



Study on children's involvement in judicial proceedings – contextual overview for the criminal justice phase – England, Wales and Northern Ireland

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Executive summary

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

In **England, Wales and Northern Ireland** a broad legal and policy framework is in place for the protection of child victims, witnesses and suspects, either with a child specific focus or through measures applicable also to adults.¹

With respect to child suspects, the age of criminal responsibility in **England, Wales and Northern Ireland** begins at 10 and a Youth Justice system is in place with the principal aim of preventing offending by children under the age of 18. Actions are aimed at discouraging or preventing offending in the first place, by diverting children from the criminal justice system, introducing a range of out-of-court disposals, addressing offending behaviour and by managing the overall welfare of child offenders to help reduce reoffending². The system also works to ensure that custody of children is safe, secure and addresses the causes of their offending. The majority of children (10-17) are tried in a Youth Court³ though children may be tried in adult courts for certain serious offences or where they have been charged with an adult.

In contrast, child victims and witnesses must go through the formal criminal justice system where the offender is an adult. Some specific rules and procedures exist for dealing with child victims in criminal proceedings but these are not extensive. For the most part, such matters are dealt with through guidelines and advisory information.

Nevertheless, a victim or witness under 18 years of age is automatically regarded as being vulnerable and therefore eligible to be considered for special measures. The primary focus of such measures is achieving high quality evidence during interviews and when providing testimony in court, though they inevitably help to protect the child's welfare as well.

With respect to general crimes, specialist institutions are not in place to deal with child victims and witnesses. Thus the normal police, prosecution and court services will deal with such children. However, witness care units or young witness services are provided to help victims/ witnesses when they must attend court.

In addition, wide ranging legislation has been in place, and has undergone regular reviews, since 1933 establishing a child protection system focused on protecting children from neglect and abuse. The combination of law and policy, seeks to establish a child protection system in which agencies e.g. police, local children's services authorities, schools, paediatricians etc. are required to work with each other for the protection of children. In this context, Section 10 of the Children Act 2004 requires certain authorities in **England** to make appropriate co-operation arrangements with a view to improving the well-being of children in the relevant authority's area. The system aims to achieve effective early help by local agencies working together to:

- identify children and families who would benefit from early help;
- undertake an assessment of the need for early help; and
- provide targeted early help services to address the assessed needs of a child and their family which focuses on activity to improve significantly outcomes for the child.

Children and families may need support from a wide range of local agencies. Where a child and family would benefit from coordinated support from more than one agency (e.g. education, health, housing, police) there should be an inter-agency assessment. These early help assessments, such as the use of the Common Assessment Framework, should identify what help the child and family require to prevent needs escalating to a point where intervention would be needed via a statutory assessment under the Children Act 1989.

¹ It should be noted that this study refers to the situation of the UK where the approach in England, Wales and Northern Ireland is broadly similar. Only where there are notable differences between the countries, are specific references made.

² [Youth rights: Children and the Criminal Justice System.](#)

³ As established under [Section 45 of the Children and Young Persons Act 1933.](#)

With respect to the general approach taken towards children, it is clear from publications that criminal justice agencies and the government are conscious of their obligations as established under the UN Convention on the Rights of the Child. The starting point is that any victim, suspect or witness under the age of 18 is effectively considered to be a child⁴ and as such, subject to special measures, assistance or treatment. Furthermore, the general policy taken by the government and the main services of police, prosecution and courts, is that children should be protected within the system but should be provided with sufficient opportunity to participate in the proceedings and to provide their views in accordance with their abilities.

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

Through legislation, codes of practice and practice guidelines, a wide range of measures have been established with the aim of assisting child victims to know their rights, to participate in proceedings and to be protected from further harm during those proceedings. In particular, information on the progress of the case, possible protection measures and compensation measures is provided to victims. Victims should undergo an initial risk assessment to determine if they are vulnerable to intimidation. They should also be assessed to determine whether they require any special measures such as the use of a screen during the provision of a testimony, the audio-visual recording of the interview (there is a presumption that this will be the case) etc. or if they require protection measures such as a restraining order. The former measures can be particularly important as there is no age limitation on a child's participation in the proceedings, rather the focus is on the maturity and understanding of the child. In addition, in principle no information should be made public which could lead to the identification of a child who is involved in criminal proceedings. Finally, a child victim may benefit from a compensation order made by a judge within the remit of the criminal proceedings or they may apply for state compensation where they are the victim of a violent intentional crime.

With respect to child suspects and offenders, a separate youth justice system applies in most cases though a child may be tried in an adult court if charged with certain serious offences or charged together with an adult and it has been decided to keep the cases together. A number of diversionary measures exist with the aim of avoiding the child entering the formal criminal justice system in the first place. Where a child is formally charged with an offence, they benefit from the normal fair trial rights applicable to adults e.g. presumption of innocence, right to a lawyer, right to be informed of the case against them, etc. They also benefit from numerous rights or measures by virtue of their being a child. In particular, when a child is detained or arrested, a responsible adult (usually the parent) should be informed and should be present during any questioning. Detention of a child suspect should be a measure of last resort, and the child should normally be detained in child appropriate accommodation, rather than in police custody. Children should always be detained separately to adults.

Whether a child is tried in a Youth Court or adult court, the principal aim of the youth justice system is to prevent offending. Every court dealing with a child must have regard to the welfare of the child. National guidance suggests methods for creating a less formal setting for the trial in order to put the child at ease and to facilitate their participation. Such means include moving furniture and the organisation of the court room, removing formal gowns and wigs, sitting at the same level as the child suspect etc.

Where a child is found guilty of an offence, the approach to sentencing is individual to the child. Four basic elements guide the imposition of criminal sentences in cases involving children: the age of the offender (including emotional age); the seriousness of the offence; the likelihood of further offences being committed; and the extent of harm likely to result from further offences. Proper regard should be had to the mental health and capability of the young person, and to any learning disability, learning difficulty, speech and language difficulty or other disorder. A range of options is available to the court with respect to sentencing and again detention is a measure of last resort with sentences being shorter than for adults. No person under 21 may have a sentence of imprisonment passed on them nor be committed to prison. Nevertheless, children may be committed to custodial establishments specifically designed for child offenders. In **Northern Ireland**, custodial sentences are now extremely rare. With respect to conditions in youth custody, the UK government has developed plans for the

⁴ [Section 107 of the Children and Young Persons Act 1933](#) differentiates between a child (aged below 14) and young persons (aged from 14-18).

secure estate for children and young people until 2015⁵. These plans state that detention facilities for children should be distinct from adult provision and specialist in their focus on children and young people, they should maintain the safety and well-being of children, address offending behaviour, and should promote children and young people's potential, enabling them to lead healthy, crime-free lives upon release.

Promotion and monitoring of a child-friendly approach to criminal justice, with an overview of strengths and potential gaps

A wide number of organisations, established either by legislation or as non-governmental organisations, provide oversight over child welfare matters or promote the protection of children or those involved in the criminal justice system. Some of the key organisations are described below:

Office of Children's Commissioner

The role of Children's Commissioner was created by the Children Act (2004). Separate Commissioners have been established **for England, Wales and Northern Ireland** to promote awareness of the views and interests of children in their respective constituencies. The Office has the status of a non-departmental public body (NDPB).

The Children Act (2004) specifies the Commissioner's general functions:

- to encourage people who are planning or providing services or activities that affect children, to take account of their views and interests;
- to advise the Secretary of State on the views and interests of children;
- to consider or research the operation of complaints procedures in so far as they relate to children;
- to consider or research any matter relating to the interests of children; and
- to publish reports on any of the above.

In carrying out these functions, the Office of the Children's Commissioner must have regard to the United Nations Convention on the Rights of the Child.

Her Majesty's Inspectorate of Constabulary

Her Majesty's Inspectorate of Constabulary (HMIC) independently assesses police forces and policing in the public interest. HMIC is independent of Government and the police. HM Inspectors of Constabulary are appointed by the Crown – they are not employees of the police service or government. HM Chief Inspector of Constabulary reports to Parliament on the efficiency and effectiveness of police forces in **England and Wales**. It also carries out inspections of the **Northern Ireland** Police Force. HM Inspectors have powers to seek information from police forces and to access their premises. In carrying out assessments, the HMIC will examine child specific issues as they relate to the role of the police. For example, in 2008 it assessed the framework for protecting vulnerable people, which includes children⁶.

Her Majesty's Inspectorate of Prisons

Her Majesty's Inspectorate of Prisons for England and Wales (HMI Prisons) is an independent inspectorate which reports on conditions for and treatment of those in prisons, young offender institutions and immigration detention facilities. HMI Prisons inspects establishments in **Northern Ireland** at the request of the Criminal Justice Inspectorate of Northern Ireland.

The role of Her Majesty's Inspectorate of Prisons is to provide independent scrutiny of the conditions for and treatment of prisoners and other detainees, promoting the concept of 'healthy prisons' in which staff work effectively to support prisoners and detainees to reduce reoffending or achieve other agreed outcomes. HM Chief Inspector of Prisons is appointed by the Justice Secretary from outside the Prison Service.

⁵ [Developing the Secure Estate for Children and Young People in England and Wales: Plans until 2015](#); Youth Justice Board for England and Wales and the Ministry of Justice.

⁶ [Her Majesty's Inspectorate of Constabulary: Protecting vulnerable people](#).

HM Inspectorate of Probation

HM Inspectorate of Probation is an independent Inspectorate, funded by the Ministry of Justice, and reporting directly to the Secretary of State on the effectiveness of work with adults, children and young people who have offended aimed at reducing reoffending and protecting the public.

Criminal Justice Inspection Northern Ireland

Criminal Justice Inspection Northern Ireland (CJI) is an independent, statutory inspectorate established in 2003 under s.45 of the Justice (Northern Ireland) Act 2002. It is a Non Departmental Public Body in the person of the Chief Inspector. CJI is the only unified inspectorate in the United Kingdom that can look at all the agencies that make up the criminal justice system apart from the judiciary. Agencies which CJI can inspect include the police service, prison service, prosecution service, youth justice services and the courts. The strategic aim of Criminal Justice Inspection is to promote the effectiveness, efficiency and even-handedness of the criminal justice system in **Northern Ireland**. The CJI is specifically precluded from inspecting where an agency is already subject to an adequate inspection regime. Such monitoring and regulatory bodies include the Police Ombudsman, the Northern Ireland Audit Office and the Human Rights Commission. It will have to liaise carefully with them in order to avoid duplication of effort, and to avoid burden on the inspected agencies. Depending on the role of the service assessed and the objective of the inspection, the CJI can serve a number of monitoring roles relevant to children in judicial proceedings. For example, they are able to carry out unannounced inspections of detention facilities to ensure they meet relevant standards. Alternatively, reports can focus on specific issues. For example, the CJI carried out in 2012 an inspection of the contribution that criminal justice agencies in **Northern Ireland** make to preventing children and young people from entering the criminal justice system. They examined in the same year the use of special measures in the criminal justice system in **Northern Ireland**. Such measures are particularly applicable to children⁷.

Victims' Commissioners

The Victims Commissioner for England is established under statute and must promote the interests of victims and witnesses, encourage good practice in the treatment of victims and witnesses and review the operation of the victim's code of practice. In **Northern Ireland**, the Commission for Victims and Survivors is established in legislation and is required to promote awareness of matters relating to the interests of victims and survivors and the need to safeguard those interests, to review the adequacy and effectiveness of law and practice affecting the interests of victims and survivors and broadly speaking to ensure the views of victims and survivors are heard by government. However, the role of the Northern Ireland Commissioner is restricted to victims and survivors of the conflict, rather than victims of criminal conduct more generally.

Non-Governmental Organisations and Charities

Numerous organisations exist to further the protection of children generally and within the criminal justice system. The key organisations include:

Victim Support

Victim Support (England and Wales) is an independent charity for victims and witnesses of crime in **England and Wales**. Every year, it speaks to over 1.1 million victims of crime as well as around 270,000 witnesses at court⁸ to provide assistance to victims and witnesses in conjunction with the police and other criminal justice agencies. They have paid staff and specially-trained volunteers delivering their services which include the Witness service (provided in every court) and the national Victim Supportline. Victim Support Northern Ireland provides a similar service in **Northern Ireland**.

National Society for the Prevention of Cruelty to Children (NSPCC)

The NSPCC is a UK children's charity with statutory powers to safeguard children at risk of abuse. It is governed by a Royal Charter and by-laws granted by Queen Victoria in 1895. It provides a number of services aimed at the protection of children including a free national, confidential helpline dedicated to

⁷ See link for a list of inspections carried out by the CJI: <http://www.cjini.org/TheInspections/Inspection-ReportSection.aspx>.

⁸ [Victim Support Website](#).



children and young people. The NSPCC has over 40 service centres across the UK where staff work face to face with children and families to provide a combination of services such as therapeutic assistance to offering support to help parents and families care for their children. The NSPCC also has statutory powers⁹ to apply to court for certain orders in respect of a child, including care and supervision orders. In Northern Ireland the NSPCC provides a young witness service, offered to young people who are under 18, their families, friends and supporters who have to attend court as witnesses.

⁹ [The Children Act 1989 in England and Wales and the Children \(NI\) Order 1995 in Northern Ireland.](#)

Abbreviations

ASBO	Anti-social behaviour order
CA	Competent Authority
CCTV	Closed Circuit Television
CDA	The Crime and Disorder Act
CJI	Criminal Justice Inspection Northern Ireland
CoE	Council of Europe
CPS	Crown Prosecution Service
CRB	Criminal Records Bureau
EC	European Commission
ECHR	European Convention of Human Rights
ECtHR	European Court of Human Rights
EU	European Union
HMIC	Her Majesty's Inspectorate of Constabulary
HMI Prisons	Her Majesty's Inspectorate of Prisons for England and Wales
IPCC	Independent Police Complaints Commission
MoJ	Ministry of Justice
NDPB	Non-departmental public body
NSPCC	National Society for the Prevention of Cruelty to Children
Ofsted	Office for Standards in Education
SCHs	Secure Children's Homes
STCs	Secure Training Centres
VPS	Victim Personal Statement
YJB	Youth Justice Board for England and Wales
YOIs	Young Offender Institutions
YOS	Youth Offender Specialist
YOT	Youth Offending Team(s)
YDS	Youth Diversion Scheme

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 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 and they have greater enforcement powers. They also vary depending on the type of crime committed.

For the purposes of this study, only a brief overview is provided of the key elements of the institutional framework relevant to children. For a broader description of the UK criminal justice systems please see the European Commission's e-justice Portal and the European Judicial Atlas (for compensation matters)¹⁰.

It should be noted that whilst **England and Wales** share a common criminal justice regime **Northern Ireland and Scotland** have separate laws and institutions regarding certain matters (See the separate report on **Scotland**, carried out in the context of this study). However, there are many similarities in approach and whilst separate laws may have been enacted, it is not uncommon for their content to be very similar. As such this study refers to the situation of the UK where the approach in **England, Wales and Northern Ireland** is broadly similar. Only where there are notable differences between the countries, are specific references made. Moreover, references to the UK do not refer to the situation of Scotland though the rules may be the same.

Youth Justice System – Child suspects, defendants and offenders

The Youth Justice system of **England and Wales** was overhauled in 1998 through the Crime and Disorder Act (CDA)¹¹. The principal aim of the system is to prevent offending by children under the age of 18¹². It seeks to achieve this by carrying out actions to discourage or prevent offending in the first place, by diverting children from the criminal justice system and introducing a range of out of court disposals, addressing their offending behaviour and by managing the overall welfare of child offenders to help reduce reoffending¹³. The system also works to ensure that custody of children is safe, secure and addresses the causes of their offending.

Similarly, **Northern Ireland** updated its youth justice system through the Justice (Northern Ireland) Act 2002. This followed the 1998 Good Friday Agreement, the devolution of competences via the Northern Ireland Act 1998, and the Criminal Justice Review which reported its recommendations in 2000¹⁴. The Justice (Northern Ireland) Act 2002 introduced a comprehensive set of guiding principles for youth justice. The system has the main aim of preventing offending, but must also have regard for the welfare of the children concerned. The Act also provided for reparation orders and community responsibility orders, meant to be community-based resolutions for minor offences¹⁵. A significant innovation of the 2002 Act was the introduction of youth conferencing in 2003 which was set up within the Youth Justice Agency and is now the main disposal for young people. A youth conference can be ordered by the Public Prosecution Service before the court process (diversionary) or ordered by a Youth Court for any offence other than that which would carry a sentence of life in

¹⁰ [E-Justice 'Judicial system'; European Judicial Atlas in Civil Matters.](#)

¹¹ [Crime and Disorder act 1998.](#)

¹² Section 37(1) CDA.

¹³ [Youth Rights: Children and the Criminal Justice System.](#)

¹⁴ See O'Mahoney, D. and Campbell, C., 'Mainstreaming Restorative Justice for Young Offenders through Youth Conferencing - the experience of Northern Ireland', August 2004, p. 6.

¹⁵ O'Mahoney, D. and Campbell, C., 'Mainstreaming Restorative Justice for Young Offenders through Youth Conferencing - the experience of Northern Ireland', August 2004, p. 6.

prison. The youth conference is a restorative meeting, or series of meetings, which brings together the offender and whoever has been affected by the offence, for example, the victim and/or representatives of the community affected by the offending behaviour. The conference aims to give young people who offend the opportunity to understand the harm they have caused and the opportunity to make amends for their actions.

The outcome from the meeting is a Youth Conference Action Plan which has been agreed by everyone at the meeting and then approved by either the Public Prosecution Service or the District Judge in the Youth Court before it can start. The Youth Justice Agency will engage the services of Victim Support or the NSPCC to support victims who are young and/or vulnerable, who require extra support at a youth conference. The Agency also uses the family group conference process to help families deal with problems they might have. The Department of Justice Northern Ireland commissioned a review of the youth justice system in 2010. The resulting report was published in September 2011 for public comment¹⁶, however its recommendations have not yet been reflected in new legislation.

In **England and Wales**, the Youth Justice System is overseen by the Youth Justice Board (YJB)¹⁷ which is a non-departmental public body sponsored by the Ministry of Justice.

The primary functions of the Board are to:

- monitor the operation of the youth justice system and the provision of youth justice services;
- advise the Secretary of State for Justice on the operation of, and standards for, the youth justice system;
- monitor the extent to which the aims and standards of the systems are met;
- identify, promote and disseminate effective practice;
- make grants to local authorities and other bodies to support the development of effective practice, commission research into such practice and publish relevant information;
- purchase places for, and place, children and young people remanded or sentenced to custody.

The principle aim of the youth justice system is “to prevent offending by children and young persons¹⁸”. The YJB have identified six key objectives of the youth justice system:

- a. Swift administration of justice.
- b. Confronting young offenders with their offending behaviour.
- c. Intervention that tackles particular factors that lead ‘young people’ to offend.
- d. Punishment proportionate to the offence.
- e. Encouraging reparation.
- f. Reinforcing the responsibility of parents/guardians.

Local authorities must, in co-operation with a wide range of agencies including police, probation services and health authorities, ensure youth justice services are made available to an appropriate extent. These services include a range of protection and supervision measures for children when questioned or detained by the police and when deprived of their liberty as well as measures for the rehabilitation of children and supervision post-release.

A range of other measures are also in place to better to manage a child’s experience of the criminal justice system. For example every local authority acting in co-operation with partner agencies (e.g. police, probation services, health services, education expert) must establish

¹⁶ [Department of Justice Northern Ireland: Youth Justice Review.](#)

¹⁷ Section 41 CDA.

¹⁸ Section 37(1) CDA.

youth offending team(s) (YOT) which should co-ordinate the provision of youth justice services and carry out other work as assigned to them under youth justice plans.

The CDA also requires local authorities to establish annual youth justice plans which set out how youth justice services are to be provided and funded and how youth offending teams are to be composed and funded and how they should operate.

More generally, a range of documentation and statements from key services such as the police and crown prosecution service, indicate a strong focus on ensuring children are treated in a manner which will minimise any negative impact on them, will protect their rights and will obtain the best evidence from them. Such documents make regular reference to obligations arising from the Convention on the Rights of the Child.

The structures and functions of the youth justice system in **Northern Ireland** are similar to their counterparts in **England and Wales**. The lead agency in **Northern Ireland** concerned with children accused or convicted of offences is the Youth Justice Agency which operates the youth conferencing system as an alternative to court proceedings, and the Police Service of Northern Ireland runs the youth diversion scheme, which provides alternatives to criminal prosecution. Other statutory and voluntary bodies operate early intervention programmes aimed at at-risk children to prevent their offending in the first place.

Criminal Trials

The majority of children (10-17) are tried in a Youth Court¹⁹ which is a specialist branch of the Magistrate's Court. The Youth Court celebrated 100 years of existence in 2008. Only judges authorised by the Lord Chief Justice may sit as a member of a Youth Court²⁰. A child or young person will be dealt with summarily in the youth court unless the matter falls within one of the categories below:

- when charged with homicide;
- when charged with an offence which, if convicted, would be subject to a minimum statutory sentence unless exceptional circumstances apply;
- when charged together with an adult and it has been determined to keep the cases together;
- when charged with a grave crime and the youth court has determined that, if convicted, a sentence beyond its powers should be available;
- where a sentence under the dangerous offender provisions is likely to be needed.

Where the case is not dealt with in the Youth Court, the Crown Court takes jurisdiction. Unlike the Youth Court, the Crown Court also has a jury which decides on the guilt or innocence of the defendant.

In both courts there is a requirement that the welfare of the child is considered when sentencing but this is a weaker requirement than in the family courts. Following a decision of the ECtHR, guidance was issued to remind judges of the importance of guaranteeing the fair trial rights of 'young people' in accordance with Article 6. In particular they are required to ensure that children sit with their lawyers and understand the nature of the proceedings and the evidence which is being given against them. In addition judges are required to provide regular breaks and to restrict reporting in the media where appropriate²¹. **Northern Ireland** operates a similar system of Youth courts as well as the possibility for child suspects to be tried in an adult court in case of serious offences or where the child is charged jointly with an adult.

¹⁹ As established under [Section 45 of the Children and Young Persons Act 1933](#).

²⁰ Section 45(2) and (3) of the Children and Young Persons Act 1933.

²¹ [Your rights: Criminal Trials and Sentencing; see also Youth Court Bench Book 2010, March 2010.](#)

Young victims and child protection systems

In contrast child victims and witnesses must go through the formal criminal justice system where the offender is an adult. Some specific rules and procedures exist for dealing with child victims in criminal proceedings but these are not extensive. For the most part, such matters are dealt with through guidelines and advisory information.

Nevertheless, a victim or witness under 18 is automatically regarded as being vulnerable and therefore eligible to be considered for special measures. The primary focus of such measures is achieving high quality evidence during interviews and when providing testimony in court, though they inevitably help to protect the child's welfare as well. It should be noted, however, that as a result of new Crown Prosecution Service guidelines²², the approach towards child victims of sexual abuse is positively developing with an increased focus on 'the overall credibility of an allegation rather than the perceived weakness of the person making it'²³. This is aimed at addressing difficulties experienced in prosecuting such cases, where the focus has often been on undermining the credibility of the child victim. The guidelines also provide a set of common myths and stereotypes about such crimes and their victims. A joint protocol requiring police and prosecutors to share and seek relevant information from social services, schools and family courts will be published in due course.

With respect to general crimes, specialist institutions are not in place to deal with child victims and witnesses. Thus the normal police, prosecution and court services will deal with such children. However, guidance is provided for example to crown prosecutors on how to deal with children²⁴.

In addition, witness care units staffed jointly by the police and prosecutors are in place in all parts of **England and Wales** to provide a single point of contact for victims and witnesses, minimise the stress of attending court and keep victims and witnesses up to date with any relevant information²⁵. These units also carry out a full needs assessment for all victims and witnesses (adults and children) in cases where defendants have pleaded not guilty, to identify any specific support requirements.

A Victim and Witness Care Unit providing similar services has been piloted in **Northern Ireland** and work has commenced on rolling the service out across all court regions. This will involve a three stage needs assessment for victims and witnesses of crime, as appropriate. **Northern Ireland** also operates a young witness service in all its courts which provides support for child witnesses (including victim witnesses) attending court.

Child Protection Systems for abuse and neglect

With respect to child abuse and neglect, specific child protection systems are in place. In **England, Wales and Northern Ireland**, this is driven both by legislation²⁶ which focuses on five key outcomes for all children: physical, mental and emotional well-being, protection from harm and neglect, education training and recreation, children's contribution to society, and social and economic wellbeing.

In addition the "Working Together to Safeguard Children" document provides government guidance on which agencies should co-operate to ensure child protection. Working Together 2013 clarifies the core legal requirements, making it much clearer what individuals and organisations should do to keep children safe and promote their welfare.

Working Together states that effective safeguarding arrangements in every local area should be underpinned by two key principles:

²² http://www.cps.gov.uk/consultations/csa_guidelines_v2.pdf.

²³ Press statement by Director of Public Prosecutions, Keir Starmer QC on 15 October 2013: http://www.cps.gov.uk/news/latest_news/csa_guidelines_and_tpp/.

²⁴ [Crown Prosecution Service policy on prosecuting criminal cases involving children and young people as victims and witnesses.](#)

²⁵ The Code of Practice for Victims of crime details certain legal obligations of witness care unit Section

²⁶ [The Children Act 1989](#) and [Children Act 2004](#).

- safeguarding is everyone’s responsibility: for services to be effective each professional and organisation should play their full part; and
- a child centred approach: for services to be effective they should be based on a clear understanding of the needs and views of children.

According to the policy document, the needs and wishes of each child should be put first, so that every child receives the support they need, irrespective of age, before a problem escalates.

The combination of law and policy, has put in place a child protection system in which agencies e.g. police, local children’s services authorities, schools, paediatricians etc. are required to work with each other for the protection of children, where a Common Assessment Framework is in place to assess children’s needs where there is a concern about the welfare or progress of a child. In addition Local Safeguarding Children Boards have been put on a statutory footing under the Children Act 2004 (with the relevant section coming into force in April 2006). The objectives of the Boards are:

- to co-ordinate what is done by each person or body represented on the Board for the purposes of safeguarding and promoting the welfare of children in the area of the authority; and
- to ensure the effectiveness of what is done by each such person or body for those purposes.

To this end, the Boards have a range of investigation and review powers²⁷ including investigation of allegations concerning persons who work with children, undertaking reviews of serious cases and advising the authority and their Board Partners on lessons to be learned²⁸.

Where child protection concerns are reported (this can be done by a person to the local authority children’s social care or to the National Society for the Prevention of Cruelty to Children or may come directly from the police), a referral is made to the local authority child protection team which will determine the appropriate action to take – ranging from no action to seeking an emergency protection order to remove the child from the home. The level and type of intervention increases with an increased risk of harm to the child. For example where there is a significant risk of harm, a child protection conference will be held involving a wide range people including child protection officers, other professionals involved in the assessment, family members, etc²⁹.

Requirements with respect to the training of practitioners dealing with children vary. Broadly speaking, it can be said that key services such as police, prosecution and courts (court staff and judges) do not receive general training on appropriate treatment of children. Nevertheless, a range of materials including codes of practices for those services do refer to how children should be treated.

With respect to judicial training, magistrates are specially trained to sit in youth courts and national training material is provided by the Judicial College. In addition, training is provided at the local level and includes mentoring and on-going assessment and appraisal³⁰.

The Judicial College also runs a range of optional courses as published in the [2012-2013 prospectus](#). These include seminars/courses which include training on children’s issues. For example, sexual and physical abuse of children is dealt with in courses for High Court judges in the Family Division. Vulnerable witnesses, including children, are covered in Crown Court combined seminars. Child witnesses are covered in the serious sex offence seminars.

²⁷ Section 14 Children Act 2004.

²⁸ [Section 5, The Local Safeguarding Children Boards Regulations 2006](#).

²⁹ For a short overview of the system please see the [NSPCC factsheet](#) and their [factsheet on child protection legislation](#).

³⁰ See [Website of the Judiciary of England and Wales](#).

'Managing child and vulnerable witnesses' is one of the topics in cross-jurisdictional 'craft of judging' seminars.

Furthermore, the Judicial College published the [Young Witness Bench Checklist](#) in 2012 which provides specific guidance on the treatment of children in criminal proceedings. There is a chapter on children in the [Equal Treatment Bench Book 2009](#) which will be updated in 2013 and good practice guides are produced for Magistrate Areas Training Committees. In 2009, the Lord Chief Justice in **Northern Ireland** issued guidelines in relation to dealing with young and vulnerable witnesses and victims. The Judicial College is also member of the management committee for the Advocate's Gateway, a free website³¹ for lawyers and the judiciary providing toolkits on questioning vulnerable witnesses and defendants. Some judges are already requiring advocates to read the relevant toolkit before cross-examination. The toolkits include one on questioning children and young people and another on questioning children under 7. A toolkit on the effective participation of young defendants is in development. The Advocacy Training Council will launch the new Advocate's Gateway website with updated toolkits in April 2013.

Furthermore, a range of child specialist services are used in criminal proceedings, as described above, and the staff operating in those services receive appropriate training. For example, youth offending teams must ensure that all staff working with victims and young offenders have had appropriate training³². Such teams must include at least one police officer. However, it is unclear if all police officers dealing with children have received appropriate training. Training does exist for certain types of crime e.g. child abuse, but it appears from reports that generalist training on dealing with children is not provided³³.

Also, according to the [Crown Prosecution Service \(CPS\)](#), all prosecutors should be able to prosecute in Youth Courts and deal with youth connected with adults in the Magistrates Court. E-learning to ensure that all prosecutors have the necessary basic knowledge and understanding of 'youths' will become mandatory in the course of 2013, and Associate Prosecutors must attend and pass a training course before they can prosecute 'youth cases'³⁴. Currently, a Youth Offender Specialist (YOS) will undertake major reviews of files involving child offenders and take all major decisions in relation to those files. In addition, whenever possible, Youth Remand Courts should be prosecuted by a YOS, who will be able to review all the files that are appearing in that court.

YOSs must have attended the youth offender specialist training course and read all its accompanying materials, which detail practice and procedure in cases involving youth suspects and offenders providing them with information on how to handle 'youth' cases and ensure their rights whilst achieving best evidence. They must also be a Senior Crown Prosecutor with adequate experience and appropriate skills. In addition, the CPS states that advocates who deal with cases involving children as victims and witnesses should have watched the videos 'A Case for Balance' and 'A Case for Special Measures'. These are videos produced by the NSPCC and the Bar Council that describe how Special Measures can be used to help vulnerable victims/witnesses give evidence.

General Approach towards children: definition of child, participation, age and maturity, discrimination

With respect to the general approach taken towards children and based on the publications assessed, it is clear criminal justice agencies and the government are conscious of their obligations as established under the Convention on the Rights of the Child. The starting point is that any victim, suspect or witness under the age of 18 is effectively considered to be a child³⁵ and as such subject to special measures, assistance or treatment. Details of special

³¹ [The Advocate's Gateway: Toolkits.](#)

³² Victims' Code of Practice.

³³ See for example the [call by the lead officer for the Metropolitan Police Safer Schools Team](#) to establish such training and the response from the National Youth Agency.

³⁴ Information provided by the Ministry of Justice.

³⁵ [Section 107 of the Children and Young Persons Act 1933](#) differentiates between a child (aged below 14) and young persons (aged from 14-18).

measures and treatment are provided below under specific sections under the phases of criminal proceedings. In addition, there is no age limit on when a child may provide evidence with respect to crime, but rather this depends on their age and maturity.

The general policy taken by the government and the main services of police, prosecution and courts, is that children should be protected within the system but should be provided with sufficient opportunity to participate in the proceedings and to provide their views in accordance with abilities. This can be seen for example in guidance provided to judges and prosecutors³⁶ and in the functions of the Children's Commissioner which includes to "encourage persons exercising functions or engaged in activities affecting children to take account of their views and interests"³⁷ having due regard to the UN Convention on the Rights of the Child. It can also be seen in the police's [Children and Young People Strategy 2010-2012](#) which identifies as an implementation objective "The Police Force ensures that it engages and listens to the views of children and young people to inform its work".

Age and maturity

This position is also reflected in the approach taken by the courts on the ability of children to participate in proceedings. Two key House of Lords cases clearly establish that maturity and understanding should be the primary factors when determining how to treat children rather than their age.

The first case was with respect to medical treatment rather than criminal proceedings. However, the ruling was broader in scope than purely medical consent and is therefore relevant here. That case resulted in the notion of Gillick Competence which establishes that a child under 16 could consent to medical treatment "*if and when the child achieves sufficient understanding and intelligence to understand fully what is proposed*"³⁸. A subsequent criminal law case involving a child suspect held that "*In order for that principle [of Article 6 ECHR] to be respected in cases involving children, however, the conditions under which the trial is held (including the procedure followed) have to be such as will permit such participation, taking into account the age, level of maturity and intellectual and emotional capacity of the child concerned*"³⁹. Similarly the Sentencing Guidelines Council reiterates the need to take into account the maturity of the child when determining what sentence to impose⁴⁰.

Non-discrimination

Children are protected from discrimination by The Equality Act 2010⁴¹ which consolidates anti-discrimination law in Great Britain and prohibits direct and indirect discrimination, harassment, victimisation and other specified conduct, on the basis of age and 8 other specified grounds. It also includes a new integrated Public Sector Equality Duty (in force 5 April 2011) which requires public bodies to have due regard to the need to eliminate discrimination on the same grounds. The Equality Duty is enforced by the ECHR⁴².

With respect to non-discrimination and judges, national guidance on equal treatment contains a specific section on "[children and the courts and tribunals](#)".

³⁶ CPS policy on cases involving children.

³⁷ [Section 2\(2\)\(a\) of Children Act 2004.](#)

³⁸ *Gillick v West Norfolk and Wisbech Area Health Authority* [1985] 3 All ER 402 (HL).

³⁹ Concurring Judgment of Lord Reed, *T v. the United Kingdom: V v. the United Kingdom* [2000].

⁴⁰ [Overarching Principles – Sentencing Youth: 2009.](#)

⁴¹ For Wales see: The Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 entry into force 6 April 2011.

⁴² [UK national report](#), Second cycle of the Universal Periodic Review of the UN.

2 Child-friendly justice before and during criminal judicial proceedings

2.1 The child as a victim

2.1.1 Reporting a crime

There is no specific information on a child's legal capacity to report a crime though a number of charities which provide advice to children, detail they may report a crime. It is therefore understood that there are no restrictions on children reporting crimes in **England, Wales and Northern Ireland**.

In general, a child may report a crime to the police by calling the national emergency number or by going to the police station in person. A parent or guardian may also do this on behalf of the child. Some crimes may be reported to other authorities as well e.g. One Stop Services for asylum seekers or refugees. Some crimes, usually minor or non-urgent, may also be reported online.

Importantly, the NSPCC, which has statutory recognition, runs two telephone lines – one for children to talk about any concerns they have and one for people who are worried about a child.

In addition, children can take advantage of support services which assist a victim in reporting a crime, including through anonymous reporting. The primary national support organisation for reporting crime is the charity [Crimestoppers](#) which covers **England, Wales and Northern Ireland**. In addition, there are a range of specialist organisations assisting victims, child victims or child victims of specific crimes, for example, [Victim Support \(NI\)](#), the [NSPCC](#), and [Childline](#).

In common with other victims, a child reporting a crime will normally be asked to provide a witness statement which in the case of children should normally be video recorded. This should be determined through an early assessment of their needs carried out by the police. The assessment is also the basis for determining whether any other special measures will be appropriate to help the child give their best evidence in court. This process is referred to as achieving best evidence. Further details of how this applies to children are provided under [Section 2.1.5](#).

At this stage, all victims or witnesses, including children must be given a crime reference number and contact details for the police officer dealing with their case.

2.1.2 Provision of information

In **England Wales and Northern Ireland**, all victims and witnesses should be provided with a range of information on their rights and on the progress of the case from the moment they report a crime and throughout criminal proceedings including after judgment and sentencing.

Details on what information should be provided, when the information should be provided and by whom are all set out in the [Victims' Code of Practice](#) for victims and in the [Witness Charter](#) for witnesses⁴³. There are no specific provisions relating to children, so a child has the right receive the same information as an adult witness or victim. Nor are there provisions on how this information should be provided to a child. Nevertheless, a number of organisations such as the [Crown Prosecution Service](#) and the [Metropolitan Police](#) which serves London do have information available on their websites in a child friendly format.

In **Northern Ireland** work has also commenced on the development of a statutory Victim Charter. The Charter will set out how victims of crime should be treated and the standards of service to be provided by the organisations in the criminal justice system. It will set out clear milestones for the provision of information, how it will be provided and by whom. A Witness

⁴³ The Code is issued by the Home Secretary under section 32 of the Domestic Violence, Crime and Victims Act 2004. A similar [code of practice](#) has also been issued for Northern Ireland.

Charter will similarly be brought forward during the period of the new five year victim and witness strategy (2013-18).

The Codes of Practice apply to the key criminal justice organisations listed below.

Organisations covered by the Victims' Code of Practice

England and Wales

- The Criminal Cases Review Commission
- The Criminal Injuries Compensation Authority
- The Criminal Injuries Compensation Appeals Panel
- The Crown Prosecution Service
- Her Majesty's Courts Service
- The joint police/Crown Prosecution Service Witness Care Units
- All police forces for police areas in England and Wales, the British Transport Police and the Ministry of Defence Police
- The Parole Board
- The Prison Service
- The Probation Service
- Youth Offending Teams

Northern Ireland

- The Police Service of Northern Ireland,
 - The Public Prosecution Service,
 - The Northern Ireland Courts and Tribunals Service,
 - The Northern Ireland Prison Service,
 - The Probation Board for Northern Ireland,
 - The Youth Justice Agency and
 - The Compensation Agency) and
 - Voluntary-sector support organisations – Victim Support Northern Ireland and the National Society for the Prevention of Cruelty to Children (NSPCC).
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The information required to be provided under both codes of practice can be summarised as follows:

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- Any progress in the investigation such as where a suspect is arrested, where they are charged, interviewed, placed in custody, released from custody, including reasons for any decisions;
 - Any decisions not to charge, not to prosecute or non-court disposals such as cautions and final warnings. Reasons for decisions must be provided;
 - Any restorative justice proceedings and the victims role or rights within those proceedings;
 - Any dates of hearings and the outcome of hearings such as with respect to remand in custody, trial, and any delays in criminal proceedings including reasons;
 - Requirements on the victim to give evidence or attend hearings;
 - The results of any criminal proceedings, including the verdict of the trial, any sentence where the offender is found guilty, any appeal and the result of the appeal;
 - Where the offender is convicted of a sexual or violent offence and sentenced to 12 months or more, the victim should be informed of the possibility to make representations about the release of the offender and should be informed of any relevant release information including restrictions on the offender;
 - Eligibility for compensation under the Criminal Injuries Compensation Scheme, explanations for any refusal of compensation, the possibility of seeking a review and subsequently an appeal of the decision and the procedures involved, and an explanation of appeal decisions.
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In general with respect to vulnerable victims and witnesses such as children, information must be provided within one working day of the information being available. The Northern Ireland Code does not stipulate a time frame.

2.1.3 Protection from harm and protection of private and family life

Protection from Harm

During an initial needs assessment, police staff should seek to establish if a victim/ witness is, or is likely to be, intimidated⁴⁴. Although children are automatically identified as vulnerable, they are not necessarily automatically likely to suffer intimidation as well. Thus an assessment will need to determine this separate issue.

By undertaking an assessment of risk, the police will be in a much stronger position to consider what protection measures to apply such as not releasing the suspect from custody and applying for conditions on the bail. The child's views should be taken into account during the assessment⁴⁵.

As a first stage, where an assessment identifies that a child victim or witness has concerns, the police should consider providing reassurance measures such as additional police patrols in the area, CCTV cameras in the home, panic alarms, mobile phones, additional locks and fireproof letterboxes.

Custody and conditions for release

If the police (pre-trial) or the court believes that the suspect/ defendant may interfere with any victim or witness, conditions may be imposed on their release. The exact conditions of bail are not detailed in legislation but may only be imposed if they appear necessary for the specified reasons set out in the Bail Act 1976. However, some objectives of conditions and some conditions are referred to in the Bail Act 1976 (as amended). Thus conditions should aim at securing that the suspect surrenders to custody, does not commit an offence while on bail, does not interfere with witnesses or obstruct the course of justice, makes himself or herself available for the purpose of enabling inquiries into the offence. Child suspects may also be subjected to electronic monitoring ('tagging') to ensure their compliance with conditions⁴⁶.

Whilst not detailed in legislation, the most relevant conditions are those restricting contact with the victim or witness (whether child or adult), imposing curfews or movement restrictions and electronic tagging of the suspect. Where the intimidation is so serious that the witness may need to be moved for their own safety, assistance and advice can be provided by the National Witness Mobility Service⁴⁷.

Bail may also be refused after charge for the suspect/defendants' own protection and juveniles may also be detained in their own interests.⁴⁸

In addition, there is a separate offence of witness intimidation which can be prosecuted and sentenced separately to the original offence regardless of what the finding of that case subsequently is⁴⁹.

Civil Law Restraining Orders

A range of protection measures are also available to children and adults alike, in civil proceedings, through injunctions⁵⁰. These are basically restraining orders which require someone to do or not to do something e.g. prohibition from contacting the child, entering certain locations. These may be particularly relevant to children who are victims of a crime committed by a member of their own family.

⁴⁴ See [vulnerable and intimidated witnesses: a police service guide](#).

⁴⁵ See [vulnerable and intimidated witnesses: a police service guide](#).

⁴⁶ Bail Act 1976 as amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

⁴⁷ Para 6.5 of [vulnerable and intimidated witnesses: a police service guide](#).

⁴⁸ Section 38 of the Police and Criminal Evidence Act 1984.

⁴⁹ [Section 51 of the Criminal Justice and Public Order Act 1994](#).

⁵⁰ See e.g. occupation orders, non-molestation orders, restraining orders under the [Protection from Harassment Act 1997](#).

It is possible for a person to apply for an injunction themselves or through a solicitor. For a child to be able to apply they need the Court's permission if aged under 16 and must live with or be expected to live with either party or be a child whose interests the court considers relevant. Applications for children are usually brought as part of a global application for protection, but there is nothing to stop them being brought in their own right. The police are responsible for submitting an application for an order to the prosecution service and should seek the views of the victim beforehand. The prosecution service will then request the court to issue a restraining order⁵¹.

Protection of Private and Family life

With respect to any criminal proceedings in any court involving persons under 18 years of age, a court may impose certain reporting restrictions. The court may direct that no matter relating to any person concerned in the proceedings shall, while he is under the age of 18, be included in any publication if it is likely to lead members of the public to identify him as a person concerned in the proceedings⁵². This applies to children as defendants, victims and witnesses. The restriction may relate to the child's name, address, school identity, place of work or any still or moving picture of the child.

In addition, a court may impose restrictions on reports in a newspaper and reports included in a programme service; and similarly as respects pictures. Such restrictions can be made with respect to proceedings in a youth court or on appeal from a youth court, as well as proceedings in a magistrates' court with respect to youth rehabilitation orders and appeals arising from such proceedings⁵³. The court may direct that no report of the proceedings shall reveal the name, address or school, or include any particulars likely to lead to the identification of any child concerned in the proceedings.

For children and other vulnerable victims/witnesses, hearings may also be held in private and the public gallery cleared whilst the victim/ witness is giving evidence. Further details are provided under [Section 2.1.5](#). A discussion should take place between the police and the Crown Prosecution Service where it is thought that an application for reporting restrictions may be appropriate.

With respect to sexual offences, the possibility exists to impose a lifetime ban on publicity identifying a person in respect of certain sexual offences if it is likely to lead members of the public to identify that person as the person against whom the offence is alleged to have been committed⁵⁴. However, this provision is not specific to children.

In addition, the [Press Complaints Commission's Code of Practice](#) states that the press must not identify children under the age of 16 who are involved in cases concerning sexual offences, even if legally free to do so, whether as victims or as witnesses, nor allow them to be identified by stating that a child is related to a named offender.

2.1.4 Protection from secondary victimisation and ensuring a child friendly environment

A range of mechanisms are in place to help protect child victims from secondary victimisation. Many of these are described under [Section 2.1.5](#) below as they are established under the objective of achieving best evidence rather than for the welfare of the child. Nevertheless, the effect of such measures is of a protective nature. In addition, the Ministry of Justice's "[Achieving Best Evidence in Criminal Proceedings](#)" guidance itself highlights that:

"Enquiries should be carried out in such a way as to minimise distress to the child and to ensure that families are treated sympathetically and with respect. The decision as to whether to conduct a joint investigative interview or joint visits should be determined by what is in the best interests of the child, for example by limiting the number of occasions that the child has

⁵¹ Further details can be found on the [CPS website](#).

⁵² [Section 45 Youth and Justice Criminal Evidence Act 1999](#).

⁵³ Children and Young Persons Act 1933.

⁵⁴ Sexual Offences Amendment Act 1992.

to relate an account of what has happened to them or reducing the frequency of agency visits to the child's home." This guidance provides detailed recommended procedures for interviewing and dealing with child victims and witnesses. [According to the CPS](#), although the guidance isn't a legally enforceable code of conduct, significant departures from the guidance may have to be justified in court in certain circumstances. The Department of Justice in **Northern Ireland** has published similar guidance. In addition, as mentioned in [Section 1](#) above, recent CPS guidelines have changed the focus with respect to child sexual abuse, the aim now being to focus on the overall credibility of an allegation rather than the perceived weakness of the person making it.

In order to better care for both child and adult victims and witnesses, Witness Care Units, operated jointly by the police and CPS, have been established on a nationwide basis in **England and Wales**. These act as a single point of contact to provide information and access to support to victims and witnesses from the point of charge through to case completion. The key obligations and services to be provided by Witness Care Units is provided in the victims code of practice⁵⁵ but as stated above their primary role is to provide a range of information to victims and witnesses. A Victim and Witness Care Unit has been piloted in **Northern Ireland** and work has commenced on rolling the service out across all court regions.

The Witness Service has also been established in all Crown and magistrates courts to assist victims in court. The Service is provided by Victim Support which is a national independent charity for victims and witnesses of crime, funded primarily by the government. Victim support uses both professionals and thousands of specially-trained volunteers to deliver support services to victims in close co-operation with the police and other parts of the criminal justice system. It has offices across **England and Wales** (and **Northern Ireland** through a separate service). It runs the Witness Service in every court as well as the national Victim Supportline. It also provides a wide range of support specifically focussed on children at court. This includes a dedicated child friendly website for child victims and witnesses.

In **Northern Ireland**, The NSPCC operates the Young Witness Service which is a free, independent and confidential service offered to children, their families, friends and supporters who have to attend court as witnesses. The service is provided by a combination of social work staff, other qualified staff and trained volunteers. It aims to assist children and young people and their parents or carers before, during and after any trial so that they can give the best evidence to the court and prevent any further trauma caused by their experience. The Young Witness Service is available to child witnesses in every Crown, Magistrate and Youth court in **Northern Ireland**⁵⁶.

Victim Support **England and Wales** and the NSPCC also announced in early 2012 that they would be joining forces to provide a new support service for young witnesses in **England and Wales**⁵⁷.

In addition to such measures, the speed and timeliness of proceedings is repeatedly highlighted in guidance and in procedural rules where cases involving children should be prioritised, delays should be avoided or minimised, adjournments of trials should be avoided and waiting times minimised, cases with particularly young children should be fast-tracked⁵⁸.

There appear to be no specific legal or policy requirements to have in place child friendly facilities or separate waiting areas for child victims and witnesses, though such facilities do exist in some areas though not on a national basis. In **England and Wales**, the [Witness Charter](#) also states that Court Staff will seek to ensure that all witness waiting rooms contain suitable toys and reading matter for children of different ages.

⁵⁵ Pp 10-11 of the code of practice.

⁵⁶ [NSPCC Website](#).

⁵⁷ [Victim Support: NSPCC and victim Support join forces to create a new service to support young witnesses across England and Wales](#).

⁵⁸ [Criminal practice directions on listing of cases](#); [R v Barker \[2010\] EWCA Crim 4](#); [Witness Charter](#); [CPS website](#); [R v Malicki \[2009\] EWCA Crim 365](#).

2.1.5 Protecting the child during interviews and when giving testimony

At every stage in criminal proceedings all persons are in principle (whatever their age) competent to give evidence⁵⁹. However, a person may be considered not competent to give evidence where it appears to the court that the witness (including victim) is not able to understand questions put to him/her as a witness, and give answers which can be understood.

Since children may be competent to give evidence, a wide range of guidance and protection measures established in law exist to help child victims and witnesses during interviews and when giving testimony in court. In particular, the Achieving Best Evidence in Criminal Proceedings guidance has a specific section⁶⁰ covering practical issues around contact with child victim/ witnesses, consent, when the child can be further interviewed and issues to be considered for very young children, children with disabilities and children who have mental health problems.

Victims or witnesses under the age of 18 are entitled, subject to the discretion of the court, to certain special measures⁶¹ when being interviewed or giving testimony in court. The police should explain to the victim/ witness about special measures and ask which ones they want. The prosecutor must also know which measures the victim/witness wants to apply to the court for⁶² and is responsible for making an application to the court⁶³.

The court must satisfy itself that the special measure or combination of special measures is likely to maximise the quality of the witness evidence before granting an application. Whilst these measures are focused on achieving best evidence they nevertheless also help protect the victim/ witness from secondary victimisation.

There is a presumption that all child victims/ witnesses will give the evidence in chief by a video-recorded statement and any other evidence by live link unless the court is satisfied that this will not maximise the quality of the child's evidence. The child can opt out, provided the court is satisfied that not giving evidence in that way will not diminish the quality of the child's evidence.

Where a child witness does opt out, there is a presumption that the child will give evidence from behind a screen. This presumption does not apply if the court considers it would not maximise the quality of the child's evidence. The child can opt out if the court agrees based on the application of the prosecutor⁶⁴. In coming to a view about video-recorded evidence-in-chief children and/or the carers who have parental responsibility for them should be given enough information for them to come to an informed decision.

Where a video recorded interview is made before a child victim's/ witness' 18th birthday, the witness is eligible for video recorded evidence in chief and live link special measures directions after his/her 18th birthday.

A short summary of the available special measures is provided below:

⁵⁹ The Youth Justice and Criminal Evidence Act 1999, SECTION 53.

⁶⁰ Section 2.16 et seq, pp14 – 28.

⁶¹ The Youth Justice and Criminal Evidence Act 1999 which made available special measures, originally defined a child witness as being under 17. Under the Coroners and Justice Act 2009 this increased to all children under 18 and came into force on 27 June 2011 - (Commencement No. 7) Order 2011 (SECTION 1. 2011/1452). The rules described below relating to special measures are established in [Part II of the 1999 Act](#) for England and Wales and part II of The Criminal Evidence (Northern Ireland) Order 1999 for Northern Ireland.

⁶² See [Early special measures discussions between police and the Crown Prosecution Service: Practical Guidance](#), for further information.

⁶³ For further details see the [Crown Prosecution Website](#).

⁶⁴ [Ministry of Justice summary paper on eligibility for special measures in England and Wales](#).

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- Screening witness from accused
 - Evidence by live link which enable the witness to give evidence during the trial from outside the courtroom via a televised link
 - Evidence given in private in sexual offence cases and cases involving intimidation
 - Removal of wigs and gowns by barristers and judges
 - Video recorded evidence in chief
 - Video recorded cross-examination/ re-examination (not yet implemented)
 - Examination through an intermediary appointed by the court
 - Aids to communications for overcoming physical difficulties with understanding or answering questions such as alphabet boards
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One of the special measures provides for vulnerable victims and witnesses, including children, to be examined through an intermediary. In implementing this special measure, both the Ministry of Justice and the Department of Justice have established formal Registered Intermediary schemes (the scheme in **Northern Ireland** is currently being piloted in the Crown Court sitting in Belfast with plans to extend the scope of the pilot to all Crown Courts in November 2013). Registered Intermediaries are professionals with specialist skills in communication. They are recruited and selected by both government departments and complete accredited training. Registered Intermediaries are subject to Codes of Practice and Ethics, and have a Procedural Guidance Manual to follow⁶⁵. Their function is, following an assessment of the victim/witness, to facilitate communication during the police investigation and at trial between the victim/witness and others in the criminal justice process, such as police officers and advocates.

In addition to these special measures, other provisions exist to help children achieve their best evidence. For example, the defendant may not cross-examine the child in person and there are restrictions on evidence and questions about complainants' sexual behaviour. Achieving best evidence guidance also highlights that active consideration should be given to the location of the interview and the layout of the room in which it is to take place.

Children as vulnerable or intimidated witnesses can also receive social support at all stages of the investigation. The Achieving Best Evidence guidance identifies three distinct roles for witness support. They are:

- Interview support provided by someone independent of the police, such as a friend or relative, but not necessarily so;
- Pre-trial support provided to the witness in the period between the interview and the start of any trial⁶⁶; and
- Court witness support from a person who may be known to the witness, but who is not a party to the proceedings. Support may also be given during live link testimony⁶⁷. Amendments to the special measures legislation made by the Coroners and Justice Act 2009 and the Justice Act (Northern Ireland) 2011 include provision for a supporter to be present when a vulnerable or intimidated victim/witness is giving evidence in the live link room.

2.1.6 Right to be heard and to participate in criminal proceedings

Victims and witnesses (whether a child or adult) are not parties to criminal proceedings and do not have legal standing. As such they do not have formal participation rights during those proceedings and are only able to participate and be heard to the extent provided in the victims' code of practice and the Witness Charter (for **England and Wales**). The rights contained in those codes are provided at the discretion of the relevant services.

⁶⁵ Detailed procedural guidance and a case checklist can be found in the Registered Intermediary Procedural Guidance Manual (Ministry of Justice, 2012). The Department of Justice has also issued a Registered Intermediary Procedural Guidance Manual (Northern Ireland) (version 3 was issued in 2013).

⁶⁶ Appendix K of the guidance sets out National Standards for Young Witness Preparation.

⁶⁷ Section 24 Youth Justice and Criminal Evidence Act 1999 (as amended by the Coroners and Justice Act 2009).

With respect to the right to be heard, the key provisions have been outlined above where both the police and the prosecution service have a general obligation to listen to the views of victims and witnesses, and in particular consider their views when making key decisions such as accepting a guilty plea or deciding not to continue with proceedings.

However, there is no obligation on prosecutors to use evidence or to call any particular person as a witness during the trial. Equally, where a parent does not consent to a child giving evidence, the police and prosecution service will take these views into account but are not obliged to follow them.

With respect to specific provisions for children, no limitations have been identified on a child being heard and providing information in their own right.

All victims should also be given the opportunity to make a Victim Personal Statement (VPS) at the end of the interview. The purpose of a VPS is to give the victim of crime the chance to say what effect the crime has had on them and to help identify their need for information and support. This information can be used by a judge to ascertain the consequences of the offence to the victim which can be relevant when determining the sentence. The statement should be taken in the same format as the witness statement. Thus for child victims this will usually be by visual-recording. In **Northern Ireland**, Victim Impact Statements may be made. However, whilst the process has existed for some time it has not been formalised and is not established on a statutory basis. A public consultation on the matter was launched in early 2012. As a result, the system, which will be known as victim personal statements, is being formalised. Legislation will be brought forward which entitles victims to be afforded the opportunity to make a victim personal statement.

2.1.7 Right to legal counsel, legal assistance and representation

A child, in common with all victims and witnesses in criminal proceedings does not have a right to legal counsel, assistance or representation. They may pay for their own legal advice, but there are no obligations on authorities to permit legal advisors to be present during interviews or provision of testimony or to assist during the process. Some charities such as [Victim Support](#) and [Coram Children's Legal Centre](#) are also able to provide free legal advice but this is provided on a voluntary basis.

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

Victims in general (whether child or adult) have limited rights with respect to altering key decisions about proceedings such as the decision to end an investigation or prosecution, the decision to accept a guilty plea, the decision on the charge against the accused etc. As such, and as explained in the previous sections, all victims including children have a right to have their views taken into account, but those views need not be followed.

However, following a Court of Appeal case, it was announced in July 2012 by the Crown Prosecution Service, that all victims in **England and Wales** could take advantage of a general right to request a review of a decision not to prosecute⁶⁸. To date, a review of a CPS decision not to charge has been treated as a complaint – “an expression of dissatisfaction about any aspect of our service by a member of the public”. Following the judgment in *R v Christopher Killick*, the CPS has been developing a separate process specifically designed to enable victims to exercise the right to seek a review of a decision not to proceed. The new process will be operational from May 2013⁶⁹. In **Northern Ireland** victims can request a review of a decision not to prosecute.

A child may complain about breaches of the Victims' Code of Practice on the same basis as an adult. Breaches of the Code must be referred initially to the relevant service and if the victim remains dissatisfied, the complaint can then be investigated and reported on by the

⁶⁸ [BBC: Victims to get right to challenge 'no charge' decision.](#)

⁶⁹ Information provided by the Ministry of Justice.

Parliamentary Ombudsman⁷⁰. In **Northern Ireland** complaints can be referred to various independent bodies of the NI Ombudsman. No specific rules or assistance for children to make complaints has been identified.

In addition, a private individual who is not acting on behalf of the police or any other prosecuting authority or body may conduct a prosecution⁷¹. However, the Director of Public Prosecutions has power under legislation to take over private prosecutions and in some cases the private prosecutor must seek the consent of the Attorney General or of the Director of Public Prosecutions before the commencement of proceedings. Notably, a private prosecution may be taken over in order to stop it.

Compensation

In **England, Wales and Northern Ireland**, child and adult victims can seek compensation either from the offender or in certain circumstances from the State.

Offender compensation is available once the offender has been convicted of the offence⁷². Where a child wishes to seek compensation, they need to inform the police and provide details of the loss or damage suffered. The police will then give this information to the Crown Prosecution Service, which will make a compensation request in court⁷³. Victims can be compensated for a wide range of harm caused by an offence including:

- personal injury
- losses from theft or damage to property
- losses from fraud
- being off work
- medical expenses
- travel expenses or
- pain and suffering or loss, damage or injury caused to or by a stolen vehicle

The offender makes the payments to the court, which will then pass the money on to the child. The court is also responsible for making sure that the offender pays the compensation.

It should be noted that with respect to a child offender under 16, any order for compensation must be made against the parents of that person and may be made against the parents of a young person under 18 years of age, unless the parent cannot be found or it would be unreasonable to do so⁷⁴: An award can also be made against a local authority having care of a young offender. The parent or guardian should be given an opportunity to be heard before any award is made.

Child and adult victims of violent crime may be eligible for State compensation under the same rules⁷⁵. Such compensation is available, irrespective of whether an offender has been charged or convicted of an offence

The Criminal Injuries Compensation Scheme provides compensation payments to those with the most serious injuries and those who have been the victim of the most distressing crimes. Claims for one or more of the following types of payment can be considered:

- injury payments;

⁷⁰ [Parliamentary Commissioner Act 1967](#), as amended by Schedule 7 to the Domestic Violence, Crime and Victims Act 2004.

⁷¹ Section 6(1) Prosecution of Offences Act, 1985.

⁷² Sections 130 - 133 Powers of Criminal Courts (Sentencing) Act 2000 and section 40 (1) Magistrates Courts Act.

⁷³ [Victim Support England and Wales](#).

⁷⁴ Section 137 Powers of Criminal Courts (Sentencing) Act 2000.

⁷⁵ [Criminal Injuries Compensation Act 1995](#); For full details see [UK Government 'Claim Compensation for a criminal injury'](#); For Northern Ireland, injuries sustained after 2009 are covered by [The Northern Ireland Criminal Injuries Tariff Compensation Scheme \(2009\)](#).

- loss of earnings payments;
- special expenses payments;
- bereavement payments;
- child's payments;
- dependency payments;
- certain other payments in fatal cases;
- funeral payments.

A tariff system has been established to determine if a person is eligible to compensation and at what rate.

There is no prohibition on children making an application for compensation, though it is also stated that compensation may be paid to a victim even where the application is made by another person on his or her behalf. Victim Support provides free practical assistance in completing application forms as well as legal advice.

Whilst claims can normally be refused where the crime was not reported to the police straightaway, some circumstances are taken into account. If the incident or period of abuse was reported to the police before the child turned 18, and no-one made a claim on the child's behalf, the compensation authority will accept a claim from the child providing that it is made before they turn 20. If the incident or period of abuse took place before the child turned 18, but was not reported to the police at the time, the authority will consider the claim if it is made within two years of the date when the incident was first reported to the police⁷⁶. The time limit for applications is generally within two years of the crime. In **Northern Ireland** the time limit is longer for child victims and can be extended to the age of 20.

Compensation awards to people under 18 are normally paid directly into an interest-earning bank account. The money is not paid out until the applicant becomes an adult and is able to manage the funds for themselves. Advances on the award may be allowed if these are needed for the sole benefit, education or welfare of the child or young person.

In the event of any claim for compensation under the Scheme being refused or reduced, the Criminal Injuries Compensation Authority (DOJ Compensation Services in **Northern Ireland**) must give explanations for its decisions to the applicant, including the child.

A child who applies for compensation may seek a review of the decision which must in the first instance be carried out by a claims officer other than the one which made the original decision. In **England and Wales**, the victim can subsequently appeal against decisions taken on reviews under the Compensation Scheme to the First-tier Tribunal established under the Tribunals, Courts and Enforcement Act 2007. In **Northern Ireland** they may appeal to the Criminal Injuries Compensation Appeals Panel for Northern Ireland.

2.2 The child as a witness

In general the provisions applicable to victims of crime are also applicable to witnesses. In **England and Wales**, the primary difference in approach is that whilst information requirements and general provisions on rights for victims are contained in the Victims' Code of Practice, for Witnesses these are contained in the Witness Charter.

The Witness Charter (applicable only in **England and Wales**) was developed to tell witnesses how they "can expect to be treated by the police. It also covers subsequent standards of care for other criminal justice agencies and lawyers" where the witness is asked to give evidence of the prosecution or defence, in a criminal court. It does not cover judges and magistrates. In addition, the Witness Charter is not set out in law and relevant Agencies need only "seek to comply with the standards, insofar as is practicable and their professional rules allow".

⁷⁶ [A guide to the Criminal Injuries Compensation Scheme 2012](#), p11.

Although the Witness Charter makes reference to measures for vulnerable witnesses such as children, it does not contain any specific obligations on how to treat child witnesses.

A Witness Charter is to be developed in **Northern Ireland** setting out how witnesses should be treated and the standards of service to be provided by the organisations in the criminal justice system. It will set out clear milestones for the provision of information, how it will be provided and by whom.

2.2.1 Reporting a crime

See [Section 2.1.1](#).

2.2.2 Provision of information

According to the Witness Charter, after a witness (child or adult) gives a statement, the police will provide a contact telephone number and a leaflet explaining what will happen next. The police will ask if the witness would like to be referred to the Witness Service for further support should the case progress to court

In addition, if the witness is likely to be required to give evidence in court with respect to a serious criminal offence, the police will seek to update the witness at least once a month on the progress of the case. After 6 months, the police will seek to agree with the witness the frequency of future updates including if the witness does not wish to be further informed.

Where a case goes to court, the Witness Care Unit keeps witnesses informed of the progress of the case following the first court appearance. The table below provides an overview of the information provided to child and adult witnesses:

Information to be provided to witnesses:

- When the defendant has been charged;
- Whether the defendant has been released on bail to attend court, or held in custody until the first court appearance; and
- What relevant bail conditions apply.

Where case proceeds to court:

- Information to help the witness prepare for attending court
 - Information about the court and its location
 - The outcome of any application for special measures to help the child give evidence in court;
 - Any decisions made by the court to release the defendant on bail (including any relevant conditions) or to remand them in custody between court hearings; and
 - All relevant court hearings.
 - If a trial will not take place on the date that has been set;
 - The reason for any adjournment of the case, if appropriate; and
 - When the case is likely to be heard.
 - The outcome of the case and, if relevant,
 - An explanation of what the sentence means, and if necessary refer the witness to an appropriate organisation if you have further questions.
-

There do not appear to be any equivalent policy guidelines or commitments in **Northern Ireland**. However, it is expected that many information requirements are fulfilled by the NSPCC Young Witness Service whose objectives include providing direct support and assistance to children when they are required to give evidence in Crown court. They are also expected to provide a range of information including communicating the impact of testifying and debriefing and preparing them for referral on to therapeutic services.

2.2.3 Protection from harm and protection of private and family life

See [Section 2.1.3](#) above as the same rules apply to child victims and witnesses.

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

See [Section 2.1.4](#) above as the same rules apply to child victims and witnesses.

2.2.5 Protecting the child during interviews and when giving testimony

See [Section 2.1.5](#) above as the same rules apply to child victims and witnesses.

2.2.6 Right to be heard and to participate in criminal proceedings

A witness's right to be heard (child and adult) is broadly similar to that of victims though also reduced to some extent. Thus, in **England and Wales**, there remain general commitments of the relevant authorities to listen to the views of witnesses, to carry out needs assessment of witnesses to determine what support they will need during proceedings etc. as provided in the [Witness Charter](#). For example, the Witness Care Unit or defence lawyer should speak to the witness about their availability to attend trial and should ask the court to take this into account when setting a trial date⁷⁷. It should also be noted that unlike the Victim's Code of Practice, the Charter is not set out in law.

2.2.7 Right to legal counsel, legal assistance and representation

See [Section 2.1.7](#) above as the same rules apply to child victims and witnesses.

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

According to the Witness Charter, if a witness (child or adult) is not happy with the level of service they received from any of the criminal justice agencies, they can make a complaint in the first instance through the complaints procedure of that service. Where internal procedures have been exhausted and a complainant is not satisfied, they may be able to appeal to an independent adjudicator, depending on the nature of the appeal. The authority responsible for hearing such appeals varies between services but for the three main actors the following authorities are responsible:

Police – [Independent Police Complaints Commission](#)

Crown Prosecution Service – [Independent Assessor of Complaints](#)

Her Majesty's Court Service – [Parliamentary and Health Service Ombudsman](#)

Details of the complaints procedures will need to be obtained from the relevant service.

In **Northern Ireland**, whilst there is no equivalent Witness Charter, a Partnership Protocol has been agreed between Victim Support Witness Service, NSPCC Young Witness Service and the Northern Ireland Courts and Tribunals Service⁷⁸. This protocol includes the possibility to submit a complaint where it is felt the commitments made within the protocol have not been applied. Such complaints should be made to the responsible authority.

State compensation is generally not available to witnesses except where a person (child or adult) witnessed and was present at an incident in which a loved one was injured as the result of a crime of violence or if the witness was involved in the immediate aftermath of an incident in which a loved one was injured. In both cases, the child would need to demonstrate that mental injury had been suffered as a result of witnessing the crime⁷⁹. In addition, compensation may be awarded where the witness is a railway employee (which could include a child of 16 or 17 years of age) who has witnessed or been present when someone was killed or seriously injured as a result of a crime and has suffered a physical injury or disabling mental injury.

2.3 The child as a suspect/ defendant

Obligations with respect to the treatment of suspects, when they are questioned, arrested, detained etc., are broadly governed in **England, Wales and Northern Ireland** by the [Police](#)

⁷⁷ Section 12, Witness Charter.

⁷⁸ [Northern Ireland Courts and Tribunal Service](#).

⁷⁹ A guide to the Criminal Injuries Compensation Scheme 2012, p 8.

and [Criminal Evidence Act 1984 \(PACE\)](#) and the subsequent [Codes of Practice \(A-H\)](#)⁸⁰ which are updated on a regular basis. Many of the rights below will be based on these codes and the PACE. For the purposes of the codes of practice, if anyone appears to be under 17 or under 18 in the case of **Northern Ireland**, they shall be treated as a child (referred to as a juvenile in the Codes of Practice).

Throughout the codes, there is a requirement (with certain limitations relating to practicalities and risks to evidence gathering or the administration of justice) that where a child is questioned, arrested or enters criminal proceedings, an appropriate adult should be present and that any decisions are made in their presence and with their agreement.

If the child is in local authority or voluntary organisation care but living with their parents or other adults responsible for their welfare, the Note 3C of Code C of the Code of practice advises that those adults should normally be contacted as well as the authority or organisation, unless suspected of involvement in the offence concerned. Even if the child is not living with their parents, consideration should be given to informing them.

An appropriate adult in the case of a juvenile means⁸¹:

- the parent, guardian or, if the juvenile is in the care of a local authority or voluntary organisation, a person representing that authority or organisation;
- a social worker of a local authority;
- failing these, some other responsible adult aged 18 or over who is not a police officer or employed by the police.

2.3.1 Age of criminal responsibility

Criminal responsibility in **England, Wales and Northern Ireland** begins at the age of ten. This means that no child under the age of 10 can be guilty of any offence⁸². Offenders from the age of 10 to 17 are treated as 'juveniles' (henceforth referred to in this study as children), normally tried in Youth Courts and subject to specific sentencing regimes. Although they are considered fully responsible adults, young people aged 18-21 can be treated differently than other adults at sentencing (see [section 2.1.2](#) below).

Nevertheless, whilst children under 10 cannot be arrested or charged with a crime there are other disposals that can be given to children under ten who break the law⁸³. For example, in **England and Wales** they can be the subject of a Child Safety Order⁸⁴ which has the effect of placing the child under the supervision of a social worker or the youth offending team and it may require a child to comply with certain conditions such as curfews. Similarly in **Northern Ireland**, children below the age of 10 who commit acts that would be considered a crime if committed by someone older, are dealt with under the child protection system where they are considered to be at risk of significant harm⁸⁵.

2.3.2 Provision of information

A range of information is required to be provided to all suspects and detained persons under [Code C](#) of the Code of practice. In addition some specific rules apply to children.

The following is an overview of the main information requirements with respect to all suspects including specific provisions relating to children:

⁸⁰ It should be noted that whilst the 1984 Act broadly applies to Northern Ireland, there are a separate set of codes of practice for Northern Ireland established under the Police and Criminal Evidence (Northern Ireland) Order 1989). However, these codes are largely identical to the England and Wales codes and are not differentiated in this report.

⁸¹ Section 1.7 of [Code C](#) of the Codes of Practice.

⁸² [Children and Young Persons Act \(CYPA\) 1933 section 50, as amended by CYPA 1963 section 16\(1\)](#).

⁸³ [UK Government 'What happens if a child under 10 breaks the law'](#).

⁸⁴ [The Crime and Disorder Act 1998](#).

⁸⁵ See e.g. [The Children \(Northern Ireland\) Order 1995](#).

- All persons must be warned before they are arrested and must be told they are under arrest and the reasons for the arrest (Code G).
- All suspects must be informed (including in writing) of:
 - the right to have someone informed of their arrest
 - the right to consult privately (in person, in writing or by telephone) with a solicitor, that free independent legal advice is available and the arrangements for obtaining advice
 - the right to consult the Codes of Practice
 - the right to a copy of the custody record (everything that happens to a detainee is recorded here). This should also be made available to the solicitor or appropriate adult where the detained person is a child.
 - details of the caution (a person must be cautioned before questioning if their answers may be used as evidence in court for a prosecution).
 - an additional written notice briefly setting out their entitlements while in custody e.g. on visiting rights, right to food and drink, access to toilets, conduct of interview, circumstance in which an appropriate adult should be available to assist a detainee.
- A child who is detained must be advised that the duties of the appropriate adult include giving advice and assistance and that they can consult privately with the appropriate adult at any time.
- Before any letter or message is sent, or telephone call made, all detainees must be informed that what they say in any letter, call or message (other than in a communication to a solicitor) may be read or listened to and may be given in evidence.
- When a person is charged (whether adult or child) they must be provided details of the charge. With respect to children, a copy of this information should also be given to the appropriate adult.

There are no clear legal rules or statements in codes of practice 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, with respect to cautioning, police guidance states that the caution must be explained to the suspect in a language they are capable of understanding. Personal characteristics of the suspect, including age, must be taken into account.

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

The rules for police questioning, search and detention of children are broadly the same as for adults though children have additional rights. The rules are set out in Practice Code C.

Firstly when a child is first arrested and detained, the responsible police officer must, if practicable, identify who is responsible for the welfare of the child e.g. the parent or guardian, a local authority, or any other person who has assumed that responsibility. That person must then be informed as soon as practicable that the child has been arrested, why they have been arrested and where they are detained.⁸⁶ This right is in addition to the child's right not to be held incommunicado⁸⁷.

Where the child is detained, an appropriate adult (who may or may not be the person responsible for their welfare) must also be informed of the reasons for the detention and where the child is detained. The police officer responsible for the custody of the child (custody officer) should also ask the appropriate adult to come to the police station to see the child. In addition, key rights when the child is first taken into custody for questioning⁸⁸ such as being informed if their rights must be performed in the presence of an adult and the right not to have a sample taken without the presence of an appropriate adult. However, it

⁸⁶ Section 34 of the Children and Young Persons Act 1933 and PACE Code C.

⁸⁷ Section 5 of Code C.

⁸⁸ Under Sections 3.1 - 3.5 of Code C.

should be noted that, in **England and Wales**, under current legislation, the presence of an appropriate adult is only required for children aged 16 years and below⁸⁹. Nevertheless a recent judgment of the High Court⁹⁰ has ruled such practice illegal and the Home Secretary has announced that the Government intends to amend the Code by October 2013. In addition, the Association of Chief Police Officers issued interim guidance advising that with immediate effect police officers should allow 17 year olds the services of an appropriate adult⁹¹.

In common law, neither adults nor children have to answer questions during criminal proceedings. If a child suspected of a crime is questioned, the police have to give them a caution, in the presence of an appropriate adult and before asking any questions, to warn them that they do not have to answer questions but that if they do say anything, this can be used as evidence in court⁹². The police must also tell the person that if they fail to say something that they later wish to rely on in court then the fact that they did not mention it to the police may be held against them in a trial⁹³. If a caution is given without the adult's presence, then it must be repeated once the adult is present⁹⁴.

2.3.4 Conditions for pre-trial detention/ custody

When a child is initially arrested and taken to a police station, they should not be put in a police cell unless no other secure accommodation is available, it is not practicable to supervise the child or the police cell is more comfortable than the alternative accommodation. In any case, children may not be placed in a cell with a detained adult⁹⁵.

Detention of a child for longer than 24 hours is possible depending on the circumstances of the case. Before the responsible officer⁹⁶ makes a decision on prolonging detention, the child, solicitor and appropriate adult must be given an opportunity to make representations⁹⁷.

If a child is charged with an offence they have a general right to bail though this can be refused. The main reasons for refusal are that there are reasonable grounds to believe that they will abscond, for welfare reasons or where they are accused of an imprisonable offence and there are reasonable grounds for believing the child will abscond, commit further offences whilst on bail or will interfere with witnesses⁹⁸.

Where it is deemed necessary for the child of any age to be kept in detention after they are charged, they must be taken into the care of a local authority pending appearance in court unless it is not practicable. A child who is at least 12 years old may also be kept in a police station if there is no secure accommodation available and other accommodation would not be adequate to protect the public from serious harm from the child⁹⁹.

⁸⁹ As a result of S.37(15) of the Police and Criminal Evidence Act 1984 which defines an arrested juvenile as an arrested person who appears to be under the age of 17.

⁹⁰ *R (Cousins-Chang) v (1) Secretary of State for the Home Department and (2) The Commissioner of Police of the Metropolis* [2013] EWHC 982 (Admin) available at <http://www.bailii.org/ew/cases/EWHC/Admin/2013/982.html>.

⁹¹ <http://www.crimeline.info/news/appropriate-adults-and-17-year-olds>.

⁹² Section 10.5 of Code C.

⁹³ [Section 34, Criminal Justice and Public Order Act 1994](#); Further details can be found in the [Practice Advice on the Right to Silence \(2006\)](#) produced on behalf of the Association of Chief Police Officer Section.

⁹⁴ Section 10.12 of Code C.

⁹⁵ Section 8.8 of Code C Section 31 of the Children and Young Persons Act 1933.

⁹⁶ Custody officer in the case of a person arrested and charged, and an officer of at least the rank of inspector who has not been directly involved in the investigation if the person has been arrested but not charged: S40 Police and Criminal Evidence Act 1984.

⁹⁷ Section 15 2-3 of Code C.

⁹⁸ [Section 38](#) of the Police and Criminal Evidence Act 1984.

⁹⁹ Section 38(6) of the Police and Criminal Evidence Act 1984 and Code C.

During the trial, a court must decide whether a child suspect may be remanded on bail, to local authority accommodation or to youth detention accommodation. The court may decide to give the child offender either one of the following:

- Unconditional bail: The child will be required to appear in court on the specific dates. No other conditions are attached. There is a general presumption to bail¹⁰⁰ for all defendants involved in criminal proceedings but at the same time provides for certain exceptions¹⁰¹.
- Conditional bail: The court may require the child offender to comply with any conditions that could be imposed under section 3(6) of the Bail Act 1976;
- Remand to local authority accommodation: The court tasks a local authority to “look after” the child while the court investigation is on-going. The local authority decides on the accommodation terms it will provide for the child. The court may impose any conditions that may be imposed under section 3(6) of the Bail Act 1976;
- Remand to youth detention accommodation: may be given to 12 to 17 year olds if they meet one of two sets of conditions set out in sections 98 to 101 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012; the first are based on the type of offending and the second are based on the history of absconding or offending together with whether there is a real prospect of a custodial sentence. Every child remanded to youth detention accommodation is also treated as “looked after” by the local authority designated by the court.

In **Northern Ireland**, when a child is charged with an offence that will lead to a court proceeding, the court must normally release the child on bail. A child may only be held in pre-trial detention if the court considers it necessary to protect the public, and the offence charged is either a violent or sexual offence or for which an adult would be subject to a sentence of at least 14 years, or where the offence is indictable and the child either was on bail at the time of the offence or has been found guilty of an indictable offence within the preceding two years¹⁰². Children committed to pre-trial detention should be accommodated at Woodlands Juvenile Justice Centre. The overall principle of removing children from Hydebank Youth Offenders Centre has been consulted upon and agreed. As a consequence no under 18s have been held at Hydebank Youth Offenders Centre since 1 November 2012. The Department of Justice is now considering how the changes should be embedded in legislation and the potential consequences of any changes are the subject of a consultation being launched in September 2013¹⁰³.

2.3.5 Protection of private and family life

England, Wales and Northern Ireland has an open justice principle which means that in general, justice should be administered in public. This means that proceedings must be held in public, evidence must be communicated publicly and media reporting should not be prevented unless strictly necessary¹⁰⁴. Any restrictions in this area must be necessary, proportionate and convincingly established in conformity with the European Convention on Human Rights.

However, a number of statutory restrictions have been established to protect the privacy and identity of children, whether witness, victim or defendant. As explained in [Section 2.1.3](#) above during the investigation of an alleged offence against a child, no matter relating to any child involved in the offence shall be included in any publication if it may lead to the identification of the child by members of the public. These restrictions cease to apply when the matter proceeds to court as different reporting restrictions apply at that point. Section

¹⁰⁰ Section 4 of the Bail Act 1976.

¹⁰¹ Schedule 1 of the Bail Act 1976.

¹⁰² [Criminal Justice \(Children\) \(Northern Ireland\) Order 1998, section 12.](#)

¹⁰³ Information obtained from Northern Ireland Department of Justice.

¹⁰⁴ Overview provided in the publication '[Reporting Restrictions in the Criminal Courts](#)' (2009) by the Judicial Studies Board, the Newspaper Society, the Society of Editors and Times Newspapers Ltd.

49(1) of the Children and Young Persons Act 1933 (the 1933 Act) applies, amongst others, to proceedings in a youth court and an appeal from a youth court¹⁰⁵, and provides as follows:

- a. no report shall be published which reveals the name, address or school of any child or young person concerned in the proceedings or includes any particulars likely to lead to the identification of any child or young person concerned in the proceedings;
- b. no picture shall be published or included in a programme service as being or including a picture of any child or young person concerned in the proceedings.

The overarching test, therefore, is whether the particulars in question are likely to lead to the child or young person being identified as someone concerned in the proceedings. This provision applies to reports and pictures in a newspaper and reports included in a programme service (section 49(3) of the 1933 Act). The court may lift the ban on publicity in a number of circumstances. The first situation is under section 49(5) of the 1933 Act where:

- it is necessary to do so to avoid injustice to the child or young person himself/herself (s. 49(5)(a)); or
- the child or young person is unlawfully at large and:
 - it is necessary to lift the ban for the purpose of apprehending him/her and bringing him/her before a court or returning him/her to custody; and
 - he has been charged or convicted of a violent or sexual offence or an offence punishable in the case of an adult with imprisonment for 14 years or more (s.49(5)(b)).

The second situation where the ban may be lifted is under subsection 49(4A) where the court has to be satisfied that it is in the public interest to do so. The court may do so in relation to a child or young person who has been convicted of an offence by dispensing, to any specified extent, with the requirements of the section in relation to things such as the prosecution or conviction of the offender and the enforcement, amendment, variation, revocation or discharge of any order made in respect of the offence. Under subsection (4B), the court shall not exercise this power without giving the parties an opportunity to make representations.

In **England and Wales**, in the Crown Court under the s.39(1) of the 1933 Act, a Crown Court, adult magistrates' court or civil court may direct that no newspaper report of proceedings before the court shall reveal the name, address, or school, or any particulars calculated to lead to the identification of any child or young person concerned in the proceedings. A direction may also be given that no picture of the child or young person shall be published. Section 39 applies to sound and television broadcasts, just as it applies to reports in newspapers (see section 57(4) of the Children and Young Persons Act 1963).

Under section 39 of the 1933 Act, the onus is on the court to make an order restricting publicity. If no order is made, the media is at liberty to report the names etc. of children or young people, just as they are at liberty to report the names of adults. The protection of the section may be extended not just to a child or young person accused but to any child or young person involved in the proceedings (e.g., as a witness). Publication of matter in contravention of a direction given under s. 39(1) is a summary offence punishable with a fine.

In respect of reporting restrictions in the case of the Central Criminal Court, *ex parte S* (1999), the Divisional Court held that there has to be a good reason for making an order under s. 39 of the 1933 Act preventing identification of a child or young person who appears before an adult court. The court cited earlier case law stating that the age of the defendant, though a factor of considerable importance, is not the only factor. Moreover, in deciding whether or not to make such an order, the weight which the court should attach to the various factors relevant to the decision might be different at differing stages of the proceedings. For example, after the child or young person has been convicted, it might be

¹⁰⁵ Section 49(2).

appropriate to place greater weight on the interest of the public in knowing the identity of those who have committed serious crimes.

With respect to **Northern Ireland**, in addition to provisions established in the 1933 Act, where a child 'is concerned in' any criminal proceedings (i.e. proceedings by, against or in which the child is a witness) the Court may direct that no report shall be published which reveals the name, address or school of the child or particulars likely to lead to the child's identification, and neither any picture of the child, except by direction of the Court¹⁰⁶.

The court may also exclude persons of any description from the court, during the evidence of a child or vulnerable adult witness in cases relating to a sexual offence, or where there are grounds for believing that a witness has been, or may be, intimidated¹⁰⁷. However, with respect to the media a nominated representative of them must be permitted to remain.

Furthermore, the court has discretion to exclude the public but not bone fide representatives of the media during the testimony of witnesses aged under 18 in any proceedings relating to an offence against, or conduct contrary to, decency and morality¹⁰⁸. At common law, the court can exclude the public but allow media representatives to remain when considering exhibits in obscenity trials.

2.3.6 Alternatives to judicial proceedings

A number of options exist in **England and Wales** to avoid children entering formal judicial proceedings. The appropriate level of response is determined by a number of factors including the severity and impact of the offence, previous offences and compliance with previous disposals and the willingness of the child to engage in or accept full responsibility.

Firstly for minor offences, a child may be subject to a non-statutory restorative diversion which requires an acceptance of responsibility by the child. A youth offending team may be notified who will determine whether an appropriate assessment of intervention is needed. The child may be required to engage in on-street restorative justice or be referred to a Neighbourhood Justice Panel.

A child (aged 10-17) can be given a formal out of court disposal such a youth caution, which is given by the police as an alternative to prosecution in certain circumstances. A youth caution may be given for any offence where the child admits an offence, there is sufficient evidence for a realistic prospect of conviction, but it is not in the public interest to prosecute. Following a youth caution, the Police have a statutory duty to refer the child to the youth offending team (YOT). For a second or subsequent Youth Caution, the YOT has a statutory duty to carry out an assessment of the child and consider putting in place an intervention programme aimed at preventing reoffending. The YOT may carry out an assessment and offer a rehabilitation programme for a child who has never received a youth caution.

A child (aged 10-17) could also be given a youth conditional caution (a caution with one or more conditions attached) by the police or a relevant prosecutor (usually a member of the CPS). Youth conditional cautions may be offered when the child admits the offence, there is sufficient evidence for a realistic prospect of prosecution and the public interest can best be served by the child complying with suitable conditions rather than a prosecution. The YOT must assess the child and advise on appropriate conditions. The conditions attached to the Youth Conditional Caution can be reparative, rehabilitative or punitive in nature. Restorative justice processes and initiatives may be used to help inform the decisions as to the conditions to be attached to a Youth Conditional Caution The YOT is responsible for monitoring compliance with conditions and advising on non-compliance. Failure to comply with the conditions can result in prosecution for the original offence.

In addition to these out of court disposals, a range of control measures may be used (they are available against adults and children but have been largely used against children) where

¹⁰⁶ [Article 22](#) of the [Criminal Justice \(Children\) \(NI\) Order 1998](#).

¹⁰⁷ Section 25 of the Youth Justice and Criminal Evidence Act 1999.

¹⁰⁸ Section 37 Children and Young Persons Act 1933.

behaviour does not necessarily amount to a criminal offence. Such measures include acceptable behaviour contracts which are agreements between the child and local authorities or police. The child usually agrees not to do certain actions and to do other actions. The agreements are not legally binding but may be used as evidence to impose an anti-social behaviour order (ASBO). A child does not get a criminal record from these measures, though breach of an ASBO is a criminal offence.

Anyone over the age of 10 can be given an ASBO if they behave anti-socially¹⁰⁹. ASBOs are civil orders to protect the public from behaviour that causes or is likely to cause harassment, alarm or distress e.g. includes drunken or threatening behaviour, vandalism and graffiti, playing loud music at night. An order contains conditions prohibiting an individual from carrying out specific anti-social acts or (for example) from entering defined areas, speaking to people who are known trouble makers. The orders are not criminal sanctions and are not intended to punish the individual. They are designed to be preventative, not punitive.

An order may be made by:

- a magistrates' court sitting in its civil jurisdiction¹¹⁰;
- the Crown Court, a magistrates' court or a youth court where it convicts a defendant of a relevant offence¹¹¹, either following a request by the prosecutor or of the court's own volition; or
- a county court in existing proceedings¹¹² (section 1B CDA).

In **Northern Ireland**, the Youth Diversion Scheme (YDS) provides options to avoid children entering judicial proceedings. YDS officers monitor nuisance behaviour, aiming to prevent it developing into actual crimes. In case of an offence, the police will consider its seriousness, whether there has been an admission of guilt, prior offences, etc. The police may then issue an 'informed warning' or a 'restorative caution', or refer the case to the Public Prosecution Service. In **Northern Ireland**, apart from discretionary disposal, all cases must be referred to the Public Prosecution Service for direction. ASBO follow the same procedures as in **England and Wales**¹¹³.

An informed warning applies to less serious offences, and is delivered to the child by a specially trained police officer in the presence of the parents or guardians. The warning is not a conviction, but will remain on the criminal record for one year, after which it is removed unless there is a further offence. This is only imposed if the young person admits guilt. If not, the matter is dealt with in Court. Restorative cautions may apply for more serious offences. They are delivered by trained facilitators 'who can be a police officer, a representative from a partner agency, or a community representative. It provides an opportunity for the young person who has offended to gain a greater understanding of the impact of their behaviour and its consequences, and to help them take responsibility for their actions through meeting their actual victim. The process provides an opportunity for the victims of crime to be involved in how their case is dealt with and will be recorded for 2½ years on a criminal record, unless further offending takes place. However, it is not a conviction¹¹⁴. The record may be retained if initial behaviour warrants retention due to the risk displayed e.g. sexual behaviour. The record may be released to a court at any time in the future in the event of further offending. Finally for very serious offences or where the child denies the offence or has two or more previous recorded 'disposals', the prosecution service will decide how to

¹⁰⁹ Section 1C of the Crime and Disorder Act 1998.

¹¹⁰ Section 1 of the Crime and Disorder Act 1998

¹¹¹ Section 1C of the Crime and Disorder Act 1998

¹¹² Section 1B of the Crime and Disorder Act 1998

¹¹³ The Anti-social Behaviour (Northern Ireland) Order 2004.

¹¹⁴ [Youth Justice Agency of Northern Ireland: Youth Diversion Scheme.](#)

handle the case. Criminal prosecution is possible, but in the majority of cases a diversionary youth conference will result¹¹⁵.

Northern Ireland is currently evaluating a pilot study on a new process for supporting young people in the justice system called Youth Engagement (YE) Clinics. The aim of YE Clinics is to support, at the early stages of criminal proceedings, those young people who are eligible for diversion and who currently proceed to court only because they do not fully understand their options. Eligible young people are referred by PSNI to clinics which will typically occur within 30 days of the referral. The process is wholly voluntary. At the clinic, justice professionals experienced in working with young people will explain to the young person both the situation they are in and their options. The young person must be supported by an appropriate adult and may also have a lawyer. Where the young person has not admitted responsibility for the alleged offending, a lawyer is mandatory¹¹⁶.

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

With respect to minimising the burden of the criminal investigation and interactions with the police, see section [2.3.3](#), [2.3.4](#) and [2.3.8](#).

At the heart of ensuring the proper treatment of children is the Children and Young Persons Act 1933 which requires every court dealing with a child or young person, either as an offender or otherwise to have regards to the welfare of the child¹¹⁷. Beyond this general provision, a range of specific measures are in place to minimise the burden of proceedings.

With respect to court proceedings¹¹⁸, most youth courts are held in less formal surroundings to that of adult courts. National guidance¹¹⁹ established by the Youth Courts Committee emphasises that wherever possible there should be separate entrances to the court for adults and 'youths' and separate waiting areas for 'youths'. It also highlights ways to better accommodate 'young people', for example by moving furniture to encourage participation, to ensure there is a less formal setting by for example enabling all parties to sit at tables and having magistrates sit on the same level as the other people present, or by them removing their wigs.

Children under the age of 16 who appear before the youth court must also have a parent or guardian with them in court, unless the court thinks it is unreasonable. Those aged 16 and over may be accompanied but it is not required.

Only members and officers of the court, parties and other persons directly connected to the case, lawyers, witnesses and bona fide members of the press should be present in the youth court. Additional people may be authorised by the youth court. Members of the press may be present but are restricted as to what information they may report (see [Section 2.3.5](#)).

When beginning a case, magistrates are recommended to introduce themselves and those present in the court room. They may also explain their roles. The parent/guardian should sit next to their child. The Youth Court Bench Book also emphasises that consideration should always be given to the length of court sittings and to whether it is necessary to have frequent breaks.

2.3.8 Protecting the child during interviews and when giving testimony

Interviews should only take place in the presence of an appropriate adult¹²⁰. Before conducting an interview, the police must make every effort to notify the persons responsible

¹¹⁵ [Youth Justice Agency of Northern Ireland: Youth Diversion Scheme](#).

¹¹⁶ Information provided by the Northern Ireland Department of Justice.

¹¹⁷ [Section 44 of the Children And Young Persons Act 1933](#).

¹¹⁸ The rules on court proceedings are laid out in the [Youth Court Bench Book, 2010](#).

¹¹⁹ [Youth Court Panel Protocol; Youth Court Bench Book](#).

¹²⁰ See definition of 'appropriate adult', [Section 2.3](#) above.

for the child's welfare and the appropriate adult¹²¹. Once present, the appropriate adult must be informed that their role is to observe that the interview is conducted properly and fairly, as well as to advise the child and facilitate communication¹²².

If an appropriate adult is not present, a child suspected of involvement in a criminal offence may only be interviewed if an officer of at least superintendent rank considers that delaying the interview would endanger the investigation of a crime or risk similar consequences, for example through the possibility that evidence might be lost or destroyed, that others involved in the crime might be alerted to the possibility of arrest, or that property might not be recovered¹²³. In such circumstances the officer must also be satisfied the interview will not significantly harm the child¹²⁴.

In addition, with respect to **Northern Ireland**, the Coroners and Justice Act 2009 and the Justice Act (Northern Ireland) 2011 provide for the examination of an accused, including those under 18 years of age, through an intermediary. The Department of Justice is currently piloting Registered Intermediaries Schemes in the Crown Court sitting in Belfast (for both vulnerable accused and witnesses). It is planned to extend the scope of the pilot to all Crown Courts in November 2013. Registered Intermediaries are professionals with specialist skills in communication. They are recruited and selected by the Department and complete accredited training. Registered intermediaries are subject to Codes of Practice and Ethics, and have a Procedural Guidance Manual to follow¹²⁵. Their function is, following an assessment of the accused, to facilitate communication during the police investigation and at trial between the accused and others in the criminal justice process, such as police officers and advocates¹²⁶.

Information on protection of the child when giving testimony in court is provided in the section below as well as in [section 2.3.5](#) and [2.3.7](#).

2.3.9 Right to be heard and to participate in criminal proceedings

The right to be heard and to participate of children who are suspects or defendants are broadly the same in cases of adult suspects or defendants. However a range of measures are taken to account for the particular needs and vulnerabilities of children. Those additional measures are broadly similar to the measures available to child witnesses (see [Section 2.2.6](#)), except for those measures whose purpose is to protect a child witness from fear of the defendant.

The court bears a responsibility to make sure that a child defendant is able to understand, and therefore participate in the proceedings. It 'should explain the course of proceedings to a young defendant in terms he can understand, should remind those representing a young defendant of their continuing duty to explain each step of the trial to him and should ensure, so far as practicable, that the trial is conducted in language which the young defendant can understand'¹²⁷.

Normally a child who is accused of participating in a crime together with an adult should be tried separately from that adult. Exceptionally, usually for reasons of judicial efficiency, the child and adult defendants may be tried together in the Magistrate or Crown Court.

Criminal defendants in **England and Wales** may, but may also decline to, testify on their own behalf. A child defendant may ask to give evidence by live video link. The court may

¹²¹ Section 11.18 of Code C.

¹²² Section 11.18 of Code C.

¹²³ Sections 11.18 and 11.1 of Code C.

¹²⁴ Section 11.18 of Code C.

¹²⁵ The Department of Justice has issued a Registered Intermediary Procedural Guidance Manual (Northern Ireland) (version 3 was issued in 2013).

¹²⁶ Information provided by the Northern Ireland Department of Justice.

¹²⁷ Practice Direction (Crown Court: Trial of children and young persons) 16 February 2000, point 11, reproduced in Judicial Studies Board, Equal Treatment Bench Book, October 2009, p. 4-32.

agree to this if it is ‘satisfied that it is in the interests of justice to do so, and that the use of a live video link would enable the defendant to participate more effectively as a witness’¹²⁸.

The court is required to explain to the child the nature of the proceedings and the substance of the charge in simple language suitable to his age and understanding¹²⁹.

Where a child has pleaded guilty or been found guilty of an offence, the Court, before finally disposing of the case or remitting it to another Court, must inform the child, his/her parent or guardian or any person assisting him/her in his/her case of the manner in which it proposes to deal with the case¹³⁰. The Court must then allow any of those people an opportunity to make representations. When making an Order, the Court must explain to the child or young person the general nature and effect of the Order.

Beyond the above statutory duties, both the Youth Court Bench Book and the Youth Courts Committee Youth Court Panel Protocol emphasise the importance of engaging with the child suspect and provide guidance on ensuring the child is able to participate effectively. Some issues which are highlighted include ensuring parents and child suspects understand their role, ensuring the child is able to speak for him/herself, including by controlling legal advisers, remembering to demonstrate active listening, using appropriate language and being aware of body language etc.

2.3.10 Right to legal counsel, legal assistance and representation

Any person, whether child or adult, has the right to legal advice and may have the right to free legal assistance depending on their circumstances. In **England, Wales and Northern Ireland**, a person is able to choose their lawyer. Proposals to remove this choice in **England and Wales** made in 2013 by the Government as part of its reform of the legal aid scheme have now been dropped. Conversely, the child may waive their right to legal assistance. However, based on a ruling of the Supreme Court (relating to a Scottish case but still relevant), the suspect (whether adult or child) should have been told of his right, should have understood that the right was and that it was being waived, and that the waiver was made freely and voluntarily. It also noted that vulnerable people might need to be given more than a standard formula if their right to a fair trial was not to be compromised¹³¹.

From 1 April 2013, eligibility for state funded legal aid **in England and Wales** has been governed by the Legal Aid, Sentencing and Punishment of Offenders Act 2012, supported by the associated framework of secondary legislation.

Advice and assistance for individuals at the police station are provided free of charge. However, if the individual is charged with an offence, criminal legal aid in respect of the advice, preparation and subsequent representation at the trial is subject to a means assessment and, if facing trial at the magistrates’ court, to the “Interests of Justice” (IOJ) test.

In practice, the assessment of the legal aid application is, in the great majority of cases, undertaken by HMCTS under a Service Level Agreement with the Legal Aid Agency. Whilst all under-18s are “passport” through the means test at both the magistrates’ court and Crown Court, they must satisfy the IoJ test if appearing at the magistrates’ court (all defendants appearing at the Crown Court are automatically deemed to pass the IoJ test). Under the test, the following factors are taken into consideration:

- the risk of a loss of liberty;
- risk of loss of livelihood;
- risk of serious reputational damage;
- whether a substantial question of law is involved;

¹²⁸ [Ministry of Justice, Practice Direction III.30, Treatment of Vulnerable Defendants.](#)

¹²⁹ Rule 6 of the Magistrates’ Courts (Children and Young Persons) Rules 1992.

¹³⁰ Rule 11 of the 1992.

¹³¹ *Birmie v Her Majesty’s Advocate* (Scotland) [2011] UKSC 55.

- inability to understand proceedings or present a case;
- need to locate and interview defence witnesses;
- need to cross-examine prosecution witnesses; and
- whether it is in the interests of another person that the defendant have representation.

In the vast majority of cases a defendant who is under-18 years of age will pass the loJ test and be granted a representation order. Most commonly this is on the grounds that youths will struggle to understand the proceedings or to state their own case. In those rare cases where a youth is not held to meet the loJ test, this is typically because the youth is at the older end of the age spectrum (i.e. 16 or 17 years old) and has been charged with a very minor offence (however, even then, it is often possible that they will not be considered able to understand or follow proceedings).

The rules regarding legal aid in **Northern Ireland** are substantially the same as in **England and Wales**, albeit governed by separate rules and administered by separate agencies. In **Northern Ireland** legal aid is available (subject to an 'interests of justice' test and a means test) for any child charged with or convicted of a criminal offence¹³². The main legislative framework for legal aid is in the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981, as amended by the Justice (Northern Ireland) Act 2002. The Order contains no special provisions regarding free legal aid for children in criminal proceedings, except as regards diversionary youth conferences (court ordered youth conferences are subject to the same rules as is legal aid in other criminal court proceedings. Free legal aid in this context must be requested from a court. Aid is subject to a means test and to the court's determination that legal advice to help prepare for and participate in the conference is 'desirable in the interests of justice'¹³³. Usually this will consist of a solicitor's advice, although legal representation may also be provided if the conference concerns an indictable offence and in the court's view there are unusually 'grave or difficult' circumstances that make it desirable to have both advice and representation¹³⁴.

As elsewhere in the UK, a number of non-governmental organisations exist to facilitate children's ability to understand and uphold their rights in judicial as well as other legal contexts.

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

In the UK there are two basic routes for children to redress violations of their rights: the judicial appeals process (for children convicted of an offence) and mechanisms to complain about violations by police or other authorities.

Children convicted of an offence enjoy the same rights of appeal as other defendants. As with any appeal from a Magistrate Court, appeals from the Youth Court run to the Crown Court. That court hears appeals from the Youth Court in a panel format, with two magistrates (who did not hear the original case) joining a Crown Court judge. Both of the magistrates must be qualified to hear cases in the Youth Court, and one must be male while the other is female. The Crown Court judge makes determinations of law, while a majority of the three makes factual determinations. New evidence may be introduced if the court deems it relevant. Higher appeal to the Court of Appeal or the Supreme Court is at the discretion of the respective courts, not by right.

There are a number of complaint mechanisms available to children who are not already in the judicial system as defendants. A lawyer is not necessary, but may be retained if desired. A child deemed competent may instruct a solicitor (lawyer) themselves. In general a child must be at least 16 years old to apply for publicly funded legal assistance. Younger children should apply through a parent or other appropriate adult, unless there is no available adult.

¹³² [Adviceguide Website](#).

¹³³ Legal Aid, Advice and Assistance (Northern Ireland) Order 1981, Article 28A(3)(b).

¹³⁴ Legal Aid, Advice and Assistance (Northern Ireland) Order 1981, Article 28A(5).

If court proceedings are involved then the child may proceed without an adult by order (permission) of the court¹³⁵. If a child alleges a breach of the Human Rights Act 1998, a parent or other appropriate adult will not have standing to bring the action and the child may obtain public funding for legal assistance¹³⁶.

Complaints against the police are handled by the Independent Police Complaints Commission (IPCC), except for minor complaints which are first investigated by a complaints and discipline department within the local police force. In such cases the complainant may appeal to the IPCC if not satisfied with the initial outcome¹³⁷.

Complaints against the Crown Prosecution Service for actions or inaction pass through a three-stage procedure of progressively higher review within the Service. If the complainant is still not satisfied with the outcome, the complaint may be referred to the Attorney General's Office to determine not the merits of the complaint, but whether the Service correctly followed its procedures¹³⁸.

In **Northern Ireland**, the Police Ombudsman for Northern Ireland investigates and addresses complaints against the police¹³⁹. In contrast to **England and Wales**, the Ombudsman in **Northern Ireland** addresses all complaints. Local police forces do not participate. The Northern Ireland Commissioner for Children and Young People is available to investigate complaints concerning actions of public bodies other than police or courts, and to help children to utilise the complaints procedures of public authorities¹⁴⁰. The Commissioner has broad responsibilities for monitoring children's welfare in **Northern Ireland**, as detailed in the Commissioner for Children and Young People (Northern Ireland) Order 2003

¹³⁵ [Liberty, Your Rights: The Liberty Guide to Human Rights, Access to Justice and Redress.](#)

¹³⁶ [Liberty, Your Rights: The Liberty Guide to Human Rights, Access to Justice and Redress.](#)

¹³⁷ [Civil Rights Movement: Challenging the Police .](#)

¹³⁸ [Crown Prosecution Service: Feedback and complaints policy – 'Responding to you'.](#)

¹³⁹ [Police Ombudsman Website.](#)

¹⁴⁰ [NICCY: Promoting the rights of children and young people.](#)

3 Child-friendly justice after judicial proceedings

3.1 The child as a victim or offender

3.1.1 Provision of information

Following a trial in which a child was the **victim or a witness**, the witness care officer will report the result of the trial to the child, if the child was not present to hear the verdict. If the defendant was found not guilty, the child's advocate or a representative of Crown Prosecution Service will explain the verdict, and clarify that it was not the result of the child's inadequate efforts or failure of the court to believe the child's testimony. If the defendant was found guilty, the witness care officer will inform the child victim or witness of the date of the sentencing hearing, usually through the child's parents or another appropriate adult.

Although children under the age of 14 are not allowed into court without the court's permission, the parent or other appropriate adult may attend the sentencing hearing. Otherwise, the witness care officer will report and explain the sentence. Similarly, the witness care officer will report and explain subsequent procedures such as appeals¹⁴¹. In addition, with respect to offenders sentenced to 12 months or more for a sexual or violent offence, victims should be informed of the Probation Service Victim Contact Scheme and the possibility to opt out of it. This service ensures victims continue to be provided with certain information e.g. release of the offender, conditions placed on the offender upon release, as well as the possibility for the victim to make representations about what conditions should be imposed on the offender on their release. The system in **Northern Ireland** for providing on the outcome of the case and with respect to custody and release are similar.

With respect to **child defendants**, the primary source of guidance on the provision of information are practice directions¹⁴² applying in the Crown Court and the Magistrates Courts. Those directions set out that at the beginning of the proceedings the court should ensure that what is to take place has been explained to a vulnerable defendant in terms he or she can understand, and at trial in the Crown Court it should ensure in particular that the role of the jury has been explained. It should remind those representing the vulnerable defendant and the supporting adult of their responsibility to explain each step as it takes place and at trial to explain the possible consequences of a guilty verdict. Throughout the trial the court should continue to ensure, by any appropriate means, that the defendant understands what is happening and what has been said by those on the bench, the advocates and witnesses¹⁴³.

3.1.2 Sentencing

The main legislation governing the sentencing of children in **England and Wales** includes the Crime and Disorder Act 1998, the Powers of Criminal Courts (Sentencing) Act 2000, the Criminal Justice Act 2003 and the Criminal Justice and Immigration Act 2008. These laws interact with the Children and Young Persons Act 1933 and subsequent legislation relating to children to form the penal framework relating to children. The Sentencing Guidelines Council provides guidance to courts as to how to apply these laws. The main text in this regard is the [Definitive Guideline: Overarching Principles Sentencing Youths](#), issued in November 2009 (applicable to **England and Wales** though **Northern Ireland** Courts may draw on it where it is applicable to the local circumstances). There are additional principles applicable to child offenders in the [Definitive Guidelines on the Sexual Offences Act 2003](#) and on [Robbery](#)¹⁴⁴.

¹⁴¹ [Crown Prosecution Service, Children and young people: CPS policy on prosecuting criminal cases involving children and young people as victims and witnesses.](#)

¹⁴² Made pursuant to Rule 7 of the Crown Court (Special Measures Directions and Directions Prohibiting Cross-examination) Rules 2002 and Rule 7 of the Magistrates' Courts (Special Measures Directions) Rules 2002.

¹⁴³ Paragraph III.30.11.

¹⁴⁴ [Crown Legal Service, Legal Guidance: Youth Offenders.](#)

According to the Guidelines regarding ‘youths’,¹⁴⁵ ‘the principal aim of the ‘youth justice system’ is to prevent offending by children and young people. For the offender, it incorporates the need to demonstrate that such conduct is not acceptable in a way that makes an impact on the offender whilst also identifying and seeking to address any other factors that make offending more likely. Four basic principles guide the imposition of criminal sentences in cases involving children: the age of the offender (including emotional age); the seriousness of the offence; the likelihood of further offences; and the degree of harm likely to result from further offences. The court must have due regard for the welfare of the offender. Sentencing is based on an individualised assessment of each case.

Except for homicides, most cases involving children are tried not in the Crown Court but in the Youth Court. There is a statutory presumption that a person aged under 18 will be dealt with summarily, usually in the Youth Court. A court imposing a custodial sentence is required to set the shortest term commensurate with the seriousness of the offence(s).¹⁴⁶ The Sentencing Council’s definitive guideline sets out starting points for custodial sentences where the child is aged 15 to 17 or is aged 14 or less.

The Youth Court is a Magistrate Court with specialised expertise and sentencing powers regarding children. A range of options is available to Youth and adult Magistrate Courts for sentencing child offenders. Failure to comply with any of the orders listed below will result in the case being referred back to the Court. This may result in re-sentencing for the original offence, as well as for the additional ‘breach’ offence: Options available to Youth and other Magistrate Courts include:¹⁴⁷

Conditional Discharge	The Court will discharge the matter on condition that the defendant does not re-offend during a set time (usually 1 - 2 years).
Reparation Order	The Court may order a short-term programme, of no more than 24 hours’ aggregated work time, ¹⁴⁸ for the benefit of the victim or the community, e.g. by apologising, fixing any damage or performing community service.
Financial penalties	Fines, Court Costs or Compensation Orders. The Court will take the defendant’s financial situation into account. Except for children aged 16+ with their own income, it is the responsibility of the parents or guardians to pay such penalties.
Parental Bindover	Parents agree to exercise ‘proper control’ over their children for a period of time. Failure to do so can result in a financial penalty.

¹⁴⁵ [Sentencing Guidelines Council, Overarching Principles – Sentencing Youths, Definitive Guideline.](#)

¹⁴⁶ Section 153(2) of the Criminal Justice Act 2003.

¹⁴⁷ [Except as otherwise noted, the table below summarises information presented by the Tameside Borough Council, Going to Court: A Young Person’s Guide to the Youth Court.](#)

¹⁴⁸ Powers of Criminal Courts (Sentencing) Act 2000, article 74(1)(a).

Parenting Order	Requires the parents or guardians to undertake some work to address issues relating to the upbringing of their children.
Referral Order¹⁴⁹	If a first-time child offender pleads guilty to a crime that is punishable by imprisonment, in all but the most serious cases the Court must instead impose a referral order. ¹⁵⁰ This is an agreement to be made between the offender and a panel consisting of a Youth Offending Team advisor and two community volunteers. The agreement runs from 3-12 months and may for example include reparation or restitution to the crime victims, or activities or interventions to address the offending behaviour. Upon completion of the conditions the conviction is 'spent', i.e. normally need not be reported to employers, insurers, etc. This power has now been extended to enable the court to give a referral order as many times as they think suitable for the offence.
Youth Rehabilitation Order¹⁵¹	This generic sentence, introduced by the, Criminal Justice and Immigration Act 2008, replaced nine community sentences such as Supervision Orders, Action Orders, etc. A wide range of requirements may be combined, including for example activity requirements (e.g. reparation oriented work; training activities; etc.), supervision requirements, residence requirements, drug treatment or voluntary work requirements, etc. To impose a YRO the court must be satisfied the offence is 'serious enough', but an order entailing intensive surveillance or fostering may only be imposed where a custodial sentence would otherwise have been appropriate.
Detention and Training Orders	(ages 12 - 17) A period of 4, 6, 8, 10, 12, 18 or 24 months, half of which is served in detention, the remainder in the community under the supervision of a Youth Offending Team worker.
Committal to Crown Courts	The Court may commit the case to the Crown Court. They will do this for all very serious offences that might result in longer custodial sentences than the Youth Court can impose.

The custody threshold for a young person is inevitably higher than for an adult as the minimum term of a custodial sentence for a youth (four months) is significantly in excess of that which applies to an adult. In addition to custodial sentences, a Youth Court may impose the lesser sanctions of a financial order, a referral order or a youth rehabilitation order. A Youth Court or a magistrate's court can impose fines up to UKP 1000, or up to UKP 250 for children up to the age of 14. As many children have limited financial resources, courts are instructed to take care that a fine does not impose hardship on those children who depend on state aid, and in particular that it does not affect access to education or training. The courts should concentrate on financial orders for compensatory rather than punitive purposes. If costs are imposed as well they may not exceed the size of the fine itself¹⁵².

¹⁴⁹ [Ministry of Justice, Referral Order Guidance.](#)

¹⁵⁰ In some circumstances, such as where the offender has pled guilty to only some of several charges, the referral order is discretionary rather than mandatory. Certain administrative conditions must also be fulfilled.

¹⁵¹ [Youth Justice Board for England and Wales, The Youth Rehabilitation Order and other Youth Justice Provisions of the Criminal Justice and Immigration Act 2008.](#)

¹⁵² Paragraph 9.1; Overarching principles – Sentencing Youths, Sentencing Guidelines Council.

If a defendant crosses an age threshold (e.g. 17 to 18) after the offence is committed but before sentencing, the defendant must be sentenced as would have been appropriate at the age when the crime was committed.

Northern Ireland

The Justice (Northern Ireland) Act 2002 instituted several new sentencing orders aimed at child offenders. These include reparation orders, community responsibility orders and youth conference orders¹⁵³. Reparation orders are implemented similarly to reparation orders in **England and Wales** (see above).

Community responsibility orders require attendance at a local youth justice office for a period of 20-40 hours, in 2-4 hour sessions scheduled so as not to interfere with school or work. The sessions focus on helping the children to understand the impact of their offence and the factors that led to it, as well as considering ways to improve the situation including possibly making amends where appropriate¹⁵⁴.

The Youth Conference Rules (Northern Ireland) 2003 govern youth conferences, which are operated by the Youth Conference Service within the Youth Justice Agency¹⁵⁵. Two types of youth conferences exist: Diversionary youth conferences and court ordered youth conferences.

In accordance with the Justice (Northern Ireland) Act 2002, diversionary youth conferences may be instigated following a referral by the Director of public prosecutions who has the conduct of proceedings instituted against the child in respect of an offence. The referral may be made where the case would otherwise go to court. Court ordered conferences may be instigated as a result of a court referral where a child has been found guilty of an offence by the court. A court must order a youth conference for any child defendant, except for certain very serious offences¹⁵⁶.

In both instances, a youth conference co-ordinator will seek to instigate the conference but may only do so whether the child consents. With respect to diversionary conferences, the child must also admit to the Director of public prosecutions that they committed the offence. If the child does not consent or does not admit to the offence, the case is referred back to the prosecutor or court.

A youth conference consists of a meeting of the child concerned, the appropriate adult, a co-ordinator from the Youth Justice Services, and a police officer¹⁵⁷. In the conference, the child has 'the opportunity to reflect upon their actions, and offer some form of reparation to the victim. The victim, who is given the choice whether or not to attend, can explain to the offender how [the] offence has affected him or her as an individual'¹⁵⁸. After discussion, the conference will produce an agreement stating what actions concerning the child should be taken consequent to the offence. In principle, the outcome should be 'some form of restorative outcome, addressing the needs of the victim, the offender and wider community'¹⁵⁹.

A diversionary youth conference results in a recommended Youth Conference Plan, which if accepted by the prosecutor and completed by the child, 'is not classed as a conviction' on

¹⁵³ Justice (Northern Ireland) Act 2002, Articles 54-61.

¹⁵⁴ [Youth Justice Agency Northern Ireland: Court Outcomes](#).

¹⁵⁵ [Youth Justice Agency Website](#).

¹⁵⁶ O'Mahoney, D. and Campbell, C., 'Mainstreaming Restorative Justice for Young Offenders through Youth Conferencing - the experience of Northern Ireland', August 2004, p. 9 ('Only offences with a penalty of life imprisonment, offences which are triable, in the case of an adult, on indictment only and scheduled offences which fall under the Terrorism Act (2000) are not eligible for youth conferencing').

¹⁵⁷ [Youth Justice Agency Website](#).

¹⁵⁸ O'Mahoney, D. and Campbell, C., 'Mainstreaming Restorative Justice for Young Offenders through Youth Conferencing - the experience of Northern Ireland', August 2004, p. 9.

¹⁵⁹ O'Mahoney, D. and Campbell, C., 'Mainstreaming Restorative Justice for Young Offenders through Youth Conferencing - the experience of Northern Ireland', August 2004, p. 9.

the child's criminal record, but 'can be referred to if there are further criminal prosecutions'¹⁶⁰. A plan consequent to a court ordered conference results in a Youth Conference Order, which is placed on the child's criminal record as with any other court disposition.

The remainder of the **Northern Ireland** sentencing scheme for children is essentially the same as in **England and Wales** circa 1998. Thus a Youth Court may take the following actions¹⁶¹:

Absolute Discharge	The defendant is found guilty but the court takes no further action.
Conditional Discharge	The court will discharge the matter on condition that the child does not re-offend during a set time (between 6 months and 2 years). In the event of re-offending the court may consider the offence that was subject to conditional discharge as well as the new one.
Deferred Sentence	The court imposes a sentence but defers its execution for six months. If in the meantime the defendant maintains good behavior or attempts to make amends to the victim, the magistrate may consider modifying the sentence accordingly.
Fines	Fines are limited according to the age of the defendant.
Attendance Centre Orders	The child must attend a Youth Justice Agency Community Services Centre for a set number of hours (between 12 and 24 hours). This will normally take place over a period of some weeks, in one and two hour sessions scheduled so as not to interfere with school or work. A mixture of individual, family and group work and activities are aimed at addressing issues related to the offence, increasing awareness of the impact on the victim, considering how to prevent future offending, and otherwise making constructive use of time.
Community Service Orders	Children 16 years or older found guilty of an offence that would otherwise be punishable by detention or imprisonment can be sentenced instead to 40-240 hours of unpaid work in the community.

3.1.3 Deprivation of liberty

Rules relating to the sentencing of child offenders are contained in the Powers of Criminal Courts (Sentencing) Act 2000 for England and Wales and the Justice (Northern Ireland) Act 2002 for **Northern Ireland**. These Acts provide for a range of sentences against child offenders from Youth Offender Contracts to custodial sentences (see [Section 3.1.2](#) above for further details).

However, as Sentencing Guidelines indicate¹⁶²: "Under both domestic law and international convention, a custodial sentence must be imposed only as a "measure of last resort"; statute¹⁶³ provides that such a sentence may be imposed only where an offence is "so serious that neither a community sentence nor a fine alone can be justified".

It should be noted that **Northern Ireland** is in the process of developing its own sentencing guidelines mechanism. These guidelines are maintained on the Judicial Studies Board website and consist of a combination of Court of Appeal Sentencing Guidelines, Crown

¹⁶⁰ [Youth Justice Agency Website](#).

¹⁶¹ [Youth Justice Agency Northern Ireland: Court Outcomes](#).

¹⁶² [Definitive Guideline: Overarching Principles Sentencing Youths](#), 2009, Para 11.5.

¹⁶³ Criminal Justice Act 2003, Section152(2).

Court Sentencing Guidance and Magistrates' Courts Sentencing Guidelines¹⁶⁴. Moreover, case law of the Court of Appeal has established that with respect to **Northern Ireland**, guidance provided by the Sentencing Guidelines Council (of **England and Wales**) is secondary to guidelines provided by the Court of Appeal. However, where the guidelines accord with local experience they may be followed¹⁶⁵.

Limited specific rules have been identified for **Northern Ireland** on youth sentencing and it is unclear to what extent the guidelines established by the Sentencing Guidelines Council for England and Wales are followed in this respect. The Northern Ireland Magistrates' Courts Sentencing Guidelines do state that it is generally considered that an offender's youth shall be viewed as a mitigating factor in any offence, though it also notes Court of Appeal case law which states that the court has not given significant discount (on sentences) on the basis that the offender was young¹⁶⁶.

Determination of a custodial sentence

The Sentencing guidelines set out in detail the circumstances courts must take into account when determining whether to sentence a child to custody and on the length of any such sentence. Key factors taken into account include:

- custody is the last resort;
- the offender cannot properly be dealt with by a fine alone or by a youth rehabilitation order;
- a youth rehabilitation order with intensive supervision and surveillance or with fostering cannot be justified;
- account should be taken of the circumstances, age and maturity of the child offender;
- whether the offence has resulted (or could reasonably have resulted) in serious harm;
- In determining whether a custodial sentence is unavoidable, generally, a court will need to take account both of the seriousness of the offence (particularly the extent to which it caused (or was likely to cause) serious harm) and of the risk of serious harm in the future. A custodial sentence is most likely to be unavoidable where it is necessary to protect the public from serious harm;
- the requirement to have regard to the principal aim of the youth justice system i.e. the prevention of offending;
- the requirement to have regard to the welfare of the offender and the evidence that the risks associated with child offenders in a custodial setting are high.

Determination of length of sentence

With respect to the length of sentence, the basic principle is that a court must impose the shortest term commensurate with the seriousness of the offence(s)¹⁶⁷. Beyond that, a range of principles and guidelines are applied¹⁶⁸.

Where the offender is aged 15 to 17, the court must consider the maturity of the offender as well as their age. As a starting point, the guidelines suggest a sentence from half to three quarters of that which would have been applicable for an adult offender where there are no statutory requirements.

Where the child is 14 or less, the "sentence should normally be imposed in a youth court (except in cases of homicide or where the young person comes within the "dangerous

¹⁶⁴ [See the Report by the Lord Chief Justice's Sentencing Group.](#)

¹⁶⁵ Attorney General's Reference (Number 1 of 2008), Gibbons et al. [2008] NICA 41 at para 44.

¹⁶⁶ Attorney General's Reference (Number 3 of 2006) Gilbert([2006] NICA 16.

¹⁶⁷ Section 153(2) Criminal Justice Act 2003.

¹⁶⁸ [Definitive Guideline: Overarching Principles Sentencing Youths](#), 2009, para 11.16.

offender” criteria); the length of a custodial sentence will normally be shorter than for an offender aged 15–17 convicted of the same offence.”

The guidelines also indicate that ‘an offender aged 14 years or less should be sentenced to long term detention only where that is necessary for the protection of the public either because of the risk of serious harm from future offending or because of the persistence of offending behaviour; exceptionally, such a sentence may be appropriate where an offender aged 14 years or less has committed a very serious offence but is not a persistent offender and there is no risk of serious harm from future offending.’

The Secure Estate – England and Wales

No person under 21 may have a sentence of imprisonment passed on them nor be committed to prison¹⁶⁹. Nevertheless, children (that is those under 18 years) may be committed to establishments specifically designed for young offenders¹⁷⁰. These are known collectively as the “Youth Secure Estate”.

The Youth Justice Board (YJB) decides in which part of the secure estate a child should be held. The decision is based on:

- an assessment of the young person’s individual risks and needs, provided by the youth offending team (YOT) responsible for him or her;
- trying to keep the young person as close to home as possible where appropriate;
- the availability of places;;
- the age, gender, maturity, and risks associated with the young person.

There are three types of secure accommodation in which a child offender can be placed¹⁷¹:

- Secure Children’s Homes (SCHs) – SCHs are generally used to accommodate child offenders aged 12 to 14, girls up to the age of 16, and 15 to 16 year old boys who are assessed as vulnerable. They accommodate children who are placed there on a secure welfare order for the protection of themselves or others, and for those placed under criminal justice legislation. SCHs have the highest ratio of staff to young people
- Secure Training Centres (STCs) – STCs are purpose-built centres for young offenders up to the age of 17. STCs can accommodate both male and female children who are held separately. They are run by private providers under contracts, which set out detailed operational specifications and requirements. The typical staff-to-young people ratio in an STC is 3:8; and
- Young Offender Institutions (YOIs) – Under-18 YOIs accommodate 15 to 17 year olds and are run either by NOMS or by the private sector. Most YOIs are for males only though there are also three dedicated female units. The YJB commissions and purchases the places for under-18s (i.e. 15 to 17-year-old boys and 17- year-old girls), who are held in units that are completely separate from those YOIs for 18 to 21-year-olds (young adults). About 81% of young people in custody are held in YOIs. As the YJB explains “YOIs have lower ratios of staff to young people than STCs and secure children’s homes, and accommodate larger numbers of young people. Consequently, they are less able to address the individual needs of young people, and are generally considered to be less suitable accommodation for those who have been assessed as more vulnerable”¹⁷²; However, the YJB has commissioned a small number of specialist units within the YOI estate to meet the need of long-termers and those with high risk factors to ensure that those who are vulnerable within this sector are catered for.

A breakdown of the secure estate for **England and Wales** is provided in the table below:

¹⁶⁹ Section 89 of [Powers of Criminal Courts \(Sentencing\) Act 2000](#).

¹⁷⁰ Section 43 Prison Act 1953 as amended by S. 11 of the Criminal Justice Act 1982.

¹⁷¹ Youth Justice Board Corporate Brochure: Introduction to the work of the YJB within the secure estate.

¹⁷² Youth Justice Board Corporate Brochure: [Introduction to the work of the YJB within the secure estate](#).

	Secure children's homes	Secure training centres (STCs)	Male young offender institution (YOIs) units	Female YOI units
Age range and characteristics	10-17 year olds	12-17 year olds	15-17 year old boys	17 year old girls
Number of establishments commissioned	10	4	9	3
Court routes	Court-ordered secure remand (COSR), all sentences (plus s20 secure welfare order)	COSR, all sentences	Remand, all sentences	Remand, all sentences
Size	Varies – 8 bed unit to 34 bed	53 to 87 bed units	Wings accommodating 30-60 young people on each	Varies – 16 bed unit to 26 bed
Design	Inherited local authority accommodation. Often single storey and open plan with a domestic and homely feel	Newly built, one or two-story house-blocks facing inwards towards a grass area	Varied and inherited accommodation. Larger prison design often multi-storey, though with some modernisation and new, purpose built units (e.g. Keppel Unit, see below)	Newly built, two storey, self-contained i.e. living accommodation, education, group work rooms
Staffing levels (staff: child ratio)	Varies but generally 6:8, 2:3 and 1:2 per unit	2:5, 2:6, 2:7 and 3:8 ratio per unit	3/6:30-60 ratio per unit/wing	4/6:16
Regime	Therapeutic environment, 30 hours of education and key worker to meet individual offending behaviour & emotional needs	25 hours per week of education, one hour per day of crime avoidance, 24 hours per week of basic domestic skills training & 24 hours per week of social education	25 hours per week of educational and constructive activity including evening and weekend activities	25 hours per week of educational and constructive activity, including evening and weekend activities
Typical length of time out of room	14 hours	14 hours	10 hours	10 hours

Juvenile Justice Centres - Northern Ireland

As of 1 November 2012, detention of under 18s ceased in all but exceptional circumstances. Custody for children in **Northern Ireland** is thus provided by Woodlands Juvenile Justice Centre which has been designed as a centre of excellence within a secure environment,

offering a wide range of services and support to help prevent young people from reoffending¹⁷³.

It provides a safe, secure and stimulating environment for up to 48 boys and girls between the ages of 10 and 17 who have been remanded or sentenced to custody by the courts. It also operates as a place of safety for PACE purposes.

According to the most recent report of the Criminal Justice Inspection Northern Ireland¹⁷⁴, the centre moved into new purpose built accommodation in 2007 comprised of six self contained living units clustered around an education area. Eight of the 48 places were reserved for girls and on the basis of established occupancy levels it was staffed for 36 children.

Conditions of detention

Performance standards for the delivery of the Secure Estate are established through the National Standards for Youth Justice Services which are approved by the Justice Secretary on advice from the YJB. In addition, secondary legislation governs the operation of each sector of the secure estate. Moreover, pre-sentence reports are provided to the court to assist it in determining an appropriate sentence. Amongst the information provided are parenting support needs and welfare considerations and health needs¹⁷⁵.

In addition, a set of principles has been developed to provide a framework for the commissioning and delivery of services in custody¹⁷⁶.

1. The secure estate for children and young people should be distinct from adult provision and specialist in its focus on children and young people;
2. Commissioned services should recognise diversity and promote equality proactively;
3. Commissioned services should maintain the safety and well-being of children and young people placed in custody and actively incorporate the views of young people;
4. Interventions to address offending behaviour should be based on evidence of effectiveness and their delivery informed by thorough assessment and individualised sentence planning processes;
5. Service providers should recognise and promote children and young people's potential, enabling them to lead healthy, crime-free lives on release.

Finally, with respect to education needs, according to the YJB, children in custody receive compulsory education and training (for between 25 and 30 hours a week), which is monitored by Ofsted¹⁷⁷ like all other schools. The YJB's National Specification for Learning and Skills (2004) describes the education, training and employment that SCH's and STCs must provide. YOI and STCs are legally required to provide education to young people in custody.¹⁷⁸ The Learning and Skills Council monitors the quality of the provision of such education.. It should also be noted that young offender institutes cater for young offenders aged 15-21 years. They are separated into juvenile units boys aged 15.-17 years of age and young offender areas for those aged 18 to 21. Young female offenders and placed in self contained girls units and operate as young offender institutions¹⁷⁹.

With respect to the Woodlands centre in **Northern Ireland**, legislation firstly establishes that Juvenile Justice Centres are places in which child offenders may be detained and given

¹⁷³ [Established by the Criminal Justice \(Children\) \(Northern Ireland\) Order 1998.](#)

¹⁷⁴ 'An announced inspection of Woodlands Juvenile Justice Centre', November 2001.

¹⁷⁵ [Case management guidance: Reports for courts and youth offender panels.](#)

¹⁷⁶ [Developing the Secure Estate for Children and Young People in England and Wales 'Plans until 2015'](#); Youth Justice Board for England and Wales and the Ministry of Justice.

¹⁷⁷ [The Office for Standards in Education](#), Children's Services and Skills inspects and regulates services which care for children and young people, and those providing education and skills for learners of all ages to Parliament and we are independent and impartial.

¹⁷⁸ Section 38, The Young Offender Institution Rules 2000, as amended.

¹⁷⁹ Transition through detention and custody; Ofsted, May 2010.

training and education and prepared for release¹⁸⁰. In addition, statutory rules set out in detail the objectives and operational rules of the centre. These state that the aims of the centre are to:

- protect the public by accommodating children ordered to be detained therein in a safe, secure and caring environment; and
- work to reintegrate children into the community.

They also set out principles by which these aims should be achieved. These include:

- children shall be held in a safe, secure and caring environment which promotes their health, well-being and best interests; .
- a centre shall provide a positive and purposeful environment offering high standards of education and programmes to support learning, challenge offending behaviour and promote active citizenship;
- children and their families shall be treated fairly, equitably and with dignity and respect, and children and their families shall be encouraged and enabled to contribute to decisions which affect them;
- a centre shall work in partnership with other statutory or voluntary agencies and, in particular, those responsible for a child's supervision under a juvenile justice centre order;
- due regard shall be paid to the privacy of the children consistent with safety, security and communal living

Legislation also sets out detailed rules on the operation of the centre with respect to such matters as provision of health care, communications, learning and developments, security and safety etc. Specifically with respect to education and based on the 2011 inspection of the Juvenile Justice centre, all children in the centre irrespective of age and status were required to attend education. A total of 25 hours of education were provided each week to all children. Statutory rules provide that where a child is of compulsory school age, education should be provided as far as possible in according with Existing education legislation¹⁸¹.

The Department of Justice in **Northern Ireland** is about to undertake a consultation exercise on the issue of custodial arrangements for children in NI with a view to refreshing legislation relating to youth custody. The outcome of this consultation is not expected until 2014.

3.1.4 Criminal records

In **England and Wales**, most criminal convictions are 'spent' after a period of time determined by the nature of the crime and the length of the sentence imposed. Time periods required for convictions to be spent differ in **Northern Ireland** when compared to, for example, **England and Wales**. Any prison sentence of more than 30 months – for adults or juveniles – is never spent. Sentences of 30 months or less, however, have reduced periods for convictions to be spent for those under 17 at time of conviction. For those under 17, rehabilitation periods are half of what they are for adults.

A spent conviction need not be reported to prospective employers or others who inquire regarding a criminal background, except for certain types of jobs involving contact with vulnerable populations including children. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 modified the relevant time periods and lists of offences for **England and Wales**, but did not change the basic framework. The Government has also introduced legislation which, if enacted, will filter out from criminal record checks some cautions and convictions. Further details will be available once the legislation is passed.

¹⁸⁰ Section 51, Criminal Justice (Children) (Northern Ireland) Order 1998.

¹⁸¹ Namely Article 4 of the [Education Reform \(Northern Ireland\) Order 1989](#). The Order covers such matters as the education curriculum.

In **England and Wales**, a criminal record is not automatically cleared when a child offender reaches the age of 18, but the time periods required for a conviction to be spent are significantly shortened for child offenders. For example an adult sentenced to more than 30 months and up to 48 months in detention must maintain good behaviour for a 'rehabilitation period' of 7 years following completion of the sentence, whereas this period is halved in the case of a child. Depending on the sanction, the ratio between youth and adult rehabilitation periods varies. Fines and youth rehabilitation orders are spent six months after completion of their terms, and compensation orders are spent as soon as the compensation is paid.¹⁸² Anti-Social Behaviour Orders and warnings do not appear on a criminal record. All convictions are retained in the Police National Computer until the individual's 100th birthday¹⁸³.

An employer may ask an individual to apply for a criminal background report (Disclosure and Barring Service check). The employer may only make this request in relation to certain listed posts and professions, nearly all of which are specified in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975. Some of these jobs, also included in Police Act Regulations, are subject to enhanced checks¹⁸⁴. There are no special provisions regarding child offenders. From September 2012, the minimum age at which someone may request a Disclosure and Barring Service check in **England and Wales** is 16¹⁸⁵. Except for courts and other appropriate public bodies, access to criminal records is not provided outside of the Disclosure and Disbarring Service framework.

In **Northern Ireland**, criminal record checks are provided by AccessNI under Part V of the Police Act 1997. In addition to standard and enhanced checks, AccessNI also provides basic checks; in these checks the information is limited to unspent convictions only. These are used by both public and private sector employers, mainly for positions of trust, but not where an individual is seeking to work with vulnerable groups.

The minimum age for any AccessNI check is 10, in line with the age of criminal responsibility. In 2014 the minimum age for an AccessNI check will increase to 16 years, except where the position is home-based, for example, children of a foster parent or child-minder.

¹⁸² [Legal Aid, Sentencing and Punishment of Criminal Offenders Act 2012, article 139\(4\)](#).

¹⁸³ [Home Office, Disclosure and Barring Service: frequently asked questions](#).

¹⁸⁴ [Home Office, Disclosure and Barring Service, DBS checks: availability guidance](#).

¹⁸⁵ [Home Office, Changes to disclosure and barring: What you need to know](#).

4 Strengths and Potential Gaps

It is evident from the above research that **England, Wales and Northern Ireland** have a comprehensive system of protection for children involved in criminal proceedings which is established through legislation, codes of practice, practice guidelines and policy statements and commitments. This system closely follows the requirements established in the UN Convention on the Rights of the Child as explained through the Child friendly justice guidelines. In addition, the obligations arising from the UN Convention on the Rights of the Child are recognised frequently in such documents and legislation in place since 1933 established the foundations for appropriate treatment of children taking into account their welfare and best interests.

From the perspective of **child victims and witnesses**, although specialist institutions within criminal justice agencies have not generally been established, with the exception perhaps of child witness services in **Northern Ireland**, the special needs of children are recognised and catered for through statute based protection measures as well as requirements imposed on authorities in the treatment of children.

Thus child victims should receive risk assessments, should be offered measures to help them provide evidence and participate in proceedings whilst reducing secondary victimisation. In addition, one of the largest (if not the largest) victim support organisations in the world, receives referrals direct from the police and is able to assist child victims whether they participate in proceedings or not.

Overall, the [2009 Report of a Joint Thematic Review of Victim and Witness Experiences in the Criminal Justice System](#)¹⁸⁶ found that 'Considerable progress has been made since this time and the general level of service provided to prosecution witnesses has improved significantly. The setting up of dedicated Witness Care Units has been central to this. These, together with a range of other initiatives to improve victim and witness care over recent years, have contributed to a cultural shift. There is now a far greater awareness and appreciation of the need to consider the needs of victims and witnesses at all stages of the criminal justice process.'

It is worth noting that even where legislation does not require certain action, many policies and procedures are nevertheless in place to increase protection. For example, the [Press Complaints Commission's Code of Practice](#) states that the press must not identify children under the age of 16 who are involved in cases concerning sexual offences, even if legally free to do so.

Achieving policy objectives through non-legislative means is common place within the UK system. It provides for flexibility and pragmatism. However, it also risks that measures are not put in place in practice.

However, despite the wide range of legislation and guidelines in place a number of concerns have been raised with respect to the practical application of these measures. For example, whilst there are clear guidelines and special measures available when the police deal with child victims and witnesses, a Joint Inspectorate report about the practical implementation of obligations found that the service provided to them by police front line officers was variable with the needs of vulnerable and intimidated witnesses not always identified at early stages of proceedings and officers not always having sufficient understanding of special measures.

Although victim impact statements have been established to facilitate victims' participation in proceedings, it was found that not all victims are being given an opportunity to make Victim Personal Statements and the extent of victims' knowledge of victim impact statements varies.

Moreover, although protocol and policy guidelines have been established to improve joint working it was found that the large number of organisations operating in the victim's field

¹⁸⁶ The findings on victims largely reflect the [2008 joint chief inspectors report on arrangements to safeguard children](#).

together with a wide range of initiatives has caused confusion and duplication in the delivery of services.

A follow up joint report published in 2012¹⁸⁷, specifically focussing on young victims, noted that 'Progress against recommendations made in the original review has been limited'. Key issues it raised included: Initial needs analyses still not undertaken regularly by the police and needs are not identified as regularly as they should be by the Crown Prosecution Service (CPS), information from the criminal justice agencies to witness care units (WCUs) continues not to be passed to them in good time, and limited progress has been made in ensuring appropriate Victim Personal Statements are made. It concluded by stating that 'This review has shown, however, that the shortcomings that continue to exist in the way the CJS responds to victims and witnesses, apply equally to the young, and have the potential to have far reaching and distressing consequences.'

Similarly the NSPCC's report '[Measuring Up](#)' which evaluated the implementation of Government commitments to young witnesses in criminal proceedings, found that "the proportion of young people receiving direct help before trial was disappointing', that there was a lack of continuity in support e.g. children being provided with different supporters rather than the same one, many children interviewed for the report identified difficulties in answering questions during trial, pre-trial delays were on average longer than reported for all criminal cases, low rate of audio-visual recording of police interviews, etc. A follow up to this report indicates a number of areas where the government is addressing concerns but also recognises a wide range of areas where further work is needed¹⁸⁸.

Overall, the primary weakness with respect to victims and witnesses appears to be the failure to fully implement all guidelines and legislation as envisaged.

From the **suspect's perspective**, a separate youth justice system is in place focused on preventing offending and ensuring the welfare and development of the child. It has established a separate child based court system with procedures to avoid formal judicial proceedings, to protect children when they enter proceedings, to ensure that sentences are properly focussed on rehabilitation and education, and that there is a separate child detention system in place to meet those objectives.

Nevertheless, despite such a system, a number of organisations have expressed concerns either over the treatment of children in criminal proceedings, or more generally with respect to certain aspects of the system.

Key issues which have received particular attention are:

- the age of criminal responsibility of children which starts at 10 in **England, Wales and Northern Ireland**. In particular, in a [2008 Memorandum](#)¹⁸⁹, the Council of Europe's, Thomas Hammarberg, noted 'the very low age of criminal responsibility in the UK, the Commissioner recommends that the Government considerably increase the age of criminal responsibility to bring it in line with the rest of Europe, where the average age of criminal responsibility is 14 or 15';
- the extent to which children are arrested and brought into formal criminal proceedings. Whilst significant reductions in arrests of young people can be seen (a fall of 13 per cent from 2009/10 to 2010/11) there were nevertheless still 210,660 arrests in 2010/11. Similarly whilst the average population in custody (under 18) in 2011/12 was 1,963 (down four per cent from an average of 2,040 in 2010/11), this rate is still comparatively high compared with rates in other Member States. However, there is a positive trend in

¹⁸⁷ [Joint Inspection Report on the Experience of Young Victims and Witnesses in the Criminal Justice System, 2012.](#)

¹⁸⁸ [Young Witnesses in criminal proceedings: A progress report on Measuring Up? \(2009\)](#), Joyce Plotnikoff and Richard Woolfson, 2011.

¹⁸⁹ Following two visits to the UK made in 2008.

this area and this is the first time the average population has fallen below 2,000 in the last decade¹⁹⁰.

- Current legislation, in **England and Wales**, differentiates between the treatment of 17 year olds and those below 17 when first taken into custody for questioning – with 17 year olds being treated as adults. However, recently the High court has ruled such practice illegal and the Home Secretary has announced that the Government intends to amend the Code by October 2013. In addition, the Association of Chief Police Officers issued interim guidance advising that with immediate effect police officers should allow 17 year olds the services of an appropriate adult¹⁹¹.
- concerns have been expressed about custody conditions: Inspections found that custody facilities at court range from good to unacceptable¹⁹²; HM Inspectorate of Prisons noted concerns that ‘All young men continued to be routinely strip-searched on arrival at the establishment, contrary to our expectations’ - a practice also of concern to the Council of Europe’s Human Rights Commissioner, and that in most male establishments, ‘the use of force continued to be high but there was increasing evidence that de-escalation techniques were being used more’ Restraint techniques have been criticised by the Council of Europe and the UN. Finally concerns have been raised over the number of child deaths in custody¹⁹³.
- Whilst child defendants are generally heard in a specialist youth court, this is not the case for certain serious offences or where the child is being tried alongside an adult defendant. As a result child defendants in this situation lose a number of the child friendly protection measures found in the youth justice system.
- With respect to **Northern Ireland** concerns have been raised over the frequency with which children are remanded into temporary custody pending proceedings, in particular given that in many cases, the proceedings do not result in a custodial sentence¹⁹⁴. However, it should be noted that positive improvements were being made and that custodial arrangements are under review.

More generally, in relation to suspect, victims and witnesses, a number of training programmes are available to all practitioners who work with children. A recent example of good practice in this field is the development of the Advocate's Gateway, which is a free website¹⁹⁵ for lawyers and the judiciary providing toolkits on questioning vulnerable witnesses and defendants. Some judges are already requiring advocates to read the relevant toolkit before cross-examination. The toolkits include one on questioning children and young people and another on questioning children under 7. A toolkit on the effective participation of young defendants is in development. The Advocacy Training Council will launch the new Advocate's Gateway website with updated toolkits in April 2013.

¹⁹⁰ [Youth Justice Statistics 2011/12: England and Wales. \(2013\) Youth Justice Board / Ministry of Justice Statistical Bulletin.](#)

¹⁹¹ [http://www.crimeline.info/news/appropriate-adults-and-17-year-olds.](http://www.crimeline.info/news/appropriate-adults-and-17-year-olds)

¹⁹² Safeguarding children, Joint inspection.

¹⁹³ E.g. UNHCR 2008 concluding observations on the UK’s implementation of the UN Convention on the Rights of the Child or the Report [Fatally flawed](#) which indicates that 31 children have died in prison from 1990 – 2011.

¹⁹⁴ See for example [Criminal Justice Inspection Northern Ireland, ‘An announced inspection of Woodlands Juvenile Justice Centre’, November 2011.](#)

¹⁹⁵ [The Advocate's Gateway: Toolkits.](#)

Conclusions

In **England, Wales and Northern Ireland** a wide ranging legal and policy framework is in place for the protection of child victims, witnesses and suspects, either with a child specific focus or through measures applicable also to adults.

With respect to child suspects, the age of criminal responsibility begins at 10 and **England and Wales** have in place a Youth Justice system aimed at preventing offending by children under the age of 18. Actions are aimed at discouraging or preventing offending in the first place, by diverting children from the criminal justice system and introducing a range of out-of-court disposals, and by managing the overall welfare of child offenders to help reduce reoffending

In contrast child victims and witnesses must go through the formal criminal justice system where the offender is an adult. Some specific rules and procedures exist for dealing with child victims in criminal proceedings but these are not extensive. For the most part, such matters are dealt with through guidelines and advisory information.

Nevertheless, a victim or witness under 18 is automatically regarded as being vulnerable and therefore eligible for special measures. In addition, wide ranging legislation has been in place since 1933 establishing a child protection system focussed on protecting children from neglect and abuse.

With respect to the general approach taken towards children, it is clear from publications that criminal justice agencies and the government are conscious of their obligations as established under the UN Convention on the Rights of the Child. The starting point is that any victim, suspect or witness under the age of 18 is effectively considered to be a child¹⁹⁶ and as such subject to special measures, assistance or treatment under the youth justice system. Furthermore, the general policy taken by the government and the main services of police, prosecution and courts, is that children should be protected within the system but should be provided with sufficient opportunity to participate in the proceedings and to provide their views in accordance with abilities.

A wide range of organisations are in place with the objective of assisting specifically children involved in criminal proceedings or children and adults. In addition, a large number of monitoring bodies exist which review the operation of criminal justice authorities and the treatment of people within the criminal justice system.

Nevertheless, and perhaps as a result of this extensive monitoring, a range of problems have been identified as occurring in practice. For example, the failure to meet on a consistent basis minimum standards on needs assessments and the linked failure to identify the needs of child victims. With respect to child suspects, concerns have been raised over the low age of criminal responsibility, the high rate of youth custody and the treatment of children in custody. In **Northern Ireland** with the roll out of the victim and witness care unit, a three stage needs assessment process will be introduced.

However, it must also be recognised that in **England, Wales and Northern Ireland** there is a strong commitment to continual reform and improvement which is reflected in the regular reviews of policies and the updating of legislation.

¹⁹⁶ [Section 107 of the Children and Young Persons Act 1933](#) differentiates between a child (aged below 14) and young persons (aged from 14-18).

Annex – Legislation reviewed during the writing of this report

England and Wales

- Legal Aid, Sentencing and Punishment of Offenders Act 2012, 1 May 2012
- Equality Act 2010, 8 April 2010 (For Wales, Equality Act (Statutory Duties) (Wales) Regulations 2011, 6 April 2011
- Coroners and Justice Act 2009, 12 November 2009
- Criminal Justice and Immigration Act 2008, 8 May 2008
- Tribunals, Courts and Enforcement Act 2007, 19 July 2007
- Children Act 2004, 15 November 2004
- Domestic Violence, Crime and Victims Act 2004, 15 November 2004
- Criminal Justice Act 2003, 20 November 2003
- Magistrates' Courts (Special Measures Directions) Rules 2002, 24 July 2002
- Powers of Criminal Courts (Sentencing) Act 2000, 25 May 2000
- Young Offender Institution Rules 2000, 1 April 2001
- Youth and Justice Criminal Evidence Act 1999, 27 July 1999
- Crime and Disorder Act, 31 July 1998
- Protection from Harassment Act 1997, 21 March 1997
- Criminal Injuries Compensation Act 1995, 8 November 1985
- Police Act Regulations 1997 (several amendments, last amendment 17 June 2013)
- Criminal Justice and Public Order Act 1994, 3 November 1994
- Magistrates' Courts (Children and Young Persons) Rules 1992, 1 October 1992
- Sexual Offences Amendment Act 1992, 16 March 1992
- Children Act 1989, 16 November 1989
- Prosecution of Offences Act 1985, 23 May 1985
- Police and Criminal Evidence Act 1984, 31 October 1984
- Criminal Justice Act 1982, 28 October 1982
- Magistrates Courts Act 1980, 1 August 1980
- Bail Act 1976, 15 November 1976
- Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, 1 July 1975
- Parliamentary Commissioner Act 1967, 22 March 1967
- Children and Young Persons Act 1963, 31 July 1963
- Children and Young Persons Act 1933, 13 April 1933

Northern Ireland

- Justice Act (Northern Ireland) 2011, 4 May 2011
- The Police Act 1997 (Criminal Records) (Registration) Regulations (Northern Ireland) 2007, 17 December 2007
- Anti-social Behaviour (Northern Ireland) Order 2004, 27 July 2004
- Youth Conference Rules (Northern Ireland) 2003, 18 December 2003

- Commissioner for Children and Young People (Northern Ireland) Order 2003, 27 February 2003
- Justice (Northern Ireland) Act 2002, 24 July 2002
- Criminal Evidence (Northern Ireland) Order 1999, 12 October 1999
- Northern Ireland Act 1998, 19 November 1998
- Human Rights Act 1998, 9 November 1998
- Criminal Justice (Children) (1998 Order) (Commencement No. 1) Order (Northern Ireland) 1998, 20 July 1998
- Criminal Justice (Children) (Northern Ireland) Order 1998, 24 June 1998
- Children (NI) Order 1995, 15 March 1995
- Education Reform (Northern Ireland) Order 1989, 19 December 1989
- Police and Criminal Evidence (Northern Ireland) Order 1989, 2 August 1989
- Police and Criminal Evidence Act 1984, 31 October 1984
- Legal Aid, Advice and Assistance (Northern Ireland) Order 1981, 18 February 1981
- Prison Act 1953, 19 May 1953