

Consultation Response

Consultation on the future
of secure care

April 2026



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Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors. We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Child & Family Law sub-committee welcomes the opportunity to consider and respond to the Scottish Government's consultation: consultation on the future of secure care.¹ The sub-committee has the following comments to put forward for consideration.

¹ [Consultation on the future of secure care](#)



General Comments

There are several overarching issues that require fuller consideration across the consultation proposals. The definition of ‘deprivation of liberty’ as it applies to children remains unsettled, particularly in light of ongoing litigation before the United Kingdom Supreme Court, in a Reference by the Attorney General for Northern Ireland². In October 2025, the Court considered two primary legal questions:

- (1) whether people who lack capacity to make decisions about their care and treatment can give valid consent to what would otherwise be an Article 5 of the European Convention on Human Rights (‘ECHR’) deprivation of liberty; and,
- (2) whether the Court should review and set aside the ‘acid test’ enshrined in *P v Cheshire West and Chester Council & Anor* [2014] 1 AC 896 (“*Cheshire West*”) in its interpretation of Article 5 ECHR and subsequent jurisprudence.³

The Court reserved judgment. We consider that the forthcoming decision, especially as it relates to the second question above, will be of significance to the reforms proposed in this consultation and will have implications for Scots law and the wider human rights landscape in Scotland. In particular, the judgment is likely to affect statutory interpretation across child and family law, education law, criminal law, and mental health and incapacity law, insofar as these regimes engage the rights of individuals deprived of their liberty. The ‘acid test’ is generally understood to apply in some form to children.

We suggest that the Supreme Court’s judgment will necessitate a comprehensive review to ensure legal compatibility and to address existing uncertainty and inconsistency within statutory definitions and interpretations of key concepts. This includes the disparate and inconsistent use across Scots law of terms such as ‘a child’, ‘a young person’, ‘an adult’, ‘deprivation of liberty’, ‘seclusion’ and ‘restriction of liberty’. We consider that the judgment may provide an opportunity to align these definitions with domestic and international legal standards. To ensure informed and legally robust reform, we therefore suggest that the consultation be revisited once the Supreme Court has issued its judgment.

Cross-border placements, and in particular Deprivation of Liberty placements continue to raise complex legal and human rights questions, including the exercise of parental responsibilities, the validity of parental, or child consent, and the applicability of human rights safeguards and standards. Notwithstanding recent

² UKSC/2025/0042: In The Supreme Court Of The United Kingdom, In The Matter Of A Reference By The Attorney General For Northern Ireland Under Paragraph 34 of Schedule 10 to The Northern Ireland Act 1998, In Relation To Whether The Proposed Exercise Of The Minister Of Health’s Powers Under Section 288(4) Mental Capacity Act (Northern Ireland) 2016 Would Be Invalid By Reason Of Section 24 Of The Northern Ireland Act 1998

³ *P v Cheshire West and Chester Council & Anor* [2014] 1 AC 896



legislative reform, we remain concerned that children who are subject to Orders made under the Inherent Jurisdiction of the High Court of England and Wales are not afforded parity of rights' safeguards, as Scottish children, subject to secure accommodation authorisations.

In reforming secure care, it is essential that due regard is given not only to policy intention and extensive research⁴ regarding the impact of distance placements on children's rights and wellbeing, but also to the relevant jurisprudence that prompted recent legislative change⁵, in order to ensure accountability for upholding the rights of children being deprived of their liberty in cross border placements. Case law spanning more than four decades, including *D v D*⁶, highlights the persistent difficulties in distinguishing between restrictions on liberty and a deprivation of liberty, underscoring the need for a clear, rights-compliant definition before structural reforms are undertaken.

Article 5 of the ECHR sets out an exhaustive list of the bases for lawful deprivation of liberty. In the case of secure care, there is often insufficient focus on whether the deprivation of liberty is authorised on the basis of Article 5(1)(d) ("the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority") or Article 5(1)(e) (mental disorder). We consider that clarity on the basis for deprivation of liberty in secure care and equivalent settings is essential to ensure human rights compliance.

Any deprivation of liberty of a child must also be linked to educational supervision and the broader social developmental aims, in line with Articles 28 and 29 of the United Nations Convention on the Rights of the Child, ('UNCRC'). This is reflected in domestic duties under the Education (Additional Support for Learning) (Scotland) Act 2004 (as amended) ('ASfL') framework, which presumes (unless assessed otherwise), that all 'looked after' children have additional support needs requiring assessment and planning. However, in our experience, there remain persistent deficiencies in the preparation of Coordinated Support Plans (CSPs) for care-experienced children, including those in secure accommodation, and Deprivation of Liberty placements. These gaps are mirrored by weaknesses in throughcare and aftercare planning under section 29 of the Children (Scotland)

⁴ Including from the Nuffield Family Justice Observatory and the Promise Scotland

⁵ [Cumbria Country Council and Ors, Re Children X, J, L and Y \[2016\] EWHC 2271 \(Fam\)](#); [Re A-F \(Children\) \[2018\] EWHC 138 \(Fam\)](#); [M \(Deprivation of Liberty in Scotland\) \[2019\] EWHC 1510 \(Fam\)](#); [London Borough of Lambeth v L \(Unlawful Placement\) \[2020\] EWHC 3383 \(Fam\)](#); [London Borough of X v Y \(Deprivation of Liberty in Scotland\) \[2021\] EWHC 440 \(Fam\)](#); [Re T \(A Child\) \[2021\] UKSC 35](#); [City of Wolverhampton Council v. Lord Advocate and Others \[2021\] CSIH 68](#); [Petitions for the exercise of the Nobile Officium by the Mayor and Burgesses of the London Borough of Lambeth and Medway Council \[2021\] CSIH 59 P844/20, P349/21 and P598/21](#)

⁶ *D v D* [1981] 2 FLR 93.



Act 1995, resulting in discontinuity in education rights and support as young people transition out of secure care⁷.

Proposals for nationalisation of secure care also risk weakening children's links with their home local authority, families and communities, potentially undermining statutory duties relating to education, ASfL and aftercare. These duties are intrinsically linked to a child's connection with their local authority and education provider and weakening that connection raises significant equality and discrimination concerns.

Secure care reform must also be considered within wider health, mental health and capacity law frameworks.⁸ Most children entering secure care present with complex wellbeing and mental health needs⁹, and there is evidence of a greater rate of neurodiversity in children who are deprived of their liberty in secure settings.¹⁰ Yet the consultation does not fully reflect the level of integrated provision required. This includes early and consistent Child and Adolescent Mental Health Service ('CAMHS') involvement, and clear pathways between secure care and specialised mental health facilities, such as the Foxgrove (National Secure Adolescent Inpatient Service for Scotland). Relevant Adults with Incapacity case law¹¹ highlights the importance of continuity in rights-based assessment, participation, and aftercare for older children, aged 16, or 17, who are treated as 'adults' for certain purposes in Scots Law. In our view, reform must take account of the legal developments in this area, including to the Judicial Protocols and Handbook on adult capacity law in Scotland, England & Wales, and in Northern Ireland,¹² and the 2022 findings and recommendations of the Scottish Mental Health Law Review.¹³

We further note the importance of ensuring that scrutiny, inspection and monitoring arrangements for secure care, accommodation and other places of detention are aligned with national and international human rights standards. At present, certain care and health settings in Scotland are not monitored in accordance with the UK's obligations under the Optional Protocol to the

⁷ It is noted that the extension of rights under amendments to section 29, by virtue of the Children (Care, Care Experience and Services Planning) (Scotland) Bill passed in February 2026 will also impact on any proposals for reform of secure care.

⁸ As the Law Society of Scotland commented on in June 2025 [Cross border mental capacity frameworks | Law Society of Scotland](#)

⁹ Walker G, Thomas C, Jason Langa J, Smith H, (2025) 'Young people's experiences of secure care: A synthesis of qualitative research' [Children and Youth Services Review Volume 177](#), October 2025, 108399- citing: Gough, A. (2017) 'Secure care national project (CYCJ). Secure Care in Scotland: Young People's Voices'; Gibson, R. Whitelaw (2024) 'Reimagining secure care', Children and Young People's Centre for Justice

¹⁰ Ibid fn9, Walker et al, (2025), citing: Murphy, D. (2020). Autism: Implications for high secure psychiatric care and move towards best practice. *Research in Developmental Disabilities.*, 100, Article 103615.

¹¹ *AB v Scottish Borders Council* [2019] SC JED 85; *Aberdeenshire Council v SF* [2023] EWCOP 28 *Argyll and Bute Council v RF* [2025] EWCOP 12 (T3)

¹² A handbook on adult capacity law in Scotland, England & Wales, and in Northern Ireland (updated 2025)

¹³ [Scottish Mental Health Law Review \(Scott J KC 2022\)](#) (Chapter 12)



Convention Against Torture (“OPCAT”), despite the recognised increased risk of ill-treatment in settings where individuals are deprived of their liberty. Although regulatory visits occur in some circumstances, these settings do not currently receive preventive visits through the UK National Preventive Mechanism. OPCAT requires monitoring to apply wherever an individual is, or maybe, *de jure or de facto* deprived of their liberty. We therefore welcome further commitment to robust human rights impact and compatibility assessments in relation to any proposed reforms.

Finally, we remain concerned about the insufficiency of safeguards for children in secure care and other deprivation of liberty settings where restrictive practices are used, including restraint, seclusion and solitary confinement. Reforms must introduce clear and consistent legal, policy and practice frameworks setting out safeguarding responsibilities and human rights duties for all staff across all relevant settings.

Taken together, these issues demonstrate that substantial legal, policy and system-level questions remain unresolved. Any reform must be firmly grounded in the commitments of The Promise, including simplifying the law, ensuring coherence across statutory regimes, and placing children’s rights at the centre of decision-making and service delivery.

Consultation questions

Q1) Do you think the new criteria for authorising a child’s placement in secure accommodation by a children’s hearing are sufficient?

Yes

No

Please explain the reasons for your answer.

At this stage, it is difficult to determine whether the proposed criteria are sufficient because the consultation does not clearly explain the practical purpose of the change in definition, nor the specific legal outcome it is intended to achieve. The proposal appears to broaden or reframe the existing secure accommodation criteria, but without further clarity it is challenging to understand how, in practice, the revised definition would alter decision-making by children’s hearings or the courts. It is important that any changes in criteria comply with the law, and take account of the judgment in the NI Reference as outlined above.

Secure accommodation criteria

Q2) Should the criteria for secure care be revised to include children who, while not posing an immediate risk to others, may still require intensive secure, or near secure, support, protection from self-harm, or stability in near-secure residential provision, including on premises currently registered and approved to deliver secure care?



Yes

No

Please explain the reasons for your answer.

We do not support revising the criteria in the manner proposed. Under the current framework, where a child does not meet the statutory secure accommodation criteria and thresholds, they may, for their care and protection, be placed within non-secure alternative care placements, such as Children's Homes, providing open residential provision, or with foster carers or kinship carers, all of which ought to include a range of intensive support options. This provides the necessary flexibility to meet fluctuating needs, particularly for young people who may move in and out of crisis, without crossing the threshold into an Article 5 ECHR compliant deprivation of liberty.

The consultation appears to suggest expanding secure care criteria to capture children who do not presently meet the legal threshold for deprivation of liberty. It is unclear what problem this change intends to resolve. At present, if a child's circumstances deteriorate and they meet the secure criteria, the matter returns to a children's hearing (or, where relevant, the sheriff court) for proper legal authorisation. This judicial scrutiny is essential: any deprivation of liberty must be clearly justified by reference to an identified limb of article 5 ECHR, proportionate, and authorised by a competent legal authority in accordance with Article 5 ECHR.

Introducing a lower or broader threshold risks increasing the number of children deprived of their liberty, which is directly contrary to the principle that such measures must be used only as a last resort. The grey area that the consultation describes as children who intermittently display high-risk or crisis behaviours, is already managed within existing open residential provisions, supported by emergency transfer powers that require prompt referral to a judicial authority to confirm or refuse ongoing secure authorisation. The issue is therefore not a gap in law, but the need for clear decision-making pathways that remain compliant with Article 5 ECHR.

Revising the criteria in the way suggested risks blurring the distinction between restriction of liberty and deprivation of liberty. Any model that allows a child to move into a more restrictive environment without clear judicial authorisation would be unlikely to meet Article 5 standards. The current requirement for authorisation is a safeguard, not a barrier, and should not be diluted.

For these reasons, without a clear articulation of the operational mischief that the Government seeks to address, and without strong assurance that the revised criteria would not broaden the scope for deprivation of liberty, we cannot support the change as proposed.

Again, the UK Supreme Court's decision in the NI Reference ought to assist.



Q3) Are there any factors or circumstances you think should be considered in potential future secure care criteria? Please set out your suggestions below.

Examples may include (not exhaustive):

- a) Persistent, severe distress requiring intensive containment.
- b) Repeated placement breakdowns due to complexity of needs.
- c) Serious risk of exploitation.
- d) Harm arising from behaviour that does not fall under self-harm or harm to others.
- e) Situations where intensive support is required for safety.

We do not consider the additional examples outlined in the consultation to be appropriate factors for expanding secure care criteria. The secure accommodation threshold authorises a deprivation of liberty and must therefore remain tightly defined, clearly justified, and compliant with Article 5 ECHR. Any criteria that fall short of the existing legal test risk permitting deprivation of liberty for reasons that do not meet the required threshold.

For example, “persistent, severe distress requiring intensive containment” appears to relate primarily to mental health needs. In such circumstances, the appropriate response is access to specialist mental health provision or services for those with disabilities, rather than secure accommodation. Expanding the secure criteria to capture mental-health-based distress risks conflating welfare and clinical needs and would be inconsistent with the requirement that secure care be used only where the statutory criteria for deprivation of liberty are met. The crossovers with mental health and incapacity laws creates additional duties on public authorities and we suggest that the systems must align to ensure human rights protections and compatibility, as outlined above.

Similarly, repeated placement breakdowns, while often indicative of complex needs, cannot in themselves justify a deprivation of liberty. Placement instability does not meet the statutory test, and it would likely be contrary to human rights standards to authorise secure care on this basis, particularly for older children approaching 16–18. Behaviour or need that does not meet the existing threshold should continue to be addressed within open residential or enhanced support environments.

With respect to risk of exploitation or harm, the current statutory criteria already capture situations where a child is at serious risk of significant harm to self or others. Where that threshold is met, secure authorisation can be sought. Where it is not, the child should not be placed in a setting amounting to a *de facto* deprivation of liberty.

More broadly, any attempt to create additional or more discretionary criteria risks blurring the distinction between restriction of liberty and deprivation of liberty, undermining the clarity and legal certainty required for such decisions. Secure accommodation is not a mechanism for managing general vulnerability, complex



needs, instability, or fluctuating distress. It is a measure of last resort, subject to strict statutory and human rights safeguards, including judicial oversight.

Secure accommodation definition

Q4) Do you agree the definitions of relevant children's care services should be reviewed to include a new category of provision with adaptable levels of restriction which can be increased or decreased as required to contemplate necessary shifts between restriction of liberty to deprivation of liberty within the one setting, in the way envisioned by 'flex secure'?

Yes

No

Please explain the reasons for your answer and any situations where you think 'flex secure' could be used.

We do not support introducing a new "flex secure" category in the form proposed. While it is possible to vary levels of restriction within secure accommodation, for example, to allow a child to transition out of secure conditions, this cannot operate in reverse. A child who does not meet the statutory secure criteria cannot lawfully be moved into a setting amounting to deprivation of liberty without prior judicial authorisation. The consultation's description of a model capable of shifting between restriction and deprivation of liberty within one setting raises precisely this risk.

Ongoing confusion in practice over the distinction between restriction of liberty and deprivation of liberty, often influenced by cross-border cases and regulatory interpretations, has already led to uncertainty about what Article 5 ECHR requires.

It would be highly concerning if Scotland were found to be depriving young people of their liberty because of a misunderstanding of that distinction. Any increase in restriction that crosses the Article 37 UNCRC and Article 5 ECHR threshold must go through the existing secure accommodation authorisation process, including emergency transfer powers followed by prompt judicial scrutiny. The current system already provides the necessary flexibility.

Q5) How could a model with adaptable levels of restriction within the one setting help protect and advance children's rights and ensure deprivation of liberty is always a last resort and for the shortest possible time, as required by Article 37 of the UNCRC and in accordance with Article 5 ECHR?

Please explain the reasons for your answer.

A model that allows restrictions to be reduced within one setting may help ensure that any deprivation of liberty is for the shortest possible time. However, the consultation does not fully address two essential Article 5 safeguards:

- the requirement for judicial authorisation for any deprivation of liberty, and
- the need for appropriate educational provision when a child is deprived of their liberty.



Without these elements, an adaptable model risks allowing deprivation of liberty in practice without the procedural guarantees Article 37 UNCRC and Article 5 ECHR requires. Any increase in restriction must therefore trigger the existing statutory secure authorisation process, with reductions clearly planned and intended to support reintegration.

Models proposed in the 'Reimagining Secure Care' report

Q6) Do you support the concept of community-based hubs?

Yes

~~No~~

Please explain the reasons for your answer.

Community-based hubs align with a whole systems approach ('WSA') to early and effective intervention and reflect the preventative framework promoted by The Promise. They support decision-making that prioritises children remaining within their families and communities wherever possible, reducing the need for escalation to secure care.

By offering coordinated, multidisciplinary support locally, such hubs can help stabilise situations earlier, uphold children's rights, and ensure that intensive assistance is delivered in the least restrictive environment.

As noted above, the duties to provide bespoke, educational provision, with additional support for learning including a Coordinated Support Plan and Child's Plan, should be central in assessing the risks and holistic needs of the child.

This approach is consistent with the wider aim of keeping children connected to their families, schooling, and community networks, and of preventing unnecessary deprivation of liberty.

Q7) Do you support the wider adoption of the concept of multi-disciplinary teams?

Yes

~~No~~

Please explain the reasons for your answer.

Multi-disciplinary teams play a crucial role in preventing young people from entering secure care and in supporting them to reintegrate afterwards. Effective collaboration across services helps ensure that children receive the right support at the right time, reducing the likelihood of escalation into situations requiring deprivation of liberty. This builds on the Getting It Right For Every Child ('GIRFEC'), WSA, and Integrated Children's Services Planning policies and practice models.

As noted above, the duties to provide bespoke, educational provision, with additional support for learning including a Coordinated Support Plan and Child's Plan, should be central in assessing the risks and holistic needs of the child.

We welcome further review of how the legislative frameworks for ASfL, mental health and incapacity and criminal justice, are aligned to ensure consistency of

definitions and human rights obligations, irrespective of the justice system a child is engaged with.

Equally, when a child has been in secure care, multi-disciplinary involvement is essential to sustaining reintegration and upholding their rights. Public authorities must continue to meet their legal and human rights duties during and after a period in secure accommodation, ensuring that no child is left without coordinated support as they return to their community.

Questions on mental health provision

Q8) What further actions could be taken to integrate secure care and mental health services?

Please explain the reasons for your answer.

We refer to our response to question 7. Every child admitted to secure accommodation should be seen by CAMHS at the earliest opportunity to ensure prompt assessment and continuity of mental health care. There should also be clear, structured liaison between secure care providers and specialist mental health facilities, as well as any additional services developed in future. Strengthening these pathways would help ensure that children receive consistent, trauma-informed support and that mental health needs are addressed alongside care and protection needs. The Coordinated Support Plan and Child's Plan must include how the services will meet the child's holistic wellbeing needs. Section 12.15 of the Scottish Mental Health Law Review¹⁴ highlighted that the current system can result in children and young people with complex needs being subject to several distinct legal frameworks (child law, mental health law, capacity law, criminal law and education law), each with different judicial oversight. This can frustrate the aim of a holistic and child-centred approach to meeting the child's needs and consideration should be given to how to align these regimes into a shared legal and judicial framework.

Q9) How can these systems work together to ensure that children and young people - both within secure settings and those on the edge of admission - receive trauma-informed, holistic support that prioritises wellbeing alongside safety?

Please explain the reasons for your answer.

No further comments.

Q10) What improvements in information sharing across services are needed to ensure we fully understand and meet the health and wellbeing needs of children and young people?

Please explain the reasons for your answer.

It is essential that all changes made to information sharing practices across services are compliant with Human Rights and Data Protection law, in accordance

¹⁴ See above, at pages 668-675 and recommendations 12.26 and 12.27



with the United Kingdom Supreme Court judgment in *The Christian Institute and others (Appellants) v The Lord Advocate (Respondent) (Scotland)*[2016] UKSC 51.¹⁵

Questions on prevention, alternatives, community based support and transitions
Q11) In your experience, which alternative care and support options are currently most effective in preventing the need for secure care placements, particularly on welfare grounds?

Please explain the reasons for your answer.

No comments.

Q12) Where alternatives to secure care are available, what factors most strongly influence whether they are used in practice? (For example, workforce confidence, secure care placement availability, commissioning arrangements, risk)

Please explain the reasons for your answer.

No comments.

Q13) What gaps currently exist in the availability of alternatives to secure care across Scotland?

Please explain the reasons for your answer.

No comments.

Q14) How can learning from local authority practice approaches to alternatives be shared and scaled across Scotland?

Please explain the reasons for your answer.

No comments.

Q15) Is there scope for sharing and pooling of resources to support specialist alternatives to secure care on a multi-authority basis?

Please explain the reasons for your answer.

No comments.

Q16) What role should health, education, and justice services play in supporting children with complex needs?

Please explain the reasons for your answer.

No comments.

¹⁵ [The Christian Institute and others \(Appellants\) v The Lord Advocate \(Respondent\) \(Scotland\) \[2016\] UKSC 51](#)

Q17) How can we measure the effectiveness of community-based supports in meeting the needs of children and young people?

Please explain the reasons for your answer.

No comments.

Q18) What support should be in place to ensure successful transitions, including to Young Offenders' Institutions, and reintegration for children and young people leaving secure care into their communities, including as they transition into adulthood and more independent living?

Please explain the reasons for your answer.

No comments.

Questions on national co-ordination of secure care placements

Q19) How can we improve access to secure accommodation placements to ensure that children who cannot legally be placed elsewhere (e.g. those remanded or sentenced by the courts) are always accommodated appropriately?

Please explain the reasons for your answer.

Access to secure accommodation can only be improved if there is sufficient availability to meet the needs of children who lawfully require secure care. A key concern is ensuring that existing capacity is not occupied by children for whom Scottish public authorities do not owe statutory duties, including cross-border placements, as this reduces availability for children who cannot legally be placed elsewhere.

Improving access therefore requires both adequate national capacity and a clear framework governing who may be placed in Scottish secure care, ensuring that beds remain available for the children to whom Scotland owes the highest legal obligations and who have the greatest needs.

Q20) Do you agree there should be nationally-funded facilities whereby there is guaranteed access to fulfil court orders and do you think that would be sufficient to build confidence in decision makers?

Yes

No

Please explain the reasons for your answer.

We are not persuaded that nationally-funded facilities, in themselves, would “build confidence” in decision-makers. When a sheriff refuses bail for a 16- or 17-year-old, or a Children’s Hearing authorises secure accommodation, this is not a question of ‘confidence’ but of judicial decision-making in implementing the law. Where bail is refused, the young person must be placed in secure accommodation if no lawful alternative exists. The issue is therefore one of capacity and implementation, not confidence.

Any national system must also ensure that young people maintain strong links with their home local authority, particularly in relation to:

- statutory education and ASfL duties,
- aftercare and continuing care duties, and
- family-based social work and children's services involvement.

There is a risk that a fully nationalised system could weaken these connections. Evidence from other jurisdictions suggests that when responsibility shifts upwards to a national service, local authorities and health boards may disengage from ongoing responsibilities, with resulting failures in aftercare, education, and family involvement.

This is reflected in concerns that nationalisation of secure care could repeat past failures where children left secure care without adequate planning or even basic support such as transport home, due to a lack of ongoing involvement from their home authority.

It is therefore essential that any nationally-funded or nationally-coordinated model preserves:

- local authority and Corporate Parenting responsibility for their own young people;
- continuity with local children and families social work teams, even where a young person is involved in serious offending; and
- decision-making that continues to include parents, siblings, and wider family, consistent with the UNCRC requirement to treat 16- and 17-year-olds as children in need of guidance and support.

Reference may be made to *MM v Glasgow City Council* (2025)¹⁶, which affirmed that older children remain entitled to guidance and involvement of their local authority even where residence cannot be directed. This underscores the importance of local authority and Corporate Parenting duties remaining central.

For these reasons, while improvements to funding and capacity may be necessary, any national system must ensure that local duties and relationships are not diluted. National funding alone will not address the underlying statutory obligations or the structural need for continuity of care.

Q21) Do you agree Scotland should introduce a single national system for coordinating secure care placements for children?

Yes

No

- If yes, what functions should that system include?
- Would these differ depending on the route through which a child enters secure care? If so, how?

¹⁶ MM v Glasgow City Council [2025] SC EDIN 12



- If no, what alternative approach would you suggest?

See response to Question 20.

Q22) When creating a new national system to coordinate secure care placements for children, which type of model do you think Scotland should look at and take ideas from?

Please explain the reasons for your answer.

No further comments.

Q23) Beyond the specific models referenced in this section, please share any other proposals or comments you have in relation to national co-ordination.

Please explain the reasons for your answer.

No further comments.

National co-ordination and secure placement allocation

Q24) If Scotland were to establish a Multi-Agency Panel to make decisions about secure care placements, similar to Northern Ireland's model, which professionals do you think should be part of that panel? Do you also think that care experience should be represented on the panel?

Please explain the reasons for your answer.

Any proposal to introduce a Multi-Agency Panel with decision-making powers over secure care placements raises potential concerns under Articles 6 and 8 of the ECHR, and the participation and family and privacy rights under Articles 12 and 16 of the UNCRC. Where a panel is making decisions that determine a child's liberty, it is essential that the decision-making process is accessible to the child and their parents; a model that sidelines their privacy and participation risks being incompatible with Article 6 requirements for fairness and procedural safeguards. The Article 5 ECHR and Article 37 UNCRC rights require judicial scrutiny which would not be met by a Multi-Agency Panel.

As noted above, there is also a clear crossover with existing human-rights issues arising in deprivation-of-liberty contexts. Recent case law in both Scotland and England has highlighted the risks where decisions affecting liberty are made without directly hearing from the individual concerned. Similar concerns have arisen in the Adults with Incapacity framework, where the failure to hear from the adult has led to criticism and a loss of international confidence in Scottish procedures.¹⁷ These issues should not be replicated where decisions are being made on secure care placements.

Any panel must therefore be designed to:

¹⁷ See *AB v Scottish Borders Council* [2019] SC JED 85; *Aberdeenshire Council v SF* [2023] EWCOP 28 and *Argyll & Bute Council v RF* [2025] EWCOP 12 (T3)

- ensure effective participation by the child and their parents;
- avoid creating a decision-making body that is remote or inaccessible;
- comply fully with Article 5, 6 and 8 ECHR and 12, 16 and 37 UNCRC duties; and
- recognise the additional equality and discrimination considerations relevant to disabled children and young people with complex needs.

Accordingly, while a multi-agency forum may provide helpful professional insight, any role it plays must not displace the child's ability to be heard and participate with parents, or undermine the legal safeguards associated with decisions that may result in deprivation of liberty.

Questions on the nationalisation of secure care

Q25) Do you support the concept of the wholesale nationalisation of secure care provision in Scotland so it is run as a national service in the future?

~~Yes~~

No

Please explain the reasons for your answer.

We cannot support nationalisation of secure care based on the information provided. The consultation does not explain how a national system would operate, who would fund it, or how children's human rights would be protected. There is also a risk that nationalisation would weaken children's links with their home local authority, which currently holds key duties around education, throughcare, aftercare, health care, and family involvement. Other national systems have shown that centralisation can lead to local authorities disengaging from responsibilities, with negative consequences for reintegration. More detailed proposals are needed before this option can be evaluated.

Questions on potential secure care funding reform

Q26) In the short-medium term, do you agree Scotland should move away from 'spot purchasing' by local authorities or the Scottish Government as the main way secure placements are funded and services are supported to remain sustainable and supported to plan for improvements and modernisation?

Yes

No

Please explain the reasons for your answer.

We agree that the current spot-purchasing model has limitations, but any alternative must maintain local authority responsibility for each individual child. Funding that follows the child ensures that local authorities remain fully engaged with their statutory duties, including education, aftercare, family involvement, and reintegration planning. A move away from spot purchasing must not make it easier for children to be placed far from home or weaken the expectations set by The Promise, which emphasises minimising cross-authority moves and keeping children within their own communities wherever possible. Any reform must

therefore safeguard children's links to their home authority and ensure placements near home remain the default. Rights based budgeting and funding models must be applied to ensure compatibility with the UNCRC. It must also comply with human rights standards in business. The UN Committee on the Rights of the Child's General Comment 16¹⁸ provides guidance on ensuring providers and commissioned services are underpinned by children's human rights, in fulfilling public authority functions.

Q27) Which funding model (or combination of models) would best support the sustainability and equitable use of secure care in Scotland, and why?

See section 6.2.2 above which sets out a number of potential options (not exhaustive), including:

- Option 1: National approach to funding secure care
- Option 2: National commissioning with local placement responsibility
- Option 3: Hybrid funding model
- Option 4: Retention of current model with targeted reforms
- Option 5: Other

Please explain the reasons for your answer.

No further comments.

Q28) How can Scotland make sure that any new approach – whether national, local or mixed – guarantees equity of access for all children?

Please explain the reason for your answer

No comments.

Questions on secure care transport standards

Q29) Based on the areas expected to be covered in the standards, as referred to above, do these fit with your expectations?

Yes

No

If your answer is no, please tell us what you think should be included in the standards.

All secure accommodation requirements, and any setting in which a child may be lawfully deprived of their liberty, must comply with Article 5. This must include the use of transport. It is unclear from the information provided what the lawful authority is for the use of the range of transport currently used to deprive children of their liberty, other than in circumstances involving court-appointed services when a child is remanded, or where police powers are exercised and a clear chain of custody applies. By contrast, the transportation of the accused adult individuals and prisoners involves a highly structured and secure chain of custody, designed to ensure safety, accountability and legal oversight from police custody

¹⁸ General comment no. 16 (2013) on State obligations regarding the impact of the business sector on children's rights Assessed here: <https://digitallibrary.un.org/record/778525?v=pdf>



through court proceedings and into the prison system. We would welcome clarification as to whether equivalent safeguards apply to children.

The consultation notes that the current Ministers' contract for secure transport is used only in rare situations where a child has been 'convicted of murder' and that transport under that contract is provided by private operators such as GeoAmey, G4S or Secro. It is unclear whether the Scottish Government intends the next secure transport contract to be extended more broadly, including for transport to and from secure care for children's hearings, medical appointments, or court appearances.

While local authorities currently determine transport arrangements on a case-by-case basis, taking account of the child's needs, the nature of the journey, risk assessments and available options, we are concerned about the absence of oversight or monitoring of this decision-making. This raises a risk of arbitrary practice and potential non-compliance with Article 5 ECHR and Article 37 UNCRC obligations.

We are also concerned about the use of restrictive practices, including restraint, by private contractors or other staff involved in transport, in the absence of clear lawful authority, safeguards or independent oversight.

Although we welcome the duty on Scottish Ministers, under section 25 of the Children (Care and Justice) (Scotland) Act 2024, to create and publish minimum standards for the safe and secure transport of children and young people, we are concerned that standards alone may be insufficient to prevent human rights breaches in the absence of supporting statutory duties.

As noted above, any place of detention, or *de facto* deprivation of liberty, including secure transport, must comply with international human rights standards, and be subject to independent monitoring, including by the UK National Preventive Mechanism ('NPM'). It is unclear whether the NPM, has been involved in the development of the Standards. We further note that Business and Human Rights obligations must be fully reflected in any commissioning and procurement processes underpinning the transport standards.

Before the introduction of Standards, and after consideration of the judgment in the NI Reference, as noted above, we would urge the Scottish Government to provide clarity on what is happening in current practice with disaggregated data on the numbers of children being transported and types of transport.

Questions on the Single Point of Contact for victims

Q30) How should the SPOC service interact with other possible support routes for victims and what kind of specialist training do you think staff need to work effectively in this service?

Please explain the reasons for your answer.

No comments.



Q31) How should the SPOC service interact with other organisations within the sector and what features should it include to make it accessible, age-appropriate and trauma-informed?

Please explain the reasons for your answer.

No comments.

Q32) Do you agree that the support services that may be provided should extend to signposting victims and their families to counselling and other support and advice services?

Yes

No

Please explain the reasons for your answer.

No comments.

Q33) Do you agree that the SPOC service should be resourced to commission and to offer those services to victims?

Yes

No

Please explain the reasons for your answer.

No comments.

Q34) If a SPOC delivery model encompassed trained staff, with some aspects potentially delivered by volunteers, what do you think would be the benefits of this approach and do you have any views on the priority training and qualifications of SPOC personnel providing support services?

Please explain the reasons for your answer.

No comments.

Q35) In order to provide support and explanation to victims whose cases are not disposed of by a Children's Reporter or children's hearing decision, do you agree that the SPOC service should be able to access information from others, including the chief constable of the Police Service of Scotland and local authorities, where cases are dealt with by diversionary measures like Early and Effective Intervention?

Yes

No

Please explain the reasons for your answer.

No comments.



Questions on Assessing Impact

Q36) What, if any, do you see as the data protection related issues that you feel could arise from the proposals set out in this consultation?

The proposals raise potential concerns under Article 8 ECHR, Article 16 UNCRC, and data protection law, particularly around information-sharing between agencies. Any move toward national coordination or alternative funding models must ensure that children's personal data is shared or processed, only where necessary and proportionate, and that clear legal bases exist for doing so.

There is a risk that widening responsibility beyond the child's home local authority, which currently holds key statutory duties, could lead to unnecessary or excessive data sharing, especially if children are placed farther from home or across authority boundaries. Safeguards must ensure that data sharing remains tightly controlled, respects children's privacy rights, and supports the principle that children should remain connected to their own communities wherever possible.

Q37) What, if any, do you see as the children's rights and wellbeing issues that you feel could arise from the proposals set out in this consultation?

No comments.

Q38) What, if any, do you see as the main equality related issues that you feel could arise from the proposals set out in this consultation?

N/A

Q39) Please share any other views you have about this consultation, or any other issues you feel it raises.

No comments.



For further information, please contact:

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