

# **A Guide to Youth Justice in Scotland: policy, practice and legislation**

## **Section 11: Children's Rights, Our Responsibilities**

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## 1. Introduction

This chapter sets out the principles and provisions of a rights-based approach to youth justice, grounded in the United Nations Convention on the Rights of the Child (UNCRC) and other international and European human rights conventions. It aims to provide support and guidance to those working in youth justice to ensure children and young people's rights are embedded across policy and practice. To achieve this, the chapter will set out the international obligations and standards against which Scotland has agreed to be held to account and offer guidance as to how these standards can be implemented across the youth justice system in practice.

### 1.1 Background

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

“the idea that children should be active participants in decisions affecting them...has only recently been enshrined in the new [UNCRC] ...although these values have been the foundation stones of Scottish juvenile justice for 20 years now.” (Scottish Government [SG], 2012)

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

To embed an approach to youth justice that respects, protects and fulfils children's human rights, it is essential that legislators, policy makers and practitioners focus on the implementation of relevant international human rights standards. These include preventing children from entering the youth justice system, favouring alternatives to detention, and treating children with dignity and worth throughout all stages of the youth justice system. Such measures are not a matter of 'goodwill' or 'positive practice' (Muižnieks, 2014) they are a legal obligation to which Scotland, through the UK, has signed up by ratifying the UNCRC and other international human rights treaties.

### 1.2 Taking a rights-based approach

International human rights law places governments (referred to as 'State Parties') under a legal obligation to respect, to protect and to fulfil human rights, including children's human rights. The obligation to 'respect' means that governments must not interfere with or restrict the enjoyment of human rights. The obligation to 'protect' means that governments must protect individuals and groups against human rights abuses. The obligation to 'fulfil' means that governments must take positive steps to facilitate the enjoyment of basic human rights. These obligations are central to ensuring a rights-based approach to youth justice. A rights-

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

As noted in the Scottish Human Rights Commission, 2013, essential elements of a rights-based approach are:

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

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

A rights-based approach to youth justice seeks to ensure that children are not unduly criminalised or stigmatised as a result of their behaviour, but instead supported to address that behaviour and to rehabilitate. It recognises that young people who offend, often have significant underlying needs, and a failure to address these needs is a violation of their human rights. A rights-based approach also takes into account the need to ensure public protection, and to acknowledge the harm that can sometimes be caused to others by a child's behaviour.

### 1.3 The Whole System Approach

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

WSA advocates a multi-agency, multidisciplinary approach 'to put in place tailored support and management based on the needs of each individual child' (Scottish Government, 2017). It seeks to respond to offending behaviour as an indicator of need. In doing this, WSA stops children being unnecessarily pulled into formal systems such as the Children's Hearing System or Criminal Justice System through diversionary processes and promoting the use of universal services where appropriate. WSA recognises that the continuum of offending behaviour is varied and there will be occasions and situations where a child's behaviour poses significant risk of harm to others. In these situations, it is crucial that responses continue to be proportionate, developmental, systemic and trauma-informed to reduce risk

behaviours. Any response to children involved in, or at risk of involvement in, offending behaviour must be underpinned by a rights-based approach and embedded in the Getting It Right for Every Child (GIRFEC) principles.

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

## 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.

“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”

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 [UN], 1948)

International human rights law is founded upon the 1948 Universal Declaration of Human Rights (UDHR) which, together with the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), is known as the ‘International Bill of Human Rights’.

Other international and European human rights instruments provide additional specific legal protections applying equally to children and young people. In total, there are nine core international human rights instruments, each of which is accompanied by a committee of independent experts who monitor implementation. Additionally, within the international human rights framework are the Special Procedures of the Human Rights Council. These are independent human rights experts with specific mandates to report and advise on human rights from a thematic or country-specific perspective. They include, among others, the Special Rapporteur on Arbitrary Detention, the Special Rapporteur on the Rights of Persons with Disabilities, the Special Rapporteur on the Right to Education and the Special Rapporteur on the Right to Privacy.

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

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

The UNCRC is an international human rights treaty that sets out the civil, political, economic, social and cultural rights of every child under the age of 18 within its 54 articles. Since its adoption by the United Nations in November 1989, 195 countries have signed up to the UNCRC. The USA is the only country in the world yet to do so.

Underpinning the UNCRC are three core concepts:

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

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

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

The UNCRC is binding under international law and carries a clear obligation for governments to ensure its full implementation. It is not, however, incorporated into Scots or UK law and therefore most of its provisions are not legally enforceable through the courts. Some elements have been brought into Scots law on a piecemeal basis. An example is the best interests of the child (Article 3) which is particularly prominent through provisions that treat welfare as 'the paramount consideration' in the *Children (Scotland) Act 1995* and *Children's Hearings (Scotland) Act 2011*. The 1995 Act also places an obligation on the courts, 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, taking into account the age and maturity of the child.

## 2.2 UNCRC General Principles and youth justice

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

### **Non-discrimination (Article 2)**

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

### **Best interests of the child (Article 3)**

The best interests of the child must be at the heart of all decisions relating to children in the youth justice system, both in terms of any child exhibiting offending behaviour and in terms

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

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

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

### **The right to be heard (Article 12)**

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

### **Other relevant UNCRC rights**

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

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

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

### **Children's rights in juvenile justice (Article 40)**

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

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

This means that, within the youth justice system, the treatment and education of children should be directed to the development of respect for human rights and freedoms and that it requires a full respect for and implementation of the guarantees for a fair trial. The UN Committee asks:

“If the key actors in juvenile justice, such as police officers, prosecutors, judges and probation officers, do not fully respect and protect these guarantees, how can they expect that with such poor examples the child will respect the human rights and fundamental freedom of others?” (UN, 2007).

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

### 2.3 The European Convention on Human Rights (ECHR)

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

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

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

Although the ECHR omits the social, economic and cultural rights that are such an intrinsic part of the UNCRC, it has made a substantial contribution to the advancement of children’s human rights. The UNCRC has been ratified by all member states of the Council of Europe and therefore binds all states party 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).

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 ECtHR has increased the standards of protection guaranteed in the Convention when ruling in cases concerning children and young people, particularly in relation to detention. As such, the standards for demonstrating the need for detention in accordance with the ECHR are higher for children than for adults. Furthermore, the ECtHR has ruled that detaining children in pre-trial detention should be a measure of last resort and be as short as possible. When detention is necessary, the ECtHR has ruled that children should always be kept apart from adults (Nart v. Turkey, 2004).

### 2.3 Guidelines of the Committee of Ministers of the Council of Europe on Child-friendly Justice

The Council of Europe Guidelines on child-friendly justice set out basic rules that Council of Europe countries should follow when adapting justice systems to meet the specific needs of children. The Guidelines are based on existing international and European standards, including the European Convention on Human Rights, the jurisprudence of the ECtHR and a wide range of Council of Europe instruments relating to children’s human rights including the European Social Charter, the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, and the European Rules for Juvenile Offenders subject to sanctions or measures. They apply to all situations in which children and young people are likely to be in contact with criminal, civil or administrative justice systems and, in line with the UNCRC, define a ‘child’ as any person under the age of 18 years old.

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

“Elements of due process such as the principles of legality and proportionality, the presumption of innocence, the right to a fair trial, the right to legal advice, the right to access to courts and the right to appeal, should be guaranteed for children as they are for adults and should not be minimised or denied under the pretext of the child’s best interests. This applies to all judicial and non-judicial and administrative proceedings” (Council of Europe, 2010, p. 19).

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

- **Participation:** Children have the right to be heard in decisions that affect them. Adults must take children's views seriously.
- **Best interests of the child:** When decisions are being made, children's human rights must be respected, and all their needs taken into account according to their age. In doing this, judges are encouraged to seek the opinion of experts, such as psychologists or social workers.
- **Care and respect:** Children must always be treated with care and respect. In particular, his or her privacy must be protected.
- **Equal treatment:** Children must be treated equally, regardless of their country of origin, group or religion, or the language they speak. Children with disabilities, children who are homeless or those placed in residential care, and Gypsy/Traveller and foreign children need particular protection.
- **Rule of law:** Children should be treated fairly in the justice system. Those in the youth justice system should have a lawyer and the court should take into account their specific situation and needs. Children have the right to complain about their treatment to an independent and impartial person or body (Council of Europe, 2010, pp. 17-20).

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

- **Information, representation and participation:** children should be informed of their rights, have free access to a lawyer, and have a saying decisions that affect them, which should be explained in a way that they can understand.
- **Protection of privacy:** A child's privacy should be protected, including from the media. In particular, no one is allowed to print a child's name, picture or personal information, including about their family, in the newspaper or on the internet. If children are being heard in court or other official settings, only the relevant people should be present.
- **Safety:** Children should be protected from harm and when they have been hurt, it is important to keep them safe. Everyone working with children should be checked to make sure they are not likely to harm them.
- **Multidisciplinary approach and training:** Professionals working with children should work together towards the child's best interests. They should receive training on children's human rights, communication and needs at different ages to support and protect children in the youth justice system as well as to ensure the reliability and good administration of justice.
- **Safeguards before, during and after all proceedings:** When children go to court, the settings and process should be described and explained to them in a way that they can understand. They should have the opportunity to have their own lawyer and to have a say in cases that affect them. Decisions should be taken as quickly as possible and be clearly explained to children.
- **Deprivation of liberty:** A child should be detained only when there is no other option, and never on immigration grounds. If a child is detained, it should be as briefly as possible and separate from adults (except when this is in their best interests). Despite the detention, they should enjoy all their other rights, especially the right to contact family and friends, education or training, religion and access to sports and leisure facilities. Children should be properly prepared for their return home.

- **Promoting and monitoring child-friendly actions:** Governments should set up information structures for children (e.g. free helpline or Children’s Commissioner), make sure children know how and who to complain to about their treatment, teach children, parents and professionals about children’s rights, foresee protective legislation understandable for children, regularly check children’s treatment in justice systems and take measures to improve it (Council of Europe, 2010, pp. 20-34).

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

## 2.4 Parliamentary Assembly of the Council of Europe – Resolution 2010 (2014) on 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”, 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 at least 14 years-old, establishing a maximum period of detention to which a child may be sentenced and decriminalising status offences.

### Others

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

- 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

## 3. The Scottish human rights framework

### 3.1 Human Rights Act 1998

*The Human Rights Act 1998* came into force in the UK in 2000 and incorporates much of the ECHR into UK law. It gives adults and children the ability to protect their ECHR rights through the domestic courts and includes a range of provisions to ensure the realisation of ECHR rights. According to s. 2 of the *Human Rights Act 1998*, Scottish and UK courts are required to take account of the case law of the ECtHR. All laws must be understood as far as

possible in a manner compatible with the rights contained in s. 3 of the *Human Rights Act 1998*. Public authorities (including the UK and Scottish Governments, local authorities, Police Scotland and the courts) must act compatibly with the rights in the *Human Rights Act 1998* (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 *Human Rights Act 1998* has had a significant impact on Scottish child law (Cleland & Sutherland, 2009, pp. 1-22).

### 3.2 Children and Young People (Scotland) Act 2014

*The Children and Young People (Scotland) Act 2014* aims to further the Scottish Government's ambition for Scotland to be the best place to grow up in by putting children and young people at the heart of planning and services and ensuring their rights are respected across the public sector.

### 3.3 Rights of Children and Young People

Part 1 of the 2014 Act placed the UNCRC on statute for the first time. It includes:

- A duty on the Scottish Ministers to keep under consideration and take steps to further the rights of children and young people, to promote and raise awareness and understanding of the UNCRC, and prepare three-yearly reports on the implementation of the UNCRC. The first report will be laid before the Scottish Parliament in autumn 2018.
- A duty on the wider public sector to report on what they are doing to take forward realisation of the rights set out in the UNCRC
- An extension to the powers of Children and Young People's Commissioner for Scotland that enables the office to undertake investigations in relation to individual children and young people

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

- **Child Rights and Wellbeing Impact Assessments:** The 2014 Act has resulted in the use of child rights and wellbeing impact assessments (CRWIA) within the Scottish Government. The Scottish Government's CRWIA model provides a robust process through which officials can identify, research, analyse and record the anticipated impact of any proposed law and policy on children's human rights. The Scottish Government guidance is clear that the CRWIA should be used on all legislation and policy that impacts on children, not just children's services. The CRWIA model is available for use at a national and local level and can be used across youth justice services to inform the development of legislation, policy and practice
- **Public sector child rights reporting duty:** This duty applies to wide a range of public bodies including Scotland's Children's Reporter Administration, Children's Hearings Scotland, the Chief Constable of the Police Service of Scotland and local

authorities. As such, it will encourage a range of youth justice services that reflect on the extent to which a rights-based approach is reflected in policies and service delivery, and enable youth justice services to make steps to improve implementation of the UNCRC. Extensive guidance by the Scottish Government has been published to support the implementation of this duty. The first reports are due to be published in 2020.

### 3.4 Information sharing and the Named Person

In July 2016, the Supreme Court ruled that information-sharing provisions included in the Named Person scheme in Parts 4 and 5 of the *Children and Young People (Scotland) Act 2014* may result in a disproportionate interference with the rights of children, young people and their parents under Article 8 of the ECHR. The Court was very clear that the policy intention behind the 2014 Act is “unquestionably legitimate and benign” and does not breach human rights.

The ruling means the information sharing provisions of the Named Person scheme included in Parts 4 and 5 of the 2014 Act cannot be implemented until the Scottish Government makes the necessary amendments. To take this forward, the Children and Young People (Information Sharing) (Scotland) Bill was introduced to the Scottish Parliament in 2017. However, further scrutiny of the Bill by the Education and Skills Committee has been postponed until the Scottish Government publishes an authoritative draft Code of Practice to accompany the Bill (expected in September 2018). In the meantime, the Named Person scheme can still be taken forward on a non-statutory basis within existing information sharing thresholds.

### 3.5 Children and Young People’s Commissioner Scotland

The Children and Young People’s Commissioner Scotland’s role is to promote and safeguard the rights of children and young people under the age of 18 years old, or up to the age of 21 if they are Care Experienced. The current Commissioner Bruce Adamson took up the post in May 2017 for a fixed term of six years. 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 government to account in upholding its international human rights obligations. As set out in the 2003 Act, the Commissioner has a responsibility to:

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

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

The Commissioner's revised Strategic Plan sets out the steps the office will take to champion children and young people's human rights between 2018 and 2020. This plan was informed by the powerful views and experiences of children and young people. Also inspired by working with children and young people are the office's shared values of bravery, independence, participation, respect and leadership, which is expressed as:

- **Bravery:** We will stand up to people in power and hold them to account. We will use the authority given to us to protect children and young people's rights, even if it's difficult or challenging.
- **Independence:** We will not be unduly influenced, or seen to be influenced, by people in power. We will be accountable to the people of Scotland through the Scottish Parliament.
- **Participation:** We will have children and young people's views at the heart of all our work and will be open and approachable. We will make a special effort to involve children and young people who are less likely to be included or listened to, and those whose rights are most at risk.
- **Leadership:** We will make sure that all the work we do to promote and safeguard the rights of children and young people is grounded in knowledge and expertise. We will use our experience to shape law, policy and practice and seek to inspire and influence others both in Scotland and internationally.
- **Respect:** We will always act with truthfulness and honesty and treat everyone with respect (Children and Young People's Commissioner for Scotland [CYPCS], 2018).

### 3.6 Investigations

The Commissioner has the power to carry out an investigation as to whether service providers have failed to:

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

These powers are limited, and the Commissioner cannot investigate a case if:

- It relates to matters reserved to the UK Government
- It concerns the decision-making of a court or tribunal in a particular case; or
- It concerns a case currently before a court of tribunal

The Commissioner also cannot investigate an issue if it would duplicate another organisation's legal powers. In March 2018, the Commissioner launched the first formal investigation, which focuses on restraint and seclusion of children in school and, in particular, the adequacy of local authority policies and procedures around recording of incidents.

## 4. UN Committee General Comments

The UNCRC Committee publishes General Comments which provide additional guidance and support in taking forward the various principles and provisions of the UNCRC. There are currently 23 General Comments, including General Comment No. 10 which specifically addresses the rights of children in relation to youth justice. The General Comments provide a useful tool to support a rights-based approach to planning, implementing and evaluating youth justice services.

### 4.1 General Comment No. 10 (2007): Children's rights in juvenile justice

In February 2007, the UN Committee issued General Comment No.10 on Children's Rights in Juvenile Justice. The UN Committee is clear that whilst the preservation of public safety is a legitimate aim of the youth justice system, this aim is best served by a full respect for and implementation of the overarching principles of youth justice as enshrined in the UNCRC. The General Comment elaborates on youth justice-specific articles of the UNCRC (Articles 37 and 40) while also taking into account broader social, cultural, economic, civil and political rights and also providing recommendations based on the rights included in other international standards on youth justice. The General Comment sets out what is needed to develop and implement a comprehensive youth justice policy that prevents and addresses offending behaviour by children and young people in a manner that is compatible with the UNCRC. It explores several aspects of juvenile justice policy, including: prevention of juvenile delinquency; diversion from judicial proceedings; minimum age of criminal responsibility; guarantee to a fair trial; prohibition of the death penalty and life imprisonment; and deprivation of liberty. It articulates the leading principles and core elements of a comprehensive youth justice policy, and sets out the training, awareness-raising and monitoring and evaluation needed to support the approach.

### 4.2 Preventing offending behaviour by children and young people

The UN Committee is clear that states 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 address broader social and economic injustices including poverty and discrimination. The Committee calls on governments to:

- Promote social integration and community involvement
- Develop and implement prevention programmes focusing on vulnerable families
- Support parents, carers and families

### 4.3 Promoting Diversion

Promoting Diversion is about the promotion of alternative measures to judicial proceedings. Diversionary measures are those that divert the child away from the formal court system and redirect them towards community support services. The General Comment stresses that, given that the majority of children who display offending behaviour only commit minor offences, a range of measures involving removal from criminal justice processing and referral to social services should be used in most cases. Keeping children away from the formal justice system reduces the subsequent stigma they may otherwise face and prevents

the negative effect of subsequent proceedings. To ensure that diversionary activities are effective and in keeping with a rights-based approach, the Committee recommends that:

- The child (and the child's parents or carers) must freely and voluntarily give consent in writing to the diversion
- Legislation should contain specific provisions that indicate the cases in which diversion is possible
- Police, prosecutors, and other agencies who make decisions on these provisions should be regulated and reviewed
- The child must have the opportunity to seek legal or other assistance on the diversionary measure offered
- The completion of any diversion by the child should result in a definite and final closure of the case

#### 4.4 Minimum age of criminal responsibility

The minimum age of criminal responsibility refers to the age at which a child or young person may be charged with a criminal offence. This means that if a child below that age breaks the law, he or she will not be held criminally responsible. At present there is a wide range of minimum ages of criminal responsibility across the world - from as young as 8 years-old (in Scotland) up to age 18 (including Colombia, Ecuador, Mexico and Uruguay). The General Comment recommends that:

- States should set their minimum age to no lower than 12 years of age (as previously mentioned, the Council of Europe has subsequently set the age of 14 years-old as the recommended minimum age)
- States that currently have a minimum age which is higher than 12 should not decrease it but rather raise it as high as possible
- States should also respect an upper-age limit (the age of 18, according to the UNCRC). They are encouraged to raise this limit whenever possible and appropriate.
- States with two minimum ages should increase their lower age to 12 and increase their higher age to 14 or 16
- Even children below the minimum age have a right to a response or reaction to their alleged actions
- Children whose age cannot be proven to be above the minimum age should not be formally charged

#### 4.5 Guarantee to a fair trial

Guaranteeing a fair trial refers to the process of upholding certain rights while dealing with and sentencing a child who has come into conflict with the law. The General Comment recommends that:

- High quality training should be provided to all those involved in the justice system, including the police, prosecutors, legal representatives of the child, judges, probation officers, social workers and others
- Training should include developing an understanding of the child's psychological, physical and developmental capacities as well as his or her racial, ethnic, social,

- religious and linguistic needs in order to provide appropriate support to the child throughout the process
- Particular attention should also be paid to girls as they constitute a smaller group in the youth justice system
- The standard set of rights to a fair trial should be considered minimum standards and States should strive to attain higher standards

#### 4.6 Prohibition of the death penalty and life imprisonment

The death penalty continues to exist in several countries in the world. Although the banning of this practice for both children and adults has become an international norm, children who are under 18 years old in some States may still receive the death sentence. Five States are known to have executed a juvenile since 2005 (Child Rights International Network [CRIN], 2017).

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

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

#### 4.7 Deprivation of liberty

The deprivation of liberty refers to “any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority” (UN, 1990). GC10 calls for the need for better monitoring and data collection on the number of children in detention and recommends:

- The arrest, detention or imprisonment of a child must be in conformity with the law; no child can be deprived of his/her liberty unlawfully or arbitrarily
- The deprivation of liberty should be used only as a measure of last resort and for the shortest appropriate period of time
- States must ensure that children are not held in pre-trial detention for months or years. If necessary, they should be released conditionally, and the law should state the conditions under which children can be placed in pre-trial detention.
- Alternatives to detention should be used wherever possible. These may include community service or restorative justice.

- The time period from arrest to sentencing should not last more than 6 months and should be reviewed by independent and qualified inspectors

## 5. Other General Comments

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

### 5.1 General Comment No. 12 (2009): Voice of the Child

General Comment No. 12 includes specific provisions relating to children in the youth justice system. It emphasises that the right of the child to express his or her views must be “fully respected and implemented” (UN, 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” (UN, 2009, para. 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 (UN, 2009, para. 59-60).

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

- Adequate information to inform their consent
- The opportunity to give free and voluntary consent
- The opportunity to obtain legal and other advice and assistance to decide the appropriateness and desirability of the proposed diversion (UN, 2009, para. 60)

In noting the strong impact that child participation plays in preventing rights violations, the General Comment also specifically highlights the importance of involving children and young people in the formulation of youth justice legislation and policy, and in the drafting, development and implementation of plans and programmes.

### 5.2 General Comment No. 14 (2013): Best Interests of the Child

General Comment No. 14 provides a focus on rehabilitation and restorative justice for children in the youth justice system. It reiterates that the best interests principle applies to all children in conflict with the law, and that this means that “the traditional objectives of criminal

justice, such as repression or retribution, must give way to rehabilitation and restorative justice objectives, when dealing with child offenders” (UN, 2009, para. 28).

### **5.3 General Comment No. 5 (2003): General Measures of Implementation**

General Comment No. 5 sets out legislative, policy, institutional, budgetary and statistical actions which States 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 (UN, 2003, para. 22).

### **5.4 General Comment No. 20 (2016): Implementing Rights of Child during Adolescence**

General Comment No. 20 again places an emphasis on diversion, restorative justice, preventative interventions, and on avoiding detention. It recognises the vulnerability of young people in contact with the law and sets out the steps that States need to take to reduce this vulnerability (in relation to both children displaying offending behaviour and child victims) (UN, 2016, para. 87). It reiterates the need for a focus on rehabilitation and reintegration. It stresses the principle that detention should only be used as a measure of last resort and for the shortest appropriate period of time, and that young people should be detained separately from adults (UN, 2016, para. 88).

### **5.5 General Comment 13 (2011): Freedom from all forms of Violence**

General Comment No. 13 reiterates that States 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 way of preventing children from being exposed to violence (UN, 2011, para. 47(d) (iii)).

## **6. Monitoring children’s human rights in the youth justice system**

The implementation of the UNCRC in Scotland is monitored by the UN Committee. The UN Committee’s examination is informed by reports from the Children’s Commissioners across the UK as well reports submitted from children’s rights alliances across Scotland, England, Wales and Northern Ireland. In Scotland, evidence was submitted by Together (Scottish Alliance for Children’s Rights) and supported by 66 non-governmental organisations across Scotland (Together Scotland, 2015). Furthermore, the Vice Chair of the UN Committee visited Scotland to speak to children and young people, including those who had been involved in the youth justice system (CYPCS, 2015). As such, the recommendations made by the UN Committee clearly reflected the views and experiences of children and young people across Scotland.

Following its 2016 examination of the UK, the Committee highlighted a number of concerns and made many recommendations. The State of Children’s Rights report 2016 (Together Scotland, 2016) provides a baseline for the implementation of these recommendations. It also reflects on areas where progress is being made and identifies where further efforts are needed. A number of issues were raised by the UN Committee specifically in relation to youth justice, as detailed below.

## 6.1 Civil rights and freedoms

### Non-statutory stop and search

The UN Committee expressed concerns over the use of non-statutory stop and search powers against children. A non-statutory (consensual) stop and search is one where the police officer asks for verbal consent to perform the search. There were concerns that officers were not under a duty to disclose reasons for the search and that children were not made aware of their right to refuse consent. A 2014 report noted that stop and search powers tended to be used disproportionately on younger age groups and also found that young people were significantly more likely to be searched on a non-statutory basis than older age groups (Scottish Centre for Crime & Justice Research, 2014). The UN Committee recommended that the UK prohibit the use of non-statutory stop and search checks against children (UN, 2003, para. 38(a)). The Scottish Government, in partnership with the Scottish Youth Parliament and Children's Parliament, consulted with children and young people on the issue. Children and young people said that stop and search practices damage their relationships with the police, describing the practice as “degrading”, “humiliating”, “embarrassing”, and “scary”. Younger children said that they would be “anxious”, “embarrassed” and “worried” if they were stopped and searched by the police (Children's Parliament, 2016). The Scottish Government considered evidence that where consensual stop and search has been employed as a means of attempting to recover alcohol from children, it has been unsuccessful in 90% of cases. In response, under the *Criminal Justice (Scotland) Act 2016*, the use of non-statutory stop and search has been made unlawful.

### Statutory stop and search

For statutory stop and search checks, the UN Committee called on the UK to ensure that their use was non-discriminatory and proportionate, taking into consideration the age and maturity of the child (UN, 2003, para. 38(b)). The *Criminal Justice (Scotland) Act 2016* placed a duty on Scottish Ministers to draft a Code of Practice on the use of statutory stop and search. The 2016 Act additionally imposes a duty on police to treat the need to safeguard and promote the wellbeing of a child as a primary consideration when deciding whether to search that child. The Code of Practice was laid before Scottish Parliament on January 11, 2017. Section 7 of the Code was addressed specifically to the use of stop and search powers on children and young people and Police Scotland provided training for all officers aimed at improving methods of engagement with young people. A six-month review of the Code of Practice's implementation was published on February 21, 2018. This review found that, although the rate of stop and searches against young people had declined, they were still more likely to be stopped and searched than adults (Scottish Government, 2018). A short guide on Stop and Search has since been published specifically for children and young people to set out the purpose of stop and search and the rights of children and young people in an age-appropriate manner.

## 6.2 Violence against children

### Tasers

The UN Committee expressed concerns over the police use of Tasers and called on the UK to prohibit their use. Police Scotland's use of Tasers complies with their internal Armed Policing Policy. Police Scotland's Equality and Human Rights Assessment Standard Operating Procedure does not comply with the UN Committee's above recommendation that the use of Tasers on children be outlawed. The Scottish Government states that taser use is an “operational decision” to be determined by Chief Constables. A 2011 Legal Opinion

commissioned by Amnesty International (2010) contested this interpretation. Additionally, there has been no civil society engagement by Police Scotland on Taser use.

### **Restraint**

The UN Committee also expressed concerns over the increased use of restraint against children as a disciplinary measure. This included the use of restraint in young offender's institutions. The Committee called on the UK to abolish all methods of restraint against children for disciplinary purposes in all settings and ban the use of any other technique designed to inflict pain on children (UN, 2003, para. 40(b)). The Committee urged the UK to ensure that restraint would be used only where it was necessary to prevent harm to the child or others, and only as a measure of last resort (UN, 2003, para. 40(c)). The Scottish Prison Service uses 'Pain Compliance' restraint as a last resort and are trained to take account of age and gender (Department of Justice, 2012). This is an area which would benefit from further scrutiny.

## **6.3 Administration of juvenile justice**

### **Minimum age of Criminal Responsibility**

The UN Committee expressed concerns that the minimum age of criminal responsibility in Scotland is eight years old. The Committee called for this age to be raised in accordance with "acceptable international standards" (UN, 2003, para. 79(a)). Although the majority of children under 16 are dealt with through the Children's Hearing System, rather than the criminal courts, information about an offence can appear on a child's Disclosure Certificate or PVG record until well into adulthood. In 2016, an Advisory Group was established to explore and develop recommendations for consultation. This consultation took place in March-June 2016, with 95% of responses agreeing that the minimum age of criminal responsibility should be raised to 12. In March 2018, the Age of Criminal Responsibility (Scotland) Bill was introduced to the Scottish Parliament. If passed, this will raise the minimum age of criminal responsibility from 8 to 12 years old. Even at 12 years old, this remains lower than the age of 14 years old, as set out in the Parliamentary Assembly of the Council of Europe Resolution on child-friendly juvenile justice. The Children and Young People's Commissioner for Scotland has said that raising the age to 12 years old does not go far enough and that it needs to be raised further (Children and Young People's Commissioner Scotland, 2018).

### **Youth Justice System**

The UN Committee expressed further concerns that children were 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 (United Nations Committee on the Rights of the Child, 2016). This corresponds with findings by the Centre for Youth and Criminal Justice (CYCJ) in January 2016, that many children and young people in Scotland were being prosecuted as adults, in adult courts, rather than appearing before the Children's Hearing System (Dyer, 2016). The report showed that in the five year period up to 2014, 333 children under 16 years were prosecuted in adult courts, with 137 receiving adult convictions (Dyer, 2016). Where children were diverted to non-formal measures, the Committee recommended that these diversion measures must not appear on children's criminal records (United Nations Committee on the Rights of the Child, 2016).

## Detention

The UN Committee expressed concerns over the high number of children in custody, particularly the disproportionate representation of ethnic minorities, care-experienced children and children with psychosocial disabilities. The Committee recommended that the UK establish a statutory principle that detention be used only as a measure of last resort, for the shortest possible period of time, and on a non-discriminatory basis (United Nations Committee on the Rights of the Child, 2016).

Currently, in accordance with the *Criminal Justice (Scotland) Act 2016*, if a police officer suspects that an arrested or detained person is under 16, the officer must inform a parent or guardian. If the child cannot be seen before a sheriff, police can (but need not) release the child, with or without a written undertaking to appear in court. If the child is not released, he or she must not be detained in a police station, unless arranging an alternative is impracticable or unsafe. Figures on the number of children held overnight in police custody under this procedure are unavailable. Improved data needs to be made available here, and Scottish Government must ensure that overnight police detention is only used as a last resort.

Offences committed by children are normally dealt with via the Children's Hearing System. This cannot result in criminal prosecutions. However, measures may include a Compulsory Supervision Order, which may involve a restriction of the child's liberty, movement restrictions or placement in secure accommodation.

## 7. Resources

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

### 7.1 Children's Rights and Wellbeing Impact Assessment

The Scottish Government has developed a Child Rights and Wellbeing Impact Assessment (CRWIA) which has been made available for public bodies and children's services to adapt for their own use. A CRWIA is a process through which decision-makers can identify, research, analyse and record the anticipated impact of any proposed legislation or policy on children's human rights. It should be used on all legislation and policy that impacts on children, not just children's services. The CRWIA provides a template to help assess whether the proposal complies with the UNCRC and the wider human rights framework, and how it can help to protect, respect and fulfil children's human rights. In particular, the CRWIA can be used to ensure that the best interests of the child (UNCRC, Article 3) and children's views (UNCRC, Article 12) are an integral part of policy development.

- [Guidance on using CRWIA](#)
- [CRWIA template](#)
- [CRWIA training tool](#)

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

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

## 7.3 State of Children's Rights reports

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

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

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

The [Common Core](#) was produced by the Scottish Government in 2012 to describe the skills, knowledge values and understanding that everyone should have if they work with children, young people and their families, whether they are paid or unpaid. The skills, knowledge and understanding are underpinned by the UNCRC and are set out in two contexts; relationships with children, young people and families and relationships between workers. From the perspective of children, young people and their families, the Common Core describes what is fundamentally important to them, no matter what service they are using or their own circumstances or backgrounds. From the perspective of workers (whether paid or unpaid) the Common Core describes the fundamentals that every worker should demonstrate and contains the basics needed to build positive relationships and promote children's human rights. It can be used in several ways, including framing recruitment materials, drafting staff guidance, in support and supervision through to induction training.

## 7.5 PANEL principles

The [PANEL Principles](#) are one way of breaking down what a human rights-based approach means in practice. The principles provide a process through which international human

rights standards can be embedded at the very centre of policies and practice, ensuring that people know and claim their rights and that organisations, public bodies and businesses fulfil their human rights obligations. They also create solid accountability, so people can seek remedies when their rights are violated.

## 7.6 The 7 Golden Rules of Participation

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

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

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

## 8. Conclusion

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

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

Whilst progress has been made in embedding a rights-based approach into Scotland's youth justice system, this chapter has set out a number of areas that have been highlighted by the UN Committee on the Rights of the Child as needing improvement. These include the age of criminal responsibility (which, even when Scottish Government proposals are taken forward to increase it from 8 to 12 years old later in 2018, will still be one of the lowest in the world), the use of restraint and the number of children still being tried in adult courts.

When a rights-based approach to youth justice is fully embedded across Scotland, children will no longer be unduly criminalised or stigmatised as a result of their behaviour, but always supported to address that behaviour and to rehabilitate. Whilst recognising the need to ensure public protection and acknowledging the harm that can sometimes be caused to others by a child's behaviour, there will also always be full recognition that young people who offend often have significant underlying needs, and that failing to address these needs would be a violation of their human rights. This chapter has set out the human rights frameworks and tools needed to turn this ambition into a reality across Scotland.

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