – ending u-18s in young offenders institutions/secure accommodation

### Costs to the Scottish Administration

66. Provisions under Part 2 concern ending the practice of under-18s being kept in custody in YOIs in Scotland. Under the Bill's provisions, where a child requires to be deprived of their liberty, secure accommodation will normally be the alternative.

67. Scottish Ministers fund the costs of children sentenced to detention and detained in YOI. Regarding those remanded, Scottish Ministers fund placements for young people remanded in YOIs, whilst local authorities fund young people remanded in secure accommodation.

68. The number of children under 18 in YOIs in Scotland fluctuates. There was a daily average of eight children so detained in July to November this year and the last full

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yearly figure shows a daily average of 12.<sup>21</sup> However, in keeping with other baselines used in this Financial Memorandum using financial years, the figure for 2021/22 stands at an average of 16 children, with 12 of those placed there on remand.<sup>22</sup>

69. Secure accommodation costs vary depending on the provider, with the fees set annually for the coming year in the Scottish Excel contract. This shows an average of around £6,500 per week – or £338,000 per year per placement. Based on an average of four additional under 18s being placed in secure accommodation, who would otherwise have been in a YOI, this leads to additional annual recurring costs of £1.35m.

70. YOIs are part of the prison estate and therefore running costs are met within the Scottish Prison Service's (SPS) budget (and fall to the Scottish Administration). SPS estimate that the annual average cost of a prison place in 2021-22 was £41,858<sup>23</sup> – excluding capital charges, exceptional payments and the cost of the Court Custody and Prisoner Escort contracts. However this is an average figure (i.e. based on total costs divided by the number of prisoners, not the costs associated with each individual prisoner) and does not account effectively for complexities associated with allocation of costs relating to the holding of prisoners or consider the issue of average versus marginal costs. There may be some notional savings to the SPS budget if children are no longer held in YOIs but it is not possible to provide an estimate of those savings, separate from wider work to consider the management of the regime and the available accommodation. Any notional savings would be absorbed in the costs of running the wider prison estate, including YOIs for those aged 18 and over.

71. Predicting demand for secure care is complex, but based on previous demand it is deemed that there is likely to be sufficient capacity in the secure accommodation estate to accommodate the numbers of children no longer being detained in YOI. However, there will be additional costs for secure accommodation providers associated with any adaptations required to secure accommodation, in the form of training of staff, increased safety measures and skills academy provision in order to meet the needs of a higher age range who will be in secure accommodation rather than a YOI. Furthermore, there will be costs associated with additional provision to accommodate children in exceptional circumstances where the placement breaks down or the safety of the child or others is compromised or in an emergency situation such as fire or a health pandemic such as covid. The costs for this are currently unknown. It is acknowledged that Scotland's secure accommodation framework and provision will require to take account of Bill provisions in this area, particular around additional contingency provision as outlined above. Although this is not a cost directly derived from the Bill, such considerations in consultation with partners are taking place in tandem with the Parliament's consideration of the legislation.

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<sup>21</sup> Scottish Prison Population [SPS Prison Population](#)

<sup>22</sup> Scottish Prison Population [SPS Prison Population](#)

<sup>23</sup> [Annual Report and Accounts 2021-22 \(sps.gov.uk\)](#)

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Parts 2 and 3 of the Bill (Ending U-18s in YOI / Secure Accommodation)			
Scottish Administration			
Falling on	Nature of costs	One off	Recurring (from 2024/25)
Scottish Ministers	Increase in children placed in secure accommodation following sentence	N/A	£1.35m p/a

## Costs to local government

72. Local government currently fund remand places for secure accommodation. Considerations is being given to secure accommodation delivery and funding more generally, in light of the Bill and other policy aims. However, in order to quantify costs upon introduction to Parliament, current funding processes are used. Using the above calculation of 12 children per year, this leads to annual recurring costs of £4.06m.

Parts 2 and 3 of the Bill (Ending U-18s in YOI / Secure Accommodation)			
Local Government			
Falling on	Nature of costs	One off	Recurring from f/y 2024/25
Local authorities	Increase in children remanded in secure accommodation		£4.06m p/a

73. Provisions under Part 3 concern routes to secure accommodation and revisits the statutory definition of a “secure accommodation service”, to help clarify and update the regulatory landscape linked to these services, including processes and criteria for such services to be approved by the Scottish Ministers. However, the existing Bill does not affect the existing decision-making forums and roles and responsibilities for authorising placements and implementing secure accommodation authorisations (i.e. retaining existing roles of the CSWO, and Heads of Unit in secure accommodation, local authorities, the judiciary, the children’s hearings system and the police). Secure

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accommodation placements will still only be possible after full consideration of the child's needs, best interests and rights and, where appropriate, the safety of others. Therefore, whilst these provisions may alter the numbers of children in secure accommodation, they are not intended to increase the number of children deprived of their liberty therefore no specific costs are quantified.

74. Part 2 also affords looked after children status to all children who are sentenced or remanded to secure accommodation (if they do not have such status already) for the duration of their placement, and should they leave secure accommodation on or after their 16th birthday to be treated as, and have access to, the same entitlements to after-care support as other care leavers. Currently most children in secure accommodation will already be looked after children and therefore benefit from corporate parenting entitlements. Also at present, if the child ceases to be looked after on or after their 16th birthday, they will have additional entitlements to support as care leavers, including after-care potentially up to the age of 26. Although this new provision affords this to all those in secure accommodation, the numbers not previously entitled are forecast to be low and therefore no specific cost derived.

## Accommodation sections 24 and 25 – Cross border care placements

### Costs to the Scottish Administration

75. Sections 24 and 25 introduce measures regarding children and young people placed in care settings in Scotland from other UK jurisdictions, commonly known as cross-border placements. These provisions build on the Deprivation of Liberty (DOL) Order Regulations<sup>24</sup> which, came into force on 24 June 2022. These regulations provide for DOL orders to be treated in Scotland as if they were Compulsory Supervision Orders, reducing the need for petitions to Scottish courts and the previous costs with such court processes.

76. They are in place to ensure clarity and accountability around the placing authority's responsibilities prior to any cross-border placement, and throughout its duration. These make clear the placing authority is responsible for implementation of the DOL order and all aspects of the child's welfare. This includes the provision of all services required to support the child and bearing all the costs arising from – or in consequence of – the placements (except the cost of Scottish advocacy provision). It provides a robust mechanism for information-sharing, which aims to streamline and better regulates the existing placement process. In the initial three month period up to 24 September 2022, the SG has received notifications relating to the placement of 10 children into Scottish residential childcare services.

77. These new DOL Orders arrangements are in their infancy and the Scottish Government intends to learn from their implementation and operation as further

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<sup>24</sup> [The Cross-border Placements \(Effect of Deprivation of Liberty Orders\) \(Scotland\) Regulations 2022 \(legislation.gov.uk\)](https://legislation.gov.uk)

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measures develop. However, the Bill introduces new requirements regarding the regulatory framework, namely for new providers of services which will accommodate cross-border placements to notify necessary bodies involved in strategic needs locally and children's services planning such as local authorities and health boards.

78. Section 25 also contains further enabling powers allowing for recognition of UK court orders that temporarily place children in residential care in Scotland in the framework of Scots law. The power should permit recognition taking account of the distinctions between the different types of orders which may result in a cross-border placement. In addition to the recognition of DOLs Orders, this will enable appropriate recognition of other types of UK care orders. Yet detailed assessment of impacts and costs will only be possible when secondary legislation is developed. The Scottish Government will undertake this in line with its obligations at that point.

79. Scottish Administration cost implications for the cross-border measures in the Bill are principally via the Care Inspectorate (with any associated future Scottish Government policy or guidance development considered to be part of usual functions already captured in overall administrative costs). New costs for the Care Inspectorate will be derived from the additional requirements to consider if a residential childcare or school care accommodation service provider has made the necessary notifications regarding strategic needs and children's services planning when assessing its registration application. Detailed engagement has taken place with the Care Inspectorate, which indicates that it will need to develop a process to provide such verification which will include, staffing costs as well as system and guidance changes. However, a new process has not been established and the Bill will not direct the process, therefore no costs have been forecast in this regard. The Care Inspectorate does however predict a requirement to update digital systems, at a one-off cost of £5,000 and with ongoing staffing costs of WTE business support at £0.015m per annum.

## Costs to local government

80. There is already a duty on local authorities and health boards to develop and publish their children's services plans, setting out how the partnership will work together collaboratively to improve outcomes for children and young people in their area. It is expected that local services will work within the existing structures and resources that they already have in place to process these notifications and involve the new services providers within local children's services planning arrangements. As such any additional costs likely to fall on public bodies from alterations in practice on this issue is forecast to be minimal.

## Costs on other bodies, individuals and businesses

81. As above, health boards are involved in children's services plans. The same implications as set out for local government apply.

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## Overall Bill

Costs Borne By	Amount (p/a)
Scottish Government	£5.31m-£5.38m
Local Government	£5.36m-£6.56m
Total	£10.67m-£11.94m

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# Children (Care and Justice) (Scotland) Bill

## Financial Memorandum

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