

# RIGHTS RESPECTING JUSTICE FOR CHILDREN IN CONFLICT WITH THE LAW

BRIEFING PAPER FROM THE RIGHTS RESPECTING  
GROUP IN THE UK, JERSEY AND IRELAND

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This report was prepared by members of the Rights Respecting Group: Holly Maclean, Fiona Dyer, Nina Vaswani, Deena Haydon, Maria Galli, Anthony Charles, Tim Bateman, & Ursula Kilkelly



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## INTRODUCTION

The idea for a Rights Respecting Group was initially developed within Scotland's Children and Young People's Centre for Justice (CYCJ) following the commitment made by the Scottish Government to incorporate UNCRC into Scots Law. The group was created to identify policy and practice implications for incorporating the UNCRC into legal systems within UK jurisdictions. Terms of reference were agreed, encouraging members of the group to share experiences, evidence, research, challenges and solutions from within their own jurisdictions, in order to support changes to meet UNCRC requirements.

This paper provides an overview of discussions within the Rights Respecting Group from May 2021 - September 2023. This group was represented by academics and campaigners working in the field of children's rights within the six nations of England, Ireland, Jersey, Northern Ireland, Scotland and Wales. This paper aims to highlight the most pressing concerns for children's rights across the nations, highlighting the similarities and differences in policy and practice.

At the group's inception in 2021 the following issues were identified as being of pressing importance:

- There was variation across nations in terms of UNCRC incorporation. In Scotland, the Scottish Parliament had recently unanimously supported the incorporation of the UNCRC into domestic Scots Law, resulting in the passing of the UNCRC (Incorporation) (Scotland) Bill on 16th March 2021 (with the amended bill unanimously passed in December 2023). In Ireland, some key principles of UNCRC have been incorporated into legislation, including that detention should only be used for children as a last resort. In Jersey, the Assembly of Ministers passed a law to incorporate a UNCRC due regard duty into domestic law, through the Children (Convention Rights) (Jersey) Law 2022 which will be brought into force in January 2024. In England, Wales and Northern Ireland, the UNCRC has been ratified but there is little political will to incorporate it into domestic law.
- The Age of Criminal Responsibility in Scotland had recently been raised to 12 years old. In Ireland, it is also 12, with the exception of murder, manslaughter, rape and sexual assault, where the age of criminal responsibility is 10. In England, Wales, Northern Ireland, and Jersey it is 10 years old for all offences. All six nations therefore fall short of the standard set by the United Nations Committee on the Rights of the Child (2019), who recommend that the Age of Criminal Responsibility should be a minimum of age 14.
- Over the last decade there had been a significant reduction in the number of children (under 18) and young people (under 26) subjected to formal criminal justice sanctions across jurisdictions, including custodial sentences. However, reductions have not been experienced equally across the system, or among minoritised groups. In England and Wales, for example, the Lammy (2017) review found that White children had benefited most from the fall in formal criminal justice sanctions, with children from a minoritised ethnic background now making up over 50% of the child custody population. Across jurisdictions, care experienced children and those who are neurodivergent or have additional needs are also disproportionately criminalised.

- Resource issues pose key challenges to managing children’s often complex welfare needs. This has resulted in decisions being led by resources rather than by what is in the best interest of the child. In Northern Ireland, for example, (subsequently abandoned) proposals to combine care and justice facilities were arguably led more by a desire to ‘efficiently’ manage resources (now that the number of children being detained has reduced) than by a desire to effectively meet the needs of the vulnerable young people currently placed in secure care or custody.
- There has been renewed appetite for diversion practices across a number of jurisdictions, with diversion procedures successfully implemented in Ireland and Scotland, the development of the Wales Youth Justice Blueprint (within which diversion is a key focus), and Jersey keen to follow suit in diverting children not only away from criminal justice systems but into the welfare services they need.

In discussing these issues, the group highlighted a need to identify common problems, mutual learning and best practice across the six jurisdictions. This paper will present the outcome of these discussions, focusing on Police Custody, Children in Court, Incarceration and Deprivation of Liberty, Restorative Justice and the Use of Restraint and Isolation Practices, as these five issues were the predominant focus of the Group’s meetings over the 2021-2023 period.

## **POLICE CUSTODY**

The detention of children and young people in police custody poses significant concerns for children’s rights across jurisdictions, with research finding this can often be one of the most distressing and traumatising aspects of children and young people’s experience of the justice system (McEwan, Maclean, Dyer, Vaswani, & Moodie, 2020). The group identified the following areas as being of critical importance:

### *Police custody regularly used as a Place of Safety*

Police stations should only be used as a place of safety as an absolute last resort, yet in Scotland, England, Jersey, and Wales, this is not the case, with children regularly held in police custody, often overnight or over the weekend. In part, this is due to a lack of alternative options. In England and Wales, local authorities are often unable or unwilling to accommodate children in children’s houses, and police, who are aware of this issue, rarely put in the request, instead taking children to police stations by default (Children’s Commissioner for England, 2017). Furthermore, research by Kemp, Carr, Kent, and Farral (2023) into custody records in England highlighted that the length of time children are being detained in police custody has significantly increased over the last decade, rising from an average of 8 hours and 55 minutes in 2009 to 14 hours and 6 minutes in their sample from 2019-2021. 54% of children from their sample were held overnight, with significantly more Black (59%) and Asian (58%) children held overnight compared to White children (52%) (Kemp et al., 2023, p. 39).

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In Jersey, police custody of children is a pressing issue. Jersey's Parish Hall Inquiry System permits Centeniers (lay members of the community, granted title of Honorary Police Officer) to decide whether a child can be granted bail or remanded in overnight police detention. This practice remains a concern for the Jersey's Children's Commissioner and it is hoped that legislative amendments will be brought forward to ensure a child-friendly justice approach in Jersey. In Ireland and Northern Ireland, children are rarely held in police stations, but issues with the quality of care children receive in police stations remain. In Northern Ireland, some children are instead inappropriately detained in the Juvenile Justice Centre (Northern Ireland's custodial facility for children aged 10-17) solely as a consequence of a lack of alternative accommodation. In 2021/22, 78% of admissions to the Juvenile Justice Centre were through the Police and Criminal Evidence (NI) Order 1989 [PACE], which permits the Centre to be used as a 'place of safety'. These placements are used to remove children who are described as being 'disruptive' from residential care homes, or when no alternative accommodation is available, with children generally detained there for one or two days, and only 45% going on to be held on remand or in custody (Brown, 2022, p. 39).

#### *Lack of data*

Across jurisdictions, a key challenge is the absence of data relating to children and young people held in police custody. Data on this is often unrecorded and/or unpublished, with researchers having to go through lengthy Freedom of Information (FoI) processes to acquire basic information. The data that is either collected or collated and/or made publicly available is typically very limited, and it can be difficult to distinguish between the reasons for, and length of time in which, children are being held in police stations. The concern here is that children are being brought into custodial settings without public knowledge or scrutiny. In England and Wales, this is compounded further by the significant rise in the practice of 'voluntary interviews' in which police might ask children and young people to come into the police station for a 'chat', whilst using this as an opportunity to interview them as a suspect. This gives ample scope for children's rights breaches, with children and young people often unaware of their rights and entitlements in these contexts. Further, The Home Office (2023) found that data recorded and collected in relation to voluntary interviews was of 'low quality', with only 21 forces out of 43 in England and Wales able to provide any data on this.

Given that research with children and young people frequently highlights the significant rights breaches that can occur in these settings (Kilkelly & Forde, 2020), it is critical that practices are documented, and made subject to public scrutiny. In Scotland, for example, Police Scotland (2023) released data from 2021 detailing that 3,730 children and young people were arrested and taken to a police station. 1,473 of these were younger children (under 16 or aged 16 and 17 on a compulsory supervision order through the children's hearing system) and whilst 1,395 were subsequently released from police custody at the conclusion of enquiries, 78 were held in police cells to appear before the courts. Of the 2,257 older children brought into custody to enable further enquiries, 1,767 were released at the conclusion of enquiries and 490 taken to Court. There is no further information regarding the

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reasons why so many children were taken into police custody, to then be released.

### *Strip Searching*

Strip searching is key rights concern within police custody and other custodial settings. Across jurisdictions this has largely not been on the public or political agenda, meaning its use within custody has been unscrutinised. When this has been questioned in the past, senior police officers have often strongly defended their need to strip search children. In Northern Ireland, this issue has received recent scrutiny following a FoI Request which revealed that in 2021, the police strip searched 27 children. Following this, the Northern Ireland Policing Board commissioned its Human Rights Advisor to conduct an investigation into the legal, regulatory and human rights compliance of these 27 cases. This found that over twice as many children and young people strip searched identified as Catholic rather than Protestant; prohibited items (drugs and a weapon) were found on only two occasions; an appropriate adult was present on only six occasions; and that there was inadequate and inconsistent recording of the justification for strip searches. This led the Advisor to conclude that it was 'difficult to assess whether any of the strip searches were lawful' and that 'It is of greatest concern that in the vast majority of cases identified by this research in 2022, the PSNI appeared to ignore the rules, and no one was present to support the young person during this very invasive and humiliating use of power by officers' (Northern Ireland Policing Board, 2023: 16-17; 22).

In Scotland, strip searching of children is routine (as opposed to statutory or evidence-led), with data obtained through an FoI request highlighting that between January 2020 and March 2022, Police Scotland strip searched 1,089 children, three of whom were 13 years old (Learmonth, 2022). In England, a recent review of custody records shows the disproportionate use of strip searching. Black and Asian children are significantly more likely to be strip searched, with 10.9% of Black children and 11.2% of Asian children who were taken into police custody strip searched, compared to 6.7% of White children (Kemp et al., 2023, p. 43). These searches present significant concern around the likely adverse impacts for the child, whose rights to privacy and bodily integrity are undermined through a process which can be particularly (re)traumatising. Strip searching also takes place outside of police custody, including within education, as in the case of Child Q in England, who was strip searched by police officers in her school.

### *Tasering*

Police tasering of children (during arrest and custody) is currently of critical concern in England, with indications that this practice has been significantly increasing and that it is disproportionately used against children from minoritised ethnic backgrounds. Between January 2019 – October 2019, for example, the Children's Rights Alliance for England (2020) reports that 74% of children tasered in London were from a minoritised ethnic background. Whilst there has been more frequent media reporting of these instances, precise data on the use of tasers across jurisdictions is scarce. In Scotland data had to be accessed via a FoI

request, which showed that in the previous year three children had been tasered by police officers. In Northern Ireland, a similar [FoI request](#) was submitted in 2020, with the response recording that from 1 January 2017 to 30 June 2020 tasers were used on 25 children aged 17 and under. Of particular concern is that in two of the recorded incidents, involving children aged 10 and 14, the reason given for use was 'Accidental' (Haydon, 2022, p. 56).

### *'Child-friendly cells' and 'trauma-informed policing'*

Throughout the group's duration, members reflected on some of the more recent changes to practice in relation to police custody of children and young people. In Scotland, there have been efforts by Police Scotland to develop 'child-friendly cells' in police stations, and information is given to children to ensure they know their rights. There has also been commitment from Police Scotland to reduce the practice of using police custody for children, and, across national police forces, a new focus on 'trauma-informed' policing has been introduced, with training rolled out in relation to this. Whilst welcome, these developments pale in comparison to the scope of change needed to ensure that interactions between police and children and young people uphold their rights; how effective these new developments will be is also yet to be determined. To end the detention of children and young people in police stations, significant resource is needed to establish alternative places of safety that can accommodate children at crisis points. Moreover, piecemeal training around 'trauma-informed practice' is often ill-equipped to address the reality that police and police stations are often trauma-producing experiences for children and young people. This calls into question the extent to which the police, as an institution, can ever be truly trauma-informed.

These issues pose difficult challenges for children's rights campaigners. There is a need to work with current policing systems in order to alleviate the most pressing rights breaches in the immediate term, whilst ensuring that achieving positive change to police custody does not legitimise the detention of children and undermine the longer-term goal of ending this practice altogether. Effectively balancing both the immediate and long terms goals in this respect is thus critical to securing a future in which no child is held in police custody.

## **CHILDREN AND YOUNG PEOPLE IN COURT**

Another key rights issue across jurisdictions is the treatment of children and young people in court. The six nations had different routes for children and young people and varying opportunities for them to access alternative systems to adult courts, as discussed below:

### *Children's Hearings System*

Scotland's Children's Hearings System is unique in providing a means to support children who come into conflict with the law in a welfare-led system that is largely divorced from adult criminal justice processes. This is available to children up to the age of 16, and 16- and 17-year-olds who are already open to the Scottish Children's Reporters Administration (SCRA) or on a Compulsory Supervision Order, through the Children's Hearings System. The Children's Care and Justice (Scotland) Bill, currently going through Scottish Parliament,

proposes to extend this eligibility to all children under age 18.

This is an important means to protect children from the punitiveness of adult criminal justice systems, with a panel of three lay members deciding what support and measures are required to manage the risk associated with the child. There are, however, current rights concerns around the unintended consequences of dealing with more serious offences through the Children's Hearings System, wherein children's right to legal advocacy is not supported. As a result decisions that may result in serious restrictions, convictions or criminal records and the potential deprivation of the child's liberty, are being made without access to legal aid.

### *Parish Hall Inquiries (PHI)*

In Jersey, children can be diverted to the Parish Hall Inquiries, a historic, lay community-based, decision-making process for children and adults who commit low-level offences. Similar concerns arise to those posed by the Children's Hearings System, where children must plead guilty to be dealt with by the PHI and have no access to independent advocacy or legal advice. This system also poses concern about the privacy rights of children who have previously been referred to PHI, with the alleged offences dealt with through PHI later possibly being disclosed in Magistrates and Royal Courts.

### *Youth Courts*

Access to specialised youth courts is inconsistent across the six nations. Youth courts typically seek to provide a buffer against the adult criminal justice system for children and young people, often taking a more problem-solving approach. In some jurisdictions this has involved youth courts having specific magistrates trained in youth justice and children's rights. Following an evaluation of Glasgow's Youth Court, Scotland has sought to roll youth courts out further, with these currently not available across the country (Brown & Vaswani, 2023). In England, Wales, Jersey and Northern Ireland, youth courts are widely available; however, there is concern that as youth courts are aligned with adult criminal courts (rather than civil and family courts), and are not required to take account of the 'best interests' and rights of the child, the magistrates who sit in them bring the culture, language and assumptions of the former to their practice in youth courts (Bateman, 2021).

Similar to the concerns around the extension of the Children's Hearings System, there is concern that youth courts have unintended implications for children and young people's legal rights. In England and Wales, for example, the custodial powers of youth courts are greater than those in adult magistrate courts, and there have been recent calls for youth courts to obtain further sentencing powers to deal with more serious offences. Thus, whilst children and young people in England and Wales are being diverted from adult criminal courts, they are being tried in a youth court without a jury, with the individual magistrate overseeing their case having significant power to impose restrictive and custodial sentences.



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### *Children in Adult Courts*

Despite the (patchy) availability of youth courts, the Children's Hearings System in Scotland, and the PHI in Jersey, the reality across jurisdictions is that a significant number of children are still being processed through the adult criminal justice system and tried in adult courts. This is often because of the seriousness of the alleged offence, or the age of the child, where legally they are not eligible to be dealt with through alternative systems, or the judiciary make the decision that this is not appropriate. There are serious concerns associated with this: children and young people can't meaningfully participate or understand what is happening in an adult court; sentencing powers are higher, increasing scope for more extensive and restrictive sentencing; anonymity is often ignored; and rights are not upheld.

### *Diversions Approaches*

The United Nations Committee Against Torture (2019, p. 21) recommended that all States "develop early intervention for children and actively promote non-judicial measures, such as diversion, mediation and counselling, for children accused of criminal offences and, wherever possible, the use of non-custodial measures for children, such as probation or community service". All six nations do offer a model of diversion from prosecution, but, again, up-take in relation to this is patchy. In Ireland, all children under 18 years are entitled to be considered for diversion under the Garda (Police) Diversion Programme which is a statutory programme. In Scotland, the Lord Advocate's Guidelines has a presumption that diversion from prosecution will be used when it is not in the public interest to prosecute. All 32 Local Authorities in Scotland offer a diversion service, but there are some disparities across the nation in relation to what this entails, especially for children under age 18.

In Jersey, a Youth Justice Strategy is currently being developed following the UN Committee's recommendations to the Government of Jersey. This will seek to ensure that restorative justice-based diversionary alternatives to prosecution and detention are made available, underpinned by rights-based, trauma-informed practice. In Northern Ireland, diversionary disposals, which are delivered by the police, include an 'Informed Warning' or a 'Restorative Caution'. In cases where the Public Prosecution Service decides that a full conference with the victim of the alleged offence is required, a 'Diversionary Youth Conference' is organised, leading to a conference plan. Concerns have been raised regarding proportionality, legitimacy, effectiveness, efficiency and rights compliance of diversionary measures (Haydon, 2022). In England and Wales there has been a huge increase in diversionary approaches. In Wales, building on the All Wales Youth Offending Strategy and Children and Young People First, the Welsh Government has acknowledged the importance of diversion and has alluded, within the Youth Justice Blueprint, to the further importance of situating diversion as a core element of youth justice endeavour within a whole system approach. Across England and Wales, post enactment of the Legal Aid, Sentencing and Punishment of Offenders Act (2012), some interesting diversionary approaches have been developed. Following the issuing of the Youth Justice Board's Child First Guidance in 2022, it is hoped that both diversion and related prevention work will be strengthened and reinvigorated (such would sit well with the

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intentions of UNCRC General Comment 24).

Whilst this expansion has supported a significant decrease in the number of children and young people receiving formal criminal sanctions - and is therefore much welcomed - some concerns remain around its use. Importantly, the informal nature of most diversionary responses has undermined the quality and quantity of data recorded. Further, a recent review of data that has been made available in England and Wales indicates an uneven use of diversionary responses across ethnic groups, with Black children significantly less likely than their White peers to be cautioned rather than charged (Bateman, Brodie, Day, Pitts, & Osidipe, 2022, p. 3). Similarly, Kemp et al. (2023, p. 47) found that, whilst the proportion of White child suspects receiving an out-of-court-disposal was 15.3%, this figure was only 8.8% and 8.9% for Black and Asian child suspects.

## CHILDREN AND YOUNG PEOPLE IN CUSTODY

The incarceration of children and young people is managed differently across the jurisdictions:

- England: Children can be detained in either: one of four Young Offenders Institutions (YOIs), one of six secure children's homes, or in one secure training centre.
- Ireland: Children are detained in a single state-run facility with an intensive focus on education and health care. There are no YOIs and all those over 18s are in adult prisons.
- Jersey: Children can be detained in the one secure accommodation facility in Jersey. Children as young as 15 have historically been remanded or sentenced to Jersey's adult prison, and Ministers have the power to stand up a YOI anywhere on the Island.
- Northern Ireland: Children aged 10-17 years old are detained in Woodlands Juvenile Justice if they are on remand or have been sentenced to custody, or if they have been held here as a place of safety. There is one secure care centre for children aged 13-17 years old who are detained on welfare grounds.
- Scotland: Children are detained in either: one of four secure care centres, or two YOIs. One YOI is for girls aged 16-21, and one for boys aged 16-21. In both YOIs, children under 18 are held separately from those over 18.
- Wales: Children can be detained in either the nation's one YOI or one secure estate.

Despite differences in how children and young people are detained, there were similar rights issues across the six nations (although the extent and severity of these varied across jurisdictions and facility type):

### *Inappropriate use of remand*

Inappropriate use of remand is a longstanding issue in all six nations, particularly as children and young people on remand are often subsequently bailed and/or do not go on to serve a custodial sentence. Some young people are held on remand because they have breached unachievable bail conditions (Criminal Justice Inspection Northern Ireland, 2018, p. 34) or are unable to perfect bail due to being homeless/because a suitable bail address is not available

(Criminal Justice Inspection Northern Ireland, 2022, p. 4). In Scotland, the proportion of children and young people in custody who are on remand is significantly higher than that of the adult population. As of May 3, 2019 there were 37 children aged 16 or 17 in custody, 22 of whom were sentenced and 15 were on remand (12 were untried and 3 were convicted, but awaiting sentencing); there were also 321 young people aged 18-20 in custody, of whom 207 were sentenced and 114 were on remand (78 were untried and 36 were convicted, but awaiting sentencing) (Scottish Prison Service, 2019). As a proportion then, 41% of children in custody are on remand and 36% of young people aged 18-20 in custody are on remand. This compares with a population of 7,843 adult prisoners (over 21 years old) of whom 20% are on remand (Scottish Prison Service, 2019). The proportion of children and young people on remand is far greater than for adults, raising questions about whether this is appropriate given the importance of receiving a fair trial and the damage that detention can do, particularly for a child; this is of particular concern as regards children's right's compliance (Lightowler, 2020).

### *Treatment of children and young people*

There are serious concerns around the treatment of children and young people incarcerated in certain facilities. There is particular concern over: high rates of violence; the use of segregation and isolation as punishment; the use of pain-based restraints; and the rise in self-harming in recent years, with a number of children taking their own lives whilst incarcerated. Not only are children's care, health and education needs not being met during their incarceration, they are being put at significant risk of harm within systems that too often inflict rather than heal harm. In Jersey, the secure accommodation facility, Greenfields, has been under intense scrutiny and criticism for a number of years. Despite some recent improvements, there are ongoing concerns about the failure to meet children's needs and rights to: education, family contact, association with friends, play and leisure, mental health supports and to recovery from trauma and abuse.

These issues are less prevalent in Ireland, where recent Inspection Reports show a dramatic reduction in the use of separation, and where there is no serious risk of self-harm or suicide in the under 18s facility. Similarly, these issues are less prevalent in Northern Ireland's Juvenile Justice Centre, which has been described by the Inspectorate as operating with a child-centred ethos. It consists of six residential units designated either for females or males, with each unit opening onto recreational grounds, enabling activities such as football, tennis, exercise, swimming and horticulture. Every young person has a Key Worker and education is provided in an education and learning centre. There is daily nursing cover alongside support from an Occupational Therapist, a weekly GP clinic and a CAMHS in-reach service. The most recent inspection found that generally the standard of health services in the centre was good, and there had been a reduction in 'use of force' incidents since 2017 (Criminal Justice Inspection Northern Ireland, 2022, p. 40). However, use of single separation appeared high, and examination of records "suggested there could be particular needs related to age and disability but there was no evidence in the case file to show how these needs were being

met". In some cases, "single separation was the conventional response and not a last resort, for example, non-attendance at education, COVID-19 protocols and prior to discharge or transfer" (Criminal Justice Inspection Northern Ireland, 2022, pp. 42-44).

### *Transitions into adult systems*

Another key issue is around what happens to children when they turn 18 and they still have time left on their sentence. This is of current and pressing concern in Scotland – with the Scottish Government committed to removing all under 18s from YOIs, holding them instead in secure care centres. This poses questions around what will happen to these children once they turn 18, and how best to manage their transition to a YOI at this point if necessary. The Children (Care and Justice) (Scotland) Bill proposes that children could remain in secure care past their 18th birthday if it's in their best interest to do so. What this assessment will be based on is yet to be decided. These challenges exist in the other five nations too.

In Ireland, every effort is made to ensure that a child does not have to enter adult prison once they turn 18, with children kept in the under 18s facility until they are 18.5 years old. If they still have time on their sentence at this point, attempts will be made on a case-by-case basis to use early or temporary release powers, in an effort to return the young person to their community rather than have them serve out the rest of their sentence in an adult prison. This is at the discretion of the Director of the children's facility.

In England and Wales, most children in this circumstance would already be in a YOI before turning 18 and then may face transition to adult prison. A smaller proportion of children will be held in secure children's homes; should they be looking to finish their sentence within a few months of their 18th birthday, they would typically stay in the secure home until that point. If it will likely be longer, then they would be transferred to a YOI or adult prison. There is significant concern about the gap between how transitions are supposed to be managed, and what happens in practice, with examples of young people who had no idea that they were going to be moved to a YOI or adult prison until the day of their transfer.

In Northern Ireland, young people are detained in the Juvenile Justice Centre up to age 18. Once they reach this age they are transferred to Hydebank Wood College (a Young Offender Centre for 18-21 year olds) to complete their sentence. In all but one of six randomly selected cases reviewed by the Inspectorate in 2022 the young person had transferred on the day of their 18th birthday. Although there is a protocol in place and good arrangements have evolved over time between the Juvenile Justice Centre and Hydebank to manage the transfer of young people to the adult facility, the protocol was found by the Inspectorate to be "outdated" with more work needed to ensure the young person and their family have adequate time to prepare for this transition (Criminal Justice Inspection Northern Ireland, 2022, pp. 70-71).

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### *Reduction in population*

Across jurisdictions there has been a steady fall in the number of children who receive custodial sentences over the last two decades. In Northern Ireland, for example, the total number of admissions to custody in 2020-2021 (269) was the lowest in the last 10 years (Criminal Justice Inspection Northern Ireland, 2022, p. 20).

This reduction in numbers is much welcomed, however it has come with consequences for those children who do still serve custodial sentences. Notably, in some jurisdictions, including Scotland and Jersey, the number of children incarcerated is so low that, at times, a child might be serving their sentence effectively in isolation. These children may have no other child in the facility that they can socialise with, a practice that has been widely criticised (McCall-Smith, 2021), undermining their rights to family life, association with peers and education. This practice risks breaching children's rights under the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, (the UNCAT), the European Convention on Human Rights (ECHR) as well as the UNCRC Article 37. This practice of de facto isolation has been widely criticised, with some critics going as far as to say it constitutes cruel, inhuman, degrading treatment and punishment for children, in contravention of the UNCAT.

The decrease in the number of children incarcerated has also led some policymakers to deprioritise the issue, on the basis that the population affected is now so small. It is critical that policymakers instead see the reduction as an indicator that finding community-based alternatives for all children and young people is now more achievable than ever, and that there is an ongoing resource requirement to make this happen.

## **RESTRAINT AND ISOLATION IN EDUCATION AND HEALTH**

Across jurisdictions, many of the rights issues that characterise children's experiences of the justice system also permeate through education and health systems. One example of this is the punitive use of restraint and isolation practices in these settings. This issue has received very little public or political attention, with minimal data recorded on the use of restraint or isolation by teachers or healthcare providers (Sealy, Abrams, & Cockburn, 2023). Further, there appears to be a significant gap in practitioners' knowledge of what appropriate and/or lawful use of restraint and isolation is, creating ample scope for significant rights breaches to occur. Research with children and young people has illuminated the use of locked isolation rooms in schools and in mental health facilities across jurisdictions, and the excessive and unnecessary use of pain-based restraints, all of which can be experienced as particularly (re)traumatising (Sealy et al., 2023).

Some progress is being made to examine this issue in the six nations. In Northern Ireland, following a review of the use of restraint and seclusion in educational settings by the Northern Ireland Commissioner for Children and Young People (Northern Ireland Commissioner for Children and Young People, 2021) and a Department of Education review

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(Department for Education, 2022), the Department plans to: repeal legislation which currently enables the use of reasonable force to “prevent a pupil engaging in any behaviour prejudicial to the maintenance of good order and discipline at the school or among any of its pupils”; issue statutory guidance on the use of restrictive and support practices for educational settings; commission a training needs analysis to ensure that teaching and non-teaching staff are able to comply with the statutory guidance; and engage with teacher training institutions about how training on restrictive practices might be included in early and continuous professional development. The Children and Young People’s Commissioner for Scotland has also raised this as a key issue, with a steering group set up by the Scottish Government to consider whether guidance is needed on restraint practices. Importantly, however, this has focused on changing guidance from a child protection perspective, rather than development of a universal rights-respecting approach across all places where children are being restrained. A much-welcomed consultation was undertaken in 2023 by the Scottish MSP Daniel Johnston who is proposing the introduction of a Bill (Calum’s Law), which would seek to make restraint guidelines in schools legally enforceable and implement compulsory training for all teachers on de-escalation strategies. Additionally, in Wales in 2022, the Welsh Government implemented a ‘Reducing Restrictive Practices Framework’ to ensure that any restrictive practice is within the context of the European Convention on Human Rights, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities.

## RESTORATIVE JUSTICE

Restorative Justice is used to different extents and in different ways across jurisdictions. In Scotland, there is renewed focus on this through the Scottish Government Restorative Justice Action Plan, with working groups set up to assist in the roll out and implementation of Restorative Justice across the country. In Ireland, Restorative Justice is already well implemented; it’s often used as a diversion from prosecution and/or early intervention, and ‘restorative practices’ are also embedded into various systems including in education. This is similar to Wales, where there is, for instance, an example of a local authority providing significant resource to schools to implement restorative practices and replace discipline codes with restorative codes. In that case, the local authority progressively supported work to embed rights respecting approaches in schools.

In Northern Ireland, restorative justice is largely implemented as a means to divert children and young people from prosecution. A ‘Restorative Caution’ involves child or young person, (alongside their parent(s)/carer(s)) meeting with the victim and anyone else affected by the crime at a police station to discuss the impact of their actions. The young person is expected to agree to apologise, make amends to the victim or community, and/or attend classes to address their behaviour. A Restorative Caution is not a conviction but will stay on the young person’s criminal record for two and a half years. A ‘Diversionary Youth Conference’ involves a trained conference co-ordinator, the young person, family members and (in most cases) the victim or their representative. After the offence has been discussed, an agreed

conference plan usually includes arrangements for an apology, compensation, community service, restrictions on the young person's conduct or whereabouts, or involvement in specific programmes. If the young person does not follow the approved plan, the Public Prosecution Service can refer the case to court for formal adjudication.

Key concerns remain across the jurisdictions around the use and availability of Restorative Justice. In particular, there are questions around whether restorative justice can ever effectively balance the rights of the individual who has been harmed and the person who has caused harm (Lynch, 2010). Restorative Justice is led by the needs of the person who has been harmed, with the welfare needs and rights of the latter often sidelined through a process that some have described as particularly painful and shaming. Further, there are questions around its incompatibility with a 'child first' approach. The person who has harmed is required to take accountability for their actions in order to restore the harm caused; this poses particular concern where the admission of guilt may have implications for young people's future choices. Questions also arise over whether some young people (including those with mental health issues or learning difficulties) have the capacity to give informed consent to the process and meaningfully participate in agreeing to actions or conditions during, for example, diversionary youth conferences.

## CONCLUSION

This paper gives an overview of discussions and areas of interest in the Rights Respecting Group. There are many variations across the Six Nations (and indeed within nations themselves) in how the rights of children and young people in conflict with the law are being implemented. Concerns remain in some nations, and lessons can be learned across the board in relation to how we can uphold the rights of our children and young people. Going forward the Rights Respecting Group will continue to meet to share knowledge, learning, evidence, data and experience of best practice as we collectively strive to improve the implementation of human rights standards across the six nations.

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