

Children (Care and Justice) Bill: Stage 3

Barnardo's Scotland Briefing | 24 April 2024

Summary

- Barnardo's Scotland supports the intention to raise the age of referral to the Children's Hearing System and end the imprisonment of children.
- We provided [evidence at Stage 1](#) and signed a joint letter to the committee at Stage 2, outlining our views on the need to improve support for victims and witnesses of harm when their case is referred to the hearings system.
- **We support the Bill and the enhancement of child-friendly justice processes in line with obligations under the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024.**
- Reforms within the Bill are an important step towards keeping The Promise. However, the changes **must be properly resourced**; with full consideration given to child-rights budgeting and sustainable funding models. Further work will be required in implementation of the Bill and through implementation of the Children's Hearing System Redesign to ensure the hearing system can properly support children and their families.

Children's Hearing System Reforms

Barnardo's Scotland strongly supports proposed reforms to the Children's Hearings System.

The United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act is clear that the definition of a child includes everyone under the age of 18 – all of whom are entitled to have the full spectrum of their rights respected, protected, and fulfilled.

Proposed amendments to the Bill, seeking to reduce protections for children aged 16 and 17, would therefore act in a manner incompatible with UNCRC duties – and ultimately reduce access to child-friendly justice.

We therefore **oppose all amendments in Group 1** in the name of Russell Findlay MSP (amendments 41, 50-53, 59-62, 69-79, 83, 90-97)

Many of the children, young people, and families we work with have experienced trauma, loss, and abuse, which can have significant lasting impacts upon their lives.

We were pleased the [Stage 1 Committee report](#) recognised the point made by Barnardo's Scotland in written evidence that young people can end up in the criminal justice system when what they particularly need is support with their mental health and wellbeing, as well as other holistic, intensive supports.

We are also supportive of amendments 3, 4, 5, 6 and 7 in the name of Willie Rennie which amend the information sharing processes discussed at Stage 2 and aim to improve the process of information sharing with victims of harm.

The Stage 1 report also acknowledged that extending the Children's Hearing System to all children under the age of 18 will have **significant resource implications**, given that the reforms will likely lead to a sharp increase in the number of cases being heard by the Hearings System and that many of these new cases will be more likely to be on offence grounds.

We are clear that, for the intentions of the Bill to be achieved, these **resources must be provided in a timely and sustainable manner** and that further work through implementation of the Bill and fulfilment of recommendations with the Children's Hearing System Redesign Report will be required.

Criminal Justice and Procedure

We strongly support the Bill's intention to remove all children under the age of 18 from Young Offenders Institutions. While the numbers of children being detained within prisons has drastically reduced in recent years, as of June 2023 there are still a small number of children under the age of 18 who remain in residence at HMYOI Polmont.

In relation to Compulsory Supervision Orders, we ask MSPs to **oppose Amendment 2**, which would introduce fines, or secure care detention, for children found to be in breach of restrictions. This amendment would not fall within the scope of child-friendly justice processes.

Residential and Secure Care

Barnardo's Scotland is clear that **all children resident in secure care within Scotland are entitled to have the entire spectrum of their rights protected, respected, and fulfilled**, regardless of whether they are ordinarily domiciled in Scotland or subject to cross-border placements. This includes a proactive approach to ensuring that access to advocacy, children's rights representation and legal support is available at the point of need.

We **support Amendment 33** in the name of Michael Marra MSP - requiring a review of cross-border placements within Scotland.

Rights and Welfare of Children

Barnardo's Scotland welcomes legislative changes in the Bill which further enshrine children's rights within Scots law – including through duties to fully enact existing legislation, such as the Children (Scotland) Act 2020.

We **support amendments 43, 45, 46, 63, 64, 65, 66 and 67** in the name of Martin Whitfield MSP in relation to consideration of the rights and welfare of the child during court processes, and consideration of a child's Article 12 rights to express views where appropriate.

Overview of Barnardo's Scotland Services

Barnardo's Scotland delivers a wide range of care and youth justice support related services across Scotland, and we use information and experience from those services, and from the children and young people we work with, to seek positive change in policy and practice based on what matters to the people who use our services and what we see working in communities.

Many of the young people we support across any different services are care experienced.

Barnardo's Scotland also provides fostering and adoption services, residential care services and support accommodation services for young people who are over 16 and leaving the formal care system but who need ongoing support.

Barnardo's Scotland services also include:

- The provision of **independent advocacy** for looked after children and children involved with the children's hearing system and in cross border Deprivation of Liberty Safeguards (DoLS) placements.
- **Prison-based supports**, such as those within HMP Polmont Young Offenders Institution and the HMP Edinburgh visitor's centre.
- **Community-based youth justice services** including Stirling and Clackmannanshire; and women's justice services which include Shine women's mentoring and Ayrshire Court screening.

Key Points

We ask MSPs to **support** the following amendments:

3, 4, 5, 6, 7, 43, 45, 47, 63-67, and 33

We ask MSPs to **oppose** the following amendments:

41, 50-53, 59-62, 69-79, 83, 90-97, 2



About Barnardo's Scotland

Barnardo's is the UK's leading national children's charity. Barnardo's Scotland works with thousands of children, young people, and families every year, delivering a wide range of support across over 150 services.

We use information and experience from our services across Scotland, and from the children and young people we work with, to seek positive change in policy and practice based on what matters to the people who use our services and what we see working in communities.

We work collaboratively across all sectors and political parties to achieve the best outcomes for children and young people.

For more information, please contact Barnardo's Scotland Senior Policy and Public Affairs Lead, Kirsty-Louise Hunt, at kirstylouise.hunt@barnardos.org.uk