

A Guide to Youth Justice in Scotland: policy, practice and legislation

Background, Policy and Legislation

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1. Introduction

In Scotland, one of the principles underpinning social work with both children and young people who offend is a welfare approach. This stems from the work of the Kilbrandon Committee in 1964 and formed the basis of the Social Work (Scotland) Act 1968. The principles of justice and welfare together still underpin social work practice in Scotland today.

‘A Guide to Youth Justice in Scotland: policy, practice and legislation’ is aimed at practitioners and managers who work with children and young people who offend or who are at risk of offending. This section gives a broad overview of significant historical developments in determining how Scotland deals with children and young people who offend, and outlines relevant policy, rights and legislation pertinent to this area of work.

How local authorities prioritise and practice youth justice varies significantly across Scotland for a number of reasons including demand for services and geographical considerations. Some local authorities have had the capacity to create specialist youth justice teams whilst others have had to deliver services using workers located in either in Children and Families or Criminal Justice Services. Irrespective of how individual local authorities are organised, it is important that staff who work with children and young people involved in offending behaviour retain their skills, knowledge and competencies, in order to deliver appropriate and timely services to some of Scotland’s most vulnerable children and young people.

The primary role of youth justice in Scotland should be:

To divert young people involved in offending behaviour from the adult Criminal Justice System.

Where this is not an option youth justice should:

Seek community disposals appropriate to a young person’s age, developmental stage and seriousness of the offence whenever this is realistic and appropriate.

Parameters for youth justice practice in Scotland have broadly been defined as those young people between the ages of 12 and 18 years who offend or are at risk of offending, with the aim of retaining them within the Children’s Hearing System (CHS) where possible.

2. Historical background

Kilbrandon

There was a concern in the late 1950s and early 1960s that change was needed in the way society dealt with children and young people in trouble or at risk. A committee was set up in 1960 under Lord Kilbrandon to investigate possible solutions. The committee found that children and young people appearing before the courts, whether they had committed offences or not, had common needs. It considered that the existing juvenile courts were not suitable for dealing with these problems because they had to combine the characteristics of a criminal court with an agency making decisions on welfare, and separation of these functions was recommended. The Kilbrandon Report recommended a national co-ordinated system to deal with children in need of compulsory measures of care, the separation of adjudication from disposition and stressed the importance of early intervention.

The establishment of facts, where they were disputed, would remain with the courts, but decisions on what action was needed in the welfare interests of the child were to be the responsibility of a new and unique kind of hearing. These findings were incorporated into the Social Work (Scotland) Act 1968 and on April 15, 1971 Children's Hearings took over from the courts most of the responsibility for dealing with children and young people under 16 years and in some cases up to 18 years who commit offences or are in need of care and protection.

This radical way of dealing with children and young people who offend is incorporated into the Children (Scotland) Act 1995 and the Children's Hearing (Scotland) Act 2011.

3. Youth Justice in Scotland

Policy Developments

Although some policy and legislative developments, such as the introduction of anti-social behaviour orders, restriction of liberty orders, electronic monitoring of young people and specialist youth courts have presented a challenge to the Kilbrandon principles, Scotland has avoided the more punitive aspects of other jurisdictions.

However, despite Scotland's welfare approach, legally 16 and 17 year olds not on a Compulsory Supervision Order have tended to be dealt with predominantly in the adult criminal justice system. Many young people still receive custodial sentences and we imprison more 16 and 17 year olds than almost anywhere else in Europe.

Youth justice in Scotland has been heavily influenced by the cultural and political climate of the time and the establishment of the new Scottish Parliament brought a new focus, notably the national policy discussions of the early millennium.

In November 1999 the Scottish Cabinet held a strategy session which focused on issues relating to youth crime in Scotland. As a result of this an Advisory Group on Youth Crime was commissioned to:

- Assess the extent and effectiveness of options available to Children's Hearings and Courts in cases involving persistent offenders
- Look at the scope for improving the range and availability of options aimed at addressing the actions of persistent young offenders

On June 9, 2000, the report of the work of the Review 'It's a Criminal Waste: Stop Youth Crime Now', along with the Scottish Executive's response, was published. Key recommendations included:

- A national strategy based on core objectives which delivered a consistent framework for local activity
- Expansion of the range of community based interventions for persistent offenders which could be used by Reporters, Hearings, Procurators Fiscal and the Courts
- Expansion of diversion and supervision schemes for 16 and 17 year olds
- A review of the case for raising the age of criminal responsibility to 12 years

The report also recommended the use of bridging pilots for 16 and 17 year olds with the aim of retaining as many young people as possible in the CHS. However, that recommendation was not taken forward and instead in 2002 a Ministerial Group on Youth Crime ordered a feasibility study to be carried out into the establishment of a Youth Court. As a consequence of that a pilot Youth Court was established in Hamilton Sheriff Court in June 2003 and in Airdrie Sheriff Court thereafter. Following an evaluation of the pilot, funding for the Youth Court was withdrawn.

In 2002 Audit Scotland published its review of Scotland's Youth Justice System 'Dealing with Offending by Young People' which provided support for the underlying principles for youth justice in Scotland but also identified several areas for improvement.

In response to the report, Scotland's Action Programme to Reduce Youth Crime 2002 was aimed at:

- Increasing public confidence in Scotland's system of youth justice
- Giving victims a greater stake in Scotland's systems of youth justice
- Easing the transition between youth justice and the adult criminal justice system
- Providing all young people with the opportunity to fulfil their potential
- Early intervention

The 'Improving the Effectiveness of the Youth Justice System Working Group' was asked to develop a strategic framework of national objectives and standards for Scotland's Youth Justice Services, to help achieve the national target of reducing the number of persistent offenders by 10% by 2006.

National Standards for Scotland's Youth Justice Services were published in December 2002, defining a set of standards for youth justice strategy groups and youth justice practitioners to improve service delivery. These applied only to young people within the CHS and shaped much of the work that has taken place across Scotland in respect of persistent offenders.

There were a number of influences in later government policies which placed more emphasis on serious offenders rather than focusing solely on persistence. A significant influence was the Social Work Inspection Agency (SWIA) and Her Majesty's Inspectorate of Constabulary (HMIC) review of the Colyn Evans case.

Colyn Evans was convicted and sentenced to life imprisonment in June 2005 for the murder of a 16 year old young woman in Fife. He was 17 years old when the crime was committed and subject to throughcare support under the Support and Assistance to Young People Leaving Care (Scotland) Regulations 2003. Previously he had been subject to Supervision under Section 70(3) of the Children's Scotland Act 1995 until April 2004 when his order was terminated. Major issues were raised in respect of communication, assessment, management and supervision of the case with both the local authority and the constabulary; however, a number of recommendations were also made to the Scottish Government. They included:

- A National Strategy for meeting the needs of young people with sexually problematic or violent behaviour

- Action to provide public agencies with a framework to address adolescent sex offenders, consistent across Scotland
- Create measures to improve the identification, risk assessment, planning for and management of such young people
- Develop specialist services delivered to a rigorous standard supported by external quality assurance systems
- Definition of Non-registered Sex Offender and review of guidance on managing Non-registered Sex Offenders
- Ensure young people are supervised appropriately as they move from youth justice to the adult justice system and that appropriate information is transferred with them

The Scottish Parliament passed the Management of Offenders etc (Scotland) Act on November 3, 2005.

It introduced a legislative basis for agencies to work together not only to assess and manage Registered Sex Offenders, but also any other individuals who are considered pose a danger to the public. As a result it brings certain Non-registered Sex Offenders who may cause serious harm to the public at large into the new risk assessment arrangements.

GIRFEC

'Getting it right for every child' (GIRFEC) was first introduced as a concept in 2004 as a new national approach to working with all children and young people in Scotland. Following consultations and reviews of the CHS held in April 2004, the Scottish Executive formally published proposals known as GIRFEC in April 2005.

GIRFEC is the Scottish Government's strategic vision for all services that are either delivered to, or which affect children. GIRFEC includes core principles and values which are now incorporated into Scottish legislation, policy, guidance and practice in respect of children and relevant adult services.

The GIRFEC agenda has evolved over time and has taken into account the following sources:

- The Kilbrandon Report (1964)
- The Children (Scotland) Act 1995
- For Scotland's Children (2001)
- It's Everyone's Job To Make Sure I'm Alright (2002)
- The Review of Children's Hearings (2004)

It is based on research, evidence and best practice and designed to ensure all parents, carers and professionals work effectively together to give children and young people the best start to improve their life opportunities.

GIRFEC sets out to achieve the following:

- Better outcomes for all children
- A common co-ordinated framework across all agencies that supports the delivery of appropriate, proportionate and timely help to all children who need it
- Streamlined systems and processes, efficient and effective delivery of services focussed on the needs of the child
- A common understanding and shared language across all agencies
- A child-centred approach
- Changes in culture, systems and practice across services for children
- More joined-up policy development with GIRFEC in the delivery mechanism of all policies for children - and policies for adults where children are involved

GIRFEC is a way of working which focuses on improving outcomes for all children by placing the child at the centre of thinking, planning and action. It affects all services that impact on children and places children's and young people's needs first, ensures that they are listened to and understand the decisions which affect them, and that they get more co-ordinated help where this is required for their well-being, health and development. It requires that all services for children and young people - social work, health, education, police, housing and third sector - adapt and streamline their systems and practices to improve how they work together to support children and young people, including strengthening information sharing.

GIRFEC encourages earlier intervention by professionals to avoid crisis situations at a later date so that children and young people get the help they need when they need it, but also helps to identify those children and young people facing the greatest social or health inequalities.

The Guide to 'Getting it right for every child (GIRFEC)' published by the Scottish Government in 2008 outlines the process of assessing risk, consisting of a practice assessment and a planning model which can be used by any agency.

A change in government in 2007 led to a shift in tone and emphasis in national youth justice policy, with efforts and resources directed towards early intervention, prevention and diversion. The Concordat between Scottish Government and Local Government published in 2007 focused the public sector to deliver through 15 national outcomes.

This commitment included an agreement to work together as equal partners on policy development. Scottish Government set the direction of policy by way of Single Outcome Agreements and local authorities prioritise how they will demonstrate progress towards the overarching national objectives of a fairer, wealthier, safer and stronger, smarter, greener and healthier Scotland. As a result of this change in focus, Youth Justice National Standards became difficult to enforce and they ceased to be compulsory.

Preventing Offending by Young People: A Framework for Action

In June 2008 the Scottish Government published the strategy document Preventing Offending by Young People: A Framework for Action.

The Framework is formally owned by the Scottish Government, the Convention of Scottish Local Authorities (COSLA), the Association of Chief Police Officers Scotland (ACPOS),

changed to Police Scotland April 2013), the Scottish Children's Reporter Administration (SCRA) and the Crown Office and Procurator Fiscal Service (COPFS) as key delivery agencies. In addition, the Framework is endorsed by relevant inspection agencies and professional organisations and Audit Scotland was also represented in its development.

The Framework outlines a shared vision of what national and local agencies working with young people who offend, or are at risk of offending, should do to prevent, divert, manage and change that behaviour. It also recognises that a small number of high risk young people need to be managed safely and effectively, including those who sexually or violently offend and a Best Practice Guidance was published by the Scottish Government for managing and working with high risk offenders.

The framework also notes that GIRFEC should guide and underpin the work of all agencies working with children and young people who offend. There are five strands to the Framework:

- Prevention
- Early and effective intervention
- Managing high risk
- Victims and community confidence
- Planning and performance improvement

The framework focuses on the needs of eight to 16 year olds but also covers preventative work with younger children and transitional support into the adult system up to the age of 21 years.

A Planning and Performance Improvement Framework (PPIF) provides a voluntary framework for management information to support local areas in their work to address and measure at a strategic level how well they are achieving the aims of Preventing Offending by Young People: A Framework for Action. It also provides a mechanism to demonstrate at both a local and national level the impact of this work, as well as providing a tool that local areas can use to help manage services and plan future activity.

In 2012 the Scottish Government published Preventing Offending by Young People: A Framework for Action – Progress (2008-2011) and Next Steps. This report demonstrates what has been delivered under the five key strands of the Framework. This includes the implementation of multi-agency Early and Effective Intervention in Scotland, the abolition of unruly certificates and an increase in the minimum age of prosecution through the Criminal Justice and Licensing (Scotland) Act and the development of guidance for police officers in dealing with young people who offend in partnership with ACPOS (now Police Scotland) – the Flexible Approach to Offending.

The report also identifies key priorities to be developed into a programme of delivery for 2012 and beyond and delivered by themed Champions Groups who report directly to the National Youth Justice Strategic Group (NYJAG).

Whole System Approach

The Scottish Government has prioritised work that supports partners to take forward the development of a Whole System Approach (WSA). WSA involves putting in place

streamlined and consistent planning, assessment and decision making processes for young people who offend, ensuring they receive the right help at the right time. The ethos of WSA suggests that many young people involved in offending behaviour could and should be diverted from statutory measures, prosecution and custody through early intervention and robust community alternatives. WSA works across all systems and agencies, bringing the Scottish Government's key policy frameworks into one holistic approach for young people who offend:

- Early and effective interventions for low level offences, offering support and advice to young people in order to address need and change behaviour
- Diversion from prosecution, where the needs and risks of the young person are addressed
- Robust alternatives to secure care and custody where young people's risks and needs can be managed in the community
- Effective risk management measures by partners through the CHS as opposed to adult courts
- Supporting young people in court to help their understanding of the processes and to advise decision makers of community options
- Support in reintegration and transition back to the community from secure care and custody
- Encouraging cases to be dealt with through the CHS rather than an adult court
- Retaining more young people on compulsory supervision orders through the CHS, where there is a need to do so

A suite of guidance provides support to local areas in implementing WSA.

The Scottish Government 's Youth Justice Strategy was refreshed and launched in June 2015.

4. Rights

The Kilbrandon Report and the Social Work (Scotland) Act 1968 was, many would argue, ahead of its time in developing a child-centred approach and giving the child or young person a voice in proceedings. Over the period since the Act, human rights in general and children's rights in particular have developed and influenced the development of policy and legislation. The most significant developments in relation to this agenda are as follows:

UN Convention on the Rights of the Child

This was ratified by the UK Government in 1991. Its key principles include:

- A child is defined as a person under 18 years unless the laws of a country set a younger legal age for adulthood
- Each child has the right to be treated as an individual
- Each child who can form a view on matters affecting him or her has the right to express those views if he or she wishes
- Parents should normally be responsible for the upbringing of their children and should share that responsibility
- Each child has the right to protection from all forms of abuse and exploitation

- So far as it is consistent with safeguarding and promoting their welfare, public authorities should promote the upbringing of children by their families
- Each child has the right not to be subjected to discriminative action by others on grounds of race, ethnicity, gender, disability or social circumstance
- No-one is allowed to punish children in a cruel or harmful way. Children should not be put in prison with adults or sentenced to death or life imprisonment without the possibility of release.

The European Convention on Human Rights

This applied in the UK before the Human Rights Act but was not enforceable in domestic courts until the Human Rights Act came into force in 2000. The Convention guarantees certain rights and freedoms, some of which have particular relevance to children and young people looked after away from home, including in secure accommodation:

- Article 3: Right to freedom from torture and inhumane or degrading treatment or punishment
- Article 5: Right to liberty and security of person (with qualifications)
- Article 6: Right to a fair and public trial within a reasonable time
- Article 8: Right to respect for private and family life, home and correspondence
- Article 14: Prohibition of discrimination in the enjoyment of the Convention Rights

Draft of the Council of Europe Guidelines on Child Friendly Justice Strasbourg 2010 (CoE)

The CoE Guidelines, which defines a 'child' as any person under the age of 18 years, promotes the principle that the best interests of the child should be given a primary consideration under the Rule of Law. It also states: "Elements of due process such as the principles of legality and proportionality, the presumption of innocence, the right to a fair trial, the right to legal advice, the right to access to courts and the right to appeal, should be guaranteed for children as they are for adults and should not be minimised or denied under the pretext of the child's best interests. This applies to all judicial and non-judicial and administrative proceedings."

Finally the guidance states clearly that: "Referral of children to adult courts and procedures and adult sentencing shall not be allowed" (p.15) (Convention of the Rights of the Child, art 2 and 40.3, General Comment of the Committee on the Rights of the Child, nr 10 on children's rights in juvenile justice, par. 38 (CRC/C/GC/10, April 25, 2007).

There are a number of further guidelines and standards which are of relevance including:

- The UN Guidelines on the Prevention of Juvenile Delinquency (the Riyadh Guidelines) 1990
- The UN Standard Rules on the Administration of Juvenile Justice (the Beijing Rules) 1985
- The UN Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules) 1990
- Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime 2005

- Human Rights in the Administration of Justice, in particular of Children and Juveniles in Detention 1996.

The Carloway Review

In October 2010 the Cabinet Secretary for Justice asked the Lord President to nominate a High Court judge to lead a review of key elements of Scottish criminal law and practice following the decision of the United Kingdom Supreme Court in *Cadder v HM Advocate*. A review team, led by Lord Carloway, was tasked to consider issues relating to the right of access to legal advice, police questioning of suspects, the operation of the existing system of detention, evidence including corroboration and adverse inference, and issues arising from the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010. The review was asked to recommend both legislative and procedural change and identify where new guidance may be needed.

A number of recommendations were made specifically in relation to child suspects:

- For the purpose of arrest, detention and questioning, a child is defined as anyone under 18 years. Notification to a parent, carer or other responsible person and them having access to a child suspect applies to all persons under 18 years.
- There should be a general statutory provision that the child's best interests should be of primary concern in any decision, whether by the police or the procurator fiscal, to arrest, detain, question or charge a person under 18 years
- All children should have the right to access to a parent, carer or other responsible person if detained and in advance and during any interview provided that access can be achieved within a reasonable time. The police can delay or suspend that right in exceptional circumstances.
- The role of the parent, carer or responsible person should be defined in statute as providing moral support, parental care and guidance, and promoting understanding of communications between the child, the police and the solicitor
- Where the child is under 16 years, he/she must be provided with access to a lawyer and neither the child, parent, carer nor responsible person can waive that right
- Where the child is under 16 years he/she must be provided with access to a parent, carer or responsible person and the child cannot waive that right
- Where the child is 16 or 17 years he/she may waive right of access to a lawyer but only with the agreement of a parent, carer or responsible person
- Where the child is 16 or 17 years, he/she may waive right of access to a parent, carer or responsible person, but in such cases must be provided with access to a lawyer

5. Legislative Framework

Children's Hearing System

A Children's Hearing is part of the legal and welfare systems in Scotland. This is a tribunal system comprising a panel of three lay members of the public who are trained to undertake the duties and responsibilities of a hearing. Children's Hearings are subject to regulations as guided by the Children's Hearing (Scotland) Rules 2013.

The Scottish Children's Reporters Administration (SCRA) was formed under the Local Government (Scotland) Act 1994 and became fully operational on April 1, 1996. Children's Hearings are the operational setting in which SCRA and their partner agencies work to protect vulnerable children and young people, including those who are involved in offending behaviour.

SCRA's role in the hearing is to:

- Facilitate the work of the Children's Reporter
- Investigate and make effective decisions about the need to refer a child to a Children's Hearing
- Provide suitable accommodation and facilities for Children's Hearings
- Enable children and families to participate in Children's Hearings
- Disseminate information and data to inform and influence improved outcomes for children and young people

The Children's Reporter does not participate in the decision making process in a Children's hearing. The Children's Reporter has a statutory duty to keep a report of the proceedings of the hearing and support a fair process within the hearing.

A hearing takes place in private and will consider and make decisions on the welfare of a child taking into account family, social and educational background and any offending behaviour. A hearing can only consider cases where the child and their parent/carer accept the grounds of referral. If they do not, the case will be referred to the Sheriff Court for the Sheriff to decide whether the grounds of referral are established. An exception to this is where the child is unable to make an informed decision due to age or mental capacity, and the case must be referred to the Sheriff Court. If the Sheriff finds the grounds of referral are established, the case is sent back to a hearing to decide whether compulsory measures of care are necessary.

Definitions of a Child

In Scotland a child is defined differently in different legal contexts:

- The Children and Young People (Scotland) Act 2014 and the United Nations Convention on the Rights of the Child define a child as under 18
- Children Hearings (Scotland) Act 2011 section 199 defines a child as being under 16 or between 16 and 18 years if subject to a Compulsory Supervision Order.
- The Adult Support and Protection (Scotland) Act 2007 defines an adult as someone over the age of 16 years

Children and Young Persons (Scotland) Act 1937

Although this Act has now largely been replaced by new legislation some elements are still extant. This Act provides the statutory basis for protecting young children from cruelty but still gives parents the right to administer punishment to a child.

Children (Scotland) Act 1995

An Act to reform the law in Scotland relating to children, to the adoption of children and to young persons who as children have been looked after by the local authority; to make provision as respects the relationship between parent and child and guardian and child in the law of Scotland; to make provision as respects residential establishments for children and certain other residential establishments; and for connected purposes.

The Act defines parental responsibilities and rights in respect of children in Scotland. It sets out the duties and powers available to public authorities to support children in need, looked after children and young people and care leavers and to intervene when their welfare requires it. The Act considers as children every child under 16 years, young people on supervision between 16 and 18 years and young people affected by a disability aged up to 19 years.

The Act is based on the UN Convention on the Rights of the Child. The three over-arching principles of the Act are:

- The welfare of the child is the paramount consideration when his or her needs are being considered by courts, Children's Hearings and local authorities
- No court should make an order relating to a child and no Children's Hearing should make a supervision order unless a court or hearing considers that to do so would be better than making no order
- The child's views should be taken into account where major decisions are to be made about his or her future and must be taken into account where the child is 12 years or older

Criminal Procedure (Scotland) Act 1995

PART V: Children and Young Persons

Section 41A: Age of criminal responsibility

- A child under 12 years may not be prosecuted for an offence
- A person aged 12 years or more may not be prosecuted for an offence which was committed at a time when the person was under the age of 12 years

Section 42: Prosecution of children

- No child under the age of 16 years shall be prosecuted for an offence except on the instructions of the Lord Advocate, and only the High Court and Sheriff Court has jurisdiction of a child under 16 years. Children under 16 years are only considered for prosecution in court for serious offences such as murder, assault which endangers life or certain road traffic offences which could lead to disqualification from driving.
- Where a child is to appear in court, the parent or guardian is required to attend unless the court is satisfied that it would be unreasonable to require their attendance
- Where a child is arrested, the police should inform the parent or guardian to attend the court where the child will be appearing
- Any child detained in a police station, or being conveyed to or from a criminal court, or waiting before or after attendance at court, shall be prevented from

associating with an adult (not a relative) who is charged with any offence other than an offence with which the child is charged

- Any female child detained, conveyed or waiting must be kept in the care of a woman

Section 43: Arrangements where children are arrested

- Where a child is apprehended and cannot be brought before a sheriff, the police shall make enquiries into the case and may liberate the child either unconditionally or under a written agreement to attend court
- A child will not be liberated if the charge is homicide or other serious crime, or if liberation would defeat the ends of justice, or it is necessary to protect the child from association with any reputed criminal or prostitute
- Where a child is not liberated the police shall cause the child to be kept in a place of safety other than a police station
- Where a child has not been liberated but it has been decided not to proceed with the charge against him, the police shall inform the Principal Reporter

Section 44: Detention of children

- Where a child appears before a Sheriff in summary proceedings and pleads guilty to, or is found guilty of, an offence, the Sheriff may order that he is detained in residential accommodation provided under Part II of the Children (Scotland) Act 1995 by the appropriate local authority for a period not exceeding one year. This does not apply if the child is under 16 years or where it is competent to impose imprisonment on a person aged 21 years or more. Certain offences are excluded.
- Where a child is subject to an order and detained by the appropriate local authority under this section, the local authority has the same powers and duties as if he were subject to a supervision requirement
- If the child is subject to an order under this section and is also subject to a supervision requirement, the supervision requirement is of no effect during the period of detention
- The Secretary of State may make provision to detain a child in secure accommodation where he is subject to an order under this section
- Where a child is detained in residential accommodation, he should be released no later than the date by which half the period specified in the order has elapsed. The local authority can review the case and in regard to the best interests of the child, or in order to protect members of the public, may release him subject to conditions or unconditionally.
- If, while released the child pleads or is found guilty of an offence, he may be returned to the residential accommodation provided by the local authority which detained him

Section 49: Reference or remit to Children's Hearing

Where a child who is not subject to a compulsory supervision order pleads guilty to, or is found guilty of, an offence, the court:

- May request the Reporter to arrange a Children's Hearing for the purposes of advice, or

- On the plea or finding, having considered the advice from the Children's Hearing, may remit the case to the Principal Reporter for disposal at a Children's Hearing

Where a child who is subject to a compulsory supervision order pleads guilty to, or is found guilty of, an offence, the Sheriff Court must and the High Court may:

- Request the reporter to arrange a Children's Hearing for the purposes of obtaining advice and on consideration of that advice may remit or dispose of the case itself (certain offences are excluded).

Where a young person is:

- Not subject to a compulsory order requirement
- Over the age of 16 years
- Not within six months of attaining the age of 18 years
- Is charged summarily and pleads guilty to, or is found guilty of, an offence; the court may request the reporter to arrange a Children's Hearing for the purpose of obtaining their advice as to the treatment of the person.

Section 51: Remand and committal of children and young persons

- Where a court remands or commits for trial or for sentence a person under the age of 16 years who has been charged or convicted and not released on bail or ordained to appear, the court will commit him to the local authority to be detained in secure accommodation or in a suitable place of safety chosen by the authority
- Where a person has attained the age of 16 years and is subject to a compulsory supervision order, the court may commit him to the local authority as above, or may commit him to a young offenders institution
- Where a person has attained the age of 16 years but is not subject to a compulsory supervision order, the court may commit him to a young offenders institution

Section 205: Punishment for murder

- Where a person convicted of murder is under the age of 18 years, he will not be sentenced to imprisonment for life but will be detained without limit of time in a place and under conditions as directed by the Secretary of State
- Where a person has attained the age of 18 years but is under the age of 21 years, he will not be sentenced to imprisonment for life but will be detained in a young offenders institution and will be liable to be detained for life

Section 207: Detention of young offenders

- It is not competent to impose imprisonment on a person under 21 years of age
- A sentence of detention under this section will be a sentence of detention in a young offenders institution
- Where a person has attained the age of 16 years but is under 21 years of age, the court has the power to impose a period of detention not less than the minimum, nor more than the maximum period of imprisonment which might have been imposed

- The court shall not impose detention unless it is of the opinion that no other method of dealing with the young offender is appropriate, and must state the reasons for that opinion. With the exception of the High Court, the reasons must be entered in the record of proceedings.
- To enable the court to form an opinion, they should obtain information from the local authority, or otherwise, about the young offenders' circumstances. The court should also take into account any information concerning the young offender's character, and physical and mental condition.
- In forming an opinion, the court will also take into account its power to make a hospital direction in addition to a period of detention

Section 208: Detention of children convicted on indictment

- Subject to Section 205 of this Act, where a child is convicted on indictment and the court is of the opinion that no other method of dealing with him is appropriate, it may sentence him to be detained for a period specified in the sentence
- During this period the child will be detained in a place and on conditions as specified by the Secretary of State
- Where the court imposes a sentence of detention it must state its reasons for the opinion that no other method of dealing with the child is appropriate, and have those reasons recorded in the record of proceedings
- Certain offences are exempt

Criminal Law (Consolidation) (Scotland) Act 1995

This Act consolidates, creates offences and enacts legislation. It has particular reference here to consolidating the law on sexual offences including those against children.

Human Rights Act 1998

An Act to give further effect to rights and freedoms guaranteed under the European Convention on Human Rights; to make provision with respect to holders of certain judicial offices who become judges of the European Court of Human Rights; and for connected purposes.

Commissioner for Children and Young Persons (Scotland) Act 2003

An Act of the Scottish Parliament to provide for the establishment and functions of a Commissioner for Children and Young People in Scotland; and for connected purposes.

Protection of Children (Scotland) Act 2003

An Act of the Scottish Parliament to require the Scottish Ministers to keep a list of individuals whom they consider to be unsuitable to work with children; to prohibit individuals included in the list, and individuals who are similarly regarded in other jurisdictions, from doing certain work relating to children; to make further provision in relation to that list; and for connected purposes.

Sexual Offences Act 2003

An Act of the UK Parliament which makes provision about sexual offences, which applies mainly to England and Wales but clarifies requirements for Scotland for notification for those subject to the Sex Offenders Act 2007.

Sexual Offences (Scotland) Act 2009

An Act of Scottish Parliament which covers all sexual offences in Scotland. Part 4 is specific to sexual acts against younger (under 13) and older (over 13 but under 16) children.

Vulnerable Witnesses (Scotland) Act 2004

An Act of the Scottish Parliament to make provision for the use of special measures for the purpose of taking the evidence of children and other vulnerable witnesses in criminal or civil proceedings; to provide for evidential presumptions in criminal proceedings where certain reports of identification procedures are lodged as productions; to make provision about the admissibility of expert psychological or psychiatric evidence as subsequent of the complainant in criminal proceedings in respect of certain offences; to prohibit persons charged with certain offences from conducting their own defence at the trial and any victim statement proof where a child witness under the age of 12 is to give evidence at the trial; to enable the court to prohibit persons from conducting their own defence at the trial and any victim statement proof in other criminal proceedings in which a vulnerable witness is to give evidence; to prohibit persons charged with certain offences from seeking the precognition personally of a child under the age of 12; to make provision about the admissibility of certain evidence bearing on the character, conduct or condition of witnesses in proceedings before a sheriff relating to the establishment of grounds of referral to Children's Hearings; to abolish the competence test for witnesses in criminal and civil proceedings; and for connected purposes.

Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005

An Act of the Scottish Parliament to make it an offence to meet a child following certain preliminary contact and to make other provision for the purposes of protecting children from harm of a sexual nature; and to make further provision about the prevention of sexual offences.

Family Law (Scotland) Act 2006

An Act of the Scottish Parliament to amend the law in relation to marriage, divorce and the jurisdiction of the courts in certain consistorial actions; to amend the Matrimonial Homes (Family Protection) (Scotland) Act 1982; to amend the law relating to the domicile of persons who are under 16 years of age; to make further provision as respects responsibilities and rights in relation to children; to make provision conferring rights in relation to property, succession and claims in damages for persons living, or having lived, together as husband and wife or civil partners; to make provision in relation to certain rules of private international law relating to family law; and for connected purposes.

Protection of Vulnerable Groups (Scotland) Act 2007

An Act of the Scottish Parliament to bar certain individuals from working with children or certain adults; to require the Scottish Ministers to keep lists of these individuals; to make further provision in relation to those lists; to establish a scheme under which information about individuals working or seeking to work with children or certain adults is collated and disclosed; to amend the meaning of school care accommodation service in the Regulation of Care (Scotland) Act 2001; and for connected purposes.

The Education (Additional Support for Learning) (Scotland) Act 2004

An Act of the Scottish Parliament to make provision for additional support in connection with the school education of children and young persons having additional support needs; and for connected purposes.

The Antisocial Behaviour etc (Scotland) Act 2004

The Scottish Executive introduced the Antisocial Behaviour etc. (Scotland) Bill to the Scottish Parliament in October 2003 following their consultation document 'Putting Our Communities First: A Strategy for Tackling Antisocial Behaviour'. The Antisocial Behaviour etc. (Scotland) Act came into force in October 2004 and gave Local Authorities and the Police new powers to tackle antisocial behaviour.

- In accordance with the Act a person is defined as engaging in antisocial behaviour if that person: acts in a manner that causes or is likely to cause alarm or distress; or
- Pursues a course of conduct that causes or is likely to cause alarm or distress, to at least one person who is not of the same household

In this definition 'conduct' would include speech, and a 'course of conduct' must involve conduct on at least two occasions. Antisocial behaviour itself does not have to involve committing a criminal offence as it is the effect or likely effect of the behaviour on other people that determines whether the behaviour is antisocial. The authority applying for the order does not have to prove intention on the part of the defendant to cause alarm or distress.

Each local authority has a duty to work in partnership to prepare, publish and keep under review, a strategy for tackling antisocial behaviour in the authority area.

The Scottish Government believes that everyone has the right to feel safe in their community and it is unacceptable for people to be afraid to leave their homes, to use public spaces and go about their day to day business. Their aim is to make Scotland a safer and stronger place, which means encouraging a culture of personal and collective responsibility, and from that base rebuilding the relationship between law, government and the citizen. On March 19, 2009 the Scottish Government and COSLA jointly published their Framework for tackling antisocial behaviour. This followed a thorough review of national antisocial behaviour policy and recognises that prevention and early intervention should be at its heart. Among the strategic aims it identified were the need for appropriate, proportionate and timely interventions in tackling antisocial behaviour; and also that they should seek to counter negative stereotypes by focussing on encouraging more balanced, evidence-based reporting

on antisocial behaviour with a particular emphasis on responsible reporting on young people's involvement.

Intensive Support and Monitoring Services (ISMS)

ISMS were introduced by the Antisocial Behaviour etc (Scotland) Act in 2004 as an alternative to Secure Care. The Children (Scotland) Act 1995 was amended to enable supervision requirements imposed by a Children's Hearing to include a Movement Restriction Condition (MRC) and requiring the child to comply with arrangements for monitoring their compliance with such a restriction in the form of an Electronic Monitoring Device (tag). Young people can be required to remain in certain locations for a specified period of time, or conversely be required to keep away from specified locations. In accordance with the welfare principle of the CHS, any young person subject to an MRC must receive an intensive package of support, with access to at least some of the supports 24 hours per day seven days per week.

ISMS were introduced to seven phase one local authorities in 2005 and following evaluation and analysis over a two year period, were rolled out to all 32 local authorities in April 2008.

Antisocial Behaviour Orders (ASBOs)

ASBOs are preventative orders to protect victims of anti-social behaviour and the wider community from further acts of anti-social behaviour. The Antisocial Behaviour etc (Scotland) Act allows Sheriffs to grant an ASBO or interim ASBO against an individual over 12 years following an application by a local authority or Registered Social Landlord (RSL).

Before a Sheriff can consider an ASBO application against someone under 16 years, a Children's Hearing will be held to give advice on the application. When granting an ASBO against a child, Sheriffs also have the power to grant a Parenting Order if it is decided that this will help prevent the child taking part in further anti-social behaviour.

Local authority accountability measures introduced by the Antisocial Behaviour etc (Scotland) Act give a Children's Hearing the power to place duties on the local authority when a compulsory supervision order is not being implemented. This includes an enforcement mechanism application to the Sheriff Principal.

Breach of an ASBO granted against a child is a criminal offence and must be reported to the Procurator Fiscal (PF). The PF, in consultation with SCRA, will determine the most appropriate course of action. Possible sanctions for under-16s do not include imprisonment which is an option for an ASBO against an adult.

Parenting Orders

The Act makes provision for the local authority or the Principal Reporter to make application to the Sheriff Court to impose a Parenting Order.

Local authorities can apply for a Parenting Order on two grounds:

- The child has engaged in anti-social behaviour and the Order is desirable in the interests of preventing further anti-social behaviour

- The child has engaged in criminal conduct and the order is desirable in the interests of preventing such criminal conduct by the child

The Principal Reporter can also apply on these grounds as well as when the order is desirable in the interests of improving the welfare of the child.

An Order can last up to 12 months and includes a requirement to comply with conditions as directed by the local authority supervising officer. Although Parenting Orders are civil orders, breach of an order constitutes a criminal offence with the usual sanctions attached, including imprisonment.

To date there have been no Parenting Orders in Scotland.

Criminal Justice and Licensing Act 2010

An Act of the Scottish Parliament to make provision about sentencing, offenders and defaulters; to make provision about criminal law, procedure and evidence; to make provision about criminal justice and the investigation of crime (including police functions); to amend the law relating to the licensing of certain activities by local authorities; to amend the law relating to the sale of alcohol; and for connected purposes.

This Act came into force in August 2010. This legislation relates to a wide range of distinct policy proposals including those relating to sentencing, criminal offences, criminal procedure, disclosure of evidence, protection of victims and witnesses, and licensing. It deals with issues ranging from combating alcohol misuse, to the creation of a Sentencing Council, community payback orders and the presumption against short prison sentences of three months or less.

Section 14 of the Act relates to community payback orders (CPOs) and introduces a number of provisions to the Criminal Procedure (Scotland) Act 1995 to replace community service orders, probation orders, supervised attendance orders, and community reparation orders.

Other existing court orders, including drug treatment and testing orders and restriction of liberty orders, remain unchanged.

The CPO aims to create a robust and consistently delivered community penalty which can provide a viable alternative to custody in appropriate cases. It emphasises that a community sentence is a punishment and not merely a supportive intervention. The CPO came into force on February 1, 2011 to provide those responsible for sentencing with a range of options from which they can choose the most appropriate disposal.

The CPO was designed to ensure that those involved in offending behaviour payback to communities and society in two ways:

- By requiring the offender to make reparation, often in the form of unpaid work
- By requiring offenders to address and change their offending behaviours to improve the safety of local communities and providing opportunities for reintegration as law abiding citizens

A CPO may contain a number of different requirements which are set out in legislation and may include unpaid work, supervision requirements, programme requirements, residence requirements and conduct requirements. Key features are applicable to children and young people under 18 years:

- A CPO is a disposal of the court and is an alternative to custody
- There is no minimum age for a CPO, other than the age of criminal prosecution (12 years old)
- Where an unpaid work or other activity requirement is made, the young person must be aged 16 years or over
- Where a young person is under 18 years, the court can remit back to the CHS for disposal. A CPO is not available to a Children's Hearing as a disposal.

When the court imposes a CPO in respect of a young person under 18 years, an offender supervision requirement is mandatory. The court must also be satisfied that the local authority can support and rehabilitate the young person.

A movement restriction requirement can only be imposed by the court following a breach of a CPO.

When the court imposes a CPO in respect of a young person under 18 years who is subject to a compulsory supervision order through the CHS or assessed as needing support on care and protection grounds, the young person should be supported by effective interventions which address both the risks and the needs they present.

Section 52 of the Act relates to the prosecution of children under 12 years in the criminal courts. This amendment to the Criminal Procedure (Scotland) Act 1995 states that:

- A child under the age of 12 years may not be prosecuted for an offence
- A person aged 12 years or more may not be prosecuted for an offence which was committed at a time when the person was under the age of 12 years

The age of criminal responsibility in Scotland remains at eight years and a child aged between eight and 12 years is held to have the mental capacity to commit a crime. The Act, however, prohibits any child of this age from being dealt with in the criminal court and, where some form of compulsory intervention is considered necessary, they can only be dealt with through the CHS.

The Act has also introduced supervision for young people as defined in the Children's (Scotland) Act 1995, if sentenced to a period in custody.

Children's Hearings (Scotland) Act 2011

An Act of the Scottish Parliament to restate and amend the law relating to Children's Hearings; and for connected purposes.

The Scottish Government is clear that Scotland's unique CHS System remains the best way of providing support and assistance to our most vulnerable children and their families. Although the system, in which lay people make decisions to improve the lives of children,

remains the best way of providing this support, children and their families face significantly different challenges from when it was created in the 1960s.

The structure of the CHS was partially reformed by the Local Government (Scotland) Act 1994. Children's Reporters were removed from the Local Authorities and placed within a non-departmental public body - the Scottish Children's Reporters Administration (SCRA), which has a statutory role of facilitating the work of the Principal Reporter and is overseen by a national board. Under this Act, the children's and safeguarder's panels also changed from a regional structure to reflect the new 32 local government authorities.

The Children's Hearing (Scotland) Bill was passed by the Scottish Parliament on November 25, 2010, received Royal Assent in January 2011 and is now called the Children's Hearing (Scotland) Act 2011 (the 2011 Act).

The purpose of the 2011 Act is to strengthen, modernise and streamline the CHS; ensure improved support for the most vulnerable children and young people and deliver greater national consistency. It is also intended to ensure the system is robust in the face of European Convention on Human Rights challenges.

The 2011 Act restates some of the existing law on Children's Hearings, many changes and new provisions as detailed below. It also creates a new national body, Children's Hearings Scotland, responsible for all functions relating to the recruitment, appointment and training of panel members. Instead of 32 separate local panels, there will be one single national panel appointed by a National Convener.

The 2011 Act is a large piece of legislation which brings almost all of the legislation relevant to Children's Hearings into one place, and it replaces large sections of the Children (Scotland) Act 1995.

A large number of changes are introduced which seek to promote and strengthen children's rights, but those of most significance to local authorities [can be accessed here.](#)

Sections 1-13 address the role of the Role of the National Convener and function of the Children's Hearing Scotland (CHS).

Sections 14 -23 details the role and function of the Principal Reporter and SCRA

Section 25 addresses the welfare of the child. Specifically:

(1) This section applies where by virtue of this Act a Children's Hearing, pre-hearing panel or court is coming to a decision about a matter relating to a child.

(2) The Children's Hearing, pre-hearing panel or court is to regard the need to safeguard and promote the welfare of the child throughout the child's childhood as the paramount consideration.

Section 26 addresses situations when decisions made are inconsistent with the above:

(1) A Children's Hearing or a court may make a decision that is inconsistent with the requirement imposed by section 25(2) if:

- the Children's Hearing or court considers that, for the purpose of protecting members of the public from serious harm (whether physical or not), it is necessary that the decision be made, and;
- in coming to the decision, the Children's Hearing or court complies with subsection (2)

(2) The Children's Hearing or court is to regard the need to safeguard and promote the welfare of the child throughout the child's childhood as a **primary consideration rather than the paramount consideration**.

Section 27 details the importance of the views of the child:

- (1) This section applies where by virtue of this Act a Children's hearing or the Sheriff is coming to a decision about a matter relating to a child.
- (2) This section does not apply where the Sheriff is deciding whether to make a child protection order in relation to a child.
- (3) The Children's Hearing or the sheriff must, so far as practicable and taking account of the age and maturity of the child:
 - (a) give the child an opportunity to indicate whether the child wishes to express the child's views,
 - (b) if the child wishes to do so, give the child an opportunity to express them, and
 - (c) have regard to any views expressed by the child.
- (4) Without prejudice to the generality of subsection (3), a child who is aged 12 or over is presumed to be of sufficient age and maturity to form a view for the purposes of that subsection.
- (5) In this section "coming to a decision about a matter relating to a child", in relation to a Children's Hearing, includes:
 - providing advice by virtue of section 50,
 - preparing a report under section 141(2).

The views of the child are of extreme importance; however, there may be a large number of adults present at the hearing, making it very difficult for a child to speak honestly and openly about their situation. All measures should be considered which could assist a young person to feel more comfortable to take part in **their** hearing.

Sections 30 and 31 detail the duty of a Children's Hearing and Sheriff to consider the appointment of a safeguarder.

Sections 35 to 43 outlines the threshold, application and conditions of child assessment and child protection orders.

Section 67 details the grounds of referral.

There are both changes and additions to the grounds of referral as detailed in the Children (Scotland) Act 1995:

- (2) The grounds are that:
 - (a) the child is likely to suffer unnecessarily, or the health or development of the child is likely to be seriously impaired, due to a lack of parental care,
 - (b) a schedule 1 offence has been committed in respect of the child,

- (c) the child has, or is likely to have, a close connection with a person who has committed a schedule 1 offence,
- (d) the child is, or is likely to become, a member of the same household as a child in respect of whom a schedule 1 offence has been committed,
- (e) the child is being, or is likely to be, exposed to persons whose conduct is (or has been) such that it is likely that:
- (i) the child will be abused or harmed, or
 - (ii) the child's health, safety or development will be seriously adversely affected,
- (f) the child has, or is likely to have, a close connection with a person who has carried out domestic abuse,
- (g) the child has, or is likely to have, a close connection with a person who has committed an offence under Part 1, 4 or 5 of the Sexual Offences (Scotland) Act 2009 (asp 9),
- (h) the child is being provided with accommodation by a local authority under section 25 of the 1995 Act and special measures are needed to support the child,
- (i) a permanence order is in force in respect of the child and special measures are needed to support the child,
- (j) the child has committed an offence,
- (k) the child has misused alcohol,
- (l) the child has misused a drug (whether or not a controlled drug),
- (m) the child's conduct has had, or is likely to have, a serious adverse effect on the health, safety or development of the child or another person,
- (n) the child is beyond the control of a relevant person,
- (o) the child has failed without reasonable excuse to attend regularly at school,
- (p) the child (i) is being, or is likely to be, subjected to physical, emotional or other pressure to enter into a marriage or civil partnership, or (ii) is, or is likely to become, a member of the same household as such a child.
- (3) For the purposes of paragraphs (c), (f) and (g) of subsection (2), a child is to be taken to have a close connection with a person if:
- (a) the child is a member of the same household as the person, or
 - (b) the child is not a member of the same household as the person but the child has significant contact with the person.

Sections 73 – 78 Attendance at a Children's Hearing

Sections 79 – 82 Pre-hearing panels.

This section is new and replaces business meetings.

Issues considered by pre-hearing panels include:

- excuse the attendance of a child or relevant person,
- whether a person is relevant to the proceedings,
- appointment of a safeguarder or legal representative

The child, relevant persons and professional can attend the pre-hearing panel and the child and relevant persons including anyone requesting to be a relevant person has the right to appeal the decision.

Sections 129 – 142 Review of Compulsory Supervision Order

Sections 143 – 148 Implementation of Compulsory Supervision Order

Section 150 Movement Restriction Conditions Sections

Sections 151 – 153 Secure accommodation

Section 151 Implementation of secure accommodation authorisation

(3) The chief social work officer may implement the authorisation only with the consent of the person in charge of the residential establishment containing the secure accommodation in which the child is to be placed (the “head of unit”).

(4) The chief social work officer must remove the child from secure accommodation if:

(a) the chief social work officer considers it unnecessary for the child to be kept there, or
(b) the chief social work officer is required to do so by virtue of regulations made under subsection (6)

(5) A secure accommodation authorisation ceases to have effect once the child is removed from secure accommodation under subsection (4).

The conditions for authorising secure accommodation are:

Section 83(6)

(a) that the child has previously absconded and is likely to abscond again and, if the child were to abscond, it is likely that the child's physical, mental or moral welfare would be at risk,
(b) that the child is likely to engage in self-harming conduct,
(c) that the child is likely to cause injury to another person.

AND

Section 83(5)

(c) having considered the other options available (including an MRC) the Children's Hearing or, as the case may be, the sheriff is satisfied that it is necessary to include a secure accommodation authorisation in the order.

Section 154 – 167 details the different types of appeal, process and timescales.

The 2011 Act commenced on June 24, 2013. The link below accesses a list of subordinate legislation made under, or as a consequence of the [2011 Act](#).

Children and Young People (Scotland) Act 2014

The Children and Young People (Scotland) Act was passed in the Scottish Parliament on February 19, 2014 and received royal assent on March 27, 2014, making it an Act of the Scottish Parliament. The Act will further the Scottish Government's ambition for Scotland to be the best place to grow up in by putting children and young people at the heart of planning and services and ensuring their rights are respected across the public sector.

Rights of Children and Young People:

To ensure that children's rights properly influence the design and delivery of policies and services, the Act will:

- Place a duty on the Scottish Ministers to keep under consideration and take steps to further the rights of children and young people, to promote and raise awareness and understanding of the United Nations Convention on the Rights of the Child (UNCRC), and to prepare reports describing this activity;

- Place a duty on the wider public sector to report on what they are doing to take forward realisation of the rights set out in the UNCRC; and
- Extend the powers of Scotland's Commissioner for Children and Young People, so that this office will be able to undertake investigations in relation to individual children and young people

Wellbeing and Getting it right for every child (GIRFEC):

To improve the way services work to support children, young people and families, the Act will:

- Ensure that all children and young people from birth to 18 years old have access to a Named Person;
- Put in place a single planning process to support those children who require it;
- Place a definition of wellbeing in legislation; and
- Place duties on public bodies to coordinate the planning, design and delivery of services for children and young people with a focus on improving wellbeing outcomes, and report collectively on how they are improving those outcomes

Early Learning and Childcare:

To strengthen the role of early years support in children's and families' lives, the Act will:

- Increase the amount and flexibility of free early learning and childcare from 475 hours a year to a minimum of 600 hours for three and four year olds, and two year olds who are, or have been at any time since turning two, looked after or subject to a kinship care order

Getting it Right for Looked After Children:

To ensure better permanence planning for looked after children, the Act will:

- Provide for a clear definition of corporate parenting, and define the bodies to which it will apply;
- Place a duty on local authorities to assess a care leaver's request for assistance up to and including the age of 25;
- Give all 16 year olds in care the right to stay in care until the age of 21 from 2015;
- Provide for additional support to be given to kinship carers in relation to their parenting role through the kinship care order and provide families in distress with access to appropriate family counselling; and
- Put Scotland's Adoption Register on a statutory footing

Other Proposals:

The Act will also:

- Strengthen existing legislation that affects children and young people by creating a new right to appeal a local authority decision to place a child in secure accommodation, and by making procedural changes in the areas of Children's Hearings support arrangements and school closures

Victims and Witnesses (Scotland) Act 2014

The Victims and Witnesses (Scotland) Act 2014 was passed by the Scottish Parliament in December 2013. It will bring into law a number of changes to improve the experience victims and witnesses have of Scotland's justice system, including:

- creating a duty for justice organisations to set clear standards of service for victims and witnesses
- giving victims and witnesses new rights to certain information about their case
- improving support for vulnerable witnesses in court – for example, changing the definition of 'child witness' to include all those under 18 (instead of under 16), and creating a presumption that certain categories of victim are vulnerable, and giving such victims the right to utilise certain special measures when giving evidence
- introducing a victim surcharge so that offenders contribute to the cost of supporting victims
- introducing restitution orders, allowing the court to require that offenders who assault police officers pay to support the specialist non-NHS services which assist in the recovery of such individuals
- allowing victims to make oral representations about the release of life sentence prisoners
- providing support to victims' organisation
- improving communication to reduce witness non-attendance at court
- giving victims better access to information about how to get help and advice

6. Young people in the Criminal Justice system

Although the aim of youth justice in Scotland is to keep as many under 18s as is possible in the CHS, some, due to legal status, seriousness of offence and/or circumstance, will be dealt with by the adult criminal justice system. The age of criminal responsibility in Scotland is eight years, however, no child under 12 years is subject to prosecution in the criminal courts, instead, children under 12 years who are involved in offending behaviour can be referred to the children's reporter.

In Scotland approximately 70% of 16 to 20 year olds released from custody are reconvicted within two years, with 45% receiving further custodial sentences (Scottish Government statistics). This suggests that failing to provide effective community based support to 16 and 17 year olds locks them into a cycle of offending and may result in repeated imprisonment. It is backed by international evidence on the long term effects of juvenile incarceration. Research from the US suggests that young people, who are sentenced to a correctional facility at any stage, are more likely to continue to offend into adulthood, and that what is most effective in tackling offending behaviour is community based early intervention (Tracy and Kempf-Leonard 1996).

The introduction of the Whole System Approach for 16 and 17 year olds has supported more streamlined planning, assessment and decision making processes for young people who offend and diversion from statutory measures, prosecution and custody through early intervention and robust community alternatives.

Children and young people involved in the adult criminal justice system are also subject to services governed by the National Outcomes and Standards for Social Work Services in the criminal justice system, irrespective of whether or not they are involved in the CHS.

Depending on the nature and severity of the offence, other frameworks may apply to young people in the adult system, including the Multi-Agency Public Protection Arrangements

(MAPPA), developed under the Management of Offenders etc (Scotland) Act 2005, which protect the public and manage the highest risk sex offenders in the community.

Community Justice Authorities

Although the primary responsibility for supervising offenders in the community lies with criminal justice social work services, the Management of Offenders etc (Scotland) Act 2005 requires all relevant local authority services to contribute to the area plan and provide relevant services to offenders. The strategic bodies for criminal justice across Scotland are currently the Community Justice Authorities (CJAs) who provide a co-ordinated approach to planning and monitoring the delivery of offender services. CJAs were created in 2006 by the Management of Offenders etc (Scotland) Act 2005 and assumed their full responsibilities in April 2007.

Following a consultation on the redesign of community justice services, key changes and improvements have been announced. The new Community Justice Model for Scotland includes a transition from Community Justice Authorities (CJAs) to an integrated planning model as part of Community Planning Partnerships. This will include:

- Transfer of the responsibility of planning and delivery of services from the eight CJAs to 32 Community Planning Partnerships
- Development of a national strategy for community justice and reducing reoffending
- A new national body will be created to give community justice the leadership to progress
- The national body will have the ability to commission services if required
- Regular meetings between Ministers and local elected members to agree areas of mutual interest in improving offender management
- [Read more](#)

National Objectives and Standards for Social Work Services in the Criminal Justice System 2004 (National Standards) now replaced by National Outcomes and Standards for Criminal Justice Social Work

Since 1968, when the Social Work (Scotland) Act merged probation and welfare services, criminal justice services within local authorities have been responsible for the delivery of pre-sentence reports to courts, provision of community sentences, post release supervision of offenders on statutory licence and voluntary Throughcare. The one exception is Restriction of Liberty Orders (electronic tagging), where responsibility lies with a private contractor, although where an assessment of suitability is required that responsibility lies with the local authority.

National Standards set down the expected operational standards and objectives for criminal justice social work in Scotland. They were first introduced in 1989 for Community Service Orders and extended to Social Enquiry Reports, Probation and Throughcare in 1991 and to Supervised Attendance Orders in 1998. Although National Standards have been in place since the early 1990s when ring-fenced funding for criminal justice social work was first introduced, there have been some subsequent revisions to take account of new responsibilities and changes in policy and practice.

Chapter 9 of the National Standards highlights the importance of considering the needs of young people involved in the adult criminal justice system when planning and providing services.

Section 132, the National Standards on Social Enquiry Reports and associated court services, also highlights the power of the Sheriff Court (Summary) to remit any offender under the age of 17 years and six months to a Children's Hearing for advice and possible disposal. Some young people are excluded from this process depending on the seriousness of the offence and will be dealt with by the court.

Throughcare is the provision of social work and associated services to prisoners and their families from the point of sentence or remand, during the period of imprisonment, and following release into the community. Local authorities have a statutory responsibility under National Standards to provide Throughcare services to individuals who are sentenced to more than four years in prison on release, and for those sentenced to Supervised Release Orders and Extended Sentences. Local authorities must also offer voluntary aftercare to those who request such a service within 12 months of their release. Revised Throughcare practice guidance is currently under development.

The new revised National Outcomes and Standards provide a clear framework of professional accountability towards the outcomes of community safety, justice and social inclusion. They reflect changes in policy, practice and legislation in respect of criminal justice social work in Scotland, particularly relating to pre-sentence court reports, community sentencing and post release supervision of offenders.

Community payback orders (CPOs) replace the probation, community service and supervised attendance orders sections in the previous National Standards, and previous guidance for community reparation orders.

The Criminal Justice Social Work Report (CJSWR) guidance provides practical direction on how to complete a CJSWR for court. A CJSWR should assist the sentencing process by complementing the other range of information available to the sentencer (e.g. from the victim and the PF), and provide information on social work interventions and how they may impact on offending behaviour.

Multi-Agency Public Protection Arrangements (MAPPA)

The Management of Offenders etc (Scotland) Act 2005 introduced a statutory function for responsible authorities – local authorities, Scottish Prison Service, police, health – to establish joint arrangements for the assessment and management of the risks to the public posed by sex offenders in Scotland. MAPPA was introduced in Scotland in 2007 as a consistent approach to the management of offenders across all local authority and police force areas, providing a framework for assessing and managing registered sex offenders. Registered sex offenders are those who are required to notify the police of their name, address and other personal details and also of any subsequent changes. The fundamental purpose of MAPPA is public safety and the reduction of serious harm.

A number of agencies are placed under a duty to co-operate with the responsible authorities and are known as 'Duty to Co-operate' agencies. They include housing providers, the

voluntary sector and the Children's Reporter. They are required to share information which will enable different agencies to work together within their legitimate or statutory role.

Information about registered sex offenders is gathered and shared across relevant agencies, the nature and level of risk of harm is assessed, and a risk management plan is implemented to protect the public.

There are three levels of management based on the levels of multi-agency cooperation required to implement the risk management plan effectively:

- Ordinary management (Level 1): The risk can be managed by one agency without active involvement by others; however, information is required to be shared and there should be collaboration between agencies.
- Multi-agency management (Level 2): The risk management plans require the active involvement of several agencies via regular multi-agency public protection meetings.
- Multi-agency Public Protection Panel (Level 3): As with Level 2 but require the involvement of senior officers to authorise special resources and/or provide senior management overview. These cases are assessed as being high or very high risk of harm, and are the critical few.

Although the MAPPA guidance applies to all those who have achieved the age of criminal responsibility, in practice it generally deals with those who have been convicted through the criminal courts.

Framework for Risk Assessment, Management and Practice (FRAME)

The Framework for Risk Assessment, Management and Evaluation (FRAME), produced by the Risk Management Authority in 2011 in conjunction with partners, sets out the standards of risk practice which apply to children and young people involved in offending behaviour as well as adults. There are key aspects of risk assessment and management practice with children and young people which vary from practices with adults. This guidance outlines the differences in legislation, policy and practice as it relates to each of the five FRAME standards.

This guidance also forms part of the Scottish Government's Whole System Approach (WSA) to address the offending behaviour of young people.

Care and Risk Management (CARM)

Care and Risk Management (CARM) was published by the Scottish Government in November 2014 as an appendix to FRAME. Whilst the National Guidance for Child Protection in Scotland guidance and GIRFEC broadly support the analysis and management needs of young people with regards to welfare and child protection, CARM offers a child centred guide to risk assessment and management for those young people considered high risk in relation to violence or harmful sexual behaviour which is in line with GIRFEC and the WSA. As well as being founded on the principles of GIRFEC and WSA the document offers guidance on information sharing with reference to the Children (S) Act 1995 s16&17 (information sharing has also been referred to in the Children and Young People's Act 2014 s26).