

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

Section 3: Child and Human
Rights, Our Responsibilities

June 2026

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ACTION



Children and Young People's
Centre for Justice

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1. Introduction

Promotion of human and child rights must underpin all aspects of work with children and young people. Human rights are universal, meaning they should be enjoyed by everyone, woven into everyday experiences, systems and processes. Children's rights similarly are to be enjoyed by everyone aged under 18. As such all sections of this guide have a focus on meeting these rights for children and young people in conflict with the law.

The aim of this section is to provide an overview of child and human rights, setting 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, which provides further rights and protections for specified groups, which may also apply to those you work with. It aims to provide support and guidance to those working in youth justice to ensure all rights held by children and young people are embedded and upheld across all policy and 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, p. para 2) '[Rights Respecting? Scotland's approach to children in conflict with the law](#)'.

1.1 Rights, their origins and legal underpinnings

Rights are essentially entitlements. Human rights are therefore things it is commonly agreed that *everyone* should have, and children's rights are those entitlements specific to under 18s.

As a concept rights have been around for centuries, developing as civilisations grew and universal needs were recognised, progressing to become legal entitlements in the 21st century following the end of the Second World War and the establishment of the [United Nations \(UN\)](#) in 1945. The UN is an international organisation, currently comprising 193 member states, including the UK, "the one place on Earth where all the world's nations can gather together, discuss common problems, and find shared solutions that benefit all of humanity". It is from the UN that international rights law first emerged, upon which all current international and national rights law is based.

Those to whom rights are stated to apply, such as children or young people, are classed as 'rights-holders'. 'Duty-bearers', is the term given to governments (known as States Parties) who upon adopting certain rights legislation/treaties take on the obligation to ensure the rights contained within are provided to rights-holders under their jurisdiction.

Scotland, as part of the UK, is a 'state party' in relation to any international and European rights declarations to which the UK Government has signed up to, and therefore must comply with rights embedded within international, European, UK and Scottish legislation. The next section will look at how legislation, and subsequent policy, relates to children and young people in conflict with the law in Scotland, and how it can be used to uphold their rights.

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)

This section will set out the United Nations 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



The UN website provides fuller information on this vast, broad-reaching organisation, with the [Main Bodies](#) section explaining its different functions, and this [UN System Chart](#) providing a full breakdown of the main UN bodies, subsidiary bodies and related organisations.

The UN General Assembly is the largest body of the UN, the only one comprising all member states. The General Assembly adopts ‘Resolutions’, by majority vote of present member states, from which all current child and human rights have originated, such as those comprising the International Bill of Human Rights and the UNCRC, discussed below. Human Rights documents like these issued by the UN are known as ‘instruments’. Human rights instruments take forms such as treaties, conventions, optional protocols, and declarations, which member states can sign up to. The UN provides a non-exhaustive list of these [here](#), some of which we will cover below. These can guide practice with children and young people and be used to uphold rights and challenge situations where rights are not met, where the UK is a signatory, which can be established using the [OHCHR Dashboard](#).

Instruments of note may include:

- [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](#)

2.2 The International Bill of Human Rights

The UN General Assembly passed the [Universal Declaration of Human Rights](#) (UDHR) in 1948, the first agreed list of inalienable human rights, marking a milestone in international human rights law. In 1966, the Assembly further adopted two international treaties that would further shape international human rights: the [International Covenant on Civil and Political Rights](#) (ICCPR) and the [International Covenant on Economic, Social and Cultural Rights](#) (ICESCR), often referred to as “the International Covenants.” Together, the UDHR and these two Covenants are known as the [International Bill of Human Rights](#).

Rights are now broadly accepted as falling into the below five categories, with examples provided from the corresponding Covenants;

- **Political Rights:** the right to life, not to be subject to cruel or degrading treatment or punishment, the right to liberty and not to be subject to arbitrary arrest or detention, to a trial without undue delay, and to a reformative and rehabilitative treatment focus of the prison system
- **Civil Rights:** the right to freedom of thought, conscience and religion, to freedom of expression, the equal right to vote, and equal access to public services, protections to children on account of their age
- **Economic Rights:** the right to work, to be paid fairly and equally for this work, and to social security, and to assist children, protecting them from exploitation
- **Social Rights:** the right to an adequate standard of living (food, clothing, housing), and to the highest attainable standard of mental health, equal access to education
- **Cultural Rights:** the right to take part in cultural life, and to scientific and creative freedom

[The Human Rights Council](#) of the General Assembly (which in 2006 replaced the Human Rights Committee established by the Covenants) is the international intergovernmental body responsible for strengthening the promotion of human rights, addressing rights violations and making recommendations. It is supported by the Office of the High Commissioner for Human Rights (OHCHR), presided over by the [High Commissioner](#), the UN human rights entity mandated to promote and protect all human rights for all. More information on their role and work can be found on the [OHCHR website](#), which provides this definition of human rights:

“Human rights are rights we have simply because we exist as human beings - they are not granted by any state. These universal rights are **inherent** to us all, regardless of nationality, sex, national or ethnic origin, color, religion, language, or any other status. They range from the most fundamental - the right to life - to those that make life worth living, such as the rights to food, education, work, health, and liberty.”

There are ten core international human rights treaties (inclusive of the two international covenants) each accompanied by a committee of independent experts who monitor their implementation. While this section will focus on the UNCRC, and corresponding Committee on the Rights of the Child (CRC), 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).

2.3 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 54 articles, the first 42 holding practical significance for children, the remaining 12 procedural. The Children and Young People's Commissioner Scotland (CYPCS), responsible for upholding children's rights in Scotland, has produced a child-friendly [UNCRC Simplified Articles](#), with UNICEF UK also providing a [summary of the UNCRC](#).

The UNCRC was adopted in recognition of the unique stage of development occupied by children, and the distinct additional rights and protections they require. Since its adoption by the United Nations in November 1989, the USA is the only UN 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 are highlighted as being key to interpreting all the other articles and 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)

All rights are mutually reinforcing and interlinked. Although these four articles are given prominence, 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. The UNCRC, with caveats, is now binding under Scottish law, as discussed later.

2.4 UN Committee on the Rights of the Child General Comments

The [UN Committee on the Rights of the Child](#) publishes General Comments, which provide additional guidance and support for States Parties in taking forward the various principles and provisions of the UNCRC. General Comments support a rights-based approach to planning, implementing, and evaluating youth justice services. They also provide further clarity on individual articles, helpful in implementing the UNCRC (Incorporation) (Scotland) Act 2024.

[General Comment No. 24 \(2019\) Children's rights in the justice system](#) guides the implementation of articles 37 and 40 and should be familiar to anyone working with children

in conflict with the law. It provides further explanation of these specific rights and guides countries in implementing child justice systems that promote them. It reflects new knowledge on child and adolescent development, and evidence of effective practices. It reflects concerns such as trends relating to the minimum age of criminal responsibility and the persistent use of deprivation of liberty. GC 24 will be discussed further in section 2.6. **Other General Comments** of relevance to youth justice are outlined below.

General Comment No. 12 (2009) The right of the child to be heard highlights the value of children's perspectives and experiences, both as individuals and as a collective group being expressed and considered in decision-making, policymaking and preparation of laws and/or measures, as well as their evaluation. It highlights this process is known as **participation**, and should be an ongoing exchange of information, not a one-off act.

GC12 includes specific provisions relating to children in the youth justice system. It emphasises that the right of the child to express their 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.

In noting the strong impact that child participation plays in preventing rights violations, GC12 also specifically highlights the importance of involving children and young people in the formulation of youth justice legislation and policy, and 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 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 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 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 in conflict with the law and child victims). **It reiterates the need for a focus on rehabilitation and reintegration.**

General Comment 13 (2011) on the right of the child to freedom from all forms of violence 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 is the newest General Comment proposed by the Committee on the Rights of the Child (CRC) 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. The CRC continues its work on draft GC27, following consultation in 2025.

2.5 Key UNCRC articles in relation to youth justice



It is important for practitioners to be familiar with all UNCRC Articles, promoting understanding of how UNCRC guides policy in Scotland (covered later) but also to support them to ensure their practice, and that of their organisation, is rights respecting.

Knowledge helps identify and challenge when rights are not met, strengthening efforts to meet these, either supporting children to access rights, or advocating on their behalf.

Certain Articles can be used to promote the rights of children in specific situations, such as;

- Articles 28 and 29 cover right to and goals of education
- Article 27 provides adequate standard of living
- Articles 34, 35 and 36 protect against exploitation
- Article 39 provides the right to recovery from trauma.

The General Principles and others are particularly relevant to children in conflict with the law:

Non-discrimination (Article 2)

All children in conflict with the law should have equality of opportunity. To achieve 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. Older children should also have access to child-centred justice practices.

Best interests of the child (Article 3)

The best interests of the child must be a primary consideration in all decisions relating to children in the youth justice system, inclusive of children in conflict with the law, and child victims of the related 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 come into conflict with the law.

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

Contact with the justice system can have a detrimental impact on children's development. Removing a child's liberty can have extremely negative consequences and seriously hamper their reintegration into society. As such, the entire youth justice system should support children's development. Article 37 (discussed below) 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. This involves the meeting of related **article 13**, freedom of expression, enabling the child to seek receive and impart information in a way that suits their needs and choices. 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.

The right to parental guidance and evolving capacities (Article 5)

Article 5 reflects the fact that children by virtue of age, developmental stage, and place in society, are not fully autonomous. They require support and guidance to make decisions, decreasing as the child's capacity increases. Guidance should be provided by a parent, or other trusted adult where a parent is not able to fulfil this role.

A child's capacity to make informed decisions on matters impacting them, and therefore the level of guidance they require, varies depending on their age/developmental stage, but also due to the circumstances they find themselves in. This is particularly relevant when assessing a child's intention or culpability relating to alleged offences, but also in ensuring they have the support they need to fully understand and participate in justice processes, which have traditionally been complex and adult centric. Article 5 is widely regarded to be as significant as the guiding principles, having universal relevance.

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, used only as a measure of last resort and for the shortest possible 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 child specific specialised systems for children accused of, or found to have, broken the law. It requires the establishment of; child specialised laws, policies, authorities and institutions, a minimum age of criminal responsibility, and measures to divert children from formal judicial processes.

It states that children in contact with the justice system must be treated in a way that is "consistent with the child's sense of dignity and worth" - from first contact with law enforcement agencies through to implementing measures to work with the child.

A further principle is that the youth justice system must consider the child's age, promote their reintegration, and support them in assuming a constructive role in society. This requires all professionals involved in the youth justice system to be knowledgeable about child development and promoting child wellbeing.

2.6 General Comment 24 children's rights in the justice system

GC 24, as highlighted earlier, significantly assists with the interpretation and implementation of Articles 37 and 40. Again, anyone working with children in conflict with the law should familiarise themselves with GC 24 in order to ensure rights-respecting policies and practice.

GC 24 elaborates on the youth justice specific articles of the UNCRC (Articles 37 and 40), while also considering broader social, cultural, economic, civil, and political rights and providing recommendations based on the rights included in other international youth justice standards. It sets out what is needed to develop and implement a comprehensive youth justice policy that prevents and addresses behaviours bringing children and young people in conflict with the law in a manner that is compatible with the UNCRC.

The objectives of GC 24 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;
- **Promote the strengthening of juvenile justice systems** through improved organizations, capacity-building, data collection, evaluation and research, and;
- **Provide guidance on new developments in the field**.

It explores several aspects of juvenile justice policy, including; prevention; diversion from judicial proceedings; minimum age of criminal responsibility; guarantee to a fair trial; prohibition of the death penalty and life imprisonment; expansion of the use of non-custodial measures 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

State 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, and those at risk, particularly children not attending school and who do not complete their education. 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, enhancing parenting capacity and improving parent-child interactions.

Promoting diversion for those above the minimum age of criminal responsibility

Diversions are alternative measures to judicial proceedings, (usually to programmes or activities) and should be the preferred manner of dealing with children in the majority of cases, and an integral part of the justice system. Diversionary opportunities should be available from as early as possible after contact with the justice system, and at various stages throughout the process. Keeping children away from the formal justice system reduces stigma, yields positive outcomes, 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 by the child.
- The child must freely and voluntarily give consent 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.

Children who turn 18 before completing a diversion should be permitted to complete the diversion and not be sent into the adult justice system.

Minimum age of criminal responsibility

The minimum age of criminal responsibility (MACR) is the age at which a child may be charged with a criminal offence: a child below that age cannot be held criminally responsible. Internationally there is a wide range of MACRs – from ten in England, Wales and Northern Ireland, up to age 18 (including Colombia, Ecuador, Mexico, and Uruguay). In Scotland the MACR is 12. GC 24 says:

- States parties should set their MACR to at least 14 years of age - those where it is higher are commended (the Council of Europe has subsequently set the age of 14 years old as the recommended minimum age).
- Children below the MACR have a right to assistance or services according to their needs.
- Children whose age cannot be proven to be above the MACR 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 MACR but below the age of 18 years old at the time of the commission of the alleged offence.

The rationale for raising the MACR is based on evidence on child development and neuroscience, indicating maturity and capacity for reasoning are developing in adolescence. This is discussed in GC 20 on the Rights of the Child in Adolescence. GC 24 highlights children may lack criminal responsibility due to developmental delays or neurodevelopmental disorder, stating these children should not be in the child justice system at all, and if they are they should be individually assessed. These issues are covered in more detail in [Section 18](#) of this guide: Brain Development and Neurodiversity.

Guarantee of a fair trial

Guaranteeing a fair trial refers to upholding certain rights while dealing with, and sentencing, a child who has come into conflict with the law. GC 24 recommends high-quality training for all those involved in the justice system, including the police, prosecutors, legal representatives of the child, judges, probation officers, social workers, and others. Training should facilitate their 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.

GC 24 sets out particular considerations. Those key when supporting children are:

- **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.**
- **Safeguards against discrimination are required, including accommodation for children with disabilities, including psychosocial, and assistance with communication,** including right to an interpreter.
- **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

A sentence of life imprisonment without parole for a child means they will remain in prison throughout his or her adult life, for an offence committed as a child. GC 24 recommends that:

- **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.**
- There should be no life imprisonment (neither with nor without possibility of release) or indeterminate sentences for those who infringed the law before reaching the age of 18. The period served by children before parole is considered should be substantially shorter than that for adults, with realistic possibility of release, regularly reviewed with their development assessed, and have regard to the right to reintegration.

The [Sentencing Young People Guideline](#), in effect since January 2022, must be considered when a person who was under 25 at the time they pled or were found guilty is sentenced. Rehabilitation should be a primary consideration for these individuals (who are deemed to be less culpable). Where custodial sentences, whilst discouraged, must be imposed, they should be for a shorter period than that which would have been imposed on someone over 25 for the same or similar offence. However, currently in Scotland there is no age distinction when it comes to maximum sentencing or time served before parole is considered.

Deprivation of liberty (further detail in [Section 17](#) of this guide)

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). GC 24 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
- 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.
- 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.

2.7 The UN Convention on the Rights of Persons with Disabilities

The [United Nations Convention on the Rights of Persons with Disabilities \(UN CRPD\)](#) and the [Optional Protocol to the UNCRPD](#) (providing powers to the Committee on the Rights of Persons with Disabilities to hear and investigate CRPD violations) were both adopted by the UN in 2006 and ratified by the UK in 2009. The CRPD promotes and protects the rights of those with disabilities, under recognition of the barriers they face to participating in society.

It recognises that:

“disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others”

Article 1 recognises that disabilities include long-term physical, mental, intellectual or sensory impairments which may hinder full, effective, and equal participation in society.

Principles of the CRPD align with other rights-based instruments:

- dignity and autonomy
- non-discrimination
- participation and inclusion
- equality – both of opportunity and between men and women, and
- the evolving capacity of children

but with the focus on additional rights and safeguards required to ensure these are met for persons with disabilities, and additional principles of,

- the respect for difference and acceptance for those with disabilities, and
- accessibility.

The Convention’s focus on accessibility and ensuring communications are adapted to support participation of persons with disabilities in all aspects of life can be invoked to ensure those of any age in the justice system have access to supports that the UNCRC provides for children. This is of particular note given the prevalence of neurodevelopmental conditions, intellectual disabilities, and speech, language and communication needs (SLCNs) amongst young people (aged 18 to 25) in the justice system, and indeed justice involved adults (see [Sections 6 \(SLCN\) and Section 8 \(Mental health\) and Section 18 \(Brain development and neurodiversity\)](#)).

In addition, **Article 13 – Access to Justice** provides:

1. **States Parties shall ensure effective access to justice for persons with disabilities** on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal

proceedings, including at investigative and other preliminary stage

2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

These requirements must be borne in mind when supporting justice involved children and young people. Training and awareness should be used to promote better understanding of both individual and prevalent needs in the justice system, and to inform assessments of need/ risk and care / disposal planning, ensuring any additional considerations to inform capacity and compliance are considered. Knowledge of these specific rights can be used to advocate for adequate supports and rights-respecting approaches.

3. European Rights Framework

The UK is also a signatory to European rights instruments, notably the European Convention on Human Rights (ECHR) via its membership of the Council of Europe (CoE).

3.1 The Council of Europe

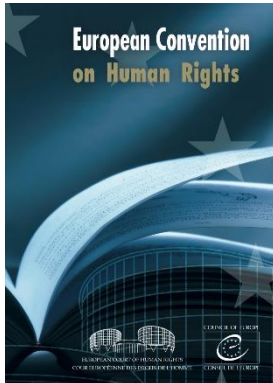
The [Council of Europe \(CoE\)](#), founded in 1949, is an organisation focussing on human rights, democracy, and rule of law, separate to the European Union (EU), though presently all EU 27 member states are members. The UK remains a CoE member following it's EU departure in 2020. In addition to passing and promoting the ECHR (discussed below) the CoE also promotes human rights via other international conventions, with its expert bodies monitoring member states' progress and making recommendations to meet human rights standards.



The CoE hosts the European Court of Human Rights (ECtHR), housed in Strasbourg, which oversees the implementation of the ECHR. It also hears complaints brought by rights-holders from state parties concerning alleged violation of their rights under the ECHR, with member states bound by the court's judgement.

The CoE website further details it's [structure](#). A linked website also covers the role and work of the [CoE Commissioner for Human Rights](#) whose role it is to independently address and raise awareness of human rights issues, including in relation to [work on children's rights](#).

3.2 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](#), its provisions therefore enforceable through Scottish and UK courts.

Certain ECHR rights are particularly relevant to children and young people in the 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. 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, 2015). The ECtHR has increased the standards of protection guaranteed in the Convention when ruling in cases concerning children, 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' using more simplified language and explaining legal terms, checking the child's comprehension, including via use of regular breaks, holding hearings in private, consideration of who is best to support the child. Section 15 of the Children (Care and Justice) (Scotland) Act 2024, now commenced, places duty on the court when hearing a case against a child to consider what steps might be taken to facilitate their participation, and where reasonable and practicable, take those steps. See [Section 13](#) of this guide for more detail.

3.3 Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice

The Council of Europe (2010) [Guidelines on child-friendly justice](#) set out rules for Council of Europe countries to follow to adapt justice systems meet the specific needs of children.

Although not legally binding, they provide authoritative guidance on how justice proceedings should consider the rights of children. They apply to all children's contact with criminal, civil or administrative justice systems.

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.

Five principles, echoing those enshrined within the UNCRC and the ECHR, underpin the guidelines: **participation, best interests of the child, dignity, protection from discrimination, and rule of law**. Importantly, the guidelines state that due process for children, such as right to a fair trial and legal representation, should not be compromised under the "pretext of their best interests" (Council of Europe, 2010, p. 19).

The Guidelines are split into sections covering before, during, and after judicial proceedings, and can be used to guide practice in these areas, as well as covering general child justice principles. It holds a focus throughout on; due process, alternatives to prosecution, the role of parents/ supportive adults, ensuring the child understands the process and has their communication needs met, participation, and promotion the child's rights and safety at all stages, facilitated by the adequate training of all professionals involved.

The Guidelines were taken into account by the Scottish Government in the development of legislation and policy relating to youth justice, for example in the Children (Care and Justice) (Scotland) Act 2024, [Guidance on the use of Movement Restriction Conditions in the Children's Hearings System](#), the [Guidance on Joint Investigative Interviewing of Child](#)



[Witnesses in Scotland](#) and [Upholding Children's Rights at Court: Roles and Responsibilities \(2026\)](#) and accompany [summary](#) (which can be edited to record individual considerations).

Other related CoE publications are:

- [Council of Europe Committee of Ministers Recommendation on restorative justice and criminal matters \(CM/Rec\(2018\)8\)](#)
- [Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse \(the 'Lanzarote Convention'\) 2007](#)

3.4 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 (MACR) to at least 14 years old, establishing a maximum period of detention to which a child may be sentenced and decriminalising status offences (those which would not be an offence for adults, therefore specifically criminalising children).

The [Age of Criminal Responsibility \(Scotland\) Act 2019](#) raised the MACR in Scotland to 12, with commitment to review this within three years of s.1 of the Act coming into force. This review, the [Report from the Age of Criminal Responsibility Advisory Group on the review of the Act](#), highlights the evidence base for increasing the MACR to 14, 15 or even 16. There is currently no maximum detention for a child, sentence length guided by the offence in Scotland. Sentencing of those age under 25 at the date of their plea or finding of guilt must however take into account the Scottish Sentencing Council's [Sentencing Young People Guideline](#), which states particular regard should be had to the maturity of the child/ young person, which impacts their culpability, and rehabilitation, their capacity for which is deemed to be greater than that of adults. [Videos](#) explaining the Guideline are also available.

3.5 Council of Europe Strategy for the Rights of the Child (2022-2027)

The [Council of Europe Strategy for the Rights of the Child \(2022-2027\)](#) acknowledges progress made via implementing the UNCRC, with children viewed increasingly as rights holders and agents of change. It is clear however that **children's rights are violated daily**, by gaps in legal protections, but more so **by gaps between policy and practice**. The Strategy notes that European judicial systems are still insufficiently adapted to the specific needs of children. It highlights the trauma that contact with the justice system can cause children, highlighting the overuse of criminal proceedings in favour of restorative justice, which should be given priority under Council of Europe Standards - [CM/Rec\(2018\)8](#).

Six priority areas are identified in the Strategy, including 'child-friendly justice for all children', where persisting challenges are acknowledged, 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 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.
- The criminal age of responsibility remains too low in some member States.
(Council of Europe, 2022)

Children's views in relation to 'child friendly justice' identified their three urgent challenges as:

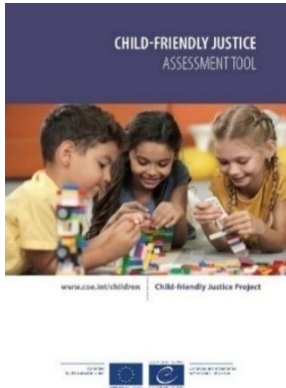
1. **Address the attitudes and conduct of officials and professionals in the justice system and law enforcement towards children through training on the rights of the child**, promoting a zero-tolerance policy against violence, humiliating and degrading treatment of children and their discrimination in the justice system.
2. **Ensure children involved in the justice system are fully informed of their rights**, the steps of and their role in proceedings in a child-friendly and timely manner, at every phase of their justice journey.
3. **Redress infringements of the media against the rights of the child to privacy and data protection and strengthen accountability.**

The Strategy proceeds to outline how the Council of Europe will implement standards and innovate to meet these challenges. This includes via knowledge exchange and developing training courses and standards for legal professionals working with children (and promoting the CoE HELP ([Human Rights Education for Legal Professionals](#)) programme), and improving access to justice for vulnerable children.

The [second implementation report of the strategy](#) (2024-2025) evaluates overall progress towards each objective, noting modest but encouraging increases in the minimum age of criminal responsibility, and signs of advancement towards more child centred justice systems.

Child Friendly Justice Assessment Tool

In March 2024, European Union and Council of Europe '[Child-Friendly Justice Project](#)' (CFJ Project) was announced. The project facilitates the practical implementation of the CoE Guidelines on child-friendly justice, actively upholding children's rights at all stages of the justice system. In June 2025, the Children's Rights Division of the Council of Europe presented the new [Child-Friendly Justice Assessment Tool](#) developed by the CFJ Project.



The Tool will support member states in evaluating their justice systems to ensure they are child-friendly, compliant with CoE Guidelines, UNCRC and European case law, and serve as a reference for those working with and for children in contact with the law, supporting efforts to identify strengths, address gaps and monitor progress over time.

The toolkit defines child-friendly justice as:

“justice that is accessible, age appropriate, speedy, diligent, adapted to and focused on the needs and rights of the child, respecting the 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.” (CoE, 2025, p.5)

It is clear that child-friendly justice must be enshrined in domestic law (Council of Europe, 2025, p.5).

4. The Scottish Human Rights Framework

In addition to exploring the incorporation of international human rights treaties, Scotland has increasingly shown human rights aspirations with the [adoption of the United Nations' Sustainable Development Goals](#) (SDGs) and the second [Scottish National Action Plan](#) (2023-2030) (SNAP 2), under an overarching [National Performance Framework](#). A consultation ([analysis available here](#)) on a Proposed Sustainability and Wellbeing Bill, which would seek to improve the implementation of the framework, took place in 2024. The Bill however does not appear on [Scotland's Programme for Government 2024-25](#) – albeit key priorities do address some of the SDGs. In terms of children's rights, Scottish policy such as [GIRFEC](#) aims 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.

4.1 Human Rights Act 1998

The [Human Rights Act \(HRA\) 1998](#) came into force in the UK in 2000 and incorporates much of the European Convention of Human Rights (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 European Court of Human Rights (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).

The Human Rights Bill for Scotland

The National Taskforce for Human Rights Leadership (Taskforce) [report](#) (2021) recommended Scotland strengthen its human rights protections, by incorporating several international human rights treaties into Scots Law. The four treaties 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).

Plans to introduce the Human Rights Bill on subsequent Plans for Government however have not manifested, the 2025-26 Plan instead promising a Mainstreaming Framework setting out practical plans to achieve. The [Equality and human rights mainstreaming strategy](#) (2025-30) and accompanying [Toolkit](#) were published in December 2025, promoting the embedding of human rights, stating that the Bill will be introduced in the 2026-31 Parliamentary session, subject to the election outcome.

4.2 The UNCRC (Incorporation) (Scotland) Act 2024

Historically, some UNCRC elements have been brought into Scots law on a piecemeal basis. The best interests of the child (Article 3) 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. The [Children \(Care and Justice\) \(Scotland\) Act 2024](#) further protects the rights of children in justice processes, extending the upper age of referral and scope for children's cases to be

remitted to the Hearing System for advice or disposal (commencing Spring 2027). It strengthens rights and protections of older children in police custody (see [CCJ Act Police Custody Guidance](#)), and places a duty on courts to take steps to promote the participation of child accused, and states *more children can* have hearings heard in private (see [Upholding Children's Rights at Court: Roles and Responsibilities](#) guidance and [guidance summary](#)).

The [United Nations Convention on the Rights of the Child \(Incorporation\) \(Scotland\) Act](#) (2024) incorporated the majority of the UNCRC into Scot's law. Areas not covered relate to the 2021 the [UK Supreme Court ruling](#) that four elements of the original all-encompassing UNCRC Bill fell out with the legislative competence of the Scottish Parliament.

Amendments ensured the now UNCRC Act only applies 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 could include the Education (Scotland) Act 1980, the Children (Scotland) Act 1995, and the Criminal Procedure (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 are not covered by the compatibility and interpretative duties.

The UNCRC Act fully commenced on July 16, 2024, incorporating the UNCRC into Scots Law. Incorporation is different from implementation: implementation encompasses a wide array of methods taken to embed a children's rights-respecting culture, whilst incorporation is the 'transposition', or copying, of international norms into domestic law, allowing them to be invoked in national courts.

The Act intends to deliver a proactive culture of everyday accountability for children's rights across public services in Scotland. To do this, the legislation outlines several provisions aimed at ensuring public authorities act compatibly with the incorporated UNCRC rights and duties.

- **Part 1** introduces the **UNCRC Requirements**, the incorporated rights provisions which are the aspects of the UNCRC Articles which relate to devolved legislative areas i.e. those governed by the Scottish Parliament not Westminster. The UNCRC Requirements are detailed in the Act's [Schedule](#). [Section 4](#) advises what can be considered when interpreting the UNCRC Requirements, including General Comment and concluding observations.
- **Part 2** dictates duties which are to be covered by the Act, and available remedies for acts unlawful by virtue of being incompatible with the Act, including bestowing powers on the Children and Young People's Commissioner Scotland and Scottish Commission for Human Rights to bring or intervene in proceedings where the UNCRC Requirements are not, or will not, be met.
- **Part 3** covers the establishment of a Children's Rights Scheme, use of Children's Rights and Wellbeing Impact Assessments (CRWIAs), and places reporting duties on local authorities and the Scottish Parliament.
- **Part 4** deals with legislation's compatibility with the UNCRC requirements, including the making of statements regarding compatibility.

- **Part 5** makes provision for a system for the courts to consider compatibility questions (in civil proceedings) and UNCRC compatibility issues (in criminal proceedings) relating to the compatibility of legislation with the UNCRC requirements and public authorities' compliance with section 6.
- **Part 6** empowers the Scottish Ministers to change the law, by regulations, in order to cure an incompatibility (or potential incompatibility) with the UNCRC requirements.
- **Part 7** makes final provisions, covering areas including interpretation, rules and regulations required, and commencement.

To support implementation, the Scottish Government has produced [statutory guidance on Part 2](#) and [Part 3](#) of the Act, aimed at helping public authorities, as well as court rules for dealing with incompatibility cases, building on previously published [non-statutory guidance](#) on how to embed a child-rights based approach.

4.3 Children and Young People's Commissioner Scotland

The Children and Young People's Commissioner Scotland's (CYPCS) role is to promote and safeguard the rights of all children under the age of 18, and care-experienced young people aged 18 to 21. Nicola Killean started her 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
- Promote best practice by service providers
- Promote, commission, undertake and publish research on matters relating to the rights of children

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 [About the Commissioner](#) page of the CYPCS's website explains its role in more detail, both via text and in short videos, including one where you can meet the Commissioner.

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.

5. Taking a rights-respecting approach to youth justice

A human rights-based approach ensures that legislation, policy, and practice are all anchored in a system through which rights-holders claim their rights, and duty-bearers are given corresponding obligations. It is an approach that empowers people to take part in developing legislation, policy and practice, whilst also holding the government to account in meeting the obligation to respect, protect and fulfil human rights.

This section covers how to embed a human and child rights-based approach, then highlights how Scotland's key policy and approaches to children and young people in conflict with the law are grounded in human rights approaches. The following section then explores monitoring mechanisms to see how embedded these approaches are in practice.

5.1 The PANEL Principles

The PANEL Principles, as noted by the Scottish Human Rights Commission (2013), are essential elements of a human rights-based approach for people of all ages, and therefore applicable to approaches with **young people aged 18 to 25**.

Four of the five principles (**Participation, Accountability, Non-Discrimination and Equality, and Empowerment**) are also key principles of a Children's Human Rights Approach, discussed below, so not detailed here. The fifth, **Legality**, states that, approaches should be grounded in the legal rights that are set out in domestic and international laws.

The PANEL principles explained in this [video](#), should be held in mind by organisations and practitioners working with and for individuals, with this [Self-Assessment Tool](#) a helpful guide. The non-discrimination principle advises we think about whose rights are most at risk and prioritise these, and as this section progresses it will be helpful to hold in mind just how at risk the rights of young people in conflict with the law are, and how you as an individual, your organisation, and as a society we can address this.

A rights-based approach to youth justice seeks to ensure that young people are not unduly criminalised or stigmatised because of their behaviour but instead supported to meet their potential. It recognises that young people in conflict with the law often have significant underlying needs and a failure to address these 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.

To embed an approach to youth justice that respects, protects and fulfils human rights, legislators, policy makers, key organisations and practitioners must *collectively* focus on the implementation of relevant international human rights standards.

5.2 Principles of a children's human rights-based approach

The Scottish Government's [Guidance on taking a children's human rights approach](#) (2024) provides information and resources for public authorities and other agencies to support their understanding and implementation of a children's rights approach, and compliance with their legal duties under the UNCRC (Incorporation) (Scotland) Act 2024.

The guidance introduces and promotes a practical framework highlighting integral components of a children's human rights-based approach, of which there are **five principles**:

- **Embedding:** Putting children's rights at the core of planning and the delivery of services that affect children and young people – *this includes use of Children's Rights and Wellbeing Impact Assessments (CRWIAs) and Child Rights Budgeting.*
- **Equality and Non-discrimination:** Ensuring that every child or young person has an equal opportunity to make the most of their lives and talents – *this includes inclusive communications in use at all times, and the early identification of communication needs and preferences, and equality of physical accessibility.*
- **Empowerment:** Giving children the knowledge and confidence to use their rights and hold organisations and individuals that affect their rights accountable – *this includes promoting awareness of rights for rights-holders, their advocates, and the workforce, allowing children to contribute to outcomes and become human rights defenders.*
- **Participation:** Listening to children and taking their views seriously – *children are involved in any decisions that affect them on national, local and individual levels.*
- **Accountability:** Organisations and individuals should be accountable to children for the decisions and actions which affect their lives – *this involves children being given access to procedures to challenge decision-makers and involved in continuous feedback, child-friendly complaints processes, access to advocacy, and open reporting on rights achievements.*

This [video](#) from Together Scotland explains the five principles, whilst [their Learning Library](#) has helpful resources themed by each of the five principles. The Scottish Government guidance also contains case studies illustrating what the principles look like in practice. These resources support organisations and individuals to embed a children's human-rights based approach.

5.3 GIRFEC and the Whole System Approach (WSA)

GIRFEC and the WSA (along with the children's Hearing System, see [Section 2](#)) form the basis of the *child specific* approaches to justice for children in Scotland, required by Article 40 of the UNCRC.



Getting it Right for Every Child (GIRFEC)

Introduced in 2006, [Getting it right for every child \(GIRFEC\)](#) provides a consistent framework and shared language for promoting, supporting, and safeguarding the wellbeing of children and young people, now embedded across all Children's Services. GIRFEC is inherently rights and needs led, focussing not only on the child but the systems round them, recognising the significant influence of individuals and environments on a child's

development, and the vulnerabilities, needs, evolving capacities, and reduced autonomy associated with childhood and adolescence by virtue of age and developmental stage.

When providing supports and assessments for children, including those in conflict with the law, the GIRFEC Framework should be applied. It allows for assessment of the child's experiences, risks, and needs in all aspects of their life to be contained within one multi-agency assessment, addressed via one Child's Plan. GIRFEC can be used alongside Child Protection Guidance and Care and Risk Management (CARM) guidance for children who have displayed harmful behaviours.

The Whole System Approach (WSA)

The [Whole System Approach](#), introduced in 2011, is the Scottish Government's policy approach to working with children and young people in conflict with the law. It provides a proportionate, rights-based response to children (and where appropriate young people up to age 26) at each stage of their journey through the justice system.

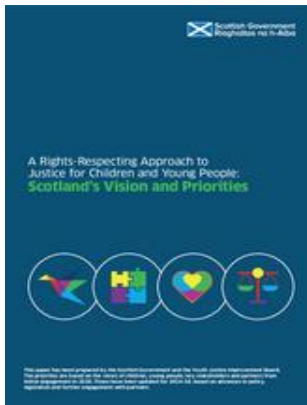
The WSA is rooted in GIRFEC, dealing with all children as children, looking beyond the presenting behaviour to meet their needs. As with GIRFEC, it focusses on the right response by the right service at the right time, in response to individual needs. The WSA keeps children out of formal systems where possible and manages any risk the child or young person presents, whilst meeting their needs, in consideration of their best interests.

It promotes the maximised use of the Children's Hearings System and has a focus on prevention and early intervention, having introduced the process of **Early and Effective Intervention (EEI)**, the key diversionary measure keeping children out of formal systems in Scotland through timely and proportionate interventions. It also promotes **Diversion from Prosecution** where safe and appropriate (see [Sections 10 and 11](#) for further detail on these processes).

Regardless of how they are dealt with, children and young people should be supported through the system, including where they are proceeded against in court, and through their disposal, whether community or custody, with support in place to manage any transitions.

Regard should be given to the relevant UNCRC articles and human rights when considering assessments, care-planning, interventions and disposals for children and young people under these approaches. Good practice references these and their best interest and views.

5.4 Scotland's Vision and Priorities 2024-2026



[A Rights Respecting Approach to Justice for children and young people: vision and priorities 2024-26](#) aims to keep children and young people out of the criminal justice system, promoting the use of the Whole System Approach.

As with the previous Vision, there is a focus on upholding rights in justice, ensuring that Scotland delivers an effective, holistic, developmentally informed approach to children and young people in conflict with the law, based on prevention, early intervention, and rehabilitation. Like the WSA, it recommends where possible extending its supports and principles for those up to the age of 26.

Overarching Priorities:

Rights: All those working with and for children are responsible for upholding and advocating for the rights, of children and young people, and for promoting their awareness, including knowledge of the justice system. Children and young people should have access to support their recovery from past trauma and have consideration of additional and specific needs.

Participation and Engagement: Children and young people must be supported to achieve their right to understand and participate in any processes impacting them, challenge any barriers, and have their views shape decisions affecting them. Opportunities must be developmentally appropriate, with accessible communication options. Good relationships promote engagement and participation and must be forged.

Data and Evidence: The Vision is underpinned by views and information of those with experience of the justice system, and to achieve the Vision, practice and outcomes, continued recording, gathering and analysing of data and evidence is required (noted in GC24).

Outcome Priorities:

Victims: Victims of children in conflict with the law must also be supported and their rights upheld. This is also applicable to child victims of exploitation and trafficking, and asylum-seeking children, support for whom must consider the impact of trauma, and the scale of exploitation, and a Child Protection and contextual safeguarding approach.

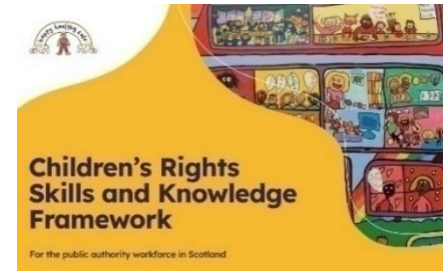
WSA Integrity: All children must be diverted away from justice systems to alternative supports via the WSA where possible. The WSA must support the development of community and workforce confidence, creating lasting and effective systems and cultural change to ensure that Scotland's response to children and young people in conflict with the law is based on prevention, early intervention, and rehabilitation.

Prevention, Early Intervention and Support: Improvement of children and families' life chances must be supported at an earlier stage, protective supports maximising wellbeing and mental health. This requires wider partnership work addressing issues such as trauma, neglect, and anti-social behaviour on a national level. This outcome includes timely access to services to identify and assess health needs including neurodivergent conditions, reducing stigma, enhancing community trauma informed supports, and promoting positive masculinity.

The Vision is steeped in rights practice; we will later explore how to evaluate to what extent its priorities translate into practice. The new Vision is expected in Autumn 2026.

5.5 The Children's Rights Skills and Knowledge Framework

The [Children's Rights Skills and Knowledge Framework](#) was commissioned, and will be reviewed, by the Scottish Government under its UNCRC incorporation. It was compiled and is hosted by Together and supports practitioners to take a rights-based approach to practice. It compiles resources for use sector wide to promote children's rights, and has various levels of training recommended under its [Menu of training](#) and contains over 500 resources for use with children.



6. Access to Justice for Children and Young People

This section looks at the mechanisms in place to identify and address any rights infringements for children and young people in Scotland.

6.1 Scottish Human Rights Commission (SHRC)



The [Scottish Human Rights Commission](#) (SHRC) is an independent public body which has a duty to promote awareness, understanding and respect for all human rights, and to promote best practice. Its full duties and powers are set out in the [Scottish Commission for Human Rights Act 2006](#), and their role also explained in this [video](#).

The SHRC has powers to recommend changes to law, policy and practice; promote human rights through education, training and publishing research; and to conduct inquiries into the policies and practices of Scottish public authorities.

It publishes State of the Nation reports to support Parliament and others to meet their lawful human rights obligations. Their recent [State of the Nation Report: Economic, Social and Cultural Rights in Scotland](#) highlighted significant concerns that the basic rights of many Scottish citizens are not being met. It makes ten Key Findings including lack of available healthcare provision, safe and affordable housing, and high levels of food insecurity.

Relevant to this section is the finding that **'People cannot access effective justice or remedies when their economic, social and cultural rights are not recognised.'** This is on account of these rights not being explicitly protected by incorporation into in Scot's law. The report highlights whilst non-judicial complaints mechanisms have a role, they do not always have the mandate, skills or resources to embed human rights analysis into handling of specific complaints.

The Commission reiterates its call to progress [Incorporation: a new Human Rights law for Scotland](#), incorporating the ICECSR, not covered by the ECHR or Human Rights Act.

6.2 Children and Young People's Commissioner Scotland (CYPCS) investigation powers

The Commissioner for Children and Young People (Scotland) Act 2003 provides the Commissioner with the power to investigate 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.

On the 20th of November 2024 the CYPCS announced an [investigation into Police use of force against children](#), concerned by data indicating children were twice as likely to experience this than adults. This investigation is approaching conclusion.

The United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 expanded 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, or intend not to act, compatibly with their duties within the Act. The first case of this nature was ruled on in February 2025. The High Court in Edinburgh ruled that the Crown Office's decision whether to prosecute children in court is a 'relevant function' under s.6(1), and therefore within the scope of the Act. This [judgement](#) was significant as it means that all future prosecutions of children in court must meet the requirements of the UNCRC Act, and may be challenged in court if they fail to do so. Following an application from Crown Office and Procurator Fiscal Service (COPFS), a supplementary [appeal judgement](#) confirmed that until s.12 of the Children (Care and Justice) Act is fully commenced (expected Spring 2027), 16 and 17 year olds who are not open referrals to the Children's Hearing System are not considered children in this context.

6.3 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. Following piloting and public consultation, the [Child-Friendly Complaints Handling Principles](#) were approved by the Scottish Parliament, and launched with accompanying [Child Friendly Complaints Handling Process Guidance](#) in May 2024.

6.4 Rights Empowered: Children's Access to Justice project



Clan Childlaw and Together Scotland, two leading promoters of children's rights in Scotland, are working on the three-year [Rights Empowered](#) project to support the use of informal means to challenge decision making and establish a new collaborative model to use strategic litigation to address systemic UNCRC rights breaches in Scotland. It aims to maximise the impact of UNCRC incorporation on the lives of children.

The project recognises legislation and UNCRC incorporation alone do not guarantee children's rights will be met, and that systemic change requires a more strategic approach to that offered by individual litigation. In 2026 the project produced the [UNCRC Community Action Toolkit Part 1](#), exploring the fundamentals of the UNCRC and the UNCRC Act, with Part 2 planned to support use of the UNCRC to achieve rights-respecting outcomes for children and young people, enabling the sector to become more legally empowered.

[Clan Childlaw](#) is an independent children's charity actively supporting children and young people to take ownership of their rights.

[Together](#) is a prominent alliance of children charities improving awareness, understanding and implementation of the UNCRC in Scotland.



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

This section looks at mechanisms for monitoring accessing of rights for children and young people in Scotland.

7.1 UN Concluding Observations

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 the State of Children's Rights Report \(2023\)](#) 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 low age of criminal responsibility and the practice of not always treating 16- and 17-year-olds as children in the justice system.

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’](#). The response highlights the anticipated impact of the Children (Care and Justice) (Scotland) Act in diverting more 16- and 17-year-olds from court into the welfare-based Children’s Hearing System to have their offences considered. It also points to the Sentencing Young People Guideline and support for the development of Youth Courts. These measures, whilst enhancing provision of child friendly justice do however arguably fall short of the Committee’s position in concluding observation 54b(i) that children are not prosecuted as adult offenders, **without exception**. The Scottish Government’s response also expresses the view that Article 37 does not prohibit detention without limit of time with a fixed punishment part (mandatory in Scotland for murder conviction), as there is a possibility of release. It also argues that rehabilitation and disclosure periods will continue to be considered from the date of conviction. With legal recourse now possible under the UNCRC (Incorporation) (Scotland) Act 2024, under [Section 4](#) of which General Comments and Concluding Observations, among other documents, can be considered in interpreting the UNCRC Requirements, it may be that future decisions and legal precedent determine interpretation moving forward.

Minimum age of criminal responsibility

The Committee called for the MACR to be raised in accordance with “acceptable international standards” (UN Committee on the Rights of the Child, 2003, p. 79). Although most children under 16 are dealt with through the Children’s Hearings System, 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 – though incidents of conflict with the law in childhood can still be disclosed either as an offence or ‘other relevant information’ (ORI).

Youth justice system

The 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. This can be due to the nature of the offence, legal status and/or circumstances.

Three core elements of the [Children \(Care and Justice\) \(Scotland\) Act 2024](#) include provisions for increasing the age of referral to the Principle Reporter to 17, amending the definition of a child in respect of criminal proceedings and the prosecution of children to cover all under 18s, and ending the use of Young Offenders Institutions for those under the age of 18, the latter of which commenced 28th August 2024. 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 will have their cases dealt with via formal prosecution once all provisions commence. Guidance on [Upholding Children’s Rights at Court: Roles and Responsibilities](#), and the [Toolkit Summary](#), published to accompany s.16 of the Act, promote the rights of children in court and should result in child-specific experiences of court, and separation from adults. [Police Custody Guidance](#),

accompanying s.15 of the Act, covers the extension of protections now afforded to all children who enter Police custody.

Detention and deprivation of liberty

The Committee 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.

Under [Criminal Justice \(Scotland\) Act 2016](#), if a police officer suspects that an arrested or detained person is under 18, they 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, under [Section 22](#) of the 2016 Act they must not be detained in a police station, unless arranging an alternative is impracticable or unsafe. These arrangements, previously applicable only to under 16s, now apply to all children following commencement of s.15 of the Children (Care and Justice) (Scotland) Act 2024.

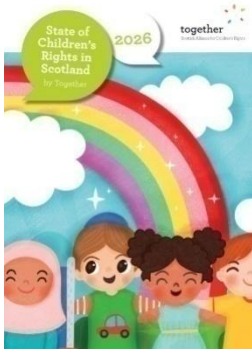
Use of an alternative, defined as a 'place of safety' as per [Section 202](#) (1) of the Children's Hearings (Scotland) Act 2011, depends on availability of this provision. Local authorities and Police are encouraged to develop a range of options which can be explored and utilised as and where conditions are met.

In December 2022 the Scottish Government commissioned CYCJ to explore potential options of a 're-imagined' Scottish secure care estate. The [Re-imagining Secure Care Report](#) (2024), proposed new opportunities where individualised support would be available as and when needed. The Scottish Government is considering the suggestions of the report.

The Scottish Government has committed to an updated response to the 2023 Concluding Observations, as relevant to Scotland, in 2026.

7.2 Together's 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. Research for the reports is undertaken through a variety of methods, and in recent years a child-friendly version has been produced. Their previous reports and accompanying webinars are available in the [State of Children's Rights Reports](#) page on their website.



The 2026 State of Children's Rights Report is dedicated to exploring case studies of organisations across Scotland taking forward aspects of a children's human rights approach in their work, in the hope of sharing learning and ideas, and for the report to function as an ongoing learning tool.

The report does this by exploring and reflecting on each of the five principles of a children's human-rights based approach, and sharing examples of these working effectively in practice.

It highlights that UNCRC incorporation legislation alone does not guarantee change, stating the previously referenced gap between law and practice can be bridged when organisations and individuals use the five principles of a [children's human rights approach](#) to shape culture, leadership, policies, services and relationships.

7.3 Children's Rights Scheme

The United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 places a duty, under s.6 of the Act, on Scottish ministers to comply with the UNCRC requirements. [Part 3](#) of the Act states that to ensure this 'compatibility duty', and better secure and further effect the rights of children, ministers must establish a Children's Rights Scheme. To this end the 'Scheme' must include various arrangements to ensure UNCRC compatibility: steps that will see the UNCRC practically applied. These must include; rights awareness raising, participation, ensuring children have effective access to justice, promotion and use of inclusive communication, and preparation and publishing of CRWIAs.

The [First Children's Rights Scheme](#) (approved version although named 'proposed') was laid before Parliament in October 2025. Developed with children, the CYPCS and the SHRC (in line with statutory duties), the resultant Scheme is grounded in the five principles of children's human rights approach. It lists 41 'arrangements' that will guide practice and contends that the arrangements should remain in place for at least three years, though the Scheme can be updated any time in response to new developments. The Act also contains a duty for ministers to review the arrangements annually.

The 'arrangements' are essentially practical actions/commitments identified as required to ensure a UNCRC compliance and embedding of child human rights approaches.

They include various commitments to identify and address legislative incompatibilities within devolved and non-devolved legislation. Significantly, if progress to extending children's rights has not been sufficient, by November 2026, the Government will commission a review of provisions in UK Acts in devolved areas to identify any key provisions that impact children's rights to an extent it may be worth re-enacting them as acts of the Scottish Parliament – examples of relevant legislation include the Children (Scotland) Act 1995, Criminal Procedure (Scotland) Act (1995) and the Education (Scotland) Act (1980).

Arrangement 30 requires the Government to compile a list of children's rights issues identified by children and stakeholders in published sources, which are of concern, and invite the CYPCS, SHRC and Together to review this list regularly, which may then inform ministerial priorities (arrangement 33).

Arrangements of particular relevance to children in conflict with the law

The Scottish Government (arrangement 26) will consider the need for child friendly communication tools and approaches for all, including children and young people. This is significant given the communication demands of children in justice processes.

In relation to rights monitoring and evaluation (under arrangement 35) the Government is exploring the development of indicators that can be used to measure the extent to which children in Scotland are accessing rights in the UNCRC requirements. Initial scoping work has focussed on articles 37 and 40, governing children in the justice system. This learning will inform any development of indicators for other UNCRC requirements. Moreover, if it is assessed that the indicators are meaningful there may be soon a robust way of measuring Scotland's progress towards meeting UNCRC articles 37 and 40, which most importantly can inform targeting of efforts to improve rights where these are not being upheld.

7.4 Children's Rights and Wellbeing Impact Assessment

A (Child Rights and Wellbeing Impact Assessment) 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.

In compliance with duties [section 17](#) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, CRWIAs must be used on all new Scottish Parliamentary legislation (asides from statutory instruments which are just bringing previously agreed legislation, or parts of such, into force) and strategic decision making that *impacts* children, not just children's services.

CRWIAs assess whether a proposal complies with the UNCRC and wider human rights framework, and how to protect, respect and fulfil children's human rights. A CRWIA can be used to ensure that the best interests of the child and children's views are an integral part of policy development.

Multiple arrangements of the Children's Rights Scheme relate to CRWIAs, including commitments to awareness raising and training on CRWIA use, and the benefits of CRWIA use to other organisations, and providing tools for their use. The Scottish Government has produced the [Child rights and wellbeing impact assessment external guidance and templates](#), including templates for each stage, accessible as downloadable forms using this [link](#).

It is good practice that any organisation implementing changes to policy and practice impacting children complete a CRWIA. Together offer [Support the use of Child Rights Impact Assessments \(CRIA's\)](#) as well as sharing learning from [reports](#) assessing the learning from use of CRWIAs in Scotland and Wales. The Scottish Human Rights Commission similarly has guidance on [Equality and Human Rights Impact Assessments](#) on its website assessing rights impacts for those of all ages.

7. Conclusion

This section has explained and explored the rights which children and young people as rights-holders are entitled to, highlighting those of relevance to those who find themselves in conflict with the law, a group which often find their rights most at risk. It has shown how the policy and legislation governing youth justice practice in Scotland has developed over time, highlighting its triumphs, but also areas requiring future work.

International and national monitoring practices continue to highlight areas where rights are not met, and by using the information and resources in this guidance it is hoped readers are more aware of how to ensure their practice is rights respecting but also that they are aware of the mechanisms by which they can challenge barriers to this to improve the outcomes for children and young people. UNCRC legislative incorporation has been a hugely significant milestone, though it is only with efforts of duty bearers, leading rights organisations, and the youth justice workforce to embed a children's human rights approach to youth justice that incorporation will have meaning for children and young people. It is hoped that new monitoring mechanisms, and tools for developing and sharing good practice further propel Scotland towards full human rights incorporation.

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