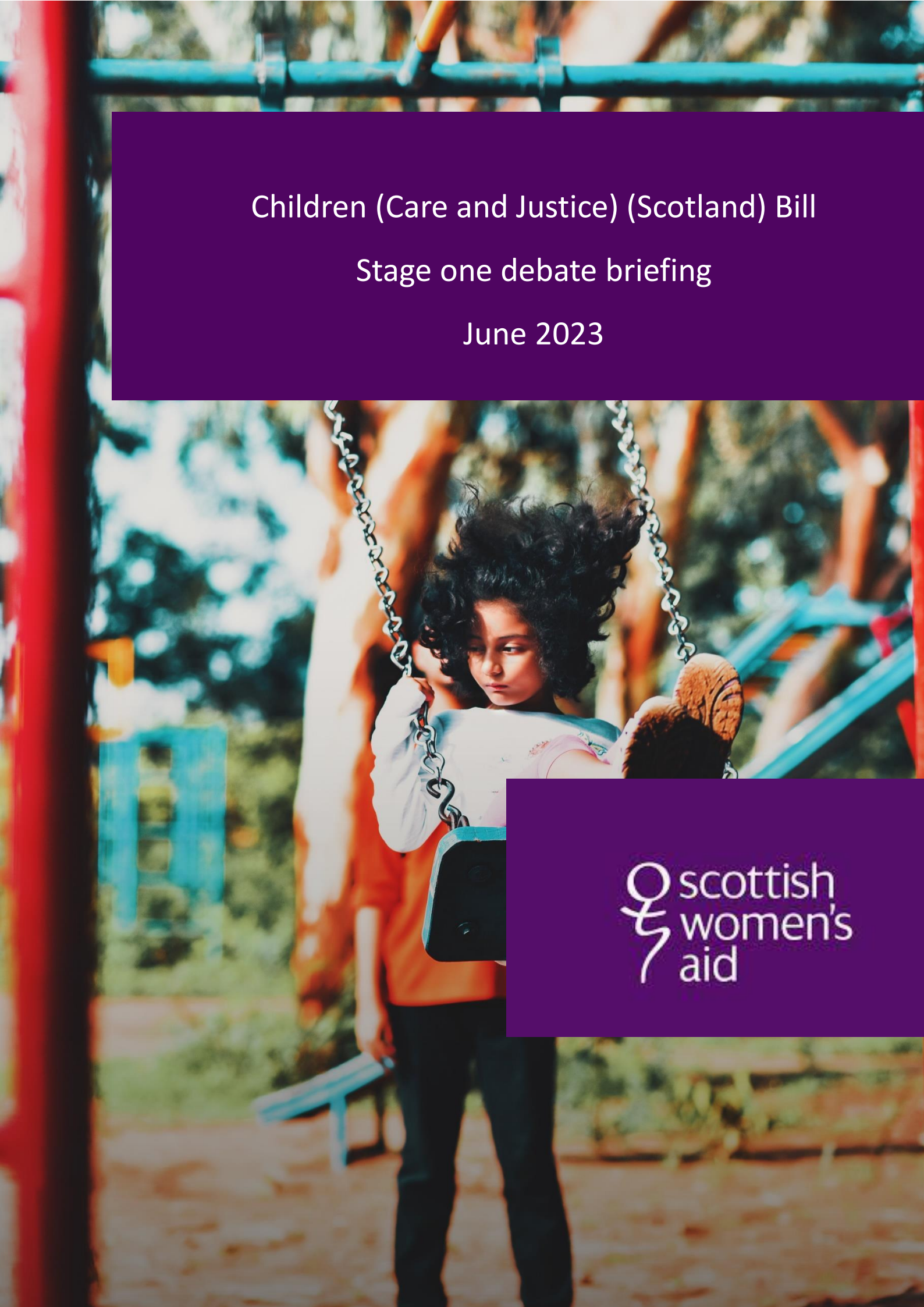
Children (Care and Justice) (Scotland) Bill

Stage one debate briefing

June 2023



scottish women's aid

Scottish Women's Aid (SWA) is the lead organisation in Scotland working to end domestic abuse and plays a vital role in campaigning and lobbying for effective responses to domestic abuse. We provide advice, information, training and publications to our member groups and to a wide variety of stakeholders. Our members are local Women's Aid groups, each providing specialist services, including refuge accommodation, information and support to women, children & young people. We also provide the National Domestic Abuse & Forced Marriage Helpline and support a Survivor Reference Group.

SWA welcomes the scrutiny of the Children (Care and Justice) (Scotland) Bill at stage one, and was pleased to respond to the Education, Children and Young People Committee's call for views[1] in March 2023. This briefing outlines the key issues identified by SWA for consideration during the stage one debate.

Our key concerns are:

- Appropriate resources and investment are needed to ensure that the Children's Hearing system and related workforce are equipped to respond to an increase in domestic abuse related offences as a result of amending the age of referral.
- Clarity on how CSOs and MRCS will be monitored to ensure victim safety. In particular detail is needed on how non-compliance will be dealt with.
- The Bill must go further in ensuring the availability of accessible child-friendly information that helps victims understand what to expect, timeframes and potential implications for those involved.
- There is an opportunity within the Bill to address and manage the complex balance of rights when one child has caused harm to another. We are keen that young victims of domestic abuse get the same protection and redress through the Children's Hearing system as adult victims do.

Ensure 'system-readiness' to meet the demand of increasing the age of referral

SWA notes the increase in the maximum age of referral to the Principal Reporter to 18 as an important step in Scotland's compliance with the UNCRC. This increase also marks a shift towards addressing the current inconsistencies in the system, as access to age appropriate justice is fundamental to protecting children's rights.

However, raising the age of referral will result in more children and young people coming into contact with the Children's Hearings System on offence grounds, including domestic abuse-

[11] https://womensaid.scot/wp-content/uploads/2023/03/170323-SWA-Childrens-Care-and-Justice-Bill-call-for-views.pdf

related offences. The Education, Children and Young People Committee stage one report[2] notes that SCRA estimates there could be an additional 1,350 hearings a year as a result of the extension in the age of referral, with up 150 of these being on offense grounds. The capacity of the Children's Hearings system to respond to domestic abuse cases must be improved through substantial resource and investment.

Responding to the projected increase in referrals will require a sound knowledge of the specific needs of children and young people affected by domestic abuse. We welcome the recent recommendations from the Hearing System Working Group[3] calling for an evidence-based understanding of domestic abuse throughout the Children's Hearing system. The report includes consideration on the importance of safety planning and consistently protecting the rights of victims as they navigate the system from the point of referral onwards.

An updated financial memorandum must be available for scrutiny. This should set out how the workforce supporting children's hearings will be equipped with skills to be cognisant on the dynamics of domestic abuse as well as ensuring the system has the capacity to respond to the increase in demand.

Clear governance and practical monitoring arrangements for CSOs and MRCs to enhance victim protection and recovery.

As reflected in our evidence submission we have concerns about how non-compliance with CSOs and MRCs will be dealt with. It is a significant omission that the Bill at stage one does not provide detail on how the new measures within CSOs and MRCs will be governed. If these new measures are to fully address concerns around victim protection and right to recovery, robust monitoring arrangements must be in place. Without appropriate governance and practical arrangements these measures could inadvertently create more harm for victims. For instance, in cases of domestic abuse the accused child should not be made aware of where the victim is living or frequenting (e.g. a school or college) as part of their conditions as this could heighten the risk to the victim. This reinforces the need for a system that cognisant of domestic abuse and builds in robust safeguard provisions for victims.

We welcome the shift to include a broader definition of harm beyond physical injury within the conditions of an MRC, however we caution against the use of the word *'psychological'*. This term risks pathologising victims, and we would instead suggest a focus on emotional harm and trauma.

We would welcome a Scottish Government Stage two amendment addressing the concerns on how CSOs will be monitored. We also call for a commitment to introduce refreshed guidance and training in response to the amendments in the MRC criteria. It is paramount that the Bill, and subsequent guidance, reflect the impact and rights of victims at risk of harm.

[2] Stage 1 Report for Children (Care and Justice) (Scotland) Bill (azureedge.net)
[3] https://thepromise.scot/the-promise-scotland/what-the-promise-scotland-does/change-projects/hearings-system-working-group/

Improve the provision of information to person(s) affected by a child's offence or behaviour.

Survivors routinely highlight the importance of having access to information about what to expect when reporting domestic abuse, why something is happening, who is involved, reasons for the decisions made, and how they will be implemented.[4] They also want to have information as early on as possible in the process, a finding supported by Lady Dorrian's Review into the management of sexual offence cases.[5]

It is therefore disappointing that the Bill at stage one falls short in developing provisions that could enhance a victim's sense of safety and control. The provision of information and support for victims could help to alleviate anxieties when engaging with hearings as well as provide an important gateway towards victim recovery. The Bill must go further in ensuring the availability of accessible child-friendly information that helps victims understand what to expect, timeframes and potential implications for those involved.

There is an opportunity within the Bill to address and manage the complex balance of rights when one child has caused harm to another. Strengthening the pathways to support is one mechanism of protecting the rights of everyone navigating the system, be that child victims and those accused of harm. The Bairns Hoose[6] model of support for child victims and witnesses of violence provides a helpful backdrop, centred on rights-respecting trauma-informed support. As part of the Scottish Government's commitment to this model, the Bill should seek to align measures with emerging insights from Bairns Hoose.

The lack of robust provision in the Bill to ensure victims are provided with the necessary information to support their recovery and protect them from further harm is disappointing. We ask that the Bill be amended at Stage 2, placing a more robust duty on the Principal Reporter to proactively ensure that victims have access to information relevant to their safety and recovery, particularly around protective conditions imposed in CSOs and MRCs.

For more information please contact:

Ffyona Taylor, Children and young people Policy Officer, Ffyona.Taylor@womensaid.scot

[4] Everyday Heroes Justice report (2018) https://everydayheroes.sps.ed.ac.uk/wp-content/uploads/2018/11/everyday-heroes-briefing2-Justice.pdf

[5] Improving the Management of Sexual Offence Cases: Final Report from the Lord Justice Clerk's Review Group. (2021) https://www.scotcourts.gov.uk/docs/default-source/default-document-library/reports-and-data/Improving-the-management-of-Sexual-Offence-Cases.pdf?sfvrsn=6

[6] https://www.children1st.org.uk/help-for-families/bairns-hoose/