



CHILDREN AND YOUNG PEOPLE IN CONFLICT WITH THE LAW: POLICY, PRACTICE AND LEGISLATION

Section 3: Child and Human Rights, Our Responsibilities

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Children and Young People's
Centre for Justice

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1. Introduction

This section sets out the principles and provisions of a rights-based approach to youth justice, grounded in the [United Nations Convention on the Rights of the Child \(UNCRC\)](#) and the wider international and European human rights framework. It aims to provide support and guidance to those working in youth justice to ensure children and young people's rights are embedded across policy and practice. To achieve this, the section will set out the international obligations and standards against which Scotland has agreed to be held to account and offer guidance as to how these standards can be implemented across the youth justice system in practice. We recommend that it is read in conjunction with [Section 13](#) of this guide, which focuses on upholding the rights of children in the court system, and Lightowler (2020) ['Rights Respecting? Scotland's approach to children in conflict with the law'](#).

1.1 Background

Over 30 years ago, Scotland was said to be ahead of its time in initiating a rights-based approach to youth justice. Soon after the UNCRC had first been drafted, and before it had been ratified by the UK, Professor Sanford Fox of Boston College Law School gave the first ever Kilbrandon lecture in Scotland. He reflected that:

“the idea that children should be active participants in decisions affecting them...has only recently been enshrined in the new [UNCRC]...although these values have been the foundation stones of Scottish juvenile justice for 20 years now.” (Fox, 1991, p. 11)

The Kilbrandon Report, and subsequent [Social Work \(Scotland\) Act 1968](#), took the initial steps to develop a child-centred approach to youth justice in Scotland. The UK's subsequent ratification of the UNCRC in 1991 has provided a focus through which children's human rights increasingly influence policy and legislation. Despite the progress made, a rights-based approach to youth justice does not always have public support across Scotland and is sometimes portrayed as a weak response to youth crime. There is also often a considerable gap between international human rights standards for youth justice and the lived experience of children and young people who come into contact with the youth justice system (Unicef UK, 2020).

To embed an approach to youth justice that respects, protects and fulfils children's human rights, it is essential that legislators, policy makers and practitioners focus on the implementation of relevant international human rights standards. These include preventing children from entering the youth justice system, favouring alternatives to detention, and treating children with dignity and worth throughout all stages of the youth justice system. Such measures are not a matter of 'goodwill' or 'positive practice', rather they are a legal obligation to which Scotland - through the UK - has signed up by ratifying the UNCRC and other international human rights treaties. Further still, the UNCRC is now enforceable domestically following the passage of the [United Nations Convention on the Rights of the Child \(Incorporation\) \(Scotland\) Act 2024](#). You can read more about this journey in ['Rights Respecting? Scotland's approach to children in conflict with the law'](#).

1.2 Taking a Rights-Based Approach

International human rights law places governments (referred to as 'State parties') under a legal obligation to respect, to protect and to fulfil human rights - including children's rights. The obligation to 'respect' means that governments must not interfere with or restrict the enjoyment of human rights. The obligation to 'protect' means that governments must protect individuals and groups against human rights abuses. The obligation to 'fulfil' means that governments must take positive steps to facilitate the enjoyment of basic human rights. These obligations are central to ensuring a rights-based approach to youth justice. A rights-based approach ensures that legislation, policy, and practice are all anchored in a system through which rights-holders (such as children and young people) can claim their rights, and duty-bearers (such as national or local government) are given corresponding obligations. It is an approach that empowers people (as rights-holders) to take part in developing legislation, policy and practice, whilst also holding the government to account (as duty-bearer) in meeting the obligation to respect, protect and fulfil human rights.

As noted by the Scottish Human Rights Commission (2013) essential elements of a rights-based approach are:

- **Participation:** People should be involved in decisions that affect their rights.
- **Accountability:** There should be monitoring of how people's rights are being affected, as well as remedies for when things go wrong.
- **Non-Discrimination and Equality:** All forms of discrimination must be prohibited, prevented, and eliminated. People who face the biggest barriers to realising their rights should be prioritised.
- **Empowerment:** Everyone should understand their rights and be fully supported to take part in developing policy and practices which affect their lives.
- **Legality:** Approaches should be grounded in the legal rights that are set out in domestic and international laws.

These are known as the 'PANEL Principles' and are explained in more detail later in this section.

A rights-based approach to youth justice seeks to ensure that children are not unduly criminalised or stigmatised because of their behaviour, but instead supported to address that behaviour and be rehabilitated. It recognises that children involved in offending behaviour often have significant underlying needs and a failure to address these needs is a violation of their human rights. This includes the provision of mechanisms to enable access to justice when their rights are not upheld, delivering effective and timely remedy. A rights-based approach also considers the need to ensure public protection and to acknowledge the harm that can sometimes be caused to others by a child's behaviour.

1.3 The Whole System Approach

[The Whole System Approach \(WSA\)](#) is the Scottish Government's response to children (under the age of 18 years old) who are involved in, or at risk of involvement in, offending behaviour. As Scotland's approach to youth justice, it can be assessed against international human rights standards to ensure that it provides a comprehensive means through which offending behaviour by children can be prevented and addressed in a way that protects, respects, and fulfils their human rights.

WSA advocates a multi-agency, multidisciplinary approach “to put in place tailored support and management based on the needs of each individual child” (Scottish Government, 2017). It seeks to respond to offending behaviour as an indicator of need. In doing this, WSA stops children being unnecessarily pulled into formal systems, such as the Children’s Hearings System (CHS) or criminal justice system, through diversionary processes promoting the use of universal services where appropriate. WSA recognises that the continuum of offending behaviour is varied and there will be occasions and situations where aspects of a child’s behaviours pose significant risk of harm to others. In these situations, it is crucial that responses continue to be proportionate, developmental, systemic, and trauma-informed to reduce risk behaviours. Any response to children involved in, or at risk of involvement in, offending behaviour must be underpinned by a rights-based approach and embedded in the [Getting It Right for Every Child \(GIRFEC\)](#) principles. In September 2022, CYCJ and Staf published the [Whole System Approach: A Guide for Children and Young People](#) – in collaboration with young people with experience of care and justice.

Within the agencies involved in implementing WSA are many competent and caring people - police officers, lawyers, social workers, healthcare professionals and teachers - working alongside parents, carers, panel members and children and young people. Their work to defend children’s human rights makes a genuine difference to children’s lives on a daily basis. The aim of this section is to support and guide this work and to promote a robust understanding of the international human rights framework, domestic-level rights protections and the application of this in practice.

1.4 Children’s (Care and Justice) (Scotland) Act 2024

A [public consultation](#) was launched in March 2022 by the Children and Young People’s Minister, concerning wide-ranging proposals relating to children’s care and justice. An independent [Consultation Analysis report](#) - which included responses from children and young people - was published by the Scottish Government in October 2022. In December 2022, a [Bill](#) was introduced to the Scottish Parliament with the accompanying Policy Memorandum making clear that:

“The Bill proposes a number of measures to improve experiences and promote and advance outcomes for children, particularly those who come into contact with care and justice services. Building on Scotland’s progressive approach to children’s rights in line with the UNCRC, the Bill’s provisions aim to increase safeguards and support, especially to those who may need legal measures to secure their wellbeing and safety.” (Scottish Parliament, 2022, p. 1)

The Bill was scrutinised by various Committee’s-the lead being the Scottish Parliament’s Education, Children and Young People Committee-and the Bill was successfully passed by the Scottish Parliament on April 25, 2024. The advancement of children’s rights, including the rights of victims, featured heavily in the final debate on the Bill, as did the Scottish Government’s amendment on UNCRC Compatibility Issues in Criminal Proceedings, which will allow in limited circumstances reconsideration of the decision to prosecute a child should this have been incompatible with the UNCRC requirements. Further information on this is available in [Section 1](#) of this guide, which will continue to be updated. If you have any queries, please get in touch.

1.5 The Scottish Human Rights Bill

In March 2021, the National Taskforce for Human Rights Leadership (Taskforce) launched a [report](#) recommending how Scotland can strengthen its approach to human rights protection, with a focus on the need to incorporate a range of international human rights treaties into Scots Law, alongside the right to a healthy environment. The four treaties that are being considered for incorporation are:

- The International Covenant for Economic, Social and Cultural Rights (ICESCR) – this includes things like the right to adequate housing, the right to food, the right to the highest attainable level of physical and mental health.
- The Convention for the Elimination of all forms of Discrimination Against Women (CEDAW) which also includes provisions to uphold the rights on children.
- The International Convention for the Elimination of all forms of Racial Discrimination (CERD), which includes many rights relating to race.
- The UN Convention on the Rights of Persons with Disabilities (CRPD).

Following [public consultation](#) in 2023, the Scottish Government suggested that the proposed Bill should not only incorporate the above treaties but include duties on listed public bodies and access to justice provisions for rights holders. The Scottish Government intends to introduce the new Bill during the 2023/24 parliamentary year.

2. International Human Rights Framework

The international human rights framework sets out the human rights obligations which governments are bound by international law to respect. A fundamental principle of international human rights law is that it applies to all people at all times, meaning that it applies equally to children and young people.

“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. [...]” (United Nations General Assembly, 1948, p. 3)

International human rights law is founded upon the [Universal Declaration of Human Rights \(UDHR\)](#) which, together with the [International Covenant on Civil and Political Rights \(ICCPR\)](#) and the [International Covenant on Economic, Social and Cultural Rights \(ICESCR\)](#), is known as the ‘International Bill of Human Rights’.

Other international and European human rights instruments provide additional specific legal protections applying equally to children and young people. In total, there are nine core international human rights instruments, each of which is accompanied by a committee of independent experts who monitor implementation. While this chapter will focus on the UNCRRC, several other international treaties are of relevance to children and young people, such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of Persons with Disabilities (CRPD), amongst others.

Additionally, within the international human rights framework are the Special Procedures of the Human Rights Council. These are independent human rights experts with specific mandates to report and advise on human rights from a thematic or country-specific perspective. They include, among others, the Special Rapporteur on Arbitrary Detention, the Special Rapporteur on the Rights of Persons with Disabilities, the Special Rapporteur on the Right to Education and the Special Rapporteur on the Right to Privacy.

This section will set out the United Nations and the Council of Europe human rights standards, treaties, rules and conventions which impose a wide range of obligations and provide a well-established framework for modelling youth justice legislation, policy and practice.

2.1 The United Nations Convention on the Rights of the Child (UNCRC)

The [UNCRC](#) is an international human rights treaty that sets out the civil, political, economic, social, and cultural rights of every child under the age of 18, within its 54 articles. Since its adoption by the United Nations in November 1989, a total of 196 UN member states have signed up to the UNCRC. The USA is the only member state not to ratify.

Underpinning the UNCRC are three core concepts:

- **Protection** against violence, abuse, neglect, maltreatment, or exploitation.
- **Provision** of name and nationality, social security, adequate standard of living and education.
- **Participation** through the right of a child to express their views, to freedom of thought and to freedom of association.

Four general principles have been highlighted as being key to interpreting all the other articles and as playing a fundamental role in realising all the rights in the UNCRC for all children. These are:

- The principle of **non-discrimination** (Article 2)
- The **best interests** of the child (Article 3)
- The **right to life**, survival, and development (Article 6)
- Respect for the **views of the child** (Article 12)

That said, when thinking about the implementation of human rights, it is important to avoid hierarchical interpretation, thus ensuring all rights are universal, inalienable, indivisible, and interdependent.

The UNCRC is binding under international law and carries a clear obligation for governments to ensure its full implementation. Historically, some elements have been brought into Scots law on a piecemeal basis. An example is the best interests of the child (Article 3) which is particularly prominent through provisions that treat welfare as 'the paramount consideration' in the [Children \(Scotland\) Act 1995](#) and [Children's Hearings \(Scotland\) Act 2011](#). Both the 1995 Act and the 2011 Act place an obligation on the courts, Children's Hearings panel members, and those fulfilling parental responsibility, to give children an opportunity to express their views (Article 12), and to have regard to these views as far as practicable, considering the age and maturity of the child.

In April 2019, the First Minister committed to passing a law within the following two years to incorporate the UNCRC into Scots law. In May 2019, the Scottish Government launched a consultation to look at how a new Act could take forward this commitment and give “practical effect to the UNCRC in a way that demonstrates international leadership and works for every child and young person in Scotland” (Scottish Government, 2019, p. 5). Subsequently, the Scottish Parliament unanimously passed the [United Nations Convention on the Rights of the Child \(Incorporation\) \(Scotland\) Bill](#) on March 16, 2021. The Bill was expected to receive Royal Assent four weeks from that date and commence in October 2021, meaning that Scotland would be the first UK country to fully incorporate the UNCRC into domestic law. However, on October 6, 2021, the [UK Supreme Court](#) judged that four elements of the Bill fell out with the legislative competence of the Scottish Parliament, requiring the Bill to return to the Scottish Parliament so that these aspects could be addressed.

The Scottish Parliament agreed to reconsider the Bill on September 14, 2023. The reconsideration stage agreed amendments which would ensure the Bill only applied to Acts of the Scottish Parliament, and not to Acts of the UK Parliament that apply to devolved areas. These changes applied to the public authority compatibility duty (section 6) and the interpretative duties (sections 19-21), meaning that certain pieces of legislation are not covered by the Act. This includes the [Education \(Scotland\) Act 1980](#) and the Children (Scotland) Act 1995. To ensure these amendments have as little negative impact as possible, the Scottish Government has committed to a legislative review to better understand what Acts of the UK Parliament in devolved areas will not be covered by the compatibility and interpretative duties.

Following reconsideration stage, the Bill unanimously passed again on December 7, 2023, receiving Royal Assent on January 16, 2024. Many of the provisions within the [United Nations Convention on the Rights of the Child \(Incorporation\) \(Scotland\) Act 2024](#) commence on July 16, 2024. More details on these provisions are included later in this chapter.

2.2 UNCRC General Principles and Youth Justice

In relation to youth justice, the four General Principles can be applied as follows:

Non-discrimination (Article 2)

All children in conflict with the law should be given equality of opportunity. To do this, practitioners must pay particular attention to those children who may require additional support, such as children with a disability, with communications needs or with mental health needs. Steps must also be taken to ensure that children who have been in conflict with the law do not face discrimination in relation to accessing education or employment and are able to assume a constructive role in society.

Best interests of the child (Article 3)

The best interests of the child must be at the heart of all decisions relating to children in the youth justice system, both in terms of any child exhibiting offending behaviour, and in terms of child victims of this behaviour. A rights-based approach recognises that children differ

from adults in their physical and psychological development, and their emotional and educational needs. This underpins the basis for the lesser culpability of children and means that in order to protect the best interests of the child, rehabilitation and restorative justice must be at the forefront of all approaches that deal with children who exhibit offending behaviour.

The right to life, survival, and development (Article 6)

When a child comes into contact with the youth justice system, it can have a detrimental impact on their development. Detaining children can have extremely negative consequences and seriously hamper their reintegration into society. As such, the entire youth justice system should support children's development; a related article (Article 37) explicitly sets out that deprivation of liberty, including arrest, detention and imprisonment, should be used only as a measure of last resort and for the shortest appropriate period of time.

The right to be heard (Article 12)

The right of the child to express their views freely in all matters affecting them should be fully respected and implemented throughout every stage of the process of the youth justice system. The UN Committee recognises that children involved in the youth justice system are increasingly becoming a powerful force for improvement and reform, and for the fulfilment of their rights.

Other relevant UNCRC rights

The UNCRC contains two further provisions particularly relevant to children in the youth justice system. These include:

The right not to be punished in a cruel or harmful way (Article 37)

Article 37 requires that the arrest, detention or imprisonment of children must be lawful, must be used only as a measure of last resort and be used only for the shortest possible period of time. Children deprived of their liberty must be treated with humanity, in a manner that respects their individual needs and their age. This means separating them from adults unless it is not in their best interests to do so. Every detained child must have prompt access to legal and other assistance and has a right to challenge their detention before a court or other authority.

Children's rights in juvenile justice (Article 40)

Article 40 requires states to develop and promote specialised systems for children accused of, or found to have committed, crimes. It includes a requirement to establish specialised laws and policies, as well as authorities and institutions. It requires the establishment of a minimum age of criminal responsibility and measures to divert children from formal judicial processes.

Importantly, Article 40 sets out the right for children in contact with the youth justice system to be treated in a way that is "consistent with the child's sense of dignity and worth". This inherent right to dignity and worth must be respected and protected throughout the entire youth justice system - from first contact with law enforcement agencies through to implementing measures to work with the child. It also contains the principle of treating a child in a way that "reinforces the child's respect for the human rights and freedoms of others".

This means that, within the youth justice system, the treatment and education of children should be directed to the development of respect for human rights and freedoms and that it

requires a full respect for and implementation of the guarantees for a fair trial. The UN Committee asks:

“If the key actors in juvenile justice, such as police officers, prosecutors, judges, and probation officers, do not fully respect and protect these guarantees, how can they expect that with such poor examples the child will respect the human rights and fundamental freedom of others?” (United Nations Committee on the Rights of the Child, 2019, p. 6)

A further principle is that the youth justice system must take into account the child’s age, promote the child’s reintegration, and support the child in assuming a constructive role in society. Again, this principle must be applied, observed and respected throughout the entire youth justice system. It means that all professionals involved in the youth justice system should be knowledgeable about child development and promoting child wellbeing. Across the world, violence occurs in all phases of the youth justice system, from first contact with the police, during pre-trial detention and during the stay in treatment and other facilities for children sentenced to detention. The principle of respect for the dignity of the child means that all forms of violence in the youth justice system must be prohibited and prevented.

2.3 The European Convention on Human Rights (ECHR)

[The European Convention on Human Rights \(ECHR\)](#) protects the civil and political human rights of people in countries that belong to the Council of Europe. The ECHR seldom refers to children specifically, but its provisions are equally applicable to adults and children alike. All 47 Member States of the Council of Europe, including the UK, have signed the Convention. It was ratified by the UK in 1953 but incorporated into UK law through the [Human Rights Act 1998](#) which means that its provisions are enforceable through Scottish and UK courts.

Certain ECHR rights are particularly relevant to children and young people in the youth justice system:

- The right to **freedom from torture** and inhumane or degrading treatment or punishment (Article 3)
- The right to **liberty and security** of the person (Article 5)
- The right to a **fair and public trial** within a reasonable time (Article 6)
- The right to **respect for private and family life**, home and correspondence (Article 8)
- **Prohibition of discrimination** in the enjoyment of the ECHR rights (Article 14)

Although the ECHR omits the social, economic, and cultural rights that are such an intrinsic part of the UNCRC, it has made a substantial contribution to the advancement of children’s human rights. The UNCRC has been ratified by all member States of the Council of Europe and therefore binds all States Parties to the ECHR. The European Court of Human Rights (ECtHR) has described the UNCRC as setting out “the human rights of children and the standards to which all governments must aspire in realising these rights for all children” (“Sommerfeld v Germany,” 2004) and takes account of the UNCRC in many of its judgments.

The ECtHR often deals with cases that relate to children and young people in youth justice systems and has developed a great deal of case law that reinforces the importance of taking a rights-based approach to youth justice. In 1999, the ECtHR concluded that:

“...it is essential that a child charged with an offence is dealt with in a manner which takes full account of his age, level of maturity and intellectual and emotional capacities, and that steps are taken to promote his ability to understand and participate in the proceedings.” (“Adamkiewicz v Poland,” 2010; European Court of Human Rights, 2010)

The ECtHR was clear that this also includes a requirement on domestic courts to promote the child’s ability to participate in the proceedings. In recent years, the Court has found a range of violations of the ECHR with respect to children, for instance of Article 8 (Right to respect for private and family life), Article 9 (Freedom of thought, conscience, and religion), and Article 14 (Prohibition of discrimination) (European Union Agency for Fundamental Rights, 2015b). The ECtHR has increased the standards of protection guaranteed in the Convention when ruling in cases concerning children and young people, particularly in relation to detention. As such, the standards for demonstrating the need for detention in accordance with the ECHR are higher for children than for adults. Furthermore, the ECtHR has ruled that detaining children in pre-trial detention should be a measure of last resort and be as short as possible. When detention is necessary, the ECtHR has ruled that children should always be kept apart from adults (“Nart v Turkey,” 2008).

The ECtHR set specific Article 6 requirements to ensure children’s effective participation in criminal trials. As a general rule, proceedings should ensure that account is taken of the child’s age, level of maturity and emotional capacities (“T v The United Kingdom,” 1999). Examples of ‘effective participation’ would include the child’s presence during the hearings, holding of in camera hearings, limited publicity, ensuring that the child understands what is at stake and limiting the formality of court proceedings (see [Section 13](#)).

2.4 Guidelines of the Committee of Ministers of the Council of Europe Child-Friendly Justice

The Council of Europe (2010) [Guidelines on child-friendly justice](#) set out basic rules that Council of Europe countries should follow when adapting justice systems to meet the specific needs of children. Although the guidelines are not legally binding, they provide authoritative guidance on how justice proceedings (including those of the criminal, civil and administrative justice systems, Tribunals, the Children’s Hearings System) should take into account the rights of children. The Guidelines are based on existing international and European standards, including the UNCRC, the ECHR, the jurisprudence of the ECtHR and a wide range of Council of Europe instruments relating to children’s human rights including: the European Social Charter; the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse; and the European Rules for Juvenile Offenders subject to sanctions or measures. They apply to all situations in which children and young people are likely to be in contact with criminal, civil or administrative justice systems and, in line with the UNCRC, define a ‘child’ as any person under the age of 18 years old.

According to the Guidelines, child-friendly justice is a system which guarantees the respect and the effective implementation of all children's human rights, giving due consideration to the child's level of maturity and understanding, and to the child's circumstances. The Guidelines emphasise the importance that justice is accessible, age-appropriate, speedy, diligent, adapted to and focused on the needs and rights of the child, including the rights to due process, to participate in and to understand the proceedings, to respect for private and family life and to integrity and dignity. Importantly, the Guidelines state that:

“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.” (Council of Europe, 2010, p. 19)

The Guidelines are underpinned by the following six principles, which echo those enshrined within the UNCRC and the ECHR:

- **Participation:** Children have the right to be heard in decisions that affect them. Adults must take children's views seriously.
- **Best interests of the child:** When decisions are being made, children's human rights must be respected, and all their needs taken into account according to their age. In doing this, judges are encouraged to seek the opinion of experts, such as psychologists or social workers.
- **Care and respect:** Children must always be treated with care and respect. In particular, his or her privacy must be protected.
- **Equal treatment:** Children must be treated equally, regardless of their country of origin, group or religion, or the language they speak. Children with disabilities, children who are homeless or those placed in residential care, and Gypsy/Traveller and foreign children need particular protection.
- **Rule of law:** Children should be treated fairly in the justice system. Those in the youth justice system should have a lawyer and the court should take into account their specific situation and needs. Children have the right to complain about their treatment to an independent and impartial person or body.

Through the Guidelines, these principles are embedded within seven key areas that impact on children and young people in the youth justice system:

- **Information, representation, and participation:** Children should be informed of their rights, have free access to a lawyer, and have a say in decisions that affect them, which should be explained in a way that they can understand.
- **Protection of privacy:** A child's privacy should be protected, including from the media. In particular, no one is allowed to print a child's name, picture, or personal information, including about their family, in the newspaper or on the internet. If children are being heard in court or other official settings, only the relevant people should be present.
- **Safety:** Children should be protected from harm, and when they have been hurt, it is important to keep them safe. Everyone working with children should be checked to make sure they are not likely to harm them.

- **Multi-disciplinary approach and training:** Professionals working with children should work together towards the child's best interests. They should receive training on children's human rights, communication and needs at different ages to support and protect children in the youth justice system, as well as to ensure the reliability and good administration of justice.
- **Safeguards before, during and after all proceedings:** When children go to court, the settings and process should be described and explained to them in a way that they can understand. They should have the opportunity to have their own lawyer and to have a say in cases that affect them. Decisions should be taken as quickly as possible and be clearly explained to children.
- **Deprivation of liberty:** A child should be detained only when there is no other option, and never on immigration grounds. If a child is detained, it should be as briefly as possible and separate from adults (except when this is in their best interests). Despite the detention, they should enjoy all their other rights, especially the right to contact family and friends, education or training, religion and access to sports and leisure facilities. Children should be properly prepared for their return home.
- **Promoting and monitoring child-friendly actions:** Governments should set up information structures for children (for example, free helpline or Children's Commissioner), make sure children know how and who to complain to about their treatment, teach children, parents, and professionals about children's rights, foresee protective legislation understandable for children, regularly check children's treatment in justice systems and take measures to improve it.

The Council of Europe Guidelines on child-friendly justice have been taken into account by the Scottish Government in the development of legislation and policy relating to youth justice, for example in the [Guidance on the use of Movement Restriction Conditions in the Children's Hearings System](#) and in the [Guidance on Joint Investigative Interviewing of Child Witnesses in Scotland](#).

2.5 Parliamentary Assembly of the Council of Europe – Child-Friendly Juvenile Justice: From Rhetoric to Reality

In 2014, the Parliamentary Assembly agreed a resolution, calling on Council of Europe countries to bring their law and practice into conformity with existing human rights standards. Highlighting “considerable and continuing dissonance between the rhetoric of human rights discourse and the reality of juvenile justice interventions” (Council of Europe, 2014, p. 1), the resolution aims to refocus attention on existing European and international standards. It includes key recommendations for Council of Europe countries, including setting the minimum age of criminal responsibility to at least 14 years old, establishing a maximum period of detention to which a child may be sentenced and decriminalising status offences.

2.6 Council of Europe Strategy for the Rights of the Child (2016-2021/ 2022-2027)

[The Council of Europe Strategy for the Rights of the Child](#) acknowledges progress made in implementing the UNCRC across Council of Europe countries; but is clear that children's rights are still violated on a daily basis. The Strategy notes that European judicial systems

are still insufficiently adapted to the specific needs of children, drawing on research that demonstrates that the rights of children to be heard, to be informed, to be protected, and not to be discriminated against, are not always fulfilled in practice (European Union Agency for Fundamental Rights, 2015a). It raises concerns that the justice system does not respond adequately to the rights of children in conflict and in contact with the law, highlighting the restriction of children's liberty and administrative detention of migrant and other children as particular issues. Five priority areas are identified in the Strategy, one of which is child-friendly justice for all children. Within this priority are three key areas: promoting child-friendly justice; protecting children in the context of deprivation of liberty; and children's rights in the family. The Strategy sets out how the Council of Europe will promote the implementation of child rights standards in each of these areas, including the Council of Europe Guidelines on child-friendly justice, the [European Rules for juvenile offenders subject to sanctions or measures \(2009\)](#), [Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment \(2015\)](#), the [European Convention on the Adoption of Children \(Revised\) \(2008\)](#), and the [Committee of Ministers Recommendations on family mediation \(1998\)](#).

In February 2022, the [Council of Europe Strategy for the Rights of the Child \(2022-2027\)](#) was published. Within the Strategy child-friendly justice for all children is identified as a key priority area. Within this section, it is acknowledged that a number of challenges still persist, including:

- “Children are not always provided with access to the justice system and are not always informed in a child-friendly manner, of their rights, the steps of the proceedings, their particular role in them or the legal decisions which affect them.
- Children experience infringements against their rights to privacy and data protection when in contact with the justice system, in particular via the media.
- Children continue to be excluded from meaningful participation in proceedings.
- Legal professionals lack sufficient training, including on the ability to hear children adequately.
- Jurisdictions lack sufficient specialisation and are not always adapted to the rights and needs of children.
- While there is a global decrease in the number of children in conflict with the law, child justice systems still present shortcomings and the criminal age of responsibility remains too low in some member States.” (Council of Europe, 2022)

The Strategy proceeds to outline how the Council of Europe will implement standards and innovate in order to ensure the rights of the child in relation to justice systems. In March 2024, a new European Union - Council of Europe '[Child-Friendly Justice Project](#)' was announced, encompassing Belgium, Poland, Slovenia (as focus countries) and Greece, Hungary and Portugal (as partner countries). The project is expected to run until March 2026.

Others

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

- [Council of Europe Committee of Ministers Recommendation on restorative justice and criminal matters \(CM/Rec\(2018\)8\)](#)
- [UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime 2005](#)

- [United Nations Resolution on Human Rights in the Administration of Justice, in particular of Children and Juveniles in Detention 1996](#)
- [United Nations Standard Minimum Rules for the Administration of Juvenile Justice \(the 'Beijing Rules'\) 1985](#)
- [United Nations Rules for the Protection of Juveniles Deprived of their Liberty \(the 'Havana Rules'\) 1990](#)
- [United Nations Guidelines for the Prevention of Juvenile Delinquency \(the 'Riyadh Guidelines'\) 1990](#)
- [Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse \(the 'Lanzarote Convention'\) 2007](#)

3. The Scottish Human Rights Framework

In addition to the intended incorporation of international human rights treaties, Scotland has increasingly shown human rights leadership with the [adoption of the Sustainable Development Goals](#) and the second [Scottish National Action Plan \(SNAP 2\)](#), under an overarching [National Performance Framework](#). In terms of children's rights, Scottish policy such as [GIRFEC](#) aim to embed children's rights in practice. This strong policy landscape has been supplemented by domestic legislation to create a distinctive Scottish human rights framework.

While human rights have been incorporated directly and indirectly in many Acts of the Scottish Parliament, the following presents an overview of the most notable in relation to children and young people.

3.1 Human Rights Act 1998

The [Human Rights Act \(HRA\) 1998](#) came into force in the UK in 2000 and incorporates much of the ECHR into UK law. It gives adults and children the ability to protect their ECHR rights through the domestic courts and includes a range of provisions to ensure the realisation of ECHR rights. According to s.2 of the HRA, Scottish and UK courts are required to take account of the case law of the ECtHR. All laws must be understood as far as possible in a manner compatible with the rights contained in s.3 of the HRA. Public authorities (including the UK and Scottish Governments, local authorities, Police Scotland, and the courts) must act compatibly with the rights in the HRA (s.6). It has been applied in a series of legal cases affecting children and young people, a growing number of which place considerable emphasis on articles in the UNCRC. As such, the HRA has had a significant impact on Scottish child law (Cleland & Sutherland, 2009).

3.2 The Children (Scotland) Act 1995 and the Children (Scotland) Act 2020

The introduction of the [Children \(Scotland\) Act 1995](#) marked a significant moment for reflecting children and their rights in Scottish legislation, and in particular, recognised the child's right to be heard in decisions affecting them. The 1995 Act helped define children's rights in the Scottish context, as well as outlining the duties and powers of local authorities in

terms of protecting children's welfare. While the 1995 Act is considered a notable turning point for developing the legal personality of children in Scots Law, some of its provisions required updating following Scotland's children's rights journey. Most notably, the 1995 Act included a presumption that only children aged 12 and above had the capacity to form a view in judicial and quasi-judicial proceedings, such as a children's hearing.

The [Children \(Scotland\) Act 2020](#) came into force on 1st October 2020 and updated elements of the 1995 Act, as well as other pieces of legislation related to subjects like children's hearings, adoption and family law. For children navigating children's hearings, the 2020 Act progressed the child's right to family life by placing a duty on local authorities to encourage sibling relationships for children in their care. The Act also provides for the participation of eligible siblings and wider family members in the child's hearing.

3.3 Children and Young People (Scotland) Act 2014

Prior to incorporation, [The Children and Young People \(Scotland\) Act 2014](#) aimed to 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, ensuring their rights are respected across the public sector.

Part 1 of the 2014 Act introduced various provisions to help protect, respect and fulfil children's rights including reporting duties for Scottish Ministers and public authorities, and enhanced investigation powers for the office of the Children and Young People's Commissioner Scotland. The Act also resulted in Child Rights and Wellbeing Impact Assessments being used across the Scottish Government.

The 2014 Act also contained provisions aimed at furthering the rights and protections afforded to children with experience of care. This included Part 9 which placed Corporate Parenting duties into law, Part 10 which extended aftercare provision to 26 for those eligible, and Part 11 which introduced 'Continuing Care' allowing eligible young people to remain in their care placement, or one similar, until age 21.

Whilst the 2014 Act was a step forward in terms of enshrining children's human rights in law, it is not equivalent to the incorporation of the UNCRC into Scots law, and does not enable children's UNCRC rights to be directly enforced through the courts. It has, however, provided several opportunities to further embed rights-based approaches into youth justice legislation, policy, and practice.

Information Sharing and the Named Person

In 2016, the UK Supreme Court found relevant provisions of the *Children and Young People (Scotland) Act 2014* to be outwith the Scottish Parliament's legislative competence, ruling that information-sharing provisions included in the Named Person scheme in Parts 4 and 5 of the Act may result in a disproportionate interference with the rights of children, young people, and their parents under Article 8 of the ECHR. [The Court was very clear](#) that the policy intention behind the 2014 Act is "unquestionably legitimate and benign" and does not breach human rights. After unsuccessfully exploring steps to amend legislation to bring it within competence and produce a draft Code of Practice, the decision was taken not to

enact the relevant parts of the 2014 Act. These will be repealed when section 27 of the Children (Care and Justice) (Scotland) Act is commenced.

The Scottish Government has been clear that the Named Person scheme can still be taken forward on a non-statutory basis, as an assessment and planning framework to meet children's rights and wellbeing needs and within existing information sharing thresholds, ensuring adherence to relevant legislation. Children's Services must comply with existing law and protect privacy and participation rights by seeking the informed consent of any child or parent for the sharing of their personal information. Only in the most exceptional circumstances should consent not be sought, or confidentiality breached, such as where there is a Court Order or a likely risk of significant harm. Children must be consulted and have their views taken into account in all matters that affect them, which includes situations where professionals are considering sharing information about them.

3.4 The UNCRC (Incorporation) (Scotland) Act 2024

The 2024 Act incorporated the UNCRC into Scots Law for the first time. Incorporation is different from implementation. Where implementation encompasses a wide array of methods taken to embed a children's rights-respecting culture, incorporation is the 'transposition', or copying, of international norms into domestic law, allowing them to be invoked in national courts.

As [outlined](#) by the Scottish Government, the intention behind the 2024 Act is to "deliver a proactive culture of everyday accountability for children's rights across public services in Scotland" (Scottish Government). To do this, the legislation outlines several provisions aimed at ensuring public authorities act compatibly with the incorporated UNCRC rights and duties. These provisions include:

1. Ensuring children can use the Scottish courts to enforce their rights if required.
2. A compatibility duty which ensures public authorities, and those carrying out functions of a public nature, must act in accordance with incorporated rights and duties.
3. Enhanced powers afforded to The Children and Young People's Commissioner Scotland and the Scottish Human Rights Commission to allow them to raise proceedings or intervene in proceedings where there is an alleged unlawful act.
4. The publication by Ministers of a Children's Rights Scheme outlining what they are doing to fulfil their duties and further strengthen children's rights.
5. The use of Child Rights and Wellbeing Impact Assessments by Ministers on any new legislation or policy relating to children and their rights.
6. A reporting duty ensuring listed public authorities, including the Scottish Government, report on what they are doing to ensure their compliance with the Act.
7. 'Strike down' and 'incompatibility' declarators, which allow the courts to determine if elements of Scottish legislation is incompatible with the Act.

The majority of these provisions commence on 16th July 2024. To support implementation, the Scottish Government intends to produce statutory guidance aimed at helping public authorities, as well as court rules for dealing with incompatibility cases. In the meantime, the Scottish Government has produced [non-statutory guidance](#) on how to embed a child-rights based approach.

3.5 Children and Young People's Commissioner Scotland

The Children and Young People's Commissioner Scotland's role is to promote and safeguard the rights of children and young people under the age of 18 years old, or up to the age of 21 if they are care experienced. Nicola Killean started their term as the new Commissioner in September 2023. The responsibilities and powers of the Commissioner are laid out in the [Commissioner for Children and Young People \(Scotland\) Act 2003](#). This protects the independence of the Commissioner and provides real weight in holding the government to account in upholding its international human rights obligations. As set out in the 2003 Act, the Commissioner has a responsibility to:

- Raise awareness and understanding of the rights of children and young people
- Keep under review the law, policy and practice relating to the rights of children and young people
- Promote best practice by service providers
- Promote, commission, undertake and publish research on matters relating to the rights of children and young people

In doing this, the Commissioner must have regard to the UNCRC and act in a way that encourages equal opportunities. The Commissioner must also encourage the involvement of children and young people in their work and consult relevant organisations working with and for children and young people.

The Commissioner is also in a position to carry out investigations where they believe service providers have failed to:

- Uphold the rights, interests and views of individual children and young people when taking actions or making decisions that affect them; or
- Uphold the rights, interests, and views of a group of children and young people when taking actions or making decisions that affect them

S.11 of the UNCRC Act amended the Commissioner for Children and Young People (Scotland) Act 2003, granting further investigation powers. More information on this can be found later in this section.

4. UN Committee General Comments

The UNCRC Committee publishes General Comments, which provide additional guidance and support in taking forward the various principles and provisions of the UNCRC. There are currently 24 General Comments, including [General Comment No.24](#) (2019) which replaces General Comment No.10 (2007) on children's rights in juvenile justice. The General Comments provide a useful tool to support a rights-based approach to planning, implementing, and evaluating youth justice services. The General Comments also provide further clarity on individual articles, which will be helpful when considering implementation of the UNCRC (Incorporation) (Scotland) Act 2024.

4.1 General Comment No.24 (2019): Children's Rights in the Child Justice System

In GC24, the Committee provides further explanation of specific rights outlined in UNCRC and guides countries in implementing child justice systems that promote and protect children's rights. It reflects the developments that have occurred since 2007, because of changing international and regional standards, the Committee's jurisprudence, new knowledge about child and adolescent development, and evidence of effective practices, including those relating to restorative justice. It reflects concerns such as trends relating to the minimum age of criminal responsibility and the persistent use of deprivation of liberty against children and young people.

The objectives of GC24 are specifically to:

- Provide a contemporary consideration of the UNCRC that guides States parties towards implementing child justice systems that promote and protect children's rights.
- Reiterate the importance of prevention and early intervention.
- Promote key strategies for reducing the especially harmful effects of contact with the criminal justice system, in line with increased knowledge about children's development; including an appropriate minimum age of criminal responsibility, diverting children away from formal justice processes, expanding the use of non-custodial measures, ending the use of corporal punishment, capital punishment and life sentences and setting out strict parameters in situations where deprivation of liberty is justified as a last resort.
- Promote the strengthening of juvenile justice systems, and;
- Provide guidance on new developments in the field.

The Committee is clear that whilst the preservation of public safety is a legitimate aim of the youth justice system, this aim is best served with full respect for, and implementation of, the overarching principles of youth justice as enshrined in the UNCRC. GC24 elaborates on youth justice specific articles of the UNCRC (Articles 37 and 40), while also taking into account broader social, cultural, economic, civil, and political rights and providing recommendations based on the rights included in other international standards on youth justice. It sets out what is needed to develop and implement a comprehensive youth justice policy that prevents and addresses offending behaviour by children and young people in a manner that is compatible with the UNCRC.

It explores several aspects of juvenile justice policy, including: prevention of juvenile delinquency; diversion from judicial proceedings; minimum age of criminal responsibility; guarantee to a fair trial; prohibition of the death penalty and life imprisonment; and deprivation of liberty. It articulates the leading principles and core elements of a comprehensive youth justice policy and sets out the training, awareness-raising, monitoring, and evaluation needed to support the approach.

Preventing offending behaviour by children, including early intervention for those below the minimum age of criminal responsibility

The Committee is clear that States parties must prioritise efforts to prevent situations in which children come into conflict with the law, rather than focusing only on children who have come into conflict with the law. Comprehensive youth justice strategies should include prevention and early intervention programmes that focus support for families, particularly those in vulnerable situations or where violence occurs. The Committee calls on governments to:

- Develop evidence-based intervention programmes that address the causes of offending behaviour, as well as the protective factors that may strengthen resilience.
- Close the pathways into the child justice system by decriminalising minor offences, which are often the result of poverty, homelessness, or family violence.
- Support parents, carers and families through early childhood care and education and home visitation programmes.

Promoting diversion for those above the minimum age of criminal responsibility

Promoting diversion is about the promotion of alternative measures to judicial proceedings, (usually to programmes or activities). It is stressed that diversion should be the preferred manner of dealing with children in the majority of cases and should be an integral part of the justice system. Keeping children away from the formal justice system reduces the subsequent stigma they may otherwise face, yields good results for children, is consistent with public safety and has proven to be cost-effective. To ensure that diversionary activities are effective and in keeping with a rights-based approach, the Committee recommends that:

- Diversion is only used when there is a sufficiency of evidence that an offence has been committed and that the child committed it.
- The child (and the child's parents or carers) must freely and voluntarily give consent in writing to the diversion.
- Legislation should contain specific provisions that indicate the cases in which diversion is possible.
- Police, prosecutors, and other agencies who make decisions on these provisions should be regulated and reviewed.
- The child must have the opportunity to seek legal or other assistance on the diversionary measure offered.
- Diversion should not include the deprivation of liberty.
- The completion of any diversion by the child should result in a definite and final closure of the case.

Minimum age of criminal responsibility

The minimum age of criminal responsibility refers to the age at which a child may be charged with a criminal offence. This means that if a child below that age breaks the law, he or she will not be held criminally responsible. At present there is a wide range of minimum ages of criminal responsibility across the world - from as young as ten in England, Wales and Northern Ireland, up to age 18 (including Colombia, Ecuador, Mexico, and Uruguay). GC24 says:

- States parties should set their minimum age to at least 14 years of age and commends those that have a higher minimum age, for instance 15 or 16 years of age (as previously mentioned, the Council of Europe has subsequently set the age of 14 years old as the recommended minimum age).
- Children below the minimum age have a right to assistance or services according to their needs.
- Children whose age cannot be proven to be above the minimum age should not be formally charged.
- Children with developmental delays or neurodevelopmental disorders or disabilities should not be in the child justice system at all.
- The child justice system should apply to all children above the age of criminal responsibility but below the age of 18 years old at the time of the commission of the alleged offence.
- Children who turn 18 before completing a diversion should be permitted to complete the diversion and not be sent into the adult justice system.

Guarantee to a fair trial

Guaranteeing a fair trial refers to the process of upholding certain rights while dealing with, and sentencing, a child who has come into conflict with the law. GC24 recommends that high quality training should be provided to all those involved in the justice system, including the police, prosecutors, legal representatives of the child, judges, probation officers, social workers, and others. This should include developing an understanding of the child's psychological, physical, and developmental capacities, as well as his or her racial, ethnic, social, religious, and linguistic needs, in order to provide appropriate support to the child throughout the process. GC24 sets out particular considerations around:

- No child shall be held guilty of any criminal offence that did not constitute a criminal offence at the time it was committed.
- The presumption of innocence requires that the burden of proof of the charge is on the prosecution, regardless of the nature of the offence.
- Children have the right to be heard directly, and not only through a representative, at all stages of the process, starting from the moment of contact.
- A child who is above the minimum age of criminal responsibility should be considered competent to participate throughout the child justice process.
- Every child has the right to be informed promptly and directly (or where appropriate through his or her parent or guardian) of the charges brought against them.
- Every child should be guaranteed legal or other appropriate assistance throughout the proceedings until all appeal rights are exhausted.
- The time between the commission of the offence and the conclusion of proceedings should be as short as possible.

- States parties must ensure that a child is not compelled to give testimony or to confess or acknowledge guilt.
- Children have the right to examine witnesses who testify against them and to involve witnesses to support their defense.
- A child who cannot understand or speak the language used in the child justice system has the right to the free assistance of an interpreter at all stages of the process.
- Child justice hearings should be conducted behind closed doors with exceptions being very limited and clearly stated in the law.

Prohibition of the death penalty and life imprisonment

The death penalty continues to exist in several countries in the world. Although the banning of this practice for both children and adults has become an international norm, children who are under 18 years old in some States may still receive the death sentence. Five States parties are known to have executed a juvenile since 2005 (Child Rights International Network, 2015).

For children, a sentence of life imprisonment without parole essentially means that the child will remain in prison throughout his or her adult life, for an offence committed as a child. Throughout the world, 67 countries have laws that allow a life sentence to be imposed on children under the age of 18 years old (Child Rights International Network, 2015). GC24 recommends that:

- States Parties should completely abolish the death penalty for children under 18 years of age at the time of the offence. Any pending executions should be suspended until domestic legislation is passed to abolish them.
- During sentencing, States Parties should take into account the age of the child when they broke the law, rather than the age at which they are being tried. This would prevent the practice of States parties waiting for children to reach 18 before executing them.
- There should be no life imprisonment (neither with nor without possibility of release) for children who infringed the law before reaching the age of 18. The possibility of release should be realistic, and regularly assessed, and must comply with the aims of youth justice.

Deprivation of liberty

The deprivation of liberty refers to “any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority” (United Nations Committee on the Rights of the Child, 1990). GC24 calls for the need for better monitoring and data collection on the number of children in detention, and recommends:

- The arrest, detention or imprisonment of a child must be in conformity with the law; no child can be deprived of his/her liberty unlawfully or arbitrarily.
- The deprivation of liberty should be used only as a measure of last resort and for the shortest appropriate period of time.

- States parties must ensure that children are not held in pre-trial detention for months or years. If necessary, they should be released conditionally, and the law should state the conditions under which children can be placed in pre-trial detention.
- Alternatives to detention should be used wherever possible. These may include community service or restorative justice.
- The time period from arrest to sentencing should not last more than six months and should be reviewed by independent and qualified inspectors.
- Every child deprived of liberty should be separated from adults, including in police cells, and has the right to maintain contact with their family.

4.2 Other General Comments

Many other General Comments are of relevance to youth justice, as outlined below:

General Comment No. 12 (2009) The right of the child to be heard

General Comment No. 12 includes specific provisions relating to children in the youth justice system. It emphasises that the right of the child to express his or her views must be “fully respected and implemented” (United Nations Committee on the Rights of the Child, 2009, para. 57) throughout every stage of the youth justice system, stating that:

“This right has to be fully observed during all stages of the judicial process, from the pre-trial stage when the child has the right to remain silent, to the right to be heard by the police, the prosecutor and the investigating judge. It also applies through the stages of adjudication and disposition, as well as implementation of the imposed measures.” (United Nations Committee on the Rights of the Child, 2009, p. 58)

To support this, the General Comment recommends that:

- Children must be informed promptly and directly about charges against them and in a language that they understand.
- Children must be informed about the juvenile justice process and possible measures which may be taken.
- Proceedings involving an accused child must be conducted in an atmosphere which enables the child to participate and to express themselves freely.
- Any court or other forms of hearings involving an accused child should be conducted behind closed doors. Only narrow exceptions to this are permitted, and these must be guided by the best interests of the child.

Reinforcing General Comment No. 10, it is also clear about what is needed in order to obtain a child’s consent to participate in diversionary activities, including:

- Adequate information to inform their consent
- The opportunity to give free and voluntary consent
- The opportunity to obtain legal and other advice and assistance to decide the appropriateness and desirability of the proposed diversion

In noting the strong impact that child participation plays in preventing rights violations, the General Comment also specifically highlights the importance of involving children and young

people in the formulation of youth justice legislation and policy, and also in the drafting, development and implementation of plans and programmes.

General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as primary consideration

General Comment No. 14 provides a focus on rehabilitation and restorative justice for children in the youth justice system. It reiterates that the best interests principle applies to all children in conflict with the law, and that this means that “the traditional objectives of criminal justice, such as repression or retribution, must give way to rehabilitation and restorative justice objectives, when dealing with child offenders” (United Nations Committee on the rights of the Child, 2013, p. 28).

General Comment No. 5 (2003) General measures of implementation

General Comment No. 5 sets out legislative, policy, institutional, budgetary and statistical actions which States parties must undertake for the effective implementation of the UNCRC. It is clear that all actions taken by Government, including the development of criminal justice legislation, policy, practice and budgeting, must be compatible with the UNCRC.

General Comment No. 20 (2016) Implementing rights of child during adolescence

General Comment No. 20 again places an emphasis on diversion, restorative justice, preventative interventions, and on avoiding detention. It recognises the vulnerability of children in contact with the law and sets out the steps that States parties need to take to reduce this vulnerability (in relation to both children displaying offending behaviour and child victims). It reiterates the need for a focus on rehabilitation and reintegration. It stresses the principle that detention should only be used as a measure of last resort and for the shortest appropriate period of time, and that children should be detained separately from adults.

General Comment 13 (2011) on the right of the child to freedom from all forms of Violence

General Comment No. 13 reiterates that States parties are under a duty to take proactive measures to prevent violence against children. It stresses the importance of community-based services and alternatives to detention as a way of preventing children from being exposed to violence.

Draft General Comment No. 27 on children’s rights to access to justice and effective remedies

This draft is the newest General Comment proposed by the Committee on the Rights of the Child, during its 95th session in January 2024. It outlines what access to justice should look like for all children who experience a violation of their rights. While access to justice is not explicitly named in the UNCRC, the committee has confirmed it is implicit within the convention text.

5. Access to Justice in Scotland for Children and Young People when their Rights are not Upheld

5.1 Children and Young People's Commissioner Scotland Investigation Powers

The Commissioner for Children and Young People (Scotland) Act 2003 provides The Commissioner with the power to carry out an investigation as to whether service providers have failed to:

- Uphold the rights, interests and views of individual children and young people when taking actions or making decisions that affect them; or
- Uphold the rights, interests, and views of a group of children and young people when taking actions or making decisions that affect them.

The Commissioner's office has undertaken three investigations since 2018. Most recently the office undertook an investigation into the provision of school-based counselling support, [releasing their findings](#) in May 2023. In 2021, the Commissioner's office launched an investigation to explore whether or not local authorities were compliant with the law when authorising a secure care placement. The [investigation found](#) that there had been a breach of children's rights in some cases, as it could not find evidence that those children had been consulted following the decision of a children's hearing to authorise secure accommodation.

While these investigative powers have significantly furthered the rights of children, s.11 of the UNCRC Act expands on the Commissioner's investigation powers, by affording them the ability to both raise and intervene in individual proceedings where there is a claim that public authorities have not acted compatibly with their duties within the Act.

5.2 Scottish Public Services Ombudsmen

In 2022, the Scottish Public Services Ombudsmen (SPSO) began developing a new approach to handling formal complaints from or on behalf of children, recognising the importance of non-judicial, accessible means of complaint in ensuring children's rights are upheld at domestic level in Scotland.

Alongside children, families and public sector professionals the SPSO co-designed guidance for those public bodies who fall under the remit of the SPSO. In June 2023, a pilot of the first draft of this new approach was launched. This pilot intends on testing the implementation of two guidance documents: the Child Friendly Complaints Handling Principles and Child Friendly Complaints Handling Procedure.

In the most recent stage of design, the SPSO launched a public consultation in January 2024, aimed at gathering views on their [Child-Friendly Complaints Handling Principles](#).

5.3 Rights In-Justice - Clan Childlaw

In April 2023, Clan Childlaw [launched](#) the [Rights In-Justice](#) project. This two-year project aims to ensure that children and young people in conflict with the law have their rights upheld and have accessible means of accessing justice when they believe their rights have been violated.

The project aims to:

- Help children in conflict with the law to hold public authorities to account.
- Increase provision of and access to child-friendly legal representation.
- Influence systemic change across policy and practice.
- Improve understanding of high-quality legal support for children in conflict with the law.

5. Monitoring Children's Human Rights in the Youth Justice System

The implementation of the UNCRC in Scotland is monitored by the UN Committee on the Rights of the Child. Every country that has ratified the UNCRC reports to the UN Committee every five years. The Committee's examination is informed by reports from the Children's Commissioners across the UK, as well as reports submitted from children's rights alliances across Scotland, England, Wales and Northern Ireland.

On June 15, 2022, the [UK Government](#) submitted its sixth periodic review report, outlining what the UK is doing to uphold children's rights. This report includes the devolved nations. In Scotland, this evidence was [supplemented by a report](#) from Together (Scottish Alliance for Children's Rights) which provided an independent assessment of how children's rights were being upheld in Scotland. In response, in June 2023 the UN Committee [published their Concluding Observations](#), outlining its recommendations on what the UK (including the devolved nations) must do to fully uphold children's rights. This report described the UK's child justice systems as 'draconian' and highlighted practice which is not rights-respecting, such as the age of criminal responsibility and the practice of not always treating 16 and 17 year olds as children in the justice system. (Children and Young People's Commissioner Scotland, 2015) In March 2024, the Scottish Government published their ['Initial Response to the Concluding Observations issued by the UN Committee on the Rights of the Child'](#).

5.1 Civil Rights and Freedoms

Non-statutory stop and search

The Committee on the Rights of the Child, within their Concluding Observations (2023; see para. 28) expressed concerns over the use of non-statutory stop and search powers against children and called for their use to be prohibited. A non-statutory (consensual) stop and search is one where the police officer asks for verbal consent to perform the search. There were concerns that officers were not under a duty to disclose reasons for the search and that children were not made aware of their right to refuse consent. A 2014 report noted that stop and search powers tended to be used disproportionately on younger age groups and also found that young people were significantly more likely to be searched on a non-statutory basis than older age groups (Murray, 2014). The Scottish Government, in partnership with the Scottish Youth Parliament and Children's Parliament, consulted with children and young people on the issue. Children and young people said that stop and search practices damage their relationships with the police, describing the practice as "degrading", "humiliating", "embarrassing", and "scary". Younger children said that they would be "anxious",

“embarrassed” and “worried” if they were stopped and searched by the police (Children's Parliament, 2016). The Scottish Government considered evidence that where consensual stop and search has been employed as a means of attempting to recover alcohol from children, it has been unsuccessful in 90% of cases. In response, under the [Criminal Justice \(Scotland\) Act 2016](#), the use of non-statutory stop and search has come to an end, through the entry into force of a new Code of Practice in May 2017. The Code of Practice states that “Constables must not search a person, even if they are prepared to submit to a search voluntarily, where no statutory power to search is applicable, and they have no warrant to do so” (Scottish Government, 2017, p. 6).

Statutory stop and search

For statutory stop and search checks, the Committee on the Rights of the Child (2023; see para. 28), has called on the UK to ensure that their use is non-discriminatory and proportionate. The *Criminal Justice (Scotland) Act 2016* placed a duty on Scottish Ministers to draft a Code of Practice on the use of statutory stop and search. The 2016 Act additionally imposes a duty on police to treat the need to safeguard and promote the wellbeing of a child as a primary consideration when deciding whether to search that child. The [Code of Practice](#) was laid before Scottish Parliament on January 11, 2017. Section 7 of the Code specifically addressed the use of stop and search powers on children and young people, and Police Scotland provided training for all officers, aimed at improving methods of engagement with young people. A six-month review of the Code of Practice's implementation was published on February 21, 2018. This review found that, although the rate of stop and searches against young people had declined, they were still more likely to be stopped and searched than adults (Scottish Government, 2018). A short guide on [Stop and Search](#) has since been published specifically for children and young people; it sets out the purpose of stop and search and the rights of children and young people in an age-appropriate manner. Although the number of searches is in decline, statutory stop and search powers remain widely used by Police Scotland. [Stop and search data](#) from the period April to December 2023, reveals there were 21 searches of 1–11-year-olds (14.3% positive rate); 1672 searches of 12–15-year-olds (19% positive rate) and 1598 searches of 16-17-year-olds (29.8% positive rate).

Searches in police custody, secure care, and young offenders institutions

reveals that from 1 April 2021 to 31 March 2022, 4,012 children were held in police custody. It is standard practice to search children detained in police custody (Police Scotland, 2019), although public data on the practice is not readily available. A Freedom of Information (FOI) request revealed that 6,982 searches were conducted on children in police custody between August 1, 2017, and August 31, 2018. Of these, 788 were strip searches (753 negative, 35 positive) (Police Scotland, 2018). In 2018, His Majesty's Inspectorate of Constabulary in Scotland (HMICS) raised concerns that police officers were not taking a consistent approach to strip searching of children and recommended that “Police Scotland should ensure there are appropriate safeguards in place when strip searching children under the age of 16, and 16 and 17, in police custody” (HM Inspectorate of Constabulary in Scotland, 2018, p. 3). In [response](#) to a recent FOI request, Police Scotland reported that it had conducted 3067 strip searches on children in police custody between 2017-21.

Data on the use of searches, including strip searches, on children in secure care or Young Offenders Institutions (YOI) is not routinely published. Following an independent review of

mental health services at HMP&YOI Polmont, the Chief Inspector recommended that the Scottish Government and Scottish Prison Service introduce “legislation and organisational practice which seeks to minimise re-traumatisation and stigma e.g., body searching should be intelligence led only” (HM Inspectorate of Prisons for Scotland, 2019, p. 5). This has been reiterated again in Recommendation 31 of the 2023 [full inspection report](#) of HMP&YOI Polmont which states: “SPS HQ should cease all routine body searching of young men/women, focussing instead on intelligence-led body searching and other means of detection.”

The [Year of Childhood: Pre-Inspection Survey](#) carried out in HMP&YOI Polmont established that 83.3% of children reported being strip-searched since having arrived in custody, with the frequency of how many times this had happened being unclear. Here, United Nations Committee on the Rights of the Child (2023) has called for: “legislative measures to explicitly prohibit, without exception, the use of: (ii) strip searches on children...” (see para.30).

5.2 Violence against children

Tasers

United Nations Committee on the Rights of the Child (2023; see para 30), has also expressed concerns over the use of Tasers and called for legislative measures to explicitly prohibit their use. Police Scotland’s use of Tasers complies with their internal Armed Policing Policy. Police Scotland’s Equality and Human Rights Assessment Standard Operating Procedure does not comply with the UN Committee’s above recommendation that the use of Tasers on children be outlawed. The Scottish Government states that taser use is an “operational decision” to be determined by Chief Constables. A 2011 Legal Opinion commissioned by Amnesty International (2010) contested this interpretation. The number of officers trained to carry Tasers has increased, with 500 additional officers trained in May 2018. Police Scotland must notify the Police Investigations & Review Commissioner (PIRC) every time a Taser is discharged against a person. PIRC reviews the incident and considers if an investigation is required. Investigation reports may be published on PIRC’s website. Police Scotland now publishes [statistics](#) relating to Taser use, with latest data showing that for quarter two 2023/24 a Taser was used eighteen times on children under the age of 18.

Restraint

The Committee also expressed concerns over the increased use of restraint against children as a disciplinary measure. The Committee called on the UK to prohibit methods of restraint against children for disciplinary purposes. The Committee also urged the UK to develop statutory guidance to ensure that restraint would be used only where it was necessary to prevent harm to the child or others, and only as a measure of last resort. The Scottish Prison Service has rolled out non-pain inducing restraint training techniques to staff within HMP&YOI Polmont, with a particular focus initially on changing the practice used with children, young people and women. In HMP&YOI Polmont, [evidence](#) suggests the Violence Restraint Reduction Strategy is showing signs of supporting staff to deescalate situations that might lead to violence.

5.3 Administration of Juvenile Justice

Minimum age of criminal responsibility

The Committee repeatedly expressed concerns over the previous minimum age of criminal responsibility in Scotland being eight years old. Subsequently, the Committee called for this age to be raised in accordance with “acceptable international standards” (UN Committee on the Rights of the Child, 2003, p. 79). Although the majority of children under 16 are dealt with through the Children’s Hearings System (CHS), rather than the criminal courts, there were significant implications for the potential impact of childhood offending behaviour through Disclosure Certificate or PVG record until well into adulthood. Significant changes to the [Management of Offenders \(Scotland\) Act 2019](#), implementation of Part 2 of the [Age of Criminal Responsibility \(Scotland\) Act 2019](#) (ACRA 2019), and full commencement of the [Disclosure \(Scotland\) Act 2020](#) have significantly addressed this issue - further details on these changes are included below. Against this backdrop, ACRA 2019 was fully commenced on the December 17, 2021; despite this significant legislative change, Scotland’s new age of criminal responsibility (12) remains below the internationally acceptable minimum of 14 years old, as highlighted by the UN Committee and the Council of Europe. The Children and Young People’s Commissioner Scotland has said that raising the age to 12 years old does not go far enough and that it needs to be raised further (Children and Young People’s Commissioner for Scotland, 2018). In April 2019, Scottish Government announced that an [Age of Criminal Responsibility Advisory Group](#) would be established to review operation of the 2019 Act and consider potential future ages of criminal responsibility.

As already underlined, ACRA 2019 entered into force incrementally/or in phases, with Section 1 of ACR 2019 - which raises the age of criminal responsibility from eight to 12 - being brought into force most recently in December 2021. Sections 3 (referral to Children’s Reporter) and 27 (victim information) became operational on November 29, 2019. It is now no longer possible for the Children’s Reporter to convene a hearing on offence grounds, and they must use another ground. Prior to this change, the number of eight- to 11-year-olds referred for offending had been in steady decline. In relation to disclosure of information for children under the age of criminal responsibility, the implementation of Part 2 of ACRA 2019, which commenced on November 30, 2020, means that information about behaviour which occurred while a person was under 12 years can be included on an enhanced disclosure or PVG scheme record only if the independent reviewer agrees that it should be. For children aged 12-17 the [Disclosure \(Scotland\) Act 2020](#) changes the language to ‘outcome’ rather than ‘conviction’ for disposals in relation to offence grounds referrals to the Children’s Reporter, which are either accepted or the grounds are found. Any such outcome is immediately spent for the purpose of disclosure with clear criteria as to when information, though spent, would be relevant for purposes of disclosure and PVG.

The 2019 Act sets out a range of police powers to enable investigation into alleged harmful behaviour by children under 12 years old. The powers include:

- The power to take a child to a ‘place of safety’ if they believe that the child’s behaviour may cause significant harm to another person, and their removal is necessary to protect a person from “an immediate risk of significant harm”.
- The power to search children under 12 in the most serious cases. This includes searches without a warrant under existing legislation and searches authorised by a court order.

- Samples and prints can be taken from children under 12 under a court order, or in an emergency situation with authorisation from a senior ranking police officer.
- The use of 'reasonable force' in relation to exercising the above powers, only as a measure of last resort and after all reasonable steps have first been taken to try to obtain the child's cooperation.

Procedurally, if following on from an ACRA Interagency Referral Discussion (IRD) the decision is made to undertake an investigative interview with the child - either by agreement or Sheriffs Child Interview Order (CIO) - [guidance](#) states that the interview must only go ahead if both a [Child Interview Rights Practitioner \(ChIRP\)](#) and their Supporter are located within the building where the interview is being conducted; at least one of these persons must be present with the child at the interview itself.

Youth justice system

United Nations Committee on the Rights of the Child (2023) has expressed further concerns (see paras. 53 (b) & 54 (b)) that children are sometimes tried in adult courts and recommended that the UK ensure that children in conflict with the law are always dealt with through the youth justice system. Although the aim of youth justice in Scotland is to keep as many under 18s as possible in the CHS, some are still dealt with by the adult criminal justice system. This can be due to the nature of the offence, legal status and/or circumstances. A 2020 report into Scotland's approach to children in conflict with the law showed that 37% of children who come into contact with the 'formal justice system' for their offending behaviour (either going through the CHS or the Courts), go to court (Lightowler, 2020).

Three core elements of the [Children \(Care and Justice\) \(Scotland\) Act](#) include provisions for increasing the age of referral to the Principle Reporter, amending the definition of a child in [respect of criminal proceedings and the prosecution of children to cover under 18s](#), and ending the use of YOI for those under the age of 18. The Lord Advocate and Procurator Fiscal will retain the discretion to begin criminal proceedings and to prosecute children in court, where appropriate, but it is anticipated fewer children would have their cases dealt with through the criminal justice system.

Detention and deprivation of liberty

The Committee has expressed concerns over the high number of children in custody and secure care accommodation where they are deprived of their liberty, particularly the disproportionate representation of ethnic minorities, care-experienced children, and children with psychosocial disabilities. The Committee on the Rights of the Child (2023; para.54 iv) has reiterated that detention be used only as a measure of last resort, for the shortest possible period of time, and reviewed on a regular basis. There are widespread concerns about the detention of children (Hammarberg, 2008), with the UN Special Rapporteur on Torture stating that even "very short periods of detention can undermine the child's psychological and physical well-being and compromise cognitive development" (Mendez, 2015, p. 5). The Child Rights International Network (CRIN) has long argued that "the only justification for the detention of a child should be that the child has been assessed as posing a serious risk to public safety" (Child Rights International Network, 2015, p. 3). The Nowak (2019, p. 146) Global Study on Children Deprived of their Liberty urged States "to develop national action plans aimed at an overall reduction in the numbers of children in detention and/or the elimination of detention for children". CYCJ and the Children and Young People's

Commissioner Scotland, in February 2022, jointly developed the guidance [Know Your Rights When Entering Custody](#) which was written with, and reviewed by, young men at HMP&YOI Polmont, as part of Youth Justice Voices' Inside Out participation project.

Currently, in accordance with the [Criminal Justice \(Scotland\) Act 2016](#), if a police officer suspects that an arrested or detained person is under 16, the officer must inform a parent or guardian. If the child cannot be seen before a Sheriff, police can (but need not) release the child, with or without a written undertaking to appear in court. If the child is not released, he or she must not be detained in a police station, unless arranging an alternative is impracticable or unsafe. These arrangements will be streamlined to apply to all children under 18 when the relevant provisions of the Children (Care and Justice) (Scotland) Act commence.

The [Scottish Police Authority Independent Custody Visiting Scheme Scotland – Annual Report 2022-2023](#) contains information about the number of children detained in police custody including a breakdown by age and by custody classification. A National Custody System has been introduced by Police Scotland, which records the number of times overnight police detention occurs although it does not appear that information in relation to this is routinely published. Information on the number of younger and older children retained in custody to appear at court, as well as where this detention takes place, is also not publicly available on a regular basis. Improved data needs to be made available here, and Scottish Government must ensure that overnight police detention is only used as a last resort.

Offences committed by children are normally dealt with via the CHS. This cannot result in criminal prosecution, although offence grounds through the hearings system if found or accepted are criminal convictions; as noted, these will now be referred to as outcomes from the CHS and subject to disclosure. Measures may include a Compulsory Supervision Order (CSO), which may involve a restriction of the child's liberty, movement restrictions or placement in secure accommodation.

The WSA advocates that secure care should be used where possible rather than YOIs (Gough, 2016; Scottish Government, 2011). When commenced the Children (Care and Justice) (Scotland) Act will ensure no child is remanded or sentenced to YOI; using secure accommodation instead. In order to Keep the Promise these provisions should commence by the end of 2024. Whilst both facilities deprive children of their liberty, secure care establishments are deemed more age-appropriate, being more relationship-based, providing therapeutic trauma-informed support, child-care trained staff, and with stricter limits on the use of restraint. If deprivation of liberty is really the only option to keep the child and other people safe, then secure care may be a more appropriate setting than a YOI (Lightowler, 2020). Nevertheless, there are a range of concerns about compliance with rights in secure care, with measures that are designed to 'protect' children regularly leading to breaches of their rights in relation to interactions and intervention which do not prioritise the child's participation or best interests. Significantly, in October 2020, the [Secure Care Pathway and Standards Scotland](#) was launched, with the aim of ensuring that children and young people receive sufficient support before, during and after a stay in secure care and that their rights, often when faced with extreme vulnerabilities and risks in their lives, are respected.

Between January 2012 and September 2019, 204 people died in Scottish Prison Service (SPS) custody, with many of the causes of death unclear ('awaiting determination'). Ten of these deaths were of individuals aged 21 or younger, eight of which occurred at HMP&YOI

Polmont. Two deaths were children who took their own lives. The State of Children's Rights Report 2019 (Together Scotland, 2019) sets out serious concerns about the apparent increase in the number of deaths by suicide and the lack of publicly available information on instances of attempted suicide, self-harm, and learning taken from reviews of these. In November 2021, His Majesty's Inspectorate of Prisons for Scotland (HMIPS) published an [Independent Review of the Response to Deaths in Prison Custody](#) containing a key recommendation calling for the requirement of an independent body to undertake a speedy review into every death in custody.

Following this report, Gill Imery was appointed as External Chair, Oversight of implementation of recommendations of the Independent Review of Response to Deaths in Prison Custody, setting up the Deaths in Custody Action Group shortly after. In 2023, this action group [published a report](#) on the evidence relating to deaths in custody between 2012 and 2022. This report highlights that deaths in prison custody are increasing, although it notes that the rates of death for young people and young adults is declining.

Included within United Nations Committee on the Rights of the Child (2023) Concluding Observations on the combined sixth and seventh reports of the United Kingdom of Great Britain, is a recommendation that the State Party:

“(b) Conduct an independent inquiry into the unexpected deaths of children in alternative care, custody, mental health care and the military, and ensure the regular collection and publication of disaggregated data on child deaths in all institutional settings; (c) Address the high rate of avoidable child deaths and strengthen efforts to prevent suicide and self-harming behaviours among children, including children in care, custody, health settings and immigration detention” (para. 22).

6. Resources

There are many frameworks and tools available to support policy makers and practitioners in taking a rights-based approach to their work. Whilst not all are specific to youth justice, they can be used and adapted to inform and develop legislation, policy, and practice across the youth justice system.

6.1 Taking a Children's Human Rights Approach: Guidance

[This guidance](#) has been published to support public authorities and other agencies in their understanding of what it means to adopt a child rights approach. The content of this guidance will also help public authorities comply with their legal duties under the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024.

6.2 Children's Rights and Wellbeing Impact Assessment

The Scottish Government has developed a Child Rights and Wellbeing Impact Assessment (CRWIA) which has been made available for public bodies and children's services to adapt for their own use. A CRWIA is a process through which decision-makers can identify, research, analyse and record the anticipated impact of any proposed legislation or policy on children's human rights. It should be used on all legislation and policy that impacts on children, not just children's services. The CRWIA provides a template to help assess

whether the proposal complies with the UNCRC and the wider human rights framework, and how it can help to protect, respect and fulfil children's human rights. In particular, the CRWIA can be used to ensure that the best interests of the child (UNCRC, Article 3) and children's views (UNCRC, Article 12) are an integral part of policy development.

- [CRWIA guidance](#)
- [CRWIA template](#)
- [CRWIA training tool](#)

6.3 Part 1 Guidance, Children & Young People (Scotland) Act 2014

The Scottish Government's guidance for public bodies to support Part 1 of the Children and Young People (Scotland) Act 2014 includes a range of information which is of wider relevance to all those working with, and for, children and young people. As well as providing a framework for children's rights reporting, it also contains further supporting resources, including how to involve children and young people in reporting, an overview of reporting frameworks and the relationship between children's rights and wellbeing, as well as many useful links to other relevant information.

6.4 State of Children's Rights Reports

Together (Scottish Alliance for Children's Rights) annually publishes the State of Children's Rights in Scotland report to monitor implementation of the UNCRC and wider international human rights obligations for children and young people across Scotland. Each report takes a different approach in scrutinising efforts to respect, protect and fulfil the human rights of children living in Scotland. Research for the reports is undertaken through a variety of methods, including seminars, surveys and desk research. Together undertakes extensive engagement with its membership throughout this process and much of the evidence included within the reports draws from civil society experience in policy and practice.

The [2016 State of Children's Rights report](#), published by Together provides a non-government perspective on the extent to which children and young people in Scotland are able to enjoy the human rights enshrined in the UNCRC and other international treaties. The report provides a baseline against which progress in implementing the recommendations made by the UNCRC and other international treaty bodies can be measured. It also reflects on areas where progress is being made, identifies where further efforts are needed, and makes several recommendations of relevance to youth justice.

The [2017 State of Children's Rights report](#) sets out promising rights-based practice taken by public bodies across Scotland. It includes a wide range of case studies from Together's members that illustrate how a rights-based approach can make a significant difference to children and young people's lives. The report was specifically written to provide ideas, inspiration and evidence to those working with, and for, children and young people to support further implementation of the UNCRC and other international human rights obligations to children and young people.

The [State of Children's Rights Report 2019](#) considers the extent to which children in Scotland are able to exercise their human rights as set out in the UNCRC. It builds on recommendations made to the UK by the Committee on the Rights of the Child in 2016. These cover a wide range of issues from education, health, privacy, and protection from violence to discrimination. The report draws on information provided by Together's members to give an update on how these recommendations are being implemented and what more needs to be done. For the first time, Together also published [a child-friendly version](#) of the 2019 report.

The [State of Children's Rights in Scotland 2022](#) report aims to encourage and empower everyone in Scotland to put children's human rights at the heart of everything they do. The report findings are informed by surveys, webinars, interviews, and organisational reviews. The report initially deconstructs the context around, and key tenets of, a 'child rights approach', before examining in detail the following key themes: 'children's participation in decision making', 'inclusive communications', 'situations where a child's rights are at risk of not being fulfilled', 'access to justice'; 'raising awareness of rights', 'child rights budgeting' and 'child rights impact assessment'. Both child-friendly and easy read versions of the report are accessible via the [Together website](#).

Together's 2023 [State of Children's Rights in Scotland](#) reflects on the child rights developments that have occurred in Scotland since the publication of the Committee on the Rights of the Child's Concluding Observations in 2016. The report includes analysis of the recent UK State Report submitted in 2022 and subsequent Position Statement produced by the Scottish Government. It acknowledges the 'progress' that has been made across a number of different areas, including as relates to legislation (i.e. UNCRC (Incorporation) (Scotland) Bill; Children (Equal Protection from Assault) (Scotland) Act 2019; Children (Scotland) Act 2020); the development of strategies and action plans (i.e. in areas such as UNCRC implementation, child poverty, health inequalities and the care system); and the ratification by the UK Government of particular treaties (i.e. Lanzarote and Istanbul Conventions). However, the report goes on to identify a series of 'concerns' relating to the rights of children, such as: the detrimental impact of repealing the *Human Rights Act*; the 'implementation gap' that currently exists between what is contained in legislation and policy and what is happening in practice; the deleterious effects of the cost of living crisis and pandemic; as well as justice-specific tensions relating to the age of criminal responsibility, deprivation of liberty, use of solitary confinement and use of pain-inducing restraint. The report contains 93 recommendations relating to how UNCRC implementation can be improved. A Children and Young Person's version of the report is accessible via the [Together website](#).

6.5 Common Core of Skills, Knowledge, Values and Understanding for the Children's Workforce

The [Common Core](#) was produced by the Scottish Government in 2012 to describe the skills, knowledge, values and understanding that everyone should have if they work with children, young people, and their families, whether they are paid or unpaid. The skills, knowledge and understanding are underpinned by the UNCRC and are set out in two contexts: relationships with children, young people and families, and relationships between workers. From the perspective of children, young people and their families, the Common Core describes what

is fundamentally important to them, no matter what service they are using or their own circumstances or backgrounds. From the perspective of workers (whether paid or unpaid) the Common Core describes the fundamentals that every worker should demonstrate and contains the basics needed to build positive relationships and promote children's human rights. It can be used in several ways, including framing recruitment materials, drafting staff guidance, in support and supervision, and in induction training.

6.6 PANEL Principles

The [PANEL Principles](#) are one way of breaking down what a human rights-based approach means in practice. The principles provide a process through which international human rights standards can be embedded at the very centre of policies and practice, ensuring that people know and claim their rights and that organisations, public bodies and businesses fulfil their human rights obligations. They also create solid accountability, so people can seek remedies when their rights are violated.

6.7 The 7 Golden Rules of Participation

The [7 Golden Rules for Participation](#), created by the Children and Young People's Commissioner Scotland, are a set of principles that anyone working with children and young people can use. They remind adults what children and young people may need from participation and help children and young people tell adults about the things that are important to them. They can be used throughout the planning, delivery, and evaluation of work with, and for, children and young people. The Golden Rules support a rights-based approach to:

- Planning work with children and young people
- Informing dialogue and relationships with children and young people
- Deciding which approaches to use to engage children and young people
- Checking how things are going
- Reviewing work and making decisions about what should happen next

They are available in a range of accessible versions and in a number of languages.

6.8 Rights Respecting? Scotland's Approach to Children in Conflict with the Law

CYCJ's 2020 report calls for Scotland to ensure its youth justice system is truly 'rights respecting', if it is to uphold the terms of the UNCRC. The report is the first of its kind to translate the UNCRC into Scottish-specific actions to improve policy, practice and experience in youth justice. It was written by CYCJ's former director Dr Claire Lightowler, who took a year's sabbatical to dedicate herself to exploring the complex and often emotive issues around offending by children; it is based on CYCJ's belief that youth justice in Scotland requires a reconfiguration on a scale not seen since Kilbrandon. [Read it here](#). A [child friendly version](#) is also available.

6.9 A Rights-Respecting Approach to Justice for Children and Young People: Scotland's Vision and Priorities – Action Plan 2021-2022

The Scottish Government in June 2021 published [A Rights-Respecting Approach to Justice for Children and Young People: Scotland's Vision and Priorities](#), along with an accompanying [Action Plan 2021-2022](#), setting out early actions towards accomplishing the outcomes and priorities within 'the vision' between June 2021 and June 2024.

The Action Plan states that the following eight outcomes will be achieved by 2024:

- Rights of all children are upheld and they are supported to understand what this means for them and what to expect
- Children and young people are supported to actively participate and engage in the decisions which affect them
- Victims are supported and their rights are upheld, with specific attention paid to child victims and their families
- Children are diverted away from the Criminal Justice System to appropriate alternative supports through the continued delivery of the Whole System Approach
- To the extent possible and appropriate, no under-18s are remanded or sentenced to detention in a Young Offenders Institution
- We have the required data and evidence on children and young people to better inform policy and practice so that children and young people benefit
- Children and families are supported at an early stage to improve their life chances with their wellbeing and mental health needs being addressed
- Speech, language and communication needs for all children and young people are taken into consideration both when assessing individual needs and when adapting information and communication used in formal processes.

To achieve these outcomes, the following priorities form the focal point of the Action Plan:

- Rights and Understanding
- Participation and Engagement
- Victims
- Whole System Approach
- Data and Evidence
- Early Intervention and Support

Within the Action Plan, a breakdown of key priorities and actions to be undertaken is provided for the year June 2021-June 2022, with associated timescales. Annex A of the Action Plan also outlines actions (largely without specific timeframes) to be carried out beyond June 2022.

Around the same time, and aligning with both the Vision and Priorities/Action Plan, the Scottish Government published renewed [Standards for Those Working with Children in Conflict with the Law 2021](#) (replacing the previous 2012 version). These new Standards define the minimum expectations for all strategic and operational services providing youth justice in the community, secure care and YOI. In January 2022, on behalf of the Scottish Government, CYCJ produced a child and young person friendly guide to the Standards

called [How Good Your Care and Support Should Be: Standards for People Working with Children in Conflict with the Law](#).

7. Conclusion

This section has emphasised the importance of taking a rights-based approach to the youth justice system, across all stages of legislative and policy development, as well as in practice. It has set out the international human rights framework that must be used to underpin a rights-based approach and has provided an overview of resources that can be used by policy makers and practitioners to embed this approach into the youth justice system.

Whilst all international human rights obligations must be taken into account across the youth justice system, this section has highlighted the particular importance of UNCRC Articles 37 and 40: the right of the child not to be punished in a cruel or harmful way; and the right of the child to be treated in a way that is “*consistent with the child’s sense of dignity and worth*” throughout the youth justice system. It has also demonstrated how the Council of Europe Guidelines on child friendly justice and UN Committee’s General Comments should be used to inform youth justice policy, by setting out the leading principles and core elements of a comprehensive youth justice policy, alongside the training, awareness raising, and monitoring and evaluation needed to support the approach.

Whilst progress has been made in embedding a rights-based approach into Scotland’s youth justice system, this section has set out a number of areas that have been highlighted by the UNCRC as needing improvement. These include the age of criminal responsibility (which, despite the 2019 Act, still does not conform with international children’s rights standards), the use of restraint, and the number of children still being tried in adult courts.

When a rights-based approach to youth justice is fully embedded across Scotland - the Children’s (Care and Justice) (Scotland) Act constitutes a significant development - children will no longer be unduly criminalised or stigmatised as a result of their behaviour; instead, they will be consistently supported to address that behaviour and become rehabilitated. Whilst recognising the need to ensure public protection and acknowledging the harm that can sometimes be caused to others by a child’s behaviour, there will also always be full recognition that young people at risk of, or involved in, offending behaviour often have significant underlying needs, and that failing to address these needs would be a violation of their human rights. This section has set out the human rights frameworks and tools needed to turn this ambition into a reality across Scotland.

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