

# Consultation in to The Children (Care and Justice) Scotland Bill and changes to Hospital Direction's



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## Respondent Information Form

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Are you responding as an individual or an organisation?

- Individual  
 Organisation

Full name or organisation's name

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The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name  
 Publish response only (without name)  
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### Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes  
 No

## Questionnaire

### Question 1

Do you think that removing the sentencing option of Hospital Directions for 16/17 year olds in Scotland would be problematic. If so, please explain why?

Please give reasons for your answer.

It is acknowledged that hospital directions are rarely used for 16/17 year olds. However, the distinct features of a hospital direction are important to retain as an option for 16/17 year olds (i.e. when there is no clear link between the offending behaviour and the mental disorder, but treatment in hospital is required). We do not think there is any benefit in arbitrary age ranges being applied to orders within mental health legislation.

Although removing this sentencing option is unlikely to be problematic in the sense that it is seldom used, it is problematic because of the inequality its removal then causes. There is the potential for its removal to be problematic because the alternative to a hospital direction could be a compulsion order and restriction order (CORO), (even although these are different orders). COROs are without limit of time and could be seen as over restrictive in practice. If there is not a clear link between the offending behaviour and the mental illness that has required treatment, this order would be more appropriate regardless of the patient's age.

### Question 2

Which, if any, under 18s should a Hospital Direction be applicable to, please explain the reason for your views?

There should be no discrimination on grounds of age. All sections of the act should be available to all ages. Regardless of the fact that it is small numbers that might be appropriate for a hospital direction, it should still be available to meet the needs of young people where the offence and risk to others is not linked to their mental disorder, in the way it is available for other age groups.

### Question 3

What impact do you think the unavailability of hospital directions will have on children's rights – negative, positive or neutral? Please explain why.

The impact on children's rights will clearly be negative. Whilst the numbers involved will be very small, clinicians may consider possible alternative orders such as a CORO (although the two orders are not directly comparable). Even if mental health law is revised to reflect the SMHLR recommendation that COROs have a time limit, this would not reflect the distinct use of hospital directions where there is no clear link between offending behaviour and the mental disorder. At present COROs are without limit of time and would be restrictive practice, therefore having a negative effect on children's rights. This would be in breach of the UN Convention on the Rights of the Child and could be against their human rights.

Not having all sections available to children discriminates against them on grounds of their age.

#### **Question 4**

Please provide any further comments you may have in relation to the use of Hospital Directions and young people.

It is important that a range of options are available for young people as their needs are complex.

Even although these orders are seldom used and very unlikely to be made, we would recommend that no changes to hospital directions are made which discriminate on grounds of age, and that changes align with the recommendations of the Scottish Mental Health Law Review.

Please provide any further comments on the proposals set out in this consultation in the box below.

