



**CHILDREN IN  
CONFLICT WITH  
THE LAW:**  
short report

## WHAT IS THIS REPORT ABOUT?

This report looks at Scotland's laws for children aged 16 and 17 when they are in contact with the justice system because they are believed to have committed a crime - sometimes called **children in conflict with the law**.

It asks if these laws protect children's human rights. It also asks if they keep the promises set out in the UN Convention on the Rights of the Child (UNCRC).

This report is needed because the Scottish Government is making the UNCRC part of Scotland's laws. The process of doing this is called **incorporation**. To get incorporation right, the laws that already exist here must not break children's rights. If they don't, children will be able to challenge this.

## WHAT IS THE UNCRC?

The **UNCRC** sets out the rights that all children have until at least the age of 18.

**Article 40** of the UNCRC is particularly important for children in conflict with the law.

It says that they have the right to special protection and to be treated fairly, even if they are accused of committing a crime.

**Article 37** is also important. It says that children should not be punished in a cruel or harmful way, including that their liberty should only be taken away as a last resort.

## WHO MAKES SURE SCOTLAND KEEPS CHILDREN'S RIGHTS PROMISES?

The UN Committee on the Rights of the Child is a group of international children's rights experts who check whether States are keeping their human rights promises under the UNCRC. The Children's and Young People's Commissioner works to make sure those promises are kept in Scotland by promoting and protecting children's human rights.



# CHILDREN IN CONFLICT WITH THE LAW

## WHY DO CHILDREN IN CONFLICT WITH THE LAW NEED SPECIAL PROTECTION?

It is important people are protected from crime, including crimes committed by children, and that victims are given some remedy.

However, this has to be balanced with the fact that some children in conflict with the law may have experienced difficulties in their childhood - such as poverty, family breakdown or drug and alcohol use - which has led to their behaviour.

Some of them may also be victims themselves.

Where the law says that a child should be punished for their actions in the criminal justice system, this can impact their future. States must recognise children's vulnerability **"both as victims and perpetrators of crime"**.

The Committee also explains that children in conflict with the law must be given special protection and be supported, not punished.

## HOW DOES THE UNCRC DEFINE A CHILD?

Article 1 of the UNCRC says that all people under the age of 18 are children and are entitled to the rights in the UNCRC, no matter who they are or what they have done.

## HOW DOES SCOTS LAW DEFINE A CHILD?

When a person aged 16 or 17 is accused of a crime, the law in Scotland does not always recognise them as children. There are some laws which say a 16 or 17-year-old is only a child if they have been to a Children's Hearing and a Compulsory Supervision Order is in place.

As a result of these laws, there are many 16 and 17-year-olds in Scotland who are treated as adults in adult courts when they commit crimes.

## WHAT HAVE CHILDREN AND YOUNG PEOPLE SAID ABOUT THIS?

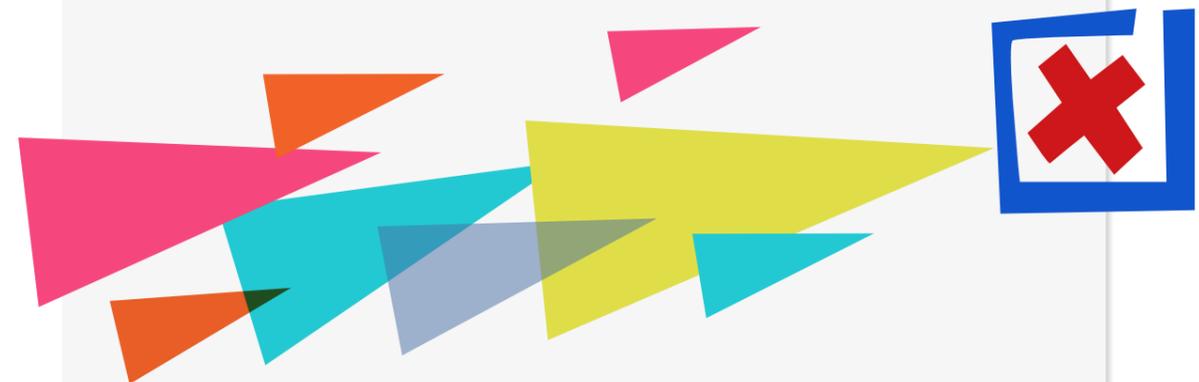
One young person who has experience of the adult criminal justice system told us they thought being treated as an adult was unfair. They said:

*"You're not a child anymore, you've committed this offence, now you're a monster instead."*

## WHAT HAS THE COMMITTEE SAID ABOUT THIS?

The Committee has said the law in Scotland is wrong and does not comply with the UNCRC.

This report looks at two worrying consequences of this, which are the right to a fair trial and the right to liberty.



## THE RIGHT TO A FAIR TRIAL

Article 40 of the UNCRC says that, wherever possible, children in conflict with the law should be treated as children and not like adults in an adult court.

However, where this can't be avoided, the Committee says that children should instead be able to go to specialist child settings.

This would include Scotland's Children's Hearing System.

One of the reasons this is important is so that the child has a fair trial.

### WHAT HAPPENS IN SCOTLAND?

In 2018/19, 83% of 16 and 17-year-olds who were prosecuted for their offending behaviour were dealt with in the adult courts and only 17% were dealt with in the Children's Hearing System.

### WHAT DO CHILDREN AND YOUNG PEOPLE THINK ABOUT THIS?

Some told us that they didn't understand their trial:

*"I don't think I understood really... what I'd done or the seriousness of it or the process or not really anything about it."*

### WHAT SHOULD HAPPEN NOW?

This report recommends that:

Scots law must recognise all people under 18 as children in order to follow the UNCRC.

No child under 18 should ever be tried in an adult criminal court. Instead, they should be treated as children and be able to go to the Children's Hearing System where this is possible.

If it not possible (for example, because the child's offence is too serious) then the report asks the Scottish Government to consider developing child-centred alternatives to adult criminal courts.

The child's welfare and what is in their best interests interests should always be the most important consideration.



# THE RIGHT TO LIBERTY AND TO BE PROTECTED FROM PRISON

## WHAT IS THE RIGHT TO LIBERTY?

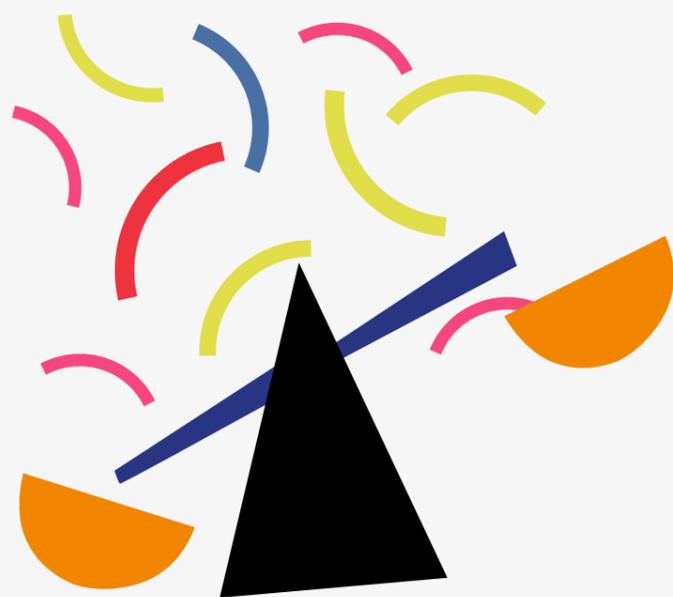
Everyone has the right to liberty, or freedom, which protects us from being detained for no good reason.

When someone is detained, they are kept somewhere and not allowed to leave, and they are under constant supervision and control.

This could include being arrested, being placed in a police cell or being sent to live in secure care centre or prison.

The impact of this can be particularly serious for children, so the UNCRC provides them with additional protections.

Article 37 says that children should only have their liberty taken away as a last resort and for the shortest period of time possible. This is particularly important when a child is on remand (detained until their trial at court).



## WHAT HAPPENS IN SCOTLAND WHERE A CHILD NEEDS TO HAVE THEIR LIBERTY TAKEN AWAY?

If a 16 or 17-year-old is not under a Compulsory Supervision Order, and a court decides that they need to be detained, the law says that they can be placed in a Young Offender Institution or a prison.

Courts can also place younger children, or 16 and 17-year-olds who **are** under a Compulsory Supervision Order, in a secure care centre. The main aim in doing this is to support that child, not to punish them.

## WHAT HAS THE UN COMMITTEE SAID ABOUT THIS?

In its report to the UK Government (called its Concluding Observations) in 2016, the UN Committee recommended that the law should be changed, to clearly state that detention must always be a last resort and happen for the shortest period of time possible.

## WHAT SHOULD HAPPEN NOW?

This report recommends:

No child under 18 should be placed in a prison or Young Offender Institution.

Scots law must change in order not to break the UNCRC, so that children can only be deprived of their liberty as a last resort and for the shortest time possible.

All people under 18 must be defined, and treated, as children.



# CONCLUSION

## WHAT HAPPENS NEXT?

It's an important time in Scotland for children's human rights as soon the UNCRC will be a part of the law in Scotland. However, this report shows there are key areas of Scots law which do not work in the way that the UNCRC says they must. This includes the child's right to a fair trial, to liberty and, above all, to be treated in a distinct child justice system.

We will use the information in this report to ask the Scottish Government to make changes to the current law. By doing this we will make sure the rights of all children, including children in conflict with the law, are properly respected, protected and fulfilled.

## ANY QUESTIONS?

If you have any questions or worries about what you've read in this report, you can talk to a parent or carer or another trusted adult in your life.

You can also speak to the Children and Young People's Commissioner if you have any questions or worries about your human rights on:

Free phone: 0800 019 1179

Text message: 0770 233 5720 (texts charged at standard network rate)

Email: [inbox@cypcs.org.uk](mailto:inbox@cypcs.org.uk)

You can also talk to Childline by free phone, on 0800 1111.

## WHO IS THE COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE?

The Commissioner is someone with authority and powers to promote and protect the human rights of all children and young people in Scotland. That is:

- Everyone under 18, and
- Everyone under 21 who is in care or care experienced

Childhood is special and those in power have additional promises in relation to children's human rights. Children and young people do not have the same power as adults, and often struggle to access justice in the same way that adults do, so the Commissioner's role exists to champion their rights.

This law says that the Commissioner must:

- Make sure that children, young people and adults know about children's human rights, and make sure they understand them.
- Make sure that people in power respect, protect and fulfil children's human rights.
- Make suggestions relevant to children's human rights to improve policies, the law, and the way that people work.
- Find examples of where adults work well with children and young people and share them with others who can learn from this.
- Carry out research into children and young people's lives and let adults know when the rights of children and young people are not being respected.
- Make sure adults listen to what children and young people have to say when decisions are being made that affect their lives.

**This report was written by Kate Whiting, LLM student at the University of Edinburgh, for the Children and Young People's Commissioner Scotland.**

**THANKS TO ALL THE YOUNG  
PEOPLE AND STAFF WHO TOOK  
THE TIME TO SPEAK TO US AND  
HELP US WITH THIS REPORT.**



**CHILDREN &  
YOUNG PEOPLE'S**  
Commissioner  
Scotland



Bridgeside House

99 McDonald Road

Edinburgh EH7 4NS

Tel: 0131 346 5350

Young Persons' Freephone: 0800 019 1179

Email: [inbox@cypcs.org.uk](mailto:inbox@cypcs.org.uk)

[cypcs.org.uk](http://cypcs.org.uk)

 [@cypcs](https://twitter.com/cypcs)  [@cypcs](https://www.instagram.com/cypcs)  [/cypcs](https://www.facebook.com/cypcs)

If you would like this document in  
another format, please let us know.