



Study on children's involvement in judicial proceedings – contextual overview for the criminal justice phase – Scotland

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Executive summary

Overview of the general elements of child-friendly justice in criminal proceedings

Most of the institutions, rules and practices relating to children as victims or witnesses are not specifically aimed at children but rather affect children similarly to any other vulnerable victim or witness. By contrast, children involved in the criminal justice system as defendants are subject to a number of specialised legal frameworks.

Youth justice in Scotland is centred on the **Children's Hearings System**, which is not limited to criminal justice, being used also as an early intervention mechanism aimed at at-risk children. There is a focus on restorative justice, with the aim that no child aged 16 or younger should be tried in adult court or sent to prison. Thus except for a few serious and violent offences, no children are subject to the general Scottish justice system.

A children's hearing is held before a lay tribunal in an informal setting. The child is required to attend, but may be excused from parts of the hearing that may be upsetting. The child's parent or guardian is also required to participate, unless this would be inappropriate. The children's hearing may decide to impose corrective or protective measures. These may include supervision requirements. Supervision is usually carried out by visits of a social worker to the child at home, although if necessary the hearing may decide other accommodation measures are necessary, such as living with a relative or in a secure facility or residential school. Since 2004 hearings can also put in place a movement restriction condition for children over 12, for example, by the use of an electronic 'tag'.

Overview of children's involvement before, during and after judicial proceedings

Children aged 16 and younger are considered vulnerable witnesses and are entitled to special protective measures. These include the use of screens and video links rather than giving evidence in open court, or to have a supporter present. The Scottish Government guidance on interviewing vulnerable witnesses emphasises the importance of, and gives instruction regarding the provision of facilities appropriate for children and conducting child-friendly interviews. These include broad guidelines such as on the need to take into account the individual child's level of maturity and emotional needs; provide a safe and comfortable interview setting; minimise interference with the child's normal routine; and tailor interview questions to the child's maturity and emotional needs. Children under the age of 14 may not make a victim statement in court, however their parents or guardians may do so on their behalf.

Special arrangements exist in relation to children who are detained. The police must inform the parents or guardian of the detained child without delay and they usually must be allowed access to the child at the police station. If a child is being held for questioning under section 14 of the Criminal Procedure (Scotland) Act 1995, then the police have twelve hours in which to either charge or release the child. This can be extended for another twelve hours.

The child has both a right and a duty to attend all stages of a children's hearing, unless their presence would be detrimental to their interests. Adults involved in the child's life also have a right and a duty to attend all stages of the hearing if they are considered to be a 'relevant person'. It is an offence for a relevant person who is obliged to attend a children's hearing to fail to attend it.

There is an automatic ban on disclosing the identity of any child involved in criminal proceedings¹. Rehabilitation periods, for prior criminal convictions to be 'spent', are halved for offenders who were less than 18 years old at the time of their conviction.

Overview of children's involvement before, during and after judicial proceedings

The Scottish Government and authorities are aware of their obligations regarding child-friendly justice. They benefit from the knowledge and experience of specialised children's rights NGOs, as well as from longstanding charity organisations that cooperate closely with the public authorities to provide

¹ This ban is found in section 47(1) of the Criminal Procedure (Scotland) Act 1995. This ban is discussed in more detail in Section 3.1.3 of the report.



practical support for victims' and witnesses' rights. Governmental policy toward child offenders has a strongly restorative and rehabilitative aspect, as children under age 16 who are accused of illegal activity are now kept almost entirely outside the adult judicial system. The institution of children's hearings applies to nearly every child offender, as well as to at-risk children who are not yet accused of an offence. However, children between the ages of 16 and 18 enjoy little added protection. Criminal responsibility can begin at the age of eight years even although, as explained in section 3.3.1, children aged between 8 and 12 years of age cannot be prosecuted in the criminal courts. Although in general provisions for providing information, ensuring access to legal advice and representation and for supporting and protecting vulnerable victims and witnesses are strong in Scotland, there are relatively few added support mechanisms aimed specifically at children.



Abbreviations

ASBO	Antisocial Behaviour Orders
CA	Competent Authority
CoE	Council of Europe
COPFS	Crown Office and Procurator Fiscal Service
EC	European Commission
EU	European Union
PCCS	Police Complaints Commissioner for Scotland
SPSO	Scottish Public Services Ombudsman
VIA	Victim Information and Advice Service

1 Overview of Member State's approach to children in criminal proceedings and specialised services dealing with such children

The institutional framework relevant to children in criminal proceedings in Scotland is a complex mix of criminal law, public and private law provisions. The institutions involved, as well as relevant laws and policies vary depending on whether the child is a suspect or victim. For the most part witnesses are treated in the same way as victims though victims' rights are more extensive. They also vary depending on the type of crime committed.

Since devolution of powers to the Scottish Parliament in 1999, the vast bulk of relevant institutions and powers are now located at the Scottish level. In fact, even prior to devolution, Scotland had its own separate Scottish justice system and specific institutions, such as the Children's Hearing System which was introduced in 1971.

Many significant functions relating to children's and victims' rights are carried out not by state bodies but rather by non-governmental organisations and charities.

The law relating to children in the criminal justice system is found in both the Children (Scotland) Act 1995 ("the Children Act") and the Criminal Procedure (Scotland) Act 1995 ("the Act"). Certain provisions of the Act apply generically to adults and children alike, but Part V of the Act sets out special provisions for children only.

Most of the institutions, rules and practices relating to children as victims or witnesses are not specifically aimed at children but rather affect children similarly to any other vulnerable victim or witness. By contrast, children involved in the criminal justice system as defendants are subject to a number of specialised legal frameworks, most prominently the system of children's hearings in lieu of court proceedings. However the children's hearings system is not limited to criminal justice, being used also as an early intervention mechanism aimed at at-risk children.

Children's Hearings

Youth justice in Scotland is centred on the **children's hearings** system, which 'puts the welfare of the child first, and recognises that children who offend are often the same children in need of care and protection. As such, there is a large crossover with child protection'². There is a focus on restorative justice, with the aim that no child aged 16 or younger should be tried in adult court or sent to prison. Thus except for a few serious and violent offences, no children are subject to the general Scottish justice system. Furthermore, if a child under the age of 17 years and six months is subject to summary procedures in the adult criminal justice system, the sheriff may remit their case to a children's hearing³.

The children's hearings system has been in place since 1971, and was incorporated into the overarching Children (Scotland) Act 1995⁴. It was updated and somewhat extended by the Children's Hearings (Scotland) Act 2011. A child may be referred by concerned parties such as family, teachers, social workers or police to the Scottish Children's Reporters Administration⁵. Grounds for referral include, but are not limited to, suspected criminal activity. Specific grounds include (for example)⁶:

- the child is at risk of suffering from lack of parental care;
- the child has been the victim of a serious ('schedule 1') offence, or is living in close proximity to a known schedule 1 offender or victim;

² [The Knowledge Network, 'Youth Justice Resources'](#).

³ [The Development Centre for Scotland.](#)

⁴ [Children's hearing.](#)

⁵ [Scottish Children's Reporter Administration.](#)

⁶ Children's Hearings (Scotland) Act 2011, Section 67(2).

- the child has committed an offence;
- the child has abused alcohol or drugs, or has consistently failed to attend school.

Following a referral the Children's Reporter will investigate the case and determine whether a hearing is warranted. The reporter investigates the case with regard to the individual circumstances and best interests of the child. Applying a civil evidence standard (balance of probabilities) except in the case of an alleged offence (in which case the criminal standard of 'beyond a reasonable doubt' applies), the reporter instigates a hearing if a) the required grounds for referral exist, and b) compulsory measures of supervision are necessary to either protect the child, or correct their behaviour. If in the view of the reporter a hearing is not appropriate, then they may recommend alternative measures of restorative justice or individually tailored programmes⁷.

A children's hearing is held before a lay tribunal of three specially trained and qualified volunteers, who are members of the Children's Panel⁸. At least one of them must be male and at least one female, selected by and representing the local authorities. The hearing is held in an informal setting. The child is required to attend, but may be excused from those parts of the hearing that may be upsetting. The child's parent or guardian is also required to participate, unless this would be inappropriate as for example when they are the source of the risk to the child.

The children's hearing may decide to impose corrective or protective measures. These may include supervision requirements, renewable until the child reaches the age of 18. Supervision is usually carried out by visits of a social worker to the child at home, although if necessary the hearing may decide other accommodation measures are necessary, such as living with a relative or in a secure facility or residential school. Since 2004 hearings can also restrict the movements of a child, by the use of an electronic 'tag', which restricts the child to, or away from, a particular place. There is no age restriction as to who can be made subject to a movement restriction condition. However, the Scottish Government's "Good Practice: Intensive Support and Monitoring" states it is not expected that a child under the age of 12 will be made subject to such a restriction. However, this tag must be accompanied by a package of intensive measures to help the child change their behaviour⁹.

The Children's Hearings (Scotland) Act 2011 mostly consolidated and restated the law regarding children's hearings, but also made a few modifications which are currently being implemented. 'The main change is the creation of a new national body, Children's Hearings Scotland, responsible for all functions relating to the recruitment, appointment and training of panel members. Instead of 32 separate local panels, there will be one single national panel appointed by a National Convener'¹⁰.

⁷ [Scottish Children's Reporter Administration](#).

⁸ [The Children's Panel](#).

⁹ [The Development Centre for Scotland 'Children's Hearing System'](#).

¹⁰ [The Development Centre for Scotland 'Children's Hearing System'](#).

2 Child-friendly justice before and during criminal judicial proceedings

2.1 The child as a victim

2.1.1 Reporting a crime

There are no restrictions on children reporting crimes in Scotland.

A child could report a crime to the local police, either in person or via telephone, or online for minor non-urgent crimes¹¹. In some regions, racial or homophobic crimes may be reported anonymously, via a third organisation that forwards the information to the police.

The charity Crimestoppers also provides a free telephone service for anonymously reporting crime¹². After making their statement to the police, victims of crime are referred to another charity, Victim Support Scotland, which provides information about next steps as well as a range of services including practical assistance and counselling for victims of crime.¹³ Victim Support Scotland also provides guidance specifically aimed at children who are victims of crimes committed by other children, including referral information to a number of further information services and children's helplines¹⁴.

2.1.2 Provision of information

The Scottish Government has published standards on the provision of information to crime victims¹⁵. According to these standards, crime victims may expect to have contact with a number of organisations, including the police, the Procurator Fiscal (public prosecutor), the Parole Board and various information and support services. All of these have a responsibility to provide information about the victim's role in the procedures, the progress of the criminal investigation and any resulting trial, and where to obtain further advice and assistance. Although no specific rules are established regarding the provision of information to children who are victims of crime, the standards state that information must be easy to understand and information providers should supply further explanations if necessary.

In general, according to the Scottish Government, much of the information regarding the case by which they are affected:

'is already available to victims in Scotland, although the more case-specific information tends to be provided only for those (or their bereaved relatives) in specific types of cases (mainly involving more serious crime) and cases involving vulnerable victims or witnesses. The Victim Information and Advice (VIA) service provided by the Crown Office and Procurator Fiscal Service is the primary route by which this information is provided. Victims in less serious cases can often find out this information by making enquiries with the police or COPFS, but at present much of the information is not provided proactively or in a concise, accessible or user-friendly way'¹⁶.

2.1.3 Protection from harm and protection of private and family life

In Scotland, the first protection on privacy for a child in **criminal proceedings** is that only specified persons may attend the proceedings¹⁷. No person may be present in the court

¹¹ [Victims of Crime in Scotland \(Scottish Government service\)](#). Whether and which crimes can be reported online seem to vary among the local police branches.

¹² [Crime Stoppers Website](#).

¹³ [Victim Support Website](#).

¹⁴ [Crime and You Website](#).

¹⁵ [The Scottish Government](#).

¹⁶ [The Scottish Government 'Making Justice Work for Victims and Witnesses'](#) para.19.

¹⁷ Section 142(1) of Criminal Procedure (Scotland) Act.

without the special authorisation of the court except members and officers of the court, parties to the case, their solicitors and counsel, witnesses and other persons directly concerned in the case, and bona fide journalists.

There is an automatic ban on disclosing the identity of any child involved in criminal proceedings. The ban is found in section 47 of the Act and provides that “no newspaper report of any court proceedings should reveal the name or any particulars calculated to lead to the identification of any person concerned in the proceedings aged below 16.” Newspaper reports of court cases may not reveal the name, address or school, or any particulars which might lead to the identification of any person aged under 16 years concerned in the proceedings. This applies to both a child who is accused and also a child who is a witness in the proceedings. However, it should be noted that the ban applies until it is dispensed with, in whole or in part, by the court where it is satisfied that to do so “is in the public interest”¹⁸.

Furthermore, as was clarified in the case of *Frame v Aberdeen Journals Ltd*¹⁹, the ban is to be narrowly interpreted as only extending to newspaper reports of court proceedings. The ban does not cover newspaper reports published during the investigative period. Thus, in this case, a report which revealed the identity of a male person, aged 15, who had been arrested for murder was not found to be in breach of section 47 of the Act.

The privacy protection afforded to children aged 16 or under by way of section 47 of the Criminal Procedure (Scotland) Act 1995 is not currently provided to children aged 16 to 18 years of age. Newspaper reports may reveal the identity of children aged 16 to 18 years that are involved in criminal proceedings. However, at the time of writing, it is proposed that the age limit for protection should be extended to 18 under section of in section 11 of the Victims and Witnesses (Scotland) Bill.

In addition, the personal details of child crime victims are protected as any other sensitive data, by the UK’s data protection law²⁰. Civil restraining orders, or ‘interdicts’, may be obtained to protect against possible domestic violence²¹. Potentially dangerous partners can be ordered not to have contact with certain people or to go to specified places. This can have the effect of helping to protect children from abusive or dangerous family members.

In cases where a person convicted of a crime has been incarcerated, victims may request that their telephone numbers be placed on a list of numbers which telephones in correctional institutions are blocked from calling²².

According to section 271(1) of the Vulnerable Witnesses (Scotland) Act 2004, a person who is giving evidence at a hearing in relevant criminal proceedings is a vulnerable witness if they are under the age of 16 at the date of the start of proceedings. Child witnesses are automatically entitled to use a variety of special measures to help them to give their evidence. Some of these measures enable the child to avoid giving evidence in court such as using a live TV link. This is detailed in [section 2.1.5](#) below.

2.1.4 Protection from secondary victimisation and ensuring a child friendly environment

The Scottish Government guidance on interviewing vulnerable witnesses emphasises the importance of, and gives instruction regarding providing facilities appropriate for children and conducting child-friendly interviews²³. These include broad guidelines such as to take into account the individual child’s level of maturity and emotional needs; provide a safe and comfortable interview setting; minimise interference with the child’s normal routine; and tailor interview questions to the child’s maturity and emotional needs. Social workers and police

¹⁸ Section 47(3)(b) of the Criminal Procedure (Scotland) Act 1995.

¹⁹ *Frame v Aberdeen Journals Ltd* 2005 SLT 949.

²⁰ Data Protection Act 1998.

²¹ [Shelter Scotland Housing and Homelessness charity](#).

²² [Victim Support website](#).

²³ Victims are included in the term “vulnerable witnesses”. [Guidance on Interviewing Child Witnesses in Scotland](#).

cooperate in conducting interviews. Court familiarisation visits are provided for children and other vulnerable witnesses²⁴.

2.1.5 Protecting the child during interviews and when giving testimony

Children aged 16 and younger are considered vulnerable witnesses and are entitled to special protective measures²⁵.

According to section 271(1) of the Vulnerable Witnesses (Scotland) Act 2004, a person who is giving evidence at a hearing in relevant criminal proceedings is a vulnerable witness if they are under the age of 16 at the date of the start of proceedings (“child witness”). According to the legislation, such child witnesses are automatically entitled to use special measures to help them to give their evidence.

The special measures which the child witness may use are listed in section 271H of the Act and they include:

- taking of evidence by a commissioner in accordance with section 271I of the Act,
- use of a live television link in accordance with section 271J of the Act,
- use of a screen in accordance with section 271K of the Act,
- use of a supporter in accordance with section 271L of the Act,
- giving evidence in chief in the form of a prior statement in accordance with section 271M of the Act.

2.1.6 Right to be heard and to participate in criminal proceedings

Victims have no general right to be heard in criminal proceedings, and there are no special rules for children in this regard. Since 2009 crime victims have had the right to make a statement in court after conviction but before sentencing, describing the impact the crime had on them²⁶. Children under the age of 14 may not make a victim statement, however their parents or guardians may do so on their behalf²⁷.

2.1.7 Right to legal counsel, legal assistance and representation

There is nothing to prevent a child victim or witness from consulting legal counsel, but there is no requirement that there be such counsel and no special facilities for providing it. Victim Support Scotland, a charity, provides free advice to victims and witnesses.

2.1.8 Remedies or compensation exist for violation of rights and failure to act

After using the complaints mechanism of the police or other public bodies, if a child still has not found a remedy for a violation of rights or failure to act, they may contact the Scottish Public Services Ombudsman (SPSO)²⁸. The SPSO may conduct an investigation and if wrongdoing is found, ask the organisation concerned to correct its actions and repair their effects.

As with other victims of violent crime, child victims in Scotland may be entitled to compensation for their injuries or damages through the Criminal Injuries Compensation Scheme²⁹.

²⁴ [Scottish Government guidance, Special Measures for Vulnerable Adult and Child Witnesses](#).

²⁵ Vulnerable Witnesses (Scotland) Act 2004, Article 271.

²⁶ [Victim Support Website](#).

²⁷ [The Scottish Government 'Making a victim statement'](#) p. 7.

²⁸ [SPSO](#), Scottish Public Service Ombudsman.

²⁹ [UK, Ministry of Justice](#).

2.2 The child as a witness

2.2.1 Reporting a crime

See [section 2.1.1](#), above

2.2.2 Provision of information

See [section 2.1.2](#), above.

2.2.3 Protection from harm and protection of private and family life

See [section 2.1.3](#), above.

2.2.4 Minimising the burden of proceedings and ensuring a child friendly environment

See [section 2.1.4](#), The provisions for minimising the burden of proceedings and ensuring a child friendly environment apply similarly to both witnesses and victims.

2.2.5 Protecting the child during interviews and when giving testimony

See [section 2.1.5](#), above. The protections afforded to child witnesses are similar to those given to victims.

2.2.6 Right to be heard and to participate in criminal proceedings

There are no specific provisions relating to the right of witnesses, including child witnesses, to be heard.

2.2.7 Right to legal counsel, legal assistance and representation

See [section 2.1.7](#).

2.2.8 Remedies or compensation for violation of rights and failure to act

See [section 2.1.8](#), above.

2.3 The child as a suspect/ defendant

In Scotland, police powers of investigation are not contained in a single regime equivalent to the Police and Criminal Evidence Act and related codes of practice that apply in England and Wales. Police powers to detain, arrest, search and question suspects in Scotland come from a mixture of the common law and the Criminal Procedure (Scotland) Act 1995.

A child who is alleged to have committed an offence may be dealt with either by **prosecution in the criminal courts** or by the Reporter under the **Children's Hearing system**³⁰. The statistics show that the vast majority of children who offend in Scotland are dealt with under the Hearing System rather than the criminal courts. This overview will refer to both the hearing system and the criminal courts.

2.3.1 Age of criminal responsibility

In Scotland, the Criminal Procedure (Scotland) Act 1995 sets the minimum age of criminal responsibility (MACR). The MACR does not depend on the circumstances such as the seriousness of the offence.

In fact, Scotland has one of the lowest ages of criminal responsibility in Europe with responsibility being engaged from the age of **eight years of age**³¹. Other than being eight years old, no conditions are needed to trigger criminal responsibility.

³⁰ Hearings System is regulated by Chapter 3 Part II of the Children Act.

³¹ Section 41 of the Criminal Procedure (Scotland) Act 1995, as amended.

However, **children aged between eight and 12** cannot be prosecuted in the **criminal courts** but they can be referred to the **children’s hearing system** on both offence and non-offence grounds³².

Children aged **12 or more** can be prosecuted in the criminal courts (subject to guidance of the Lord Advocate on appropriate cases) or referred to the hearings system on both offence and non-offence grounds.

A child is considered to be fully criminally responsible from the **age of 16 years**.

2.3.2 Provision of information

A range of information is required to be provided to all suspects and detained persons under the Criminal Procedure (Scotland) Act 1995, as amended. Special arrangements exist regarding informing parents/guardians, if the suspect or detainee is a child.

Where there are reasonable grounds to suspect that a person has committed an offence punishable by imprisonment, then the police have powers under section 14 of the Criminal Procedure (Scotland) Act 1995 to **detain and question** the suspect for up to 12 hours³³.

At the time that such a detention is made the police constable is obliged to **inform the person** of his/her suspicion, of the general nature of the offence which he suspects has been or is being committed and of the reason why the person is being detained³⁴.

The person being detained must be informed of **his/her rights** on two occasions: firstly, when he/she is detained, and secondly, on arrival at the police station. The suspect has the **right to silence**. He/she is only obliged to answer some basic questions (name, address, date and place of birth and nationality). In terms of the suspect’s other rights, he/she has the **right to a solicitor**³⁵. This entails the right to have a solicitor informed about his/her detention as well as the right to a consultation with a solicitor if the suspect is being questioned by police. The suspect also has the **right to inform** (“intimate”) **another person** without delay about the fact that he/she has been detained³⁶.

Special arrangements exist in relation to children who are detained³⁷. The police must inform the parents or guardian of the detained child without delay and they must be allowed access to the child at the police station. However, access to the child may be refused or delayed where there is suspicion that the parent or guardian is also involved in the crime or offence or it is in the interests of the well being of the child.

There are no legal provisions to the effect that information must be provided in a child friendly manner in a language the child understands, taking into account the age and maturity of the child. However all documents relevant to a children’s hearing are normally provided to a child aged 12 or older, unless providing them would significantly distress or harm the child or another person, or would seriously impede investigation or prosecution of crimes. Documents are not provided to younger children unless requested by the child or their representative³⁸.

2.3.3 Immediate actions following first contact with police or other relevant authority

When a child in conflict with the law first comes into contact with the police in Scotland, they do have the opportunity to have a parent contacted. If a child is detained for questioning under section 14 of Criminal Procedure (Scotland) Act 1995 as mentioned above, the police

³² Section 41A of the Criminal Procedure (Scotland) Act 1995 as inserted by the Criminal Justice and Licensing Scotland Act 2010.

³³ Under Section 14A Criminal Procedure (Scotland) Act 1995, this period can be extended for a further 12 hours.

³⁴ Under section 14 (6) of the Criminal Procedure (Scotland) Act 1995.

³⁵ Under section 15A of the Act.

³⁶ Section 15 of the Criminal Procedure (Scotland) Act 1995.

³⁷ These powers are found in section 15(4) of the Act. A child is defined as being under 16 years old.

³⁸ [Scottish Children’s Reporter Administration, Practice Guidance Note 24: Papers for Children.](#)

constable must contact his/her parents to let them know what has happened and must usually allow them access to the child³⁹. Similarly, if a child is formally arrested, the police constable must also inform a parent⁴⁰. Parent includes a guardian or the person who has care of the child.

Where someone who is suspected of an offence is being questioned, a caution should be administered before a suspect is questioned as a matter of fairness and the suspect has the right to a consultation with a lawyer before and during any questioning. A failure to do so may make the answers inadmissible in court.

The police will **charge a person** when they consider that they have enough evidence to prove that they have committed an offence. The charge is a statement which sets out (a) the crime the person is charged with; (b) when the crime was committed; and (c) where the crime was committed.

If a person is charged, the police must **caution** him/her that he/she does not need to say anything in answer to the charge but that he/she has the opportunity to reply. Any reply that the suspect makes will be noted and may be used in evidence.

In terms of time limits for **detention**, if a child is being held for questioning under section 14 of the Criminal Procedure (Scotland) Act 1995, then the Police have twelve hours in which to either charge or release the child. Under section 14A, the Police can extend this detention time limit for another twelve hours for further questioning, but only on the authority of a Police officer of the rank of Inspector or above. Under section 14B of the Act, the suspect or his/her solicitor has the opportunity to make representation to the police regarding the decision to extend the detention.

2.3.4 Conditions for pre-trial detention/ custody

Section 42(9) of the Criminal Procedure (Scotland) Act 1995 deals with the pre-trial stage and ensures that children are not detained together with adults. It prevents a child that is detained in a police station, or being taken to or from any criminal court, or waiting before or after a court appearance from associating with an adult (not being a relative) who is charged with any offence other than an offence with which the child is jointly charged.

When a child is arrested and may not be liberated before appearing before the sheriff⁴¹, the police officer is under a duty to keep the child in a **place of safety** which is not a police station until he can be brought before the sheriff⁴². A "place of safety" is defined as "any residential or other establishment provided by a local authority, an English local authority community home, or any hospital, surgery or other suitable place, the occupier of which is willing temporarily to receive a child⁴³".

However, it is not always possible to keep a child in a place of safety and sometimes a child will need to be detained in a police station. This would apply when the police officer certifies that:

- it is impracticable to keep the child in a place of safety; or
- the child is of so unruly a character that he cannot safely be so detained; or
- it is inadvisable because of the child's state of health or bodily or mental condition.

At the first appearance of the suspect in Court, a court must decide whether a child suspect may be bailed or remanded in custody. If bail is refused, the suspect can appeal the

³⁹ Section 15(4) of the Criminal Procedure (Scotland) Act 1995.

⁴⁰ Ibid.

⁴¹ Section 43(3) of the Criminal Procedure (Scotland) Act sets out the situations in which a child may not be liberated before appearing before the Sheriff.

⁴² Section 43(4) of Criminal Procedure (Scotland) Act.

⁴³ See Section 93(1) of Children Act and Section 307(1) of the 1995 Act.

decision to the High Court. Applications for bail can also be made at subsequent appearances of the suspect in Court.

Section 23B of the Criminal Procedure (Scotland) Act 1995 sets out the principle that bail is to be granted to an accused person, other than in restricted circumstances. The restrictions are in Sections 23C and 23D. In the former a range of risks and aggravating circumstances is set out, and it must be noted that in the case of all these conditions bail may be refused only with regard to the public interest. The latter section deals with persons accused of certain serious offences with previous convictions for serious offences.

Where a court remands or commits a child for trial or sentence and does not decide to release the child on bail, then the court will commit the child to the local authority to be detained:

- where the court so requires, in secure accommodation within the meaning of Part II of the Children (Scotland) Act 1995; and
- in any other case, in a suitable place of safety chosen by the authority⁴⁴.

2.3.5 Protection of private and family life

For privacy rules in adult courts see [section 2.1.3](#).

The identity of the child is also protected under the **children’s hearings system** because it is an offence to publish any matter intended or likely to identify “any child connected (in any way) with the case” or his or her school address⁴⁵.

Also in the children’s hearing system there are further legislative measures in place to protect privacy in relation to media reporting. The basic rule is that children’s proceedings are to be held in private – only persons who need to be there for the proper consideration of the case being heard are to be present⁴⁶. Bona fide representatives of the media are allowed to be present at children’s hearings and associated court hearings⁴⁷. However, they can be excluded by the hearing where exclusion is necessary in the child’s interests or in order to obtain the child’s views or where the presence of the media is causing distress to the child or may have this effect (s.43(4)). Once a journalist has been excluded from a hearing, the chairperson of the hearing may inform him or her about what has taken place when he or she was excluded, but the chairperson is not obliged to do so.

Measures also exist to avoid the need for the child’s presence in court completely or at least to make the court appearance more manageable. The Vulnerable Witnesses (Scotland) Act 2004 provides that any witness in the High Court or the Sheriff Court (whether an accused or not) aged under 16 when the complaint or indictment is served is automatically entitled to standard special measures (a live TV link, a screen in the courtroom and a supporter with either of the first two options).

2.3.6 Alternatives to judicial proceedings

Some alternatives to formal criminal proceedings do exist for children in Scotland⁴⁸. The alternatives described below are available for young person is someone under the age of 18 and therefore includes those aged 16 and 17 years old.

⁴⁴ Section 51 of the Criminal Procedure (Scotland) Act 1995. Note that section 51 was amended by the 2010 Criminal Justice and Licensing (Scotland) Act which stopped detention of 14 & 15 year olds certified as “unruly” in adult prisons.

⁴⁵ Section 44(1)(a) of the Children (Scotland) Act 1995.

⁴⁶ See section 43(1) of the Children (Scotland) Act 1995.

⁴⁷ Section 43(3)(b) of the Children (Scotland) Act 1995.

⁴⁸ Information in this section taken from Association of Chief Police Officers in Scotland Guidance “A Flexible Approach to Offending Behaviours by Children and Young People”, version 2011.

Minor antisocial behaviour is most often appropriately dealt with by way of an **informal warning** at the scene from a police officer who may also consider it appropriate to advise the child's or young person's parent/guardian of the incident. This informal warning does not need to be formally recorded on the Criminal History System.

The Scottish Crime Recording Standard makes provision for the use of a **formal warning** where a child or young person has committed a minor crime/offence. The warning must be carried out in the presence of the child's or young person's parent/guardian following caution and charge. Both the child or young person and their parent/guardian should be advised that the warning will be recorded locally. All formal warnings must be recorded as a disposal on the relevant crime system and victims should be updated on the action taken. The police may follow up the formal warning with a letter to the child's or young person's parent/guardian outlining the circumstances of the incident, advising them that the information may be shared with relevant agencies, and informing them of local support available should they wish to access it.

In situations where a child or young person has developed an increased pattern of committing minor crimes (such as shoplifting of low monetary value items) which do not fit the criteria for automatic referral to the Children's Reporter, a **Community Warning Notice** may be an appropriate disposal. The Community Warning Notice is a written warning served on the child or young person in the presence of their parent/guardian. It sets out statutory responsibilities of the parent/guardian and includes points of contact for advice, support or assistance. It identifies parental action and has to be signed by the child or young person and their parent/guardian.

A Community Warning Notice is intended to emphasise to the child or young person and their parent/guardian the consequences that minor offending has for them, the victims, and the community. It also includes any measures or sanctions which the parent/guardian intends to take to address the behaviour. A Community Warning Notice may follow a police formal warning but may also be used for first-time offenders where the nature or context of the minor crime merits a more robust approach. This warning may be issued more than once where appropriate where there is no requirement to escalate the intervention for the child or young person.

A **Police Restorative Warnings** is a process facilitated by trained personnel that involves the warning of a child or young person, whilst addressing the impact on the victim and the community. Restorative Warnings should be carried out where the child or young person admits the offence. A Police Restorative Warning may be appropriate where a police formal warning or a Community Warning has already been issued or it may also be used for first-time offenders who may have committed an offence of a level/seriousness which merits a more formal and structured approach.

The restorative warning takes the form of a pre-arranged structured meeting between a facilitator and the child or young person who admits the offence. The aim is to impress upon the child or young person the impact of the offence on the victim or the community and on his/her parents, encouraging him/her to take responsibility for his/her actions and to understand the implications of future offending. The focus should be on changing the behaviour and attitude of the child/young person rather than on humiliating him/her. Lastly, a police restorative warning must be signed by the child or young person to indicate that they accept the warning. The police have to make the child/young person and his or her parents aware that the young person will be warned about his/her behaviour and that this warning will be recorded and marks formal entry into the youth justice system.

Where a child or young person has developed a pattern of increased or repeated antisocial behaviour and previous efforts to address the behaviour have failed, a **Youth Notice/Acceptable Behaviour Agreement/Contract** may be an appropriate intervention. These agreements are "written agreement between a person who has been involved in antisocial behaviour and one or more local agencies whose role it is to prevent such behaviour". They are jointly served by Police and the local Antisocial Behaviour Unit and/or housing officers in a face to face visit. They are intended to emphasise to the child or young

person and their parent/guardian the consequences that antisocial behaviour has for them and the community. The joint visit affords the opportunity to outline the consequences of antisocial behaviour and the provisions of the Antisocial Behaviour etc. (Scotland) Act 2004⁴⁹. It is also a means of informing a parent/guardian of the services and diversionary activities available in the community to support them and their child and also states the potential consequences of breach, which may include an application for an **Antisocial Behaviour Orders (ASBO's)**,

For more persistent anti-social behaviour an ASBO might be issued. ASBO's are preventative court orders that prohibit a person from doing anything contained in the order. Local authorities and registered social landlords – in consultation with the police – can apply to the sheriff court for an order. An ASBO is not a criminal conviction and does not form part of a criminal record. However, breach of an ASBO is a criminal offence. ASBO's are only likely to be appropriate in very limited circumstances and mostly follow a series of other interventions. Where an ASBO is being considered in relation to a child or young person, there should be a level of agreement with other interested parties, including those engaged with the child or young person on a voluntary or compulsory basis (Named Person or Lead Professional) and the Principal Reporter and Procurator Fiscal if, the young person is 16 and 17 years that an ASBO is the most appropriate intervention in the circumstances.

2.3.7 Minimising the burden of proceedings and ensuring a child friendly environment

There are rules to ensure that proceedings commence without undue delay. The rules vary depending on whether the offender is being dealt with under summary or solemn procedure. These rules apply to all prosecutions and are not specific to children.

■ Summary procedure

There is **no time limit** on the bringing of a summary prosecution for a **common law offence**, but Article 6(1) of the European Convention on Human Rights provides that in the determination of any charge against him/her everyone is entitled to a fair and public hearing within a reasonable time⁵⁰. For **statutory offences** which may be tried under summary procedure section 136 of the Act provides that (unless the statute creating the offence provides otherwise) summary proceedings **must commence within six months of the commission of the offence**.

When an accused person is at liberty there is no specific time laid down from the date of pleading not guilty to the date of the trial in which the trial diet should take place. It is accepted that all parties should make all efforts to ensure that the matter comes to trial as quickly as possible.

When an accused person is remanded in custody for trial (i.e. is not granted bail) in respect of summary proceedings then that **trial must commence within 40 days** of the not guilty plea being tendered⁵¹. If the trial is not commenced within that period the accused is liberated immediately and is forever free from all question of process for the offence. The 40 day time limit can be extended in certain circumstances and the grant or refusal of any extension is appealable to the High Court.

■ Solemn procedure

For accused who are not held in custody, the trial must start **within 12 months** from the first appearance of the accused on petition in relation to the offence.

For accused who are held in custody, the following time limits apply and start from the date of full committal. The indictment has to be served **within 80 days** of full committal.

Thereafter the trial must be started **within 110 days** from full committal for sheriff and jury cases or **within 140 days** from full committal for High Court cases.

⁴⁹ [Guidance on Antisocial Behaviour Orders](#).

⁵⁰ H.M. Advocate v. Little (1999) SCCR 625, Robb v. HMA (2000) SCCR 354, HMA v. Hynd (2000) SCCR 644.

⁵¹ Section 147 of Criminal Procedure (Scotland) Act 1995.

Special juvenile courts used to exist in Scotland, but these were abolished in 1968⁵². Now, depending on the nature of the offence, a child will simply appear in either the Sheriff Court or the High Court. Less serious solemn cases are heard in the Sheriff Court in front of a sheriff and jury. Proceedings against a child on indictment in the High Court follow the normal pattern i.e. the procedure applied for cases involving adults. Summary proceedings follow the general approach set out in the Criminal Procedure (Scotland) Act 1995, but special provisions do exist governing the procedure for summary courts that are dealing with a child.

So, for example, the sheriff has to sit in a different building or room from that in which he usually sits or on different days from those on which other courts in the same building are doing criminal business⁵³.

As mentioned in [section 2.3.4](#), arrangements have to be made to prevent children being taken to or from a criminal court, or waiting before or after their appearance at court, from associating with an adult (other than a relative) charged with any offence other than one on which the child is jointly charged, and to ensure that a female child shall be under the care of a woman while being detained, or conveyed, or waiting⁵⁴.

The 1996 Act of Adjournal provides that in any case where a child is brought before a court on a complaint, the sheriff:

- a. "...shall explain to the child the substance of the charge in simple language suitable to his/her age and understanding, and shall then ask the child whether he admits the charge;
- b. if satisfied, after trial or otherwise, that the child has committed an offence, shall so inform the child and—
 - i. the child and his/her parent, guardian, relative or other responsible person assisting the child, or the person representing the child, shall be given an opportunity to make a statement, and
 - ii. shall obtain such information as to the general conduct, home surroundings, school record, health and character of the child as may enable the sheriff to deal with the case in the best interests of the child and may remand the child for such enquiry as may be necessary; and
- c. if the sheriff considers it necessary in the interests of the child while considering disposal after conviction, may require the parent, guardian, relative or other responsible person assisting the child, or the person representing the child, or the child, as the case may be, to withdraw from the court"⁵⁵.

According to section 50(6) of the Criminal Procedure (Scotland) Act 1995, every court dealing with a child brought before it is obliged to have regard to his/her welfare, and to take steps in a proper case to remove him/her from undesirable surroundings.

2.3.8 Protecting the child during interviews and when giving testimony

For details on protection of child suspects during interview and testimony see [Section 2.1.4](#).

However, it should be noted that a child who is the accused also falls under the definition of a vulnerable child witness, but he or she will be treated slightly differently than, for example, a child giving evidence on behalf of the prosecution. For example, the accused is not entitled to use a screen when giving evidence. Section 271F of the Criminal Procedure

⁵² The only two remaining specialised courts which exist in Scotland are two Youth Courts, one in Airdrie Sheriff Court and one in Hamilton Sheriff Court.

⁵³ Section 142(1) of the Criminal Procedure (Scotland) Act.

⁵⁴ Section 42(9) of the Criminal Procedure (Scotland) Act.

⁵⁵ R 6.4 of the 1996 Act of Adjournal.

(Scotland) Act 1995 sets out the rules pertaining to the accused as a vulnerable witness and the special measures which he or she may use.

In the unusual situation where the child is not represented by a solicitor or counsel, his/her parent or guardian is entitled to assist him in his/her defence, including the examining and cross-examining of witnesses. Where the parent or guardian cannot be found or reasonably required to attend any other relative or responsible person may be allowed by the court to take his/her place⁵⁶.

2.3.9 Right to be heard and to participate in criminal proceedings

A child defendant's parent or guardian has to attend the court during all the stages of proceedings in the case of court prosecutions⁵⁷.

The child has both a right and a duty to attend all stages of the Children's Hearing⁵⁸. However, the child can be freed of the obligation to attend where the children's hearing are satisfied that his/her presence would be detrimental to his or her interests⁵⁹. The child must attend the hearing in his or her own right, but adults involved in the child's life also have a right and a duty to attend all stages of the hearing if they are considered to be a "relevant person"⁶⁰. Relevant persons have parental responsibilities or parental rights over the child or have care of or control over the child. It is an offence for a relevant person who is obliged to attend a children's hearing to fail to attend it.

2.3.10 Right to legal counsel, legal assistance and representation

In general, there are no laws providing specifically for children's rights to legal counsel, assistance and representation in criminal proceedings. In the context of a children's hearing, either the business meeting before the actual hearing or the hearing itself can appoint a legal representative to the child⁶¹.

A person, either a child or an adult, detained for questioning on suspicion of having committed a criminal act has the right of access to a solicitor⁶². The suspect may then consult confidentially with the solicitor immediately, i.e. before questioning has begun, or at any point thereafter (unless to do so would exceptionally interfere with the investigation, or the questions are of a very basic nature such as to obtain the identity of the suspect)⁶³. Any suspect arrested on a criminal charge has the right to have a private interview with a solicitor before any judicial examination or court appearance⁶⁴.

2.3.11 Remedies or compensation for violation of rights and failure to act

In terms of complaints regarding an aspect of the judicial process, if the suspect believes his/her rights have been violated, he/she may be able to appeal to the Court in relation to the admissibility of evidence gathered through any act that violated his/her rights, e.g. being denied the right of access to a lawyer before questioning.

If a child or young person was dissatisfied with the conduct of their legal representative (usually a solicitor), they would need to firstly complain to the firm of solicitors and, if still unhappy, raise a complaint with the Scottish Legal Complaints Commission⁶⁵.

⁵⁶ R. 6.3(1) of the 1996 Act of Adjournal.

⁵⁷ Section 42(2) of the Criminal Procedure (Scotland) Act.

⁵⁸ Section 45(1) of the Children (Scotland) Act 1995.

⁵⁹ Section 45(2) of the Children (Scotland) Act 1995.

⁶⁰ Section 93(2) of the Children (Scotland) Act 1995.

⁶¹ Children's Hearings (Legal Representation) (Scotland) Rules 2002.

⁶² Criminal Procedure (Scotland) Act 1995, section 15A(2).

⁶³ Criminal Procedure (Scotland) Act 1995, section 15A(3).

⁶⁴ Criminal Procedure (Scotland) Act 1995, section 17.

⁶⁵ [Scottish Legal Complaints Commission](#).

If a complaint regarding the involvement of the Police in a matter concerning a child is not dealt with satisfactorily by the Police force concerned, then formal complaints can be made to the Police Complaints Commissioner for Scotland (PCCS). It is an independent body responsible for reviewing complaint handling in Scottish Police Forces⁶⁶.

Complaints can also be made about a member of the Children's panel or against the Children's Reporter⁶⁷.

⁶⁶ See the [Guide for complaints about the Police](#).

⁶⁷ For further information, see <http://www.childrens-hearings.co.uk/complaints.asp>.

3 Child-friendly justice after judicial proceedings

3.1 The child as a victim or offender

3.1.1 Provision of information

Crime victims may opt in to a Victim Notification Scheme, operated by the Scottish Prison Service, in cases incurring sentences of more than 18 months' incarceration⁶⁸. Participants are notified when the offender leaves prison or detention, whether through release, transfer, escape or death. They may also submit written comments to parole board hearings, and be informed of the board's recommendations as well as any conditions relating to themselves or their families.

3.1.2 Sentencing

The terms "conviction" and "sentence" are not used in relation to children dealt with summarily. Instead the terms "finding of guilt" and "order made upon a finding of guilt" are used⁶⁹.

Both custodial and non-custodial punishments are available.

In terms of the non-custodial punishments, a court may deal with a child by way of absolute discharge, admonition, community payback order (CPO) or fine in the same way as it could deal with an adult on a similar charge before it.

Where a child would, if he were an adult, be liable to imprisonment for non-payment of a fine the court may, if it considers that none of the other methods by which the case may be legally dealt with is suitable, order him/her to be detained for such period of not more than one month as it specifies in a place chosen by the local authority for the area in which the court sits.

Where a child has been allowed time to pay a fine, detention cannot be ordered unless he has been placed under supervision in respect of the fine or unless the court is satisfied, on grounds which must be stated by the court, that supervision is impracticable.

The court may order the parent or guardian of a child who has been charged with an offence to give security for their co-operation in securing the child's good behaviour. The order may not be made without giving the parent (i.e. either parent, if that parent has parental responsibilities or rights in relation to the child, or any person who in the opinion of the court has for the time being the charge of or control over the child) or guardian an opportunity of being heard except where he has been required to attend and has failed to do so. Any sum ordered to be paid on forfeiture of the security is recoverable by imprisonment or civil diligence as if it had been ordered on conviction of the parent or guardian of the offence with which the child was charged. The court may not impose a fine on a child's parent or guardian in respect of the commission of an offence by the child.

3.1.3 Deprivation of liberty

At the outset, it is worth noting that only a very small number of children are sentenced to a custodial sentence in Scotland. According to Scottish Government figures, in 2009 to 2010 only 21 children received a custodial sentence.

Section 44 of the Criminal Procedure (Scotland) Act governs the detention of children. According to this section, when in summary proceedings a child pleads guilty or is found

⁶⁸ [Victim support website](#).

⁶⁹ Section 165 of the Criminal Procedure (Scotland) Act 1995.

guilty, and a sentence of imprisonment would apply if the offender were at least 21 years old, the sheriff may order detention for up to one year⁷⁰.

Section 44 and the possibility of up to one year of imprisonment applies to any offence committed by a child other than offence under [section 9\(1\)](#) of the [Antisocial Behaviour etc. \(Scotland\) Act 2004](#). Offences under section 9(1) of [Antisocial Behaviour etc. \(Scotland\) Act 2004](#) basically involve breach of an anti-social behaviour order. Children who are found guilty of an offence under section 9(1) of the Antisocial Behaviour etc (Scotland) Act 2004 may be sentenced on summary conviction to imprisonment for up to 6 months or to a fine both. If children are found guilty of such offences on indictment, they could be liable for imprisonment for up to 5 years or to a fine or to both.

However, detention for children under 16 years is not in a prison, but rather in secure accommodation

Older youngsters, between 16 and 21, can be sentenced to a period of imprisonment in a Young Offenders Institution (YOI). In Scotland, young males will be held in YOI Polmont and young females will usually be held within a separate facility for young offenders within Scotland's only female institution: HM Prison and Young Offenders Institution Cornton Vale.

3.1.4 Criminal records

In Scotland a criminal conviction is 'spent' after a prescribed period of good behaviour, except in cases of convictions which incurred a custodial sentence of at least 30 months⁷¹. The period ranges from six months to ten years, depending on the length of the sentence. Rehabilitation periods are halved for offenders who were less than 18 years old at the time of their conviction. Imprisonment in a youth institution for up to six months is spent after three and one half years, whereas longer custodial sentences for children are spent after five years. Noncustodial punishments are spent after two and one half years⁷².

⁷⁰ Criminal Procedure (Scotland) Act 1995, section 44. This rule does not apply to children under the age of 16 guilty of offences covered by section 9(1) of the Antisocial Behaviour etc. (Scotland) Act 2004.

⁷¹ Rehabilitation of Offenders Act 1974.

⁷² Rehabilitation of Offenders Act 1974.

4 Strengths and potential gaps

The approach to children in criminal/juvenile proceedings, and ongoing legislative and policy developments, show that the Scottish Government and authorities are aware of their obligations regarding child-friendly justice. They benefit from the knowledge and experience of specialised children's rights NGOs, as well as from longstanding charity organisations that cooperate closely with the public authorities to provide practical support for victims' and witnesses' rights, support which necessarily goes to the benefit of children as well as adults. This cooperation can be considered one of the strengths of the system.

There are specific policies in place that emphasise assistance to victims of crimes, in particular children, and child witnesses, as well as prevention of domestic violence. Governmental policy toward child offenders has a strongly restorative and rehabilitative aspect, as children under age 16 who are accused of illegal activity are now kept almost entirely outside the adult judicial system. The institution of children's hearings applies to nearly every child offender, as well as to at-risk children who are not yet accused of an offence.

Among the potential gaps, the greatest is the unusually low age of criminal responsibility. Children between the ages of 16 and 18 enjoy little added protection, and criminal responsibility can begin at the age of eight years. This is somewhat ameliorated by the prevalence and flexibility of children's hearings. Although in general provisions for providing information, ensuring access to legal advice and representation, and for supporting and protecting vulnerable victims and witnesses are strong in Scotland, there are relatively few added support mechanisms aimed specifically for children.

Conclusions

In Scotland, there are no specific safeguards for child victims or witnesses; rather general rules and practices relating to victims or witnesses apply to children. By contrast, child defendants or offenders benefit from a number of specialised legal frameworks.

A child suspected of having committed an offence may be dealt with either by prosecution in the criminal courts or by the Reporter under the Children's Hearings System.

The Children's Hearings System, which is not limited to criminal justice, is an early intervention mechanism aimed at at-risk children with a focus on restorative justice. The statistics show that the vast majority of children who offend in Scotland are dealt with under the Children's Hearings System rather than the criminal courts. Thus, the Children's Hearings System plays a central role in dealing with children accused of committing offences as well as other children who may be in need of care or protection. The System has been designed to be much more informal than a court setting, and to be more "child-friendly".

The child has both a right and a duty to attend all stages of a children's hearing. Adults involved in the child's life also have a right and a duty to attend all stages of the hearing. In addition, the identity of any child involved in criminal proceedings is fully protected.

While the Children's Hearings System provides a restorative focus, Scotland is characterised by the unusually low age of criminal responsibility, which can begin at the age of eight years.

Children aged 16 and younger are considered vulnerable witnesses and are entitled to special protective measures. These include the use of screens and video links rather than giving evidence in open court, or to have a supporter present.

Child victims and witnesses receive support from NGOs and longstanding charity organisations that cooperate closely with the public authorities to provide practical support for victims' and witnesses' rights. Although general provisions for providing information, ensuring access to legal advice and representation and for supporting and protecting vulnerable victims and witnesses are strong in Scotland, there are relatively few added support mechanisms aimed specifically at children.

Annex – Legislation reviewed during the writing of this report

- The Children’s Hearings (Scotland) Act 2011
- The Criminal Justice and Licensing (Scotland) Act 2010
- The Antisocial Behaviour etc. (Scotland) Act 2004
- The Vulnerable Witnesses (Scotland) Act 2004
- Act of Adjournal 1996
- Criminal Procedure (Scotland) Act 1995
- The Children (Scotland) Act 1995
- The Rehabilitation of Offenders Act 1974