

**Proposed Support for Children (Impact of Parental Imprisonment)  
(Scotland) Bill – Mary Fee MSP**

**Summary of Consultation Responses**

This document summarises and analyses the responses to a consultation exercise carried out on the above proposal.

The background to the proposal is set out in section 1, while section 2 gives an overview of the results. A detailed analysis of the responses to the consultation questions is given in section 3.

Where respondents have requested that certain information be treated as confidential, or that the response remains anonymous, these requests have been respected in this summary.

In some places, the summary includes quantitative data about responses, including numbers and proportions of respondents who have indicated support for, or opposition to, the proposal (or particular aspects of it).

In interpreting this data, it should be borne in mind that respondents are self-selecting and it should not be assumed that their individual or collective views are representative of wider stakeholder or public opinion. The principal aim of the document is to identify the main points made by respondents, giving weight in particular to those supported by arguments and evidence and those from respondents with relevant experience and expertise. A consultation is not an opinion poll, and the best arguments may not be those that obtain majority support.

Copies of the individual responses are available SPICE and from the office of Mary Fee MSP on her Website and requests can be made to [Daniel.Cairns@scottish.Parliament.uk](mailto:Daniel.Cairns@scottish.Parliament.uk).

A list of abbreviations for the respondents cited is included in the annex.

**Section 1: Introduction and Background**

Mary Fee MSP's draft proposal, lodged on 5th February 2015, is for a Bill to: require a court (at the time of sentencing) to have regard to the impact of parental custody upon the welfare and wellbeing of the offender's children; and to ensure that children affected by parental imprisonment receive additional support as appropriate.

The proposal was accompanied by a consultation document. This document was published on the Parliament's website, from where it remains accessible:

[http://www.scottish.parliament.uk/S4\\_MembersBills/Consultation\\_Document\\_\(Website\).pdf](http://www.scottish.parliament.uk/S4_MembersBills/Consultation_Document_(Website).pdf)

The consultation period ran from 5<sup>th</sup> February 2015 to the 7<sup>th</sup> of May 2015. Late responses were accepted until 22<sup>nd</sup> May where prior notice had been given.

The launch of the consultation took place on the 5<sup>th</sup> February 2015 during a press conference at one of Barnardo's Scotland's children's services in Edinburgh. The Bill is being supported by Barnardo's Scotland, Families Outside and NSPCC Scotland.

A stakeholder event was held in Parliament on the 7<sup>th</sup> April to coincide with the launch of an online campaign run by Barnardo's Scotland to encourage responses to the consultation.

The consultation exercise was run by Mary Fee's MSP's parliamentary office in conjunction with Barnardos Scotland who have helped to draft this summary.

The consultation process is part of the procedure that MSPs must follow in order to obtain the right to introduce a Member's Bill. Further information about the procedure can be found in the Parliament's standing orders (see Rule 9.14) and in the Guidance on Public Bills, both of which are available on the Parliament's website:

Standing orders (Chapter 9):

<http://www.scottish.parliament.uk/parliamentarybusiness/26514.aspx>

Guidance (Part 3):

<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/25690.aspx>

## **Section 2: Overview of Responses**

There were **102** responses to the consultation. **82** of those responses were received by individuals, following an online campaign organised by Barnardo's Scotland. Those responses are identical, and agree with the proposal. The text of those responses can be found in the appendix.

The remaining consultation responses (**20**) were received by organisations and individuals who directly engaged with the questions in the consultation. Please note that all the figures cited in the rest of this document for the proportions of respondents expressing a particular view are by reference to this figure of **20** and not by reference to the overall total of **102**.

There was a substantial majority of support from respondents for the aims of the proposed Bill. Furthermore, there was a substantial majority of support for the specific proposals within the Bill.

The detailed analysis below seeks to explore the various reasons behind the support for the Bill, and includes various other points raised where it was felt the policies contained within the proposal could be strengthened going forward.

### Section 3: Responses to Consultation Questions

Section 3 sets out an overview of the detailed responses to each question in the consultation document.

**Q1. Do you support the general aims of the proposed bill? Please indicate yes/no/undecided and explain the reasons for your response.**

**79% of respondents said yes, 10% did not answer the question specifically but their overall response was positive/supportive, 1 respondent did not answer the question but their response was not related to the overall principles of the Bill, and 1 respondent implied they were not supportive of the specifics but were sympathetic to the issues.**

**The main reasons for supporting the Bill were:**

**The Bill reflects the principles of the UNCRC**

**Several respondents noted that the provisions in the Bill were reflective of the United Nations Convention on the Rights of the Child (UNCRC).**

*In particular, Article 2 'No child shall be discriminated against because of the situation or status of their parents' and Article 3 'In all actions concerning children, the best interests of the child shall be a primary consideration'*

**Families Outside** noted that Article 3 is not always applied in court cases and cited the UK supreme court case *HH v Deputy Prosecutor of the Italian Public, Genoa* [2012] UKSC 25 (20 June 2012) as an example of a ruling which argued that actions focused on parents (such as parental imprisonment) *do not 'concern' the children, as they are not 'about' the children.*

Additionally some respondents highlighted additional articles, Article 28 '*the right to a quality education*', Article 27 '*the right to an adequate standard of living*' (**SYP**), Article 13 '*freedom of expression*' (**RCSLT**), and Articles, 4 (*protection of rights*), 6 (*Survival and development*), 9 (*Separation from parents*), 12 (*Respect for views of the child*), and 20 (*children deprived of family environment*) (**RCPCH**)

As well as highlighting individual articles of the UNCRC, **Together** also noted the Bill could help to take forward the United Nations Concluding Observation to the UK in 2008 to "*Ensure support to children with one or both parents in prison, in particular to maintain contact with the parent(s) (unless this is contrary to their best interests) and to prevent their stigmatisation and discrimination against them*"

**Parental imprisonment has harmful effects on children**

**Most respondents noted in one way or another that parental imprisonment is likely to have a harmful effect on children. For those who did not address specific issues (as below) this was implied within their overall response.**

*"Children affected by imprisonment can suffer from serious mental health issues at three times the rate of other children.....Each year in the UK, more children experience a parent's imprisonment than a parent's divorce" (Together)*

*"This includes financial and housing difficulties, confusion and lack of information, separation anxiety, depression, grief, and having to cope with bullying and stigma" (Families Outside)*

*"Engagement with young people tells us that the children of prisoners may often feel stigmatised, ashamed, and discriminated against due to their parent's imprisonment" (SYP)*

*"Children's experience of a family member's imprisonment can be similar to experiencing bereavement, its effects may include the child 'acting out' or becoming withdrawn, deterioration in performance at school, being bullied or becoming the bully, and increased risk of substance misuse" (Together)*

*"When a parent is in the criminal justice system, the resulting separation can disrupt family relationships and have a considerable impact on a child's wellbeing. This is reflected in the fact that one in three children with a parent in prison develops significant mental health problems, when compared with one in 10 among the general population" (NSPCC Scotland)*

*"We have seen, first hand, the impact that parental imprisonment can have on attachment, resilience and life outcomes in children of all ages" (Aberlour)*

*"These children are some of Scotland's most vulnerable, often affected by multiple disadvantages" (Children 1<sup>st</sup>)*

*"Our staff cited a range of issues faced by this group, including isolation, stigma, secrecy, social exclusion, poverty, loss, bereavement and trauma among a raft of other things" (Barnardo's Scotland)*

*"The international research evidence demonstrates the harmful effect that imprisonment of family members can have on children and families. This includes issues relating to separation anxiety, depression, grief and having to cope with bullying and stigma" (CJVSF)*

### **Legislation would be a trigger for identification, assessment and support**

**Some respondents stated that provisions in the Bill would act as a trigger for various levels and forms of support for children and their families affected by parental imprisonment. The underlying assumption for this is that although services which could support these families may already exist, the families and children remain hidden.**

**Respondents highlighted that children and families affected by imprisonment are often invisible and their needs overlooked.**

In relation to Child and Family Impact Assessments, **Barnardo's Scotland** stated that:

*"Support is not consistently available, and partners [of prisoners] often struggle on their own because they are not usually accessing mainstream support, and no agencies are picking them up and identifying them or their children.....An*

*assessment of need would make a great difference to these children and families [we work with] and hopefully act as a trigger for support, whether that be universal or a more targeted intervention"*

*"There is a need to introduce legislation, such as the proposed bill, to act as a trigger, so that relevant issues are identified and appropriate links to support and the child's plan can be made" (CJVSF)*

*"While the new Children and Young People's Act enhances the GIRFEC model, there still remains no 'trigger' to ensure children affected by parental imprisonment are recognised and supported through GIRFEC arrangements.....we support the proposals for children affected by imprisonment to be identified as a specific group with equivalent rights to Looked After Children, in terms of triggering an automatic assessment by education authorities to identify and respond to any additional support needs" (SWSCJA)*

*"The RCSLT believes that this piece of legislation would act as a necessary and important trigger to enable these children to access the support they need" (RCSLT)*

*"By doing a child impact assessment at an early stage of a parent's incarceration and as a consequence arranging services which will properly support the child and family potentially reduces the risk of developing mental health problems and extreme behavioural issues.....By not assessing the impact of a prison sentence on the children, and arranging appropriate services, the systems are simply perpetuating the intergenerational effects of family breakdown, care and imprisonment" (Crossreach)*

*"First and foremost it would mean that these children would actually be identified, which is not presently the case" (NSPCC Scotland)*

*"We agree that these children and young people are an often overlooked group and that failure to address this is likely to result in these children continuing to experience negative outcomes" (CYCJ)*

*"There is a need to introduce a process, such as the proposed Bill, to act as a trigger so that relevant issues are identified and appropriate links to support and the GIRFEC approach can be made" (Families Outside)*

### **Current failure of statutory agencies to recognise/provide support**

**A consistent theme running through the responses was the agreement that current systems are failing children with a parent in prison. In particular several highlighted that Criminal Justice Social Work Reports are not fit for purpose in this respect.**

**Families Outside** noted that Criminal Justice Social Work Reports (CJSWR) are not adequately capturing the needs of children affected by parental imprisonment, despite the revised guidance stating that reports "must consider also the impact of a custodial sentence on the individual and his family"

*"We agree that Criminal Justice Social Work Reports (CJSWR) do not offer sufficient focus on the needs and impact of sentence on the child, are not written*

*for this purpose and it would be useful to reflect some more up-to-date statistics on the number of supports in Scotland each year” (CYCJ)*

*“The intention of the CJSWR is to establish what the family can do for the offender, not what statutory services can do for the family.....it is not a process of assessment centred on the family or indeed the child and therein lies the problem” (Barnardo’s Scotland)*

*“Whilst Criminal Justice Social Work Reports must reflect any immediate family issues prior to sentencing, these Reports are not required in all cases and are not designed to offer any depth of assessment regarding individual children. Nor are they designed around the GIRFEC framework” (SWSCJA)*

*“On a practical basis we would expect that children of an accused person would be mentioned in existing criminal justice social work reports. However these reports are not always required, or requested, when the court is considering imposing a period of imprisonment” (SCTS)*

**Organisations also highlighted that children affected by parental imprisonment are not consistently provided with appropriate support and protection.**

*“At present, no agency has statutory responsibility to provide support for children affected by parental imprisonment. If a child does not meet child protection thresholds, this can therefore often mean their needs are overlooked” (CJVSF)*

*“The impact of imprisonment on the children and families left behind is significant and enduring, yet no systematic process is in place to assess this impact, or even to identify who these families are” (NSPCC Scotland)*

*“They [children affected by parental imprisonment] sometimes only become visible when they really start to display either severe mental health symptoms and are referred to CAMHS or are subject to an order made by a children’s hearing panel often due to behavioural issues” (Crossreach)*

*“The failure of statutory services to properly collect information on this group, and put in place tailored approaches to meeting their various needs, has been a consistent issue in this period” (Barnardo’s Scotland)*

*“Pugh and Lanskey (2011) report that 72% of families who visit prison were receiving no support of any kind, not least due to the reluctance of families in this situation to reach out for help” (Families Outside)*

**Legislation would strengthen and compliment GIRFEC**

**A key issue for many respondents was that the provisions in the Bill could strengthen and add to pre-existing provisions such as Getting It Right For Every Child, within the Children and Young People (Scotland) Act 2014. However several respondents did query why the consultation hadn’t made these links more explicitly clear, whilst some provided concrete examples of how this could work in practice.**

*“Critically, in our view the proposed Bill underpins and strengthens Getting It Right for Every Child (GIRFEC) arrangements, to which we are wholly committed. While the Children and Young People’s Act enhances the GIRFEC model, there still*

remains no 'trigger' to ensure children affected by parental imprisonment are recognised and supported through GIRFEC arrangements" **(SWSCJA)**

"We believe all children should have a separate wellbeing assessment carried out if their parent or carer is sentenced to custody in order to prevent the longer term adverse effects on their physical, social and emotional development. We believe this assessment could form part of pre-existing structures under GIRFEC provisions as will be mentioned in question 5" **(Barnardo's Scotland)**

"It will be important for the Impact Assessment and support for children affected by imprisonment to link in with the wider child's plan. If issues were flagged up through the assessment they would then become part of the Child's Plan through existing GIRFEC provisions and legislation" **(CJVSF)**

"We believe that frameworks such as GIRFEC would be well placed to incorporate these assessments and enact any following recommendations" **(SYP)**

"To ensure that this is consistent with GIRFEC we suggest the Bill reflect the correlation between the assessment and the SHANARRI<sup>1</sup> indicators.....This relationship should be explicitly referenced on the face of the Bill" **(Aberlour)**

"Child and Family Impact Assessments should take a GIRFEC approach in which the wellbeing, as well as best interests, of the child, is seen as central. This would enable CFIA's to more easily tie in with the statutory Child's Plan" **(Children 1<sup>st</sup>)**

"Perhaps the Bill could ask that children with a parent likely to receive a custodial sentence have a GIRFEC 'My world triangle' holistic assessment as an impact statement?" **(Highland Children's Forum)**

"It is also unclear how any of the proposal will interact with the named person provisions contained in the Children and Young People (Scotland) Act 2014. The court would not hold any details of the named person for a child" **(SCTS)**

### **Legislation would raise/heighten public and professional awareness, and contribute to changing opinions**

"There is a tendency to assume that the child has been affected by criminality within the home, rather than being affected by the criminal justice system itself. In reality many children will be unaware and will be uninvolved in crimes being committed by a parent, and it is only at the point of arrest, court appearance and sentence that the child is affected. It is essential to develop this understanding amongst all professionals working with children" **(SWSCJA)**

"We also agree this could heighten both public and professional awareness of the circumstances of these children and their needs, which will have an important role in changing opinions" **(CYCJ)**

"We hope that the introduction of this Bill will signal the beginning of a cultural shift away from stigma and shame and towards the rights and interests of children of prisoners being supported and upheld" **(Children 1<sup>st</sup>)**

"There is potential for cultural change to be facilitated by the provisions in this Bill.....Legal change has a crucial role in facilitating cultural change, if this

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<sup>1</sup> SHANARRI – the Scottish Government's eight indicators of wellbeing, Safe, Healthy, Achieving, Nurtured, Active, Respected, Responsible, Included

group of children and families are recognised in law and the organisations and bodies that they come into contact with become more aware of the impact, we would hope to see a societal shift in the way communities view children and families affected by imprisonment” (**Barnardo’s Scotland**)

## **Other reasons for support**

### **Requirement on Scottish Ministers would add accountability and transparency**

“The requirement for Scottish Ministers to report to the Scottish Parliament annually adds a necessary level of accountability and transparency to the proposed measures” (**Salvation Army**)

“We agree the need for Scottish Ministers to annually report on how courts have met their duties and the number of children affected by parental imprisonment who received additional support under the 2004 Act are further important tools in ensuring duties are being fulfilled” (**CYCJ**)

### **Data collection**

**The UNCRC Day of General Discussion 2011 recommended that statistics about children of incarcerated parents should be routinely and consistently gathered, to help develop policy and practice.**

**Barnardo’s Scotland** highlighted that “This does not happen in Scotland at present, and it is impossible for governmental and statutory agencies to make provisions for children if they do not know about them.....Child and Family Impact Assessments would also serve as a quantitative tool for counting and recording the number of children affected by parental imprisonment”

“We agree with the benefits of ensuring each of these children receive an assessment of needs and of gaining more accurate figures of ensuring how many children are affected” (**CYCJ**)

“One of the benefits of this proposed legislation is that it would improve the data collection around number of children affected by imprisonment to enhance future decision making around investment to support this group of vulnerable individuals” (**Families Outside**)

“Additionally, an assessment of this type could serve as a quantitative tool for counting and recording the number of children affected by parental imprisonment. This does not currently happen in Scotland which means that these children are invisible to strategic planners and budget holders” (**NSPCC Scotland**)

### **Placing families at the heart of the justice system**

“In our view the proposed Bill delivers against all of these commitments by placing families at the heart of the justice system (equivalent to the existing national commitment for other victims of crime), and by introducing statutory requirements on the appropriate authorities to recognise and support children and their families” (**SWSCJA**)



**Q.2 Would you make any changes to the proposed Support for Children (Impact of Parental Imprisonment) Bill and if so, why?**

**Include remand in the Bill**

**42% of respondents raised the issue of remand and the importance of assessing the impact on children and families not just when a parent is sentenced to custody but also when they are remanded in custody. Prisoners on remand can often be there for 18 months whilst some sentenced prisoners can be out in 6, this was highlighted as a discrepancy in the proposal.**

*"A significant gap in the proposal is created by the fact that the child and family impact assessment is triggered by sentencing. Many families in Scotland are affected by parental imprisonment because a parent has been remanded in custody for, in some cases, many months on an untried basis" (Aberlour)*

*"A custodial remand is also likely to have a major impact on the remaining family, and children in particular are unlikely to draw a distinction between remand and sentence. We endorse the submission from the Prison Reform Trust, which refers to the need to take dependents into account for pre-trial detention and sentencing" (Families Outside)*

*"We suggest that the proposal is extended to include any parent remanded in custody not just those given a custodial sentence.....If a long custodial sentence follows remand, this arrangement would ensure the impact on the child has already been assessed and responses can be adapted accordingly" (SWSCJA)*

*"The RCSLT supports the view that it is within the scope of the Bill to address the issue of separations caused by the use of remand and to resolve this problem by requiring a child and family impact assessment when a child's parent is 'sent' to custody as opposed to 'sentenced' to custody" (RCSLT)*

*"CJVSF members raised concerns, however, that remand is likely to also have a major impact on children. Whether their parent is in custody as part of a sentence or remand, it is still likely to have an impact on the child. As such, it is important that any risks to their well-being are identified and addressed at both points of custody" (CJVSF)*

*"A child will not differentiate between their parent serving a 3 month custodial sentence and a 3 month spell on remand.....we would therefore like to see the Bill address this, potentially by requiring a Child and Family Impact Assessment to be done for every child when their parent is 'sent to custody' instead of 'sentenced to custody" (Barnardo's Scotland)*

*"For many short term prisoners much of the eventual sentence is spent on remand. By the time of sentence the effects of parental imprisonment on a child have already been felt.....We would suggest the proposed Bill looks at the possibility of a child impact assessment at the point where a parent is imprisoned, whether on remand or as the result of a sentence" (Crossreach)*

*"A Child and Family Impact Assessment should be done for every child when their parent is 'sent to custody' rather than 'sentenced to custody' as this will include*

*the children whose parents are remanded to custody, as well as those sentenced to custody” (SYP)*

**Some respondents went further than simply including remand and suggested that assessments should be conducted throughout the criminal justice process, including before sentencing.**

*“We would like to see a more preventative approach being taken to providing support to children and families. Introducing a requirement for an impact assessment to be undertaken at all relevant points in the justice process could help ensure that appropriate support is put in place at an earlier stage” (CJVSF)*

*“In line with Slovakia’s recommendation, Together is keen that a Child and Family Rights Impact Assessment model takes place when arresting, detaining, sentencing or considering early release for a sole or primary carer of a child” (Together)*

*“We would wish the impact on children to be assessed at each key stage in a parent’s journey through the criminal justice system. We need to start with assessing the impact on children and families when a parent is first taken into custody. This is absolutely essential to Getting it Right for Every Child (GIRFEC) for this group of children, whether babies or older children” (NSPCC Scotland)*

*“The most helpful starting point [for assessment] would be arrest if a) the person arrested it to be detained for a significant period in police custody (e.g. something that may lead to the distress or neglect of the remaining family); b) the nature of the offence is likely to lead to remand or sentence to custody; or c) a child witnesses the arrest” (Families Outside)*

*“We would recommend that a child and family impact assessment could be conducted prior to sentencing, but that the contents of this assessment be disclosed to the judge after length of sentence is determined. This would allow the judge in question to ensure that any custodial term could be in an institution local to the offenders’ community.....put simply, conducting an assessment after the length of sentence and place of custody have been determined is a bit like closing the barn door after the horse has bolted” (Aberlour)*

*“Links could be made to the Criminal Justice (Scotland) Bill, which is due to return to Parliament this year, in order to ensure that the child’s best interests are taken into account not only when a child is being arrested, held in custody, interviewed or charged, as per Section 42 of the bill, but when a parent is in these situations” (Children 1<sup>st</sup>)*

**One respondent disagreed with the notion that the rights and needs of children should be separated from the sentencing process.**

*“The First Minister’s stated commitment to reducing women’s imprisonment suggest(s) the political environment has shifted and that the time to address sentencing is now.....We therefore recommend broadening the proposal to bring court decision-making into scope. Distinguishing consideration of the needs of children and young people from the sentencing decision-making process is unhelpful” (Prison Reform Trust)*

**Whilst other respondents argued this was the right approach.**

*“Previous attempts to legislate for CFIA have been unsuccessful for various reasons; the key concerns being that they would add more bureaucracy to the*

*sentencing process or inspire sentencing leniency for offenders with children. We welcome the fact that this Bill separates the needs of the child from the process of sentencing. This shifts the focus away from sentencing and rightly into the territory of GIRFEC and the rights of the child” (Barnardo’s Scotland)*

*“We believe the current proposals – to carry out an Impact Assessment only where a parent has been sentenced to custody – overcomes the difficulties of the previous iterations. There will be no impact on sentencing (the ‘get out of jail free’ criticism), and there will be no pressure on the child to feel they are impacting on sentencing one way or the other” (SWSCJA)*

**The scope of the Bill should be widened to include all aspects of the family**

**Some respondents indicated that the scope of the Bill may be too narrow, and that the policy intention of providing support to families as well as children should be made more explicit.**

*“We believe a more holistic approach should be taken to the Bill, recognising the importance of the wider family and the impact that imprisonment can have on other family members as well (for example partners or dependent adults)” (Families Outside, CJVSF)*

*“No mention is made of support for the parent or carer not in the prison who is responsible for the care of the child. This may be implied, but perhaps should be made more explicit. There are immediate issues that they could be helped with, such as guidance about the prison system and what their relative might be experiencing in prison” (Salvation Army)*

**Moreover some respondents noted that ‘parental imprisonment’ should be extended to ‘familial imprisonment’ and the term ‘parent’ should be defined.**

*“Some of our services have highlighted to us that many of the children and young people they work with are affected by the imprisonment of a sibling, rather than a primary carer. This is especially pertinent in some of our services working with looked after young people, often in residential care. Older siblings can have a huge influence over younger siblings.....if they become involved in criminal activity and end up in prison this can have a hugely detrimental effect on a child or young person” (Barnardo’s Scotland)*

*“Research by Meek (2008) suggests that the imprisonment of siblings can also have a detrimental impact on children. We suggest the Bill should be broadened to include imprisonment of other family members (e.g. siblings or grandparents)” (CJVSF)*

*“The issue of sibling imprisonment is worth consideration. Without appropriate support, siblings of those in prison may begin to model criminal behaviours and act out in response to the separate from their brother or sister” (SYP)*

*“The Families Outside Helpline and Family Support databases are full of cases in which partners, elderly parents, or siblings left behind struggle as a direct result of their family member’s imprisonment. One example is a 5-year old girl we referred successfully to CAMHS service when she started self-harming as a result*

*of her older brother's imprisonment. We therefore suggest the Bill should be broadened to include the impact of imprisonment of other family members"* **(Families Outside)**

*"Together would also like to see consideration given to the impact of sibling imprisonment"* **(Together)**

*"We believe the Bill needs to be clear on how a parent is defined given the reference to non-biological care givers and the timing of the assessment being completed (following arrest and charge or following sentence)"* **(CYCJ)**

## **Other proposed changes**

### **Focus on community alternatives**

**Two respondents highlighted that community alternatives are omitted from the Bill, firstly in that only custodial sentences would trigger assessment and more widely that sentencing should be addressed within the Bill so that females in particular receive community alternatives where possible, instead of custodial.**

*"Another recommendation emerging from the UN Committee on the Rights of the Child Day of General Discussion 2011 (Robertson, 2012, P17) was: When a sentence causes parents to be separated from children for whom they are caring, they should be given sufficient time to make arrangements for those children prior to the commencement of the sentence, taking into account the best interests of the child – We would suggest extending the Bill so that it can also include support for children affected by family members undertaking other forms of sentences (e.g. Community Payback Orders, restriction of liberty sentences)"* **(CJVSF)**

*"We advocate amending the proposed Bill to include guidance for the court around sentencing decisions so as to ensure mothers are less likely to be imprisoned where community alternatives are appropriate. This could take the form of a presumption against remanding into custody or imprisoning women with dependent children in favour of community alternatives where the woman poses no risk of harm to the public"* **(Prison Reform Trust)**

### **Independent advocacy**

**Some respondents highlighted that children and young people, as well as adults with speech, language and communication difficulties may need independent advocacy to take part in, and fully understand the process of the Child and Family Impact Assessment.**

*"We feel that these provisions could be further enhanced with a recognition that many children both young and old find it difficult to adequately express themselves, particularly in times of stress. As such we feel that children undergoing a child impact assessment should have the right access to the services of a trained and independent advocate should they so wish it"* **(Aberlour)**

*"The issues around the impact of parental imprisonment can be complex, emotive and difficult to navigate. It can be hard for children to express their views when they consider that this may hurt their parents or go against their wishes. We*

*would hope that advocacy provision would be made available to all children taking part in a CFIA as a matter of course in order to minimise these difficulties"*

**(Children 1<sup>st</sup>)**

*"The speech, language and communication capacities of both the PARENT and the CHILD are crucial to the court process, especially at the time of sentencing, and also crucial to the Child and Family Impact Assessment. It is vital that – at both the time of sentencing and during the CFIA – that the whole family understands what is happening to them and the implications of decisions that are made during these processes"* **(RCSLT)**

### **Wider social issues**

*"We recognise also, however, that there are wider social issues related to imprisonment and criminality that are outside the scope of the proposed legislation, e.g. poor housing, poor parenting, relationships and family breakdown, money management, nutrition, discrimination and poverty. The holistic support for children of prisoners ideally requires a far more comprehensive response in terms of prevention as well as support when the need arises"* **(Salvation Army)**

**Q3. A) Do you see any potential problems (including implementation) with the proposed Child and Family Impact Assessments?**

Responses to this question were mixed with some choosing to highlight the benefits of CFIA, some the potential pitfalls, some noted ways in which the proposals could be strengthened, some posed questions and there were a wide variety of views on which agencies should conduct the assessments.

On the whole however a majority of respondents supported the need for such assessments. The key elements from responses are set out below:

**The terminology of assessment**

Questions were raised about whether the proposed Child and Family Impact Assessments would be conducted for every child in the family or if there would be one per family? There were differing views on this.

*"We believe than an individual Impact Assessment must be carried out for each child affected by their parent's imprisonment. As the Families Outside '27,000 voices' film illustrates, children affected by imprisonment are not a homogenous group, including children who share a parent. They will have different needs and issues relating to the imprisonment of their parent and its impact.....It may be simpler to change the name of this task to a 'Child Impact Assessment', as this could incorporate any relevant family issues, but clarifies the individual child is the focus" (SWSCJA)*

*"As the proposed Bill is not specific about whether there will be one assessment per family or one assessment per child in a family affected by imprisonment it is difficult to make an estimate of the volume of work to be carried out" (Crossreach)*

*"Together recommends that, in line with the Scottish Government's current work to develop a Child Rights and Wellbeing Impact Assessment (CRWIA) model, consideration should be given to change the proposed assessment to a Child and Family Rights Impact Assessment. This would help to further the aims of the proposed Bill to reflect and enshrine the UNCRC" (Together)*

**Others recommended a 'whole family approach' whilst not specifying whether this would mean a whole family assessment or one assessment per child in the family.**

*"We would therefore like to see any Child and Family Impact Assessment take account of this by taking a 'whole family approach', by recognising that each family will have different needs requiring different responses" (Barnardo's Scotland)*

*"The child and his or her needs should be at the centre of assessment process. Consideration should also be given to the needs of the parent or carer left behind, as they may require additional support to care for the child. The Scottish Youth Parliament supports a whole family approach" (SYP)*

*"Taking a comprehensive picture of family life prior to sentencing will give courts a clear idea of how custodial sentencing may impact upon any given family and alert all relevant agencies and support services to the needs of the children in question so that support can be provided in a timely and relevant fashion"*  
**(Aberlour)**

### **Responsibility for taking forward recommendations from assessments**

**Whilst broadly supportive of the idea of Child and Family Impact Assessments, many respondents pointed out that the success of the proposals would hinge on who was responsible for taking forward any recommendations and whether there were sufficient services available for referrals.**

*"Child & Family Impact Assessments have a number of pitfalls. First is that an assessment is of little use if no one has responsibility for the issues identified. Admittedly each assessment is likely to produce a range of actions requiring input from a number of agencies – something like the Named Person may be well placed to take forward.....The information collected must be acted upon as appropriate but the risk is that no one agency has responsibility and therefore that the information will be lost in the system"* **(Families Outside)**

*"Volume is seen as a potential barrier to implementation as is the cognisance taken of the reports by the courts and the consistency around acting on the information"* **(Crossreach)**

*"The extent to which potential problems occur is likely to depend, at least in part, on: How the information is used, who will have responsibility for implementing the recommendations of the assessment?"* **(CJVSF)**

*"What services are in place to deal with the issues that are highlighted by the Child Impact Assessment? It is likely there will be financial implications for health conditions that are identified that may or may not come under existing provision"* **(RCPCH)**

*"Obviously, we need to make sure that services are available to deliver on speech, language and communication needs that have been identified. SLT services have been subject to funding cuts in recent years that have impacted on local provision. For example, some local authority areas have experienced a 20% cut in their funding for SLT services"* **(RCSLT)**

*"The impact assessment will only be helpful if the appropriate services then exist to support children and their families affected by parental imprisonment and this could also become a barrier to implementation as it would render the impact assessment potentially inconsequential for some children. Many services do exist but they are not available in all areas of the country. We would see Prison Visitors Centres/Family Help Hubs as places able to support families and offer services following a family impact assessment for example, but they are not provided at every prison"* **(Crossreach)**

### **Assessment and the integration of services**

**Respondents noted that whilst there are good services in place, there is often a disconnect between them, how would Child and Family Impact Assessments work to join up these gaps?**

*"We note a number of processes below that have the potential to support families in this situation. The reality is that these processes are not currently connected to the justice system, meaning that families remain overlooked and unsupported. A Child & Family Impact Assessment would usefully make these links, but such Assessments may require good marketing to ensure relevant professionals understand the need and importance of them as a 'missing link' between the various processes or, in the case of children, referral to the Named Person"*  
**(Families Outside)**

*"When these services are in place, however, it is imperative that they are integrated. There can be challenges in getting services integrated and working well together, as well as getting the resource for speech and language therapists to train staff for LC profiling to take place and referral systems to work smoothly. In particular, work between SLTs, Child and Adult Mental Health Services and social services in a more integrated way is important"* **(RCSLT)**

**Questions posed about the practicalities of the assessments**

**Where are the assessments undertaken?**

*"An initial brief assessment could be undertaken in court, but this does not preclude the need for a more in-depth assessment shortly afterwards"* **(Families Outside)**

*"Members were keen to understand where the assessments will be undertaken, and suggested that the location of the assessment may have implications for how it is conducted. It was thought that the assessment should be child-focused and involve a more in-depth process than could be conducted in a court"* **(CJVSF)**

**What information is included?**

*"Research into what these assessments might look like was conducted on behalf of Families Outside in 2012. The researchers developed three versions of assessment: a Brief Assessment, designed to be conducted at court with the accused/offender and takes only a few minutes; a medium level assessment, which is more in-depth, likely to take place in the family home with the family members concerned, and would last a couple of hours; and an intensive assessment, which would be conducted over time based on the SHANARRI indicators of wellbeing, ideally by a professional with an established relationship with the family. These tools can be provided to the Consultation if desired. A small pilot study of the Brief Assessment will be conducted later this year"*  
**(Families Outside)**

**How often is the assessment reviewed?**

*"The family's circumstances are likely to change rapidly during one member's involvement in the justice system. Information collected at one stage should not be assumed to remain consistent over time and should be reviewed at key stages"* **(Families Outside)**

*"We would also propose that regular review periods are laid down, to ensure that Impact Assessment remains current and 'live'. Children's needs and issues around*



*parental imprisonment will change over time, even during a short sentence, and responses should be reviewed and altered as appropriate” (SWSCJA)*

### **Secrecy, identification, stigma and parental rights**

**Several respondents highlighted issues around the rights of families and questioned what would happen if families didn't want to take part or could not be identified for assessment.**

*"The only thing we would add relates to the decision(s) made by some families to not inform children of the fact that someone in the family has been sent to prison. Exactly what form this might take we are unclear as yet but there may be situations where this is in the best interests of the children involved” (Positive Prison? Positive Futures)*

*"One potential problem might be that it is not always known at the time of sentencing whether or not children are involved. If there is no legal connection between parent and child, and if the adult being sentenced does not reveal that a child is involved, the child may not be identified. Our staff at Edinburgh Prison Visitors' Centre find that often it is only when children come to the centre that a relationship is recognised” (Salvation Army)*

*"It may also be the case that young people and their families do not want these assessments to be completed, potentially due to fear of further stigma, and it is important this option is available but the reasons behind these decisions are explored” (CYCJ)*

*"We have a concern about parents' rights. Will these be adequately safeguarded once statutory agencies are involved?” (Salvation Army)*

*"Automatic referral to another agency might compromise a family's right to privacy: the best interests of the child and the family's right to privacy would have to be considered and handled carefully” (Families Outside)*

*"CJVSF members also flagged up a potential conflict between the rights of the child and the rights of the family to privacy” (CJVSF)*

### **Linking and building on pre-existing legislation**

**As has been touched upon previously, several respondents highlighted that the proposals for Child and Family Impact Assessments would only work if linked in with pre-existing legislation, such as the Children and Young People (Scotland) Act 2014, and were not an additional burden for services. The Social Work (Scotland) Act 1968 was also highlighted.**

*"Child and Family Impact Assessments should link with and add value to existing legislation and policy, namely: The Children and Young People (Scotland) Act and GIRFEC. In particular it will be important for the Impact Assessment and support for children affected by imprisonment to link in with the wider Child's Plan. If issues were flagged up through assessment, they would then become part of the Child's Plan through existing GIRFEC provisions and legislation. This would mean that there would be a statutory duty on Local Authorities to implement the recommendations. Information sharing provisions are also already contained*

*within the Children and Young People (Scotland Act)" (CJVSF, Families Outside)*

*"In order for these proposals to have the greatest possible impact consideration should be given to the way they connect with existing and proposed legislation and guidance: CFIA's should take a GIRFEC approach in which wellbeing, as well as best interests, of the child, are seen as central. This would enable CFIA's to more easily tie in with the statutory Child's Plan, potentially giving CFIA's a higher profile and greater role in planning how to support a child more generally"*  
**(Children 1<sup>st</sup>)**

*"The Impact Assessment and its recommendations would form part of the single Child's Plan within GIRFEC. Again this would ensure that any planned actions would be integrated into other work with the child, and would be shared across relevant bodies, rather than standing alone or being the responsibility of a single agency"*  
**(SWSCJA)**

*"When an adult with dependent children is sent to custody, whether that be on remand or sentence, the Named Person should be informed by the courts, we believe this should automatically trigger a wellbeing assessment under GIRFEC provisions. The draft statutory guidance for the Children and Young People (Scotland) Act 2014 highlights a non-exhaustive list of reasons why a wellbeing concern may be identified"*  
**(Barnardo's Scotland)**

*"We believe that frameworks such as GIRFEC would be well placed to incorporate these assessments and enact any following recommendations. Under the Children and Young People (Scotland) Act, all children will have a Named Person, and, where deemed necessary a Child's Plan. However, this is not an alternative to the Child and Family Impact Assessment, as we believe the needs of children in this situation will be best met by a more tailored approach"*  
**(SYP)**

*"As local authorities begin to realise their obligations to GIRFEC as defined under the terms of the Children and Young People Act, so to will support services be designed around identified wellbeing needs. It would seem sensible therefore to ensure that child impact assessments take into account the impact of parental imprisonment on a child's wellbeing. To ensure that this is consistent with GIRFEC we suggest that the Bill reflect a correlation between the assessment and the SHANARRI wellbeing indicators"*  
**(Aberlour)**

*"Would it be more appropriate to refer to the Children and Young People (Scotland) Act 2014 and the Child's Plan?"*  
**(Highland Children's Forum)**

### **Voice of the child/UNCRC**

**Some respondents questioned how the Child and Family Impact Assessments were going to ensure the voice of the child was heard and their rights respected and upheld. Several organisations highlighted the UNCRC, particularly Article 12.**

*"Taken together, in order to enjoy their human rights, children need to be able to express themselves to the best of their ability and also need to be able to understand information to the best of their ability. The RCSLT recommends that the child and family impact assessment must include and properly reflect the voice of the child. To achieve this, the assessment process must ensure that any*

SLC difficulties are identified and then adapted effectively to the child's individual SLC needs" **(RCSLT)**

"Children often feel excluded from the court proceedings and their point of view is often bypassed, despite the fact that decisions being made will directly affect them. One boy interviewed for a recent Barnardo's report stated 'No-one has asked me what I want to do; no-one has asked me if I want to see my dad; no-one has asked me anything'.....We hope CFIA's will allow children to express their views, emotions and feelings about what is happening, helping them to feel included and listened to" **(Barnardo's Scotland)**

"CJVSF members would like to see children and families themselves actively involved in the assessment, to ensure that they have a strong voice in the process" **(CJVSF)**

"The Child and Family impact assessment also provides an opportunity for children and young people to express their views about their parent's imprisonment. Too often these children are left to deal with the loss of a parent on their own and it is only when behaviours manifest into youth offending that intervention takes place" **(NSPCC Scotland)**

"Assessments will allow children to express their views about what is happening, allowing them to feel included and respected" **(SYP)**

"To ensure that the central aim of the proposed Bill to protect and uphold the rights of vulnerable children is fulfilled, Together recommends that when drafting a Bill, explicit reference is made to the protection, respect and fulfilment of Articles 2 and 3 of the UNCRC" **(Together)**

"In our experience children of all ages are very often able to express their views if they are appropriately supported to do so, yet many children tell us that even when they are asked their views, they do not always feel listened to" **(Children 1<sup>st</sup>)**

"I strongly believe that the methods for gaining children's views should be child-centred and the expectation for this to happen should be made very clear in legislation" **(Individual)**

### **Other issues in relation to assessments**

**There were 2 other notable objections to the proposals in the Bill regarding the role of the Scottish Courts and Tribunal Service and the comparison between Child and Family Impact Assessments and Victim Impact Statements.**

"While SCTS are wholly supportive of reducing the adverse impact of imprisonment on an offender's family we are not persuaded that there is a role for the SCTS in this process. The proposal would create an additional duty for the courts whose involvement in criminal proceedings generally ends at the point of sentence, except in relation to on-going review hearings for community based sentences or breaches of court orders. It is not clear whether the intention is for the court to consider the results of any report obtained but we could not support any new, additional duty which extends beyond the current functions of SCTS and the judiciary in criminal proceedings"

*"If the court is not to be involved in any decision making it would not be appropriate for it to merely act as an 'ordering' service or to act as a post box within the justice system"*

*"If the proposal is for SCTS staff to take on this role without a requirement for judicial involvement we would note that there is a matter of principle involved as the SCTS staff's primary role is to support the judiciary and question whether they are best placed to take on this task" (SCTS)*

*"A victim impact statement is not an assessment but rather a way of providing information directly from the victim to the court on the impact of the crime. For these reasons, we believe that there is a difference between victim statements and the proposed Child and Family Impact Assessments. The former is used to provide a voice to the direct victim(s) of crime within the court process, whereas the latter is to be used to inform the relevant agencies of the support needs of children affected by the imprisonment of their parent" (Victim Support Scotland)*

### **Q3. B) And who do you think is best placed to deliver them?**

**Many respondents cited the Children and Young People Act in one way or another as being the vehicle for taking forward Child and Family Impact Assessments, either through the Named Person or through referrals under GIRFEC procedures. Other options were also discussed such as the third sector, child and family social work and criminal justice social work. Many respondents highlighted the pros and cons of each option, these are provided below.**

#### **Children and Young People (Scotland) Act/GIRFEC/Named person**

*Families Outside suggested that there could be a statutory duty to refer children and young people to the Named Person in the event of a parent's likely imprisonment. They endorsed the response of CJVSF that:*

*"The Named Person service provider (i.e. the health board or local authority) would then be responsible for ensuring the completion of the impact assessment from whoever is best placed to carry this out from those services that are already known to the Child. There is a range of professionals that may be well placed to undertake the assessments, e.g. social workers, lead professionals, or staff from independent organisations" (CJVSF)*

*"Regardless of the final agreement around roles and responsibilities for informing the GIRFEC Named Person, the Named Person would then be able to instruct the completion of a Child and Family Impact Assessment from whoever is best placed to carry this out from those services (public or third sector) who are already known to the Child" (SWSCJA)*

*"When an adult with dependent children is sent to custody, whether that be on remand or sentence, the Named Person should be informed by the courts, we believe this should automatically trigger a wellbeing assessment under GIRFEC provisions" (Barnardo's Scotland)*

*"The Child and Family Impact Assessment could be by those already involved with the child and the family, facilitated through GIRFEC and the Named Person, with a focus on the long-term and short-term wellbeing of the child" (SYP)*

*"We would question whether this could be the responsibility of the named person, given each child will have one and parental imprisonment may indicate a 'wellbeing concern' the Named Person should already have an overview of the child's wellbeing, and know if there is already a Child's Plan in place. They will also be known to the child/family, may already have an established relationship, and their involvement may be deemed to be less stigmatising. It may be that the Named Person decides further support from other professionals is required but we would suggest that they could be responsible for undertaking at least the initial stages of any parental impact assessment" (CYCJ)*

#### **Social workers/court staff**

*"Court-based social workers are well placed to conduct an initial assessment through discussion with the accused/convicted person. They are however trained to focus on the person who has committed the offence and are less well-placed to*

*assess the needs of the child or any other family. Children and Family Social Workers are more likely to focus on the needs of the children, but they are not currently based in criminal court; they may be less attuned to the implications of the justice process for the wider family; and some families will be reluctant to engage with statutory agencies who have the power to remove children from their care” (Families Outside)*

*“We do not feel it is appropriate for court staff, including Criminal Justice Social Workers, to carry out this task. Their primary focus and interest has to remain on the adult in court” (SWSCJA)*

*“On balance we would suggest that this [CFIA] be conducted in the first instance by professionals already working with and known to the family, criminal justice social workers etc.” (Aberlour)*

*“Criminal Justice Social Work – statutory service so should be available but potential risk of stigma of involvement, offender focus, and issues with understanding the impact and needs of children and young people. We do not deem this would be the most appropriate choice. Children and Families Social Work – similar issues to CJSW, although they may have less understanding of the criminal justice system, but would have a better understanding of the needs of children and young people and should know more about local service provision” (CYCJ)*

*“We believe that Children & Family Social Workers are currently better placed than Criminal Justice Social Workers to conduct Child and Family Impact Assessments because of their experience and training. C&F Social Workers may not have the same understanding of the criminal justice system as CJ Social Workers, but this can be learned” (Salvation Army)*

*“There is a clear need for upskilling someone who works primarily with children to do the job, whether that be with third sector agencies or child & family social workers” (Individual)*

*“Whilst SCTS are wholly supportive of reducing the adverse impact of imprisonment on an offender’s family, we are not persuaded that there is a role for SCTS in this process” (SCTS)*

### **Independent organisation/third sector**

*“A visibly independent family-focused organisation, ideally with knowledge of the justice system and potential impact of imprisonment, would be the ideal solution. Such a service would need to be fully funded and sustained, however, which adds to the cost of conducting these assessments and may be prohibitive” (Families Outside)*

*“If there is no active social worker involvement with the family then third sector organisation or organisations would be best placed to undertake these assessments. In our experience, third sector service providers can foster a different kind of relationship with families which could prove beneficial in these circumstances” (Aberlour)*

*“Independent/Third Sector – May be best placed to undertake a truly needs led assessment, involvement with these services brings less stigma, and the outcome*

*of the assessment may include support from third sector organisations. This may cause some issues regarding nationwide availability of such services and funding cycles” (CYCJ)*

*“We welcome the inclusion and explorations of the third sector’s ability to be involved with and deliver the reports which would be co-constructed with families as they are often recognised for their independence and ability to bridge a gap between a family and the criminal justice system” (Crossreach)*

*“Third sector involvement may be possible and desirable, but whoever is involved needs to be specially trained and guided by social workers” (Salvation Army)*

*“Existing third sector agencies can be utilised to train people in Criminal proceedings and systems” (Individual)*

### **Family Support Co-ordinators**

*“An alternative proposal (which would require investment) would be to introduce a network of Family Support Coordinators across all courts (similar to the Witness Service being available across all courts). These coordinators could act both as a link into GIRFEC arrangements and as a wider support service for families attending court and affected by court decisions” (SWSCJA)*

In line with the draft proposal and Consultation document the Summary of Responses will move onto Question 5.

**Q5. Do you think there are any alternatives to Child and Family Impact Assessments?**

The majority of respondents who answered this question did not think there were any alternatives to Child and Family Impact Assessments. Other options were explored but were not seen as preferable. Issues already covered in previous questions were also mentioned here, such as Criminal Justice Social Work Reports not being an alternative, and existing provisions such as GIRFEC being the appropriate structure.

**No current alternatives**

*"A number of processes currently exist which could support (and be supported by) the introduction of a Child and Family Impact Assessment. These are not adequate as alternatives to Child and Family Impact Assessments the way they are used at present"* **(Families Outside, CJVSF)**

*"No, the Child and Family Impact Assessments are the most appropriate way to deliver the aims in this Bill"* **(RCSLT)**

*"No, we believe Child and Family Impact Assessments are necessary because there is currently no system in place which ensures that children and their families receive immediate support after their parent or partner is sent to prison"* **(Barnardo's Scotland)**

*"No. The Scottish Youth Parliament is supportive of the Child and Family Impact Assessment as the assessment would support children and families and consider their needs and rights primarily"* **(SYP)**

*"We cannot think of any alternatives. We think it is crucial that these children and young people are identified to enable their needs to be assessed, through an assessment where this is the main focus, and that support is provided as required"* **(CYCJ)**

*"We are not aware of an alternative which would have the same impact and range as is proposed"* **(Crossreach)**

*"We think that the assessments are a positive step forward if handled well. No alternatives come to mind"* **(Salvation Army)**

**No, but they can be linked into pre-existing structures e.g. GIRFEC**

Many respondents highlighted the importance of the Children and Young People (Scotland) Act, particularly GIRFEC and the Named Person. Most of these views have been covered elsewhere in the consultation, see question 1 and question 3 for comprehensive responses to this. Additional points below.



*"The Guidance for the Children and Young People's Act will hopefully provide an opportunity to ensure that children with a family member at risk of custody are referred to the Named Person. As the Crown Office and courts do not have a statutory duty to refer children to the Named Person, the impact on children and young people could easily be overlooked"* **(Families Outside)**

### **Criminal Justice Social Work Reports**

**Again the issue of Criminal Justice Social Work Reports has already been touched on (see question 1, failure of statutory agencies to provide support). Additional points below.**

*"The current criminal justice social work reports do not fulfil this function as highlighted by the report and would need to be radically changed should they be thought of as a means to delivering for children and families as well as prisoners"* **(Crossreach)**

*"Criminal Justice Social Work reports do not tend to capture the needs of children affected by parental imprisonment, since the focus of the reports is on the person who committed the offence. We cannot rely upon offence-focused processes to protect the wellbeing of the remaining children and families"* **(Families Outside)**

*"Recommendations in the report are designed primarily with this end in mind [sentencing decision] and with the purpose of seeking to prevent further reoffending, this is not a process of assessment centred on the family or indeed the child and therein lies the problem"* **(Barnardo's Scotland)**

**One respondent did however suggest that these reports could be improved.**

*"Improvements could be made to the framework for Criminal Justice Social Work reports and they could be made mandatory in all cases where a defendant has dependent children, with guidance provided on what information should be included, who should be consulted and what options should be considered"* **(Prison Reform Trust)**

### **Child in need assessment**

*"The Children (Scotland) Act 1995 contains a requirement for local authorities to 'safeguard and promote the welfare of children in their area who are in need' by providing a range and level of services appropriate to the child's needs. This could be a useful option but again is not regularly triggered by an adult's entry into the justice system and could cause anxieties for people who lack trust in professionals who have the power to remove their children"* **(Families Outside, CJVSF)**

### **Referral to the Reporter**

*"Children can be referred to the Children's Reporter on the grounds of care and protection, However, children with a family member in prison may not need this level of 'care and protection' and entry to the Children's Hearings System may be an overreaction in the first instance"* **(Families Outside)**

*"Children can be referred to the Children's Reporter on care and protection grounds; however this will not always be the most appropriate option" (CJVSF)*

**Q6. Do you think the proposed amendment to the Education (Additional Support for Learning) (Scotland) Act 2004 is sufficient to provide the necessary support for children experiencing parental imprisonment? If not, please explain why.**

**The majority of respondents supported this proposal; many chose to highlight some of the additional caveats and changes that would have to run alongside any change in legalisation.**

**Yes this group should be named specifically to trigger automatic assessment**

**The argument is that these children are already entitled to additional support under the Act, it is not creating a new group to be entitled, the provision is simply identifying those who may have been hidden before.**

*"We agree that it may be helpful to name this group specifically, given the issues raised above about their vulnerability and the often hidden nature of their support needs" (CJVSF)*

*"We support the proposals for children affected by imprisonment to be identified as a specific group with equivalent rights to Looked After Children, in terms of triggering an automatic assessment by education authorities to identify and respond to any additional support needs, we have no proposed changes to this aspect of the Bill" (SWSCJA)*

*"The RCLT considers the proposed amendment as sufficient. It is worth emphasising that a SLC developmental difficulty is the most common reason that triggers ASL for children and young people. The RCLT believes the proposals will ensure this particular group of CYP – who, as noted above, will experience disproportionately high levels of SLC difficulties – gain access to the support, intervention and services they need to improve their wellbeing and life outcomes" (RCLT)*

*"The amendment to the 2004 Act is necessary to ensure that parental imprisonment is explicitly highlighted as a risk factor that could indicate the need for assessment and subsequent additional support. NSPCC Scotland believes that parental imprisonment should be one of the triggers for assessment as it can often be a pre-cursor to other issues" (NSPCC Scotland)*

*"ASL and GIRFEC, among others, already have the potential to support families when someone goes into custody. The triggers for these processes simply fail to be activated" (Families Outside)*

*"We believe the amendment to the Education Act is appropriate.....The Bill seeks to add children affected by the imprisonment of a parent to that group, we believe this could be a huge step in recognising and identifying these children, who are too often hidden, and the particular vulnerabilities they face. What we hope this amendment will do is highlight parental imprisonment as a trigger and start to identify these children" (Barnardo's Scotland)*

*"The Scottish Youth Parliament believes the Education Act is appropriate for this..... We believe children affected by parental imprisonment should be recognised as a particularly vulnerable group in this Act, as this will help to recognise, identify and adequately support these children" (SYP)*

*"We support the suggestion of the Education Act be amended to include children affected by parental imprisonment with a presumption that they will have additional support needs" (Aberlour)*

*"We agree the amendment to the above Act to ensure parental imprisonment is specifically recognised as potentially impacting on a child's educational needs is beneficial and the important role schools can play in supporting a child to be resilient" (CYCJ)*

*"We absolutely welcome the potential inclusion of this group of young people being separately allowed for in the Additional Support for Learning Act, acknowledging the close link with looked after children, and recognise the added benefit of school support being a universally available service for all school age children" (Crossreach)*

*"We therefore agree that there should be a presumption of the need for additional support unless assessed otherwise that parental imprisonment should be a specific trigger for an assessment. This mechanism will, we believe, enable the necessary level of support for be give" (Salvation Army)*

### **More training and support for professionals**

**Respondents noted that training must run alongside legislation, some noting that teachers are not always best equipped to deal with specific issues like bereavement, trauma and loss.**

*"At the heart of this proposed legislative change is a desire to improve practice so that children and families are better supported. It will therefore be important to ensure that relevant professionals are adequately trained and supported to understand the purpose, process, and content of Impact Assessments so that they are able to use the information gathered from it to provide appropriate support" (Families Outside, CJVSF)*

*"We would hope that enhanced training for educational professionals, Named Person's, Lead Professionals and all those involved with a child through GIRFEC, on the impact of parental imprisonment on children would run alongside this change in legislation" (Barnardo's Scotland)*

*"We would like to see statutory guidance underpinning this Bill directed at how we best equip teachers to meet the needs of children whose parents are in prison. This could be through in-service training and modules as part of the range of formal teaching qualifications" (Aberlour)*

*"I believe teachers in this area will be more onerous and costly than planned, but is necessary" (Individual)*

### **Other issues raised by individual respondents are covered below**

- A few respondents queried whether the Bill should include 2 assessments, and if one assessment would suffice with some suggesting the GIRFEC

*Child's Plan would encompass both the proposals in the Bill. (Aberlour, CYCJ and Highland Children's Forum)*

- **Crossreach and CYCJ** queried how children under school age would be captured through this amendment?
- **Families Outside** highlighted that for this proposal to be successful there needed to be improved information sharing between adult and child systems, and **CJVSF** noted that making prison visits more friendly could also be beneficial.
- **SYP and Barnardo's Scotland** noted that the amendment could help to reduce stigma and help the move to a more understanding education system where all professionals are more aware of how parental imprisonment can impact children.
- **Aberlour** mentioned Part 12 of the Children and Young People (Scotland) Act 2014 which relates to families with children at risk of being looked after, as being an important link to make within this Bill.
- **Barnardo's Scotland** additionally highlighted the potential for absent parents to maintain the bond with their children through Additional Support for Learning in school, such as allowing time off from school for visits, facilitating skype calls, allowing them to help with homework.

**Q7. What are the likely financial implications of the proposed Bill? If possible please provide evidence to support your view. What (if any) other significant financial implications are likely to arise?**

**Respondents highlighted several areas where the Bill would have financial implications; several however also highlighted where the Bill could save money in the long-term.**

**Costs need to be based on assumptions**

*"The number of children affected by parental imprisonment is unknown; therefore cost calculations will need to be based on assumptions" (Families Outside)*

**Staffing costs for assessments**

*"As highlighted in the consultation paper (p 28.), the main cost associated with the proposed Bill is likely to be the staffing costs associated with carrying out Child and Family Impact Assessments" (Families Outside)*

*"There will be staff time implications and costs for any agency that is completing the potentially high numbers of assessments, as well as training on the potential needs of children affected by parental imprisonment" (CYCJ)*

*"An accurate costing is not possible without some prediction of volume and that depends on whether all children in a family will be subject to a separate impact assessment.....It also depends on whether the remand v's sentencing issue is included in the final Bill" (Crossreach)*

**Admin costs/court time**

*"If such a proposal were to be taken forwards, SCTS would incur costs administratively to order the assessments. If the intention is for the court to consider the assessment then there is likely to be a significant amount of additional court time required incurring substantial costs in terms of judicial and administrative staff time and accommodation" (SCTS)*

*"There will be the cost of producing documents/forms that are part of the process, training materials and information resources for families" (Salvation Army)*

*"We also wonder if a national template for such assessments will be provided and there will be financial implications of tailoring this or if not being provided developing local assessments, as well as creating and implementing local policies and procedures" (CYCJ)*

**Additional costs of services**

*"There may also be additional costs if further provision of services is needed to fulfil the recommendations of impact assessments as we believe there are insufficient services available at present to meet potential demand (e.g.*

*counselling services for children to support experience of loss and grief”*  
**(Crossreach)**

*“If an impact assessment identifies the need for extra support (not necessarily ASL) there may be a cost implication to this”* **(Salvation Army)**

*“It is likely there will be financial implications for health conditions that are identified that may or may not come under existing provision”* **(RCPCH)**

### **Training and upskilling of professionals**

*“There would be training costs for Judges, Sheriffs, Justices of the Peace and Legal Advisors”* **(SCTS)**

*“Additional costs may be incurred within schools in terms of teacher time/training or additional support for learning provision”* **(Crossreach)**

*“The training of existing and new staff will be an expense”* **(Salvation Army)**

*“Upskilling and training will be vital, costly and cannot be minimised. A large part of this will be engaging with professionals to understand the issues and adapt their attitudes/approaches accordingly”* **(Individual)**

### **Potential costs for local authorities?**

*“There will need to be clarity over who is responsible for covering any costs associated with the assessments. If it is to be funded on a geographical basis (e.g. by Local Authority), who would be responsible for covering the costs if the parent going into custody is usually resident in a different geographical area to the child?”* **(CJVSF)**

### **Cost savings as a result of a preventative approach**

*“We would also anticipate cost savings in the future since the impact assessments would have a preventative role, ensuring that adequate support is put in place before a child’s situation deteriorates. This may lead to savings for a range of departments including justice, health, education, and social work. The likelihood of intergenerational offending is also likely to be reduced if appropriate support is provided; these reductions in offending would also have a cost saving attached.”*  
**(Families Outside)**

*“We are supportive of the preventative approach to public services, promoted by the Christie Commission, and would encourage the Scottish Parliament to also consider future cost savings in any financial analysis of the proposed Bill”*  
**(CJVSF)**

*“It is therefore the view of the RCLT that substantial savings can be made if the right support is in place, and accessible services provided, to children and families with SLC difficulties through the provisions in this Bill”* **(RCLT)**

**Q8. Is the proposed Bill likely to have any substantial implications for equality? If it is likely to have a substantial negative implication, how might this be minimised or avoided?**

### **The Bill will have a positive impact**

"We would anticipate that the proposed Bill will have a positive impact on equalities, since it would help to identify children at an earlier stage that are likely to be at higher risk of negative outcomes" **(Families Outside)**

"The current situation has significant negative consequences for families in which one or both parents are in prison. The RCSLT would consider attention to these families to only be beneficial to their enjoyment of equal opportunities in Scotland" **(RCSLT)**

"The proposed Bill will have a positive impact on equalities" **(CJVSF)**

"Those who are involved in the criminal justice system often come from disadvantaged backgrounds.....Therefore, NSPCC Scotland supports the proposals which would legislate for early assessment and mitigate the exponential inequality imposed on innocent babies and children affected by parental imprisonment" **(NSPCC Scotland)**

"I believe it will have a positive effect, so long as the professionals involved 'buy in' to the process and support its implementation" **(Individual)**

### **There could be negative consequences**

"Concerns regarding stigma if assessments and services are provided beyond universal services are the main concern" **(CYCJ)**

"People in poverty often feel that they are marginalised and have fewer rights than others. It is possible that the assessments may deepen this perception if they are presented in such a way that the rights, responsibilities and privacy of parents/carers appear to be threatened" **(Salvation Army)**

### **Child Rights Impact Assessment on the whole Bill**

"In order to determine whether the Bill is likely to have any substantial implications on the rights of children and to evaluate to which any negative implications might be minimised or avoided, Together recommends that a Child Rights and Wellbeing Assessment (CRWIA) is undertaken on the proposals" **(Together)**

"We support the proposal to do a full equalities impact assessment in order to both assess and minimise any potential for discrimination which may be caused by implementation of the Bill" **(Crossreach)**

"We feel that any Bill put before Parliament on this topic should be subjected to a full child's rights impact assessment" **(Aberlour)**

"A Child Rights Impact Assessment (CRIA) should be carried out on this Bill" **(Children 1<sup>st</sup>)**

## **Q9. Other issues outwith the prescribed consultation questions**

**Some respondents chose to focus on particular areas within their responses, flagging up issues that do not fall under any of the prescribed questions. These are summarised below:**

### **Child and Adolescent Mental Health Services**

*"Scotland's mental health provision remains woefully inadequate. With a waiting time of 23 weeks which is often missed by several months, children of prisoners may only finally be seen by CAMHS after their parent has been liberated. This is unacceptable. Aberlour has long campaigned for far greater statutory investment in CAMHS and a significant and dramatic reduction in waiting times. Our view is that children should not have to wait any longer for expert clinical care to address mental health needs than they currently do for acute physical healthcare needs. We would like to see this reflected in primary legislation" (Aberlour)*

### **Kinship care**

*"Children in kinship care often have existing attachment/relationship difficulties due to separation from their parents. Further separation, either from kinship carers or from birth parents with whom they are attempting to retain a positive relationship, even if they are not currently living with them, could have a disproportionate impact on their wellbeing. We would hope that any proposals to support children affected by parental imprisonment would take the often complex dynamics and needs of kinship care families into account" (Children 1<sup>st</sup>)*

### **Focus on female offending**

*"We believe the focus of this proposed Bill should be two-pronged – in the first instance, ensuring fewer mothers are imprisoned, thus enabling them to maintain care of their children; in circumstances where custody is unavoidable because of the nature of the offence, ensuring any dependent children are identified and supported at the earliest opportunity" (Prison Reform Trust)*

### **Babies affected by the justice system**

*"New research from NSPCC and Barnardo's shines a spotlight on the needs of babies with a parent in the justice system. There are significant gaps in our knowledge about this group of babies with little or no systematic approach to data collection.....The poor or disorganised attachment relationships in infancy that harm outcomes can be avoided through timely interventions with carers and babies, both in prison and community settings" (NSPCC Scotland)*

### **Speech, language and communication issues**

*"Speech and Language Therapists (SLTs) are a significant part of the service and support provision required for offenders and their families. This is because people who are imprisoned are highly likely to have speech language and communication*



*(SLC) difficulties and support needs. Evidence tells us that the majority of offenders have below average SLC abilities. For example, 60% of young people in the justice system have a communication need. From the experience of SLTs working with offenders, it is evident that many prisoners remain unassessed and unsupported. SLTs have a crucial role in identifying SLC difficulties for this group"* **(RCSLT)**

### **Cultural change**

*"There is potential for cultural change to be facilitated by the provisions in this Bill. We need to work towards a society where these children and families are not stigmatised, where they feel comfortable asking for support and where these supports are available. Legal change has a crucial role in facilitating cultural change, if this group of children and families are recognised in law and the organisations and bodies they come into contact with become more aware of the impact, we would hope to see a societal shift in the way communities view children and families affected by imprisonment"* **(Barnardo's Scotland)**

#### **Section 4: Commentary on Consultation: Mary Fee MSP**

Firstly I would like to thank all of those who took the time to respond to the consultation. The response rate from individual members of the public and interested organisations was great to see.

I would also like to express my gratitude to Barnardos Scotland for all of their help and support with the proposal and consultation.

Throughout Scotland there is a lack of awareness about the impact parental imprisonment has on children. They are often overlooked as victims of crime by politicians, the media and the court system. The services available to them are almost non-existent and they are more or less absent from policy and legislation. They are being neglected and I believe that the Scottish Parliament has responsibility to act.

Therefore I decided to bring this proposal forward with Barnardos to legislate so that these children do not continue to suffer in silence. I believe that the proposals for Child and Family Impact Assessments and special recognition under Additional Support for Learning have the potential to change the lives of thousands of children across Scotland.

The aim of my consultation was to provide an opportunity to receive views and comments as well as analysis and to gauge public opinion. It was an opportunity to enable people and organisations to argue the case for certain refinements. In both respects, I believe that this has been an extremely successful consultation.

I was pleased that there was a substantial majority of support from respondents for the aims of the proposed Bill. The responses from interested organisation highlighted that there is a deficiency in current measures such as GIRFEC that fails to take into account the needs of Children affected by parental imprisonment.

Unfortunately after the consultation closed there was not enough time for the Bill to be lodged as a final proposal to be heard in this Parliamentary session. However I believe that the views expressed in the consultation need to be heard.

I decided to publish the Summary of the Consultation responses to show the support that this proposal received and I believe that the responses will help organisations and policy makers in their efforts to help this vulnerable group of children.

I certainly believe that the proposal will do this and I fully intend to continue to pursue this issue up until next May's election and beyond.

Thank you

Mary Fee MSP  
May 2015

## **Annex**

**SWSCJA** – South West Scotland Community Justice Authority  
**RCSLT** – Royal College of Speech & Language Therapists  
**CJVSF** – Criminal Justice Voluntary Sector Forum  
**SYP** – Scottish Youth Parliament  
**Together** – Scottish Alliance for Children’s Rights  
**CYJ** – Centre for Youth and Criminal Justice  
**SCTS** – Scottish Courts and Tribunals Service  
**RCPC** – Royal College of Paediatrics and Child Health  
**Aberlour** – Aberlour Childcare Trust  
**NSPCC Scotland** – National Society for the Prevention of Cruelty to Children

**SLC** – Speech, Language and Communication  
**CFIA** – Child and Family Impact Assessments  
**GIRFEC** – Getting it Right for Every Child  
**ASL** – Additional Support for Learning  
**CAMHS** – Child and Adolescent Mental Health Service

## **Appendix**

***Dear Mary Fee MSP***

***I am writing to give my support to your proposed Members Bill entitled Support for Children (Impact of Parental Imprisonment) (Scotland) Bill.***

***As a supporter of Barnardo’s Scotland I am aware of the poor outcomes often faced by children affected by parental imprisonment. I am particularly shocked by the following statistics that those working with this group of children have highlighted:***

- ***More children will experience parental imprisonment than divorce.***
- ***Children affected by parental imprisonment are 3 times as likely to develop mental health issues when compared with the rest of the population.***
- ***65% of boys with a parent in prison will likely go on to offend themselves.***

***It is for this reason that I am supporting the proposals within your Bill. Introducing Child and Family Impact Assessments when a parent is sent to prison will really help to identify some of the problems faced by these children and make sure that they get the support they need rather than being left to face the consequences of a situation not of their making.***

***I am really pleased and fully support your approach to improving support for children affected by parental imprisonment at school. Difficulties at school, playground bullying and stigma are common for children with a parent in prison, if these children were recognised as a vulnerable group, teachers will be more aware of the particular issues they face and be better able to provide support.***

***I hope these proposals receive the cross-party support required for a Bill to be introduced to Parliament and I give my support to the proposals.***