

The United Nations Convention on the Rights of the Child (UNCRC) is an international treaty which stipulates the rights of all children up to the age of 18 years. The Scottish Government has taken a number of steps to help guide how the rights of children in conflict with the law should be upheld including producing a set of standards on working with children in conflict with the law. Within them emphasis is placed on supporting all children to understand their rights under the UNCRC.

Upholding children's rights in Scotland

The Scottish Government has also taken the significant step of incorporating the UNCRC into Scots Law through the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 (the UNCRC Act). The Act gained approval from the Scottish Parliament on December 7, 2023, and received Royal Assent on January 16, 2024. Several aspects of the UNCRC Act will come into force on July 16, 2024.

Under this Act all children will be considered children up to their 18th birthday regardless of their legal status, such as on a compulsory supervision order (CSO) or not. All public authorities will have to protect the rights of every child and act compatibly with UNCRC requirements when carrying out functions to which the Act applies. If they fail to uphold children's rights, then children may now be able to use various methods to challenge this, including through the courts. Listed public authorities will also have to report to the Scottish Government about what they are doing to ensure that their work is meeting and protecting the rights of all children.

Upholding the rights of children in conflict with the law

Concerning children in conflict with the law, Article 40 of the UNCRC is particularly important. It states that all children have the right to be treated as children, even if they are accused of committing a crime, and have a fair hearing. Article 37 is also important. It says that children should not be punished in a cruel or harmful way, and they should only be deprived of their liberty as a last resort and for the shortest length of time possible (The Children's Commissioner 2020).

In Scotland, the age of criminal responsibility is currently set at 12 (Age of Criminal Responsibility (Scotland) Act 2019). Children between 13 and 15 are generally dealt with within the Children's Hearing System (CHS), with only the most serious of cases for this age group passing through the court system. The Children (Care and Justice) (Scotland) Bill is currently awaiting royal assent and, as set out below, could bring significant changes to the treatment of children under 18 who come into conflict with the law.

Until the new provisions from the Bill come into force, there will continue to be a contradiction concerning the definition of a child. Children aged 16 and 17 who are not subject to a CSO or an open referral to the Scottish Children's Reporter Administration (SCRA) will still be legally considered as adults. This means that these children cannot be referred to the Children Hearings System (CHS) or experience a welfare-based approach to their situation. A key exception to this is if the sheriff within the court makes the decision to remit the case back to the CHS for those up to age 17.5 years.

However, there is a significant number of children that are still being processed through the adult criminal justice system and tried in adult courts (Maclean et al. 2024). In the financial year 2021-22 a total of twenty 17-year-olds were sentenced to custody while 23 were remitted to the CHS. All these children were subjected to court proceedings regardless of the outcome of their case, including the 64 found not guilty. Some of those 17-year-olds who have been convicted will have been dealt with within a youth court. 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 (Maclean et al. 2024).

In some of the areas where youth courts run this has involved the youth courts having designated sheriffs with specific training in youth justice and children's rights. There are also dedicated teams of social workers on site to support children and young people. CYCJ is working with several local authorities to roll youth courts out further and have recently published an [evaluation](#) of the Glasgow Youth Court.

Police Scotland have also been looking at their treatment of children when they are in conflict with the law. They have developed 'child-friendly cells' in police stations, and co-produced 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 the national police force, a new focus on 'trauma-informed' policing has been introduced, with training rolled out in relation to this ([Maclean et al. 2024](#)).

The inception of youth courts and the work being done by Police Scotland are positive steps towards a [child friendly justice system](#). This is a system that adapts to the needs of children and ensures that they can participate fully in all matters concerning them. It also looks to ensure that when children are in conflict with the law they are dealt with from a strengths-based approach and as children. For this to happen in Scotland, all children under the age of 18 should have the opportunity to be referred to CHS so that they can be dealt with from a welfare viewpoint. There will be limited occasions when under 18s commit a crime that is too serious to be dealt with by the CHS. In these instances, matters should be dealt with in special child centred [youth courts](#) that prioritise strengths and participation.

While there is no doubt that positive steps are being taken within Scotland towards [child friendly justice](#), there is a lack of consistency across Scotland – this means not all approaches for children in conflict with the law are compatible with the UNCRC. As a result, further changes are needed beyond the UNCRC Act.

Forthcoming changes

Further changes to the law are coming with the [Children \(Care and Justice\) \(Scotland\) Bill](#) (the Bill). The Bill passed the Scottish Parliament on April 25, 2024, and aligns with the UNCRC Act definition of a child as someone up to the age of 18. Alongside this, the Bill also ensures that every child under the age of 18 may, depending on the alleged offence, be referred to the Principal Reporter, removing existing eligibility criteria based on age and legal status. However, having CHS deal with more serious offences could result in an unintended consequence of a child's right to legal representation being missed. Any decisions made within a hearing could therefore result in serious restrictions, convictions or criminal records and deprivation of the child's liberty - all happening without access to appropriate legal representation ([Maclean et al. 2024](#)).

Alongside this, the [Scottish Government](#) has given a commitment to remove all under 18s currently held in Young Offender Institutions by December 31, 2024 and ending the use of such provision. While this news is very positive it means that currently the number of children within HMPYOI Polmont is so low that, at times, a child might be serving their sentence almost in isolation, which could breach Article 37 of the UNCRC in terms of cruel punishment ([Maclean et al. 2024](#)). Until children are removed from YOI, there is also an option for them to be [remanded to secure care](#).

The Bill is currently still in the four-week period in which UK law officers can challenge parts of the Bill before it will then be sent for royal assent. Royal assent and the implementation of the bill may not be in place by July 16, 2024, when UNCRC is implemented. However, the parts of the Bill that relate to the UNCRC Act will come into effect at the same time.

If you are concerned about any of the points made in this info sheet or the impact the conflicting legislation may have on your practice with children in conflict with the law, please contact CYCJ at cycj@strath.ac.uk.