



English and Welsh Children and Young People in Conflict with the law in Scotland

This factsheet gives an overview of the Scottish system of dealing with children in conflict with the law, including relevant vocabulary and the implications for those children.

Background

English and Welsh children in conflict with the law in Scotland face a different system to the one in England and Wales. These can include children who are looked after by English Local Authorities who are being placed over the border in placements in Scotland. This may be in a children's home, secure placements by their local authority or as a result of a Deprivation of Liberty order. (For more on Deprivation of Liberty Orders see [YJLC's Guide 13 – Deprivation of Liberty Orders](#)). It may also be that children who cross over to Scotland, of their own volition come into some conflict with the legal system.

Who is this Guide for?

This guide is aimed to be a tool for practitioners who work with and support English and Welsh children and young people who end up in conflict with the law in Scotland.

Some of the questions you may have include:

- What are the rights of English and Welsh children in conflict with the law in Scotland?
- Do English and Welsh children in Scotland receive the same protections under Scottish law as Scottish children?
- How do social workers or YJS workers navigate their way through the Scottish justice system if they are asked to write a report for the Scottish justice system?

The aim of this guide is to give practitioners a top level understanding the Scottish Justice System and create an easy to use glossary of vocabulary relating to the justice system in Scotland.

Age of Criminal Responsibility in Scotland

In Scotland the Age of criminal responsibility is 12. It was raised from 8 years old in December 2021. While these changes mean that it is not possible for children under 12 to be charged or arrested with an offence, the [Age of Criminal Responsibility Act 2019](#) provides the police with specific powers to investigate incidents of serious harmful behaviour by those who are under 12.

This gives the police the powers to bring the child to an investigative interview, search the child or premises linked to them, and take samples – including intimate samples. A child under 12 years old, and their parent can agree to an investigative interview if asked to participate in one by the Police. If a child does not consent to an investigative interview, the police can then make an application to the sheriff for authorization. If a child attends an investigative interview they will be provided with a Child Interview Rights Practitioner (CHIRP). CHIRPs are qualified as a solicitor, but they are not there to provide legal advice. Rather their role is to help the child communicate their own needs, wishes and concerns in relation to the conduct of the interview. They also have a role in preparing for the interview. As children under 12 are below the age of criminal responsibility they are not to be treated as a suspect and the approach taken by the professionals involved in the process must reflect the non-criminal nature of the interview.

A search of a child under 12 and taking samples from a child under 12 needs to be authorized by a sheriff. A child has a right to a solicitor to represent their interests at these authorization hearings.

At the Police station

Children under the age of 12 and therefore below the age of criminal responsibility in Scotland can still undertake 'investigative interviews' as stated above. A CHIRP will provide support to a child in an investigative interview but will not give legal advice as the child is not being interviewed as a suspect.

A child over the age of criminal responsibility has the right to have a solicitor present while being interviewed about an offence which the constable has reasonable grounds to suspect the person of committing. [Section 32 Criminal Justice \(Scotland\) Act 2016](#).

A person under 16 years of age may not consent to being interviewed without a solicitor present. A 16 or 17 year old who is subject to a compulsory supervision order or an interim compulsory supervision order cannot consent to being interviewed by the police without a solicitor present. [Section 33 Criminal Justice \(Scotland\) Act 2016](#).

Provisions set out in the [Criminal Justice \(Scotland\) Act 2016](#) state that under 18s in custody should have an adult attend the police station. For those under 16 this should be a parent or guardian, and for children aged 16 or 17, this can be an adult named by them.

The Children's Hearing System

The history of the Children's Hearing System came about from the Kilbrandon Committee in 1964. Many of the committee's recommendations were brought into law through the Social Work (Scotland) Act 1968 which later led to the establishment of the Children's Hearings System.

The Children's Hearing System is the decision making forum for children under 16 years old. It handles welfare issues as well as allegations of offending. However, depending upon the seriousness of the alleged offending a case might go into the children's hearing system or it may go to the Sheriff's Court, the adult criminal court.

Children have a right to be given all the information that is before the system, if they are considered able to understand it¹. The process is that a Children's Reporter receives referrals for children and young people who may require compulsory measures of supervision. The reporter has a legal duty to carry out an investigation to ascertain the nature and substance of the concerns. The Children's Reporter does not participate in the decision-making process in a Children's Hearing. The decision making is undertaken by 3 lay panel members who make a decision about what should happen to a child.

Children can have a lawyer to represent them in the Children's Hearing System, if they wish. Despite the long term disclosure implications for children facing offences a solicitor is not automatically provided to a child in the Children's Hearing System when their statement of reasons details behaviour that has brought them into conflict with the law. They do have a right to ask for one, and legal aid will be provided to fund this.

If the matter before the hearing is there on non-offence, in other words care and protection, grounds, the evidential standard is the civil standard of balance of probabilities. If the matter before the hearing is on offence grounds, it is the same evidential standard as the criminal justice system: beyond reasonable doubt.

Right to Legal Representation

Children do not always utilize their right to legal representation in Children's hearings although they have a right to a lawyer – if they wish. Despite the fact that there are long term disclosure implications for children in conflict with the law in the Children's Hearing System.

Legal Representation is available in the Sheriff's Court for children who have alleged to have offended, this is covered by legal aid.

The Sheriff's Court

Is the venue for matters that fall under the criminal justice system. This is the usual venue for alleged offending by children who are 16 and 17 and may be the venue for younger children who are alleged to have committed serious offences.

Disclosure of Childhood Offences

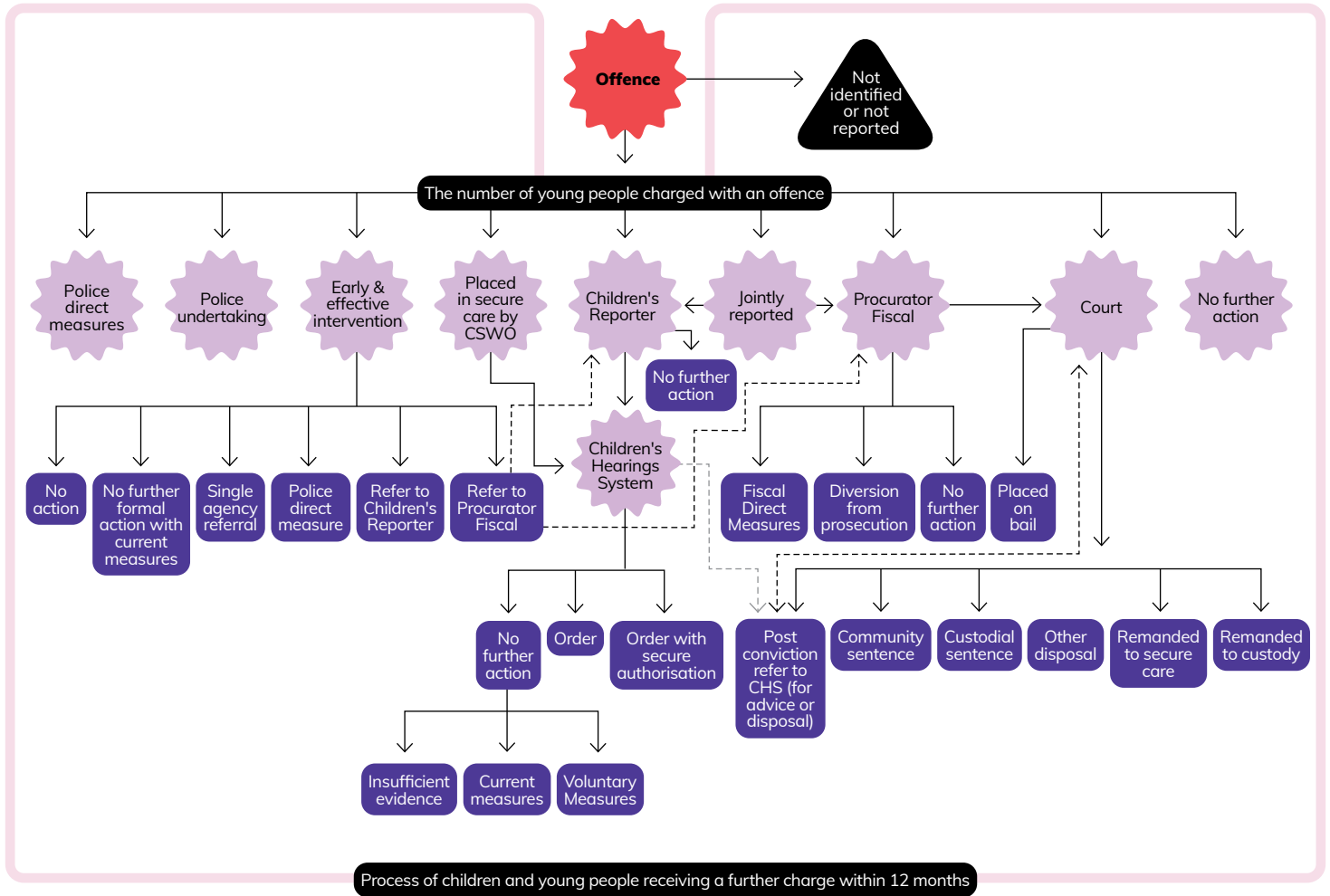
The [Disclosure \(Scotland\) Act 2020](#) makes significant changes in respect of childhood offences, making the disclosure period for childhood convictions zero. This Act is not yet in force It is not likely to be fully implemented until 1st April 2025.

The new legislation means childhood offences will become immediately spent, apart from excepted sentences which are childhood convictions that resulted in a custodial sentence of more than 48 months, and convictions for a sexual offence that resulted in a custodial sentence of more than 12 months.

Young people over 18 will be able to provide context to any childhood convictions eligible for review before any disclosure is made to a third party.

The current laws of disclosure are governed by the Rehabilitation of Offenders Act 1974; The Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007. Where a child has been in contact with the police there is a risk that regardless of conviction status the information could be disclosed in enhanced disclosures and PVG (protecting vulnerable groups) scheme applications. This is known as 'Other Relevant Information'.

Process of children and young people going through the Youth Justice process



Source: [Children and Young People's Centre for Justice](#)

Glossary of Words that are used in the Scottish Justice System

Admonished

Admonishment is where an accused person found guilty of a crime is given a warning not to offend again. No other penalty is given. The offence is recorded as a conviction. However, the disclosure period for an admonishment is zero, meaning that it is spent immediately.

Advocacy

In 2020 a national advocacy scheme to provide independent advocacy for all children attending children's hearings became operational. Therefore, the panel must advise children of this option, should they wish to have an advocate to support them at their hearing²

Advocacy worker Advocacy Participation Officer

A professional who supports a child or young person to express themselves, or if the child or young person prefers, does that on their behalf, and makes sure their voice is heard. They also help to ensure the child's rights are upheld.

Advocate/Counsel

A type of lawyer in Scotland who has done extra training and can appear in higher courts such as the Court of Session (Scotland's highest civil court) and the High Court (Scotland's highest criminal court.) They can also give written advice and opinions on certain legal issues. Similar to a barrister in England and Wales

Age of Criminal Responsibility

In Scotland the Age of criminal responsibility is 12. It was raised from 8 in December 2021. However, while these changes mean that it is not possible for children under 12 to be charged or arrested with an offence, the Age of Criminal Responsibility Act 2019 provides the police with specific powers to investigate incidents of serious harmful behaviour in the under 12s. This includes powers to bring the child to an investigative interview, search the child or premises linked to them, and take samples – including intimate samples. . A child has a right to a solicitor to represent their interests at these authorization hearing. If a child attends an investigative interview they will be provided with a CHIRP. [see below].

Bail Supervision

Judges, Sheriffs, Procurator Fiscals and defence agents can request assessments for bail supervision. In some locations there are existing processes where bail supervision assessments are automatically undertaken when court social work are notified that bail is being opposed.

2 [Children and young people in conflict with the law: policy, practice and legislation \(cycj.org.uk\)](https://www.cycj.org.uk)

Child	<p>In Scottish law a child can be 16, 17 or 18 years old depending on the context.</p> <p>The children's hearing system defines a child as someone under the age of 16 or under 18 if subject to a Compulsory Supervision Order (see below)</p>
Child Protection Committee (CPC)	<p>Responsible for multi-agency child protection policy, procedure, guidance, and practice. Within each local authority, CPCs work with local agencies, such as children's social work, health services and the police, to protect children³</p>
Child's Plan	<p>A plan created and regularly reviewed by social workers for every child supported or looked after by them, either at home or away from home. There are specific rules about how this is to be created and exactly what it is to include, such as the views of the child and his or her parents, any actions to be taken and how support is to be provided.</p>
Children's Hearings/ Children's Hearing System (CHS)	<p>A Children's Hearing is part of the legal and welfare systems in Scotland. This is a tribunal system comprising a panel of three lay members of the public who are trained to undertake the duties and responsibilities of a hearing⁴.</p> <p>The CHS handles welfare issues as well as offending. If the child or their parent do not accept the grounds of referral, the case may be referred to the Sheriff Court for the Sheriff to decide whether the facts are made out.</p>
Children's Reporter (Reporter)	<p>A state appointed role, sitting in a public body the <u>Scottish Children's Reporters Administration (SCRA)</u> deciding whether a child should go to a children's hearing or not. The Children's Reporter receives referrals for children and young people who may require compulsory measures of supervision; upon doing so, it has a legal duty to carry out an investigation to ascertain the nature and substance of the concerns. The Children's Reporter does not participate in the decision-making process in a Children's Hearing. Rather, they have a statutory duty to keep a record of the proceedings of the hearing and support fair process within the hearing.</p>

3 Children and young people in conflict with the law: policy, practice and legislation (cycj.org.uk)

4 Children and young people in conflict with the law: policy, practice and legislation (cycj.org.uk)

CHIRPS

Child Interview Rights Practitioner (CHIRP) is available for a child under the age of 12 who is involved in an investigative interview at the police station. As a child under 12 is below the age of criminal responsibility they are not to be treated as a suspect, and the approach taken by the professionals involved in the process must reflect the non-criminal nature of the interview. As such, although the CHIRP is a solicitor, they are not there to provide legal advice. Rather their role is to help the child communicate their own needs, wishes and concerns in relation to the conduct of the interview. They also have a role in preparing for the interview.

Commissioner for Children and Young People in Scotland (CYPCS)

Since 2004 there has been a Commissioner for Children and Young People in Scotland. Their role includes: the protection of children and young people's rights; supporting children and young people's understanding of their rights; and increasing awareness of what they can do if their rights are not being upheld. Under the Children and Young People (Scotland) Act 2014, the Commissioner can investigate whether, by what means, and to what extent, these rights have been upheld by service providers

Community Justice Scotland

Community Justice Scotland is the national organisation responsible for community justice across Scotland. Community Justice Scotland's role is to identify and promote best practice and work closely with a range of partners to develop expertise, provide advice and support improvements to prevent and reduce offending in Scotland

Community Payback Order (CPO)

Before giving someone a community payback order judges will normally get a report from a criminal justice social worker. A criminal justice social worker is assigned by the local authority to supervise the different requirements of the CPO. There are 10 different possible requirements of a CPO, which are; unpaid work, supervision, compensation, programmes, residence, conduct, restricted movement, 3 different kinds of treatments- mental health, drugs, alcohol.

People who breach the conditions of the CPO can be returned to court.

More details about a CPO can be found here [Community Payback Order: practice guidance](#)

Compulsory Supervision Order (CSO)

Compulsory Supervision Orders aim to protect the welfare of the child and can include measures about e.g. where the child is to reside and who they are to have contact with. Short-term emergency orders called an Interim CSO (ICSO) or Interim Variation of a CSO (IVCSO) can also be made where it is necessary as a matter of urgency to do so. These orders can be made by the Children's Hearing or, more rarely, the Sheriff Court.

Criminal Justice Social Work Report (CJSWR)	When a child pleads guilty or is found guilty, the court must request social work to prepare a criminal justice social work report (CJSWR). The court social worker should contact the relevant social work service for an appointment, which should be passed to the child and/or their parent/carer before they leave court that day. The requirements for writing court reports are set out in the Scottish Government Criminal Justice Social Work Reports and Court Based Services Practice Guidance (2010) .
Crown Office	The office responsible for the prosecution of crimes. Undertaken by the Procurator Fiscal (PF) see below
Defence Agents	Solicitor for the accused.
Discharging the case	This is when panel members in a children's hearing decide not to do anything about a Statement of Grounds
GIRFEC Getting it Right for every Child	GIRFEC is the Scottish Government's national approach for all services that are either delivered to, or affect, children. Every child aged under 18 referred to a Children's Hearing or court on offence grounds should undergo a comprehensive assessment, guided by GIRFEC principles
Investigative Interview	These are interviews for children below the age of criminal responsibility (under 12). A child cannot be a suspect at this age but can still be interviewed about something that might have been a serious crime if they were over the age of criminal responsibility
Movement Restriction Condition (MRC)	A MRC can only be made if the child meets one or more of the criteria for secure care and a children's hearing, or a sheriff determines that an MRC is necessary and should be included in the order
Panel Members	A panel member is a person from the local community who volunteers to sit on a Children's Hearing. There are 3 panel members There is a panel chair who leads the hearing. The panel members decide what action should be taken regarding a child Panel members are given special training to perform their job

Parenting Orders

The local authority or the Principal Reporter can make an application to the Sheriff Court to impose a Parenting Order.

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

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

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

In addition to these grounds, the Principal Reporter can also apply on the basis that a Parenting Order is in the best interests of the welfare of the child. An Order can last up to 12 months and includes a requirement to comply with conditions as directed by the local authority supervising officer

Place of Safety

A place that holds any 'younger child' before their appearance at court. They must be held in a place of safety, as defined by the Children's Hearings (Scotland) Act 2011 s.202 (1), until they are brought before the court. Place of safety is only an option for younger children; presently older children can continue to be held in police custody. The only occasion where this could be a police station is if an Inspector or above certifies that keeping the child in a place of safety other than a police station would be impractical, unsafe or inadvisable due to the person's state of health (physical or mental)

Placing Authority

The local authority which has responsibility for the arrangements for a child and their care.

Procurator Fiscal

The PF considers all crime reports submitted by the police and/or other specialist reporting agencies. The PF will make a decision on whether to take action based on a range of factors including: sufficiency of evidence; seriousness of offence; interest of victims and witnesses; age and conviction history of the offender; and whether prosecution is in the public interest.

The presumption is that children aged under 16 will be referred to the Children's Reporter in relation to the offence rather than the PF. This is also the position for those aged 16-17 and who are subject to a CSO.

For children aged 16 or 17 – who are not on a CSO - it is the rebuttable presumption that the PF will deal with the case by way of offering a Diversion from Prosecution service

PVG (Protecting Vulnerable Groups) Scheme Record

This operates in the same way as the Disclosure and Barring Service in England, but it is administered by Disclosure Scotland. It is established to 'ensure people who are unsuitable to work with children and protected adults cannot do regulated work with these vulnerable groups'.⁵

Receiving Authority	Is the authority in which the child is to be placed to reside.
Referral	<p>Referral is information received by the Children’s Reporter about a child or young person. The information might be received from the police, social work departments or schools⁶. more than one ground of referral may be appropriate.</p> <p>If there is sufficient evidence and there is a need for compulsory measures of supervision to protect the child, and/or address their behaviour, the child can be referred to a hearing.</p>
Remit	<p>When a child or young person who is aged 17 years and six months, or less, pleads guilty to, or is found guilty of an offence, the court may dispose of the case by remitting it to the Children’s Hearings System. Where the child is subject to a CSO the Sheriff Court must obtain the advice of the Children’s Hearing before disposing of the case</p>
Secure Care	<p>Secure care provides locked facilities for children who present risks to their own safety and/or the safety of others, that cannot be managed within the community. Children can enter secure care through the CHS if they meet the requirements or through court, either on remand or having been sentenced.</p> <p>Under current funding arrangements, the cost of placing a sentenced child in secure care is met by the Scottish Government but if a child is placed on remand or through the CHS, this cost is the responsibility of the child’s local authority.</p>
Sheriff’s Court	<p>The sheriff and the sheriff’s court are the court of first instance for criminal offences.</p> <p>Grounds of referral from the Children’s Hearing System can be sent to the Sheriff’s court.</p> <p>Children from the age of 12 can appear in the Sheriff’s Court.</p>
Single Plan	<p>a Single Plan incorporates any current single agency plans and should directly address needs and risks, including criminogenic needs.</p>
Solemn Cases	<p>The procedure followed for more serious crimes. Some have to be heard in the High Court, including all cases of rape and murder. Others can be heard in the High Court of the Sheriff Court. Judges can impose higher sentences for solemn cases.</p>

Statement of Grounds or Statement of Reasons

There are a number of reasons why a child or young person might be referred to a children's hearing. These are set out in legislation and include e.g. that the child has not been attending school, their behavior is causing concern, someone is worried they are not being care for properly at home or the child is believed to have committed an offence. If a Children's Reporter believes a child's welfare is at risk for any of these reasons, they can draft a 'statement of grounds' which sets out the reason for the children's hearing and the facts the reporter has seen which support this reason.

The Promise

The Promise is an independent Care Review which began in 2020. The [implementation of the Promise](#) will last 10 years.

Vision 'Children, young people, and their families are supported at an early stage through early intervention and preventative approaches. For those who come into conflict with the law, their rights must be upheld, their life chances improved, and services and systems must support them effectively to address their needs and the circumstances which have led to their behaviour.'

Trauma Informed Approaches

These are committed to in The Promise. 'Trauma-informed approaches and continued commitment to partnership approaches are core to achieving this vision for Scotland. (Scottish Government, 2021)

For more on trauma informed approaches see [YJLC Trauma Informed Lawyering Guide](#)

Undertakings

Often referred to as a "pink slip". An undertaking is when a person who has been charged with an offence is then released from a police station with certain paperwork which they must sign, giving an 'undertaking' that they will appear at court on a given date. For younger children this must be signed by parents or guardians. Undertakings will usually have conditions attached

Whole System Approach (WSA)

The WSA involves putting in place streamlined and consistent planning, assessment, and decision-making processes for children and young people on the cusp of - and involved in - offending. The WSA works across all systems and agencies, bringing together the Scottish Government's key policy frameworks into a single holistic approach.

Youth Justice Improvement Board (YJIB)

The Youth Justice Improvement Board is responsible for overseeing and driving the delivery of the youth justice strategy. The Board is chaired by the Scottish Government and includes senior representation from a wide range of organisations including Police Scotland; COSLA; Scottish Children's Reporters Administration (SCRA); Crown Office and Procurator Fiscal Service; CYCJ; Education Scotland; and health and third sector partners.

Additional Resources

[Children and Young People in Conflict with the Law: Policy, practice and Legislation](#)

Policies for English Children in Scotland

- Health and Social Care Standards
- The Secure Care Pathway and Standards Scotland.
- Youth Justice Standards
- Whole System Approach (WSA)

Children and Young People's Commissioner Scotland

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