



Children and Young People's  
Centre for Justice

# Youth Justice in Scotland: Still fit for the future?

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Collaborating for rights-respecting justice  
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## Introduction

Looking back at the paper, [Youth Justice in Scotland: Fixed in the Past or Fit for the Future](#), written 10 years ago, highlights how far Scotland has travelled in meeting the ambitions we set at CYCJ. During these 10 years, progress has at times felt slow, particularly with the impact of the pandemic. However, on reflection, it is encouraging to see that we are continuing a trajectory of becoming a rights-respecting nation for children and young people in conflict with the law.

During the past 10 years, we have had some influential papers, reviews, changes in Government policy, and significant pieces of legislation passed in the Scottish Parliament. The Children (Care and Justice) (Scotland) Act 2024, the UNCRC Incorporation (Scotland) Act 2024, the Disclosure (Scotland) Act 2020, and the Age of Criminal Responsibility (Scotland) Act 2019, have all impacted the direction of travel in Scotland. The very influential Independent Care Review, which spoke to thousands of children and young people, leading to *The Promise (2020)*, made many recommendations; and our own CYCJ Rights Respecting report remains influential to Youth Justice policy today (Lightowler, 2020).

Due to these significant pieces of legislation, and the changes that have been achieved in Scotland, CYCJ felt it was time to review the ambitions we set in 2014 and set new ambitions to be achieved within the next 10 years.

This paper is structured into four parts. Firstly, we reflect on the state of youth justice 10 years ago when the first paper was published and the changes that have occurred since. We then examine the interplay of policy, research and practice in meeting our five ambitions; showing the influence of policy and research on direct practice. In the third section, we turn to the question of rights and what these mean for the current system, outlining three specific Articles of the United Nations Convention on the Rights of the Child (UNCRC) relating to children's rights for those who are in conflict with the law. Lastly, we conclude by summarising our new set of ambitions for Scotland to achieve over the next 10 years.

## Part I – Reflecting on the State of Youth Justice

While our 2014 paper concluded with hope for the future, there has been significant change and turmoil politically within the United Kingdom which has directly impacted Scotland. A decision was made for the UK to leave the European Union, and a pandemic affecting the world and life as we knew it, are just two significant events over the past 10 years. During this time, Scotland still made some progress and progressive legislation, and policies were implemented. Recorded crime in Scotland also fell during this time, from 315,779 crimes recorded 10 years ago in comparison to 299,780 recorded in 2023/24. This is a fall of 5%, which is a much lower rate of decrease than the previous decade which saw a fall of 35% in recorded crime, but still an overall decline.

This section outlines some of the significant political, social and economic policies and events during the past 10 years.

### Political and Economic Landscape

Just eight days after CYCJ's original paper was published in 2014, Scotland held a referendum on its place within the United Kingdom with the 'No' campaign succeeding through a 55% to 45% result. Whilst bruised by that referendum defeat, subsequent years have been hugely successful for the SNP, returning as the largest party on each occasion and leading majority and coalition governments during their time at Holyrood, and with substantial victories at each Westminster election until 2024. Mandates of such scale have allowed the SNP to push forward several legislative instruments that have significantly changed – or will soon change – Scotland's justice landscape. Whilst the SNP's parliamentary power has receded following the most recent Holyrood elections and the dissolution of the Bute House agreement, the past decade has been one of steady government in Edinburgh, particularly in comparison to the Westminster government. There, a succession of Prime Ministers has overseen a decade of political instability and an economy on the wane caused by drastic political and economic changes, with Labour taking power from the Conservative Party in the summer of 2024.

In addition to the political instability in the UK, and perhaps the source of this economic decline was the decision of the UK electorate in June 2016 to withdraw from the European Union, with that finally taking place on New Year's Day 2020. The political and financial impact of the withdrawal is not yet fully realised. However, official reports point to the deleterious impact this decision has had on the UK's economy (Office for Budget Responsibility, 2022). Indeed, the last decade has seen substantial economic challenges, all of which – of course – contribute to the aforementioned political disarray and push children towards conflict with the law (Jahanshahi et al., 2021). Austerity has continued, with the UK government's policy of reducing expenditure sharply and severely resulting in substantial cuts to public services (Fransham et al., 2023); with the UK offering among the lowest level of state support amongst comparative nations (Dorling, 2023). Whilst the recent increase to the Scottish Government's block grant following the Autumn 2024 Budget may improve matters, local authority funding has been under significant pressure over the past decade, falling from 30% of Holyrood

spending in 2013/14 to 23% in 2022/23 (Audit Scotland, 2024). Repeated real-term reductions to local authority finances have contributed to significant scaling back of provision and widespread vacancies across the social work workforce (Finch et al., 2023; Scottish Social Services Council, 2024).

## COVID-19

Perhaps the most significant event of the past decade has been the outbreak and spread of COVID-19, with the pandemic touching on every facet of life. It has not only altered how people around the globe live their lives but has also greatly affected the youth justice landscape. Its impact, and how the UK responded to this health crisis, has had a far-reaching impact on Scotland's justice systems, resulting in a years-long backlog in dealing with court matters, adoption of digital means for participating in the legal process, and increased challenges in the recruitment and retention of staff (Audit Scotland, 2023; Scottish Social Services Council, 2024). As Dyer et al. (2023) argue, the response to COVID-19 laid bare the existing inequities in Scotland's response to children and young people in conflict with the law, and at the same time increased the range of behaviours that were deemed criminal. The latter, of course, disproportionately falls upon children and young people, particularly those from the most economically disadvantaged communities (Murray et al., 2024). This has led Tisdall and Morrison (2023) to suggest that times of crisis, such as the peak of the COVID-19 pandemic, test and stretch Scotland's commitment to children's human rights. As Scotland – and the world – deal with the impact of climate change and the risk of further pandemics, one might well ask if Scotland is both ready and prepared to respect the rights of children when its political and social structures are under the most pressure.

The era of COVID-19 'lockdowns' compounded the already bleak economic picture caused by the economic downturn of 2008/09, our departure from the European Union, and subsequent acute rates of inflation (Maher, 2024). Whilst an improvement in our resistance and response to COVID-19 has offered some protection from these issues, the consequences of each pose a hazard to the wellbeing of Scotland's children and young people through the financial devastation that lies in its wake. Scotland – like the rest of the UK – is grasped in a 'cost of living' crisis, combined with diverse social problems that affect the quality of life experienced. Political decisions have contributed to an increase in the cost of food and the use of food banks has increased year on year, with food insecurity most acutely impacting younger people who face greater challenges in attaining well-paid employment (Evans et al., 2024; Power et al., 2023). Rising gas and electricity prices have led to families facing the choice between eating and heating, whilst power companies continue to achieve record profits (Gardner & Gray, 2024). Economic pressure and falling trade have contributed to wage stagnation and job insecurity (Dorling, 2023), and housing insecurity in Scotland is particularly severe with 1.5 million people deprived of their right to a stable, secure home (Gibson & Morrison, 2024). These factors contribute to Scotland being among the most unequal societies on earth, with 25% of children living in relative poverty despite legislative drivers aimed at addressing this issue (Congreve et al., 2024), with literature highlighting the relationship this has with exposure to adversity and involvement in our justice systems (Gibson, 2020; Jahanshahi et al., 2021).

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## Far-right Protests

To further add to the precarious state, the summer of 2024 saw the outbreak – and return – of riots and far-right demonstrations across the UK, albeit felt far less acutely here in Scotland. Whilst episodes of harm have been nowhere near the levels seen in England, the climate of intolerance and tension is not confined to our neighbours. All in all, it is an understatement to say that the preceding decade has been one of public discontent, falling living standards for most, and acute deprivation for many resulting in a challenging political landscape in which to improve Scotland's response to children and young people in conflict with the law.

## Adverse Childhood Experiences

A prominent theme within Scotland's civic and political discussion of the welfare of children and young people during the past 10 years has been an increasing awareness of the impact of Adverse Childhood Experiences (ACEs). This has gained such traction, that Scottish Government policy has specifically targeted this issue, and the language of 'ACEs' has become commonplace among politicians, policymakers and service leaders alike (Walsh, 2020); no doubt influencing thinking around the aforementioned Children (Care and Justice) (Scotland) Act. While the adoption of the ACEs lens is not without criticism (see Danese et al., 2024; Davidson et al., 2020; Lacey et al., 2022) increased interest in the impact of childhood maltreatment has been of benefit in arguing for trauma-informed practice, preventative measures and support to recover from childhood adversities including conflict with the law.

It is hoped in the coming years, that this will be replicated in the attention and action given to the mental health of Scotland's children and young people, which has continued to deteriorate due to the combined impact of two economic contractions, substantial drug use problems, a global pandemic, and increased access to alienating technology (Blanchflower et al., 2024). This decline in mental health is mirrored within Scotland's prisons and secure accommodation (Gilling McIntosh et al., 2023; Whitelaw & Gibson, 2023), highlighting the critical need for Scotland to better meet the mental health needs of its children and young people.

## Part II - Five Ambitions from 2014

In 2014, five ambitions were highlighted that CYCJ wished to achieve. This section outlines the progress made against each one and the policy and legislative climate during this time.

### **Ambition 1: The Age of Criminal Responsibility in Scotland is raised to at least 12**

Ten years ago, CYCJ and other organisations were campaigning for the age of criminal responsibility to be raised from eight to a minimum of 12 years of age. At this time, the ambition of 12 years was aligned with the recommendations of the UNCRC. However, during these 10 years, and the passing and then commencement of the Age of Criminal Responsibility (Scotland) Act 2019, which raised the age to 12 years, the guidance from the United Nations committee is now that the minimum age of criminal responsibility should be 14 but recommend that states should consider a higher age of 15 or 16.

Whilst this step is to be welcomed, the standards among our international peers have also risen, leaving Scotland somewhat behind.

### **Ambition 2: Scottish employers recruit young people with conviction**

Legislation has also been passed in Parliament to address the issue of criminal convictions impacting children's future employment prospects. The Disclosure (Scotland) Act 2020 aims to restate and amend the law relating to the disclosure of criminal history. This will fundamentally change the requirements for offences committed within childhood, once this act is commenced. This is scheduled for April 2025.

### **Ambition 3: The Whole System Approach (WSA) is expanded**

Despite the best intentions and commitment of various stakeholders, the WSA has not advanced to the level hoped for, with most local authorities not yet applying this policy to the 18-21-year-old age group. While the age range has not been successfully expanded, the constituent components of the policy have become a prominent feature of Scotland's response to children and young people in conflict with the law. The continued use of Early and Effective Intervention (EEI), rising numbers of referrals to Diversion from Prosecution (DfP), and a fall in the number of children and young people experiencing a deprivation of liberty all point to this policy influencing practice (McCallum, 2024).

### **Ambition 4: The arrangements for "joint reporting" of young people aged 16 and 17 are revised**

A further sign of progress within Scotland's youth justice system can be found through changes made by the Lord Advocate. Initially, the presumption to prosecute was revoked, with the priority being to refer to the Children's Hearing System (CHS), then new sentencing guidelines for 'sentencing young people' were introduced in January 2022. Reflecting growing evidence of brain development coming to its conclusion around the age of 25

(O'Rourke et al., 2020), the guidelines now mandate that sentencers consider the best interests of the child for those under the age of 18, as well as evolving maturity for those under 25 at the time they plead, or are found, guilty. Importantly, sentencers must fully consider the prospects of rehabilitation and reduction in risk, being mindful of a younger person's greater opportunity to desist from crime.

This policy direction can be seen by the number of children proceeded against in court, which has continued to fall with only 621 children proceeded against in court in 2021/22 (the latest figures available) in comparison to 2,072 in 2016/17. Of these 621 12–17-year-olds proceeded against in court, 86 were found not guilty, and 535 were proven and received a formal outcome, whether this was remitted to children's hearing (24), community sentence (192), financial penalty (114), other sentences (184), or custody (21) (Scottish Government, 2024b).

The Children (Care and Justice) (Scotland) Act 2024 is a significant piece of legislation that will further impact practice. While maintaining the ethos of Kilbrandon and the CHS, this legislation, once fully commenced, defines all those under 18 as children, and therefore, allows equal access to the CHS, on offence and welfare grounds. As such, it truly recognises that the adult justice system is not appropriate for children, intending to meet the Scottish Government policy of Getting it Right for Every Child (GIRFEC) and the WSA. This also ensures that all children who ultimately end up in court will have been jointly reported, with the presumption remaining for them to go to the CHS.

### **Ambition 5: When deprived of their liberty as a “last resort”, young people are held in age-appropriate facilities**

The use of custody for children has declined dramatically over the past decade. The number of 16- and 17-year-olds sentenced to custody declined from 198 in 2016/17 to 21 in 2021/22. It is not possible to determine how many 16- and 17-year-olds received a custodial sentence prior to this as they were categorised in the 16–20-year-olds group (McCallum, 2024).

Similarly, the number of 16- and 17-year-olds spending any time in the Scottish Prison Service estate, whether on remand or sentenced, has fallen from 281 in 2013/14 to 49 in 2022/23 (Scottish Government, 2023).

Concerning secure care, admissions between 2017 and 2021 under Section 205(2) or 208 of the Criminal Procedure (Scotland) Act 1995 have been zero, or the numbers have been too small, and therefore, suppressed to maintain confidentiality. However, since 2022 it seems that numbers have been published with one child being admitted under Section 205 and three children being admitted under Section 208 of the Criminal Procedure (Scotland) Act since this time (Scottish Government, 2024a).

What is the most significant achievement in the past 10 years, as part of the Children (Care and Justice) (Scotland) Act 2024, is the removal of all children from Young Offenders Institutions (YOIs). Courts can no longer remand or sentence a child to a YOI. Secure care is the only option if a child is assessed as presenting a risk that cannot be managed in the



community (Nolan, 2024).

## Part III – Youth Justice - A Work in Progress

Despite the tumultuous times outlined above, the scale of progress across policy and legislation in Scotland has been impressive, with Holyrood taking several steps towards a rights-respecting response to children and young people who come into conflict with the law.

While focusing more broadly than those who come into conflict with the law, Scotland's Independent Care Review (2020) has provided a blueprint as to how Scotland should care for its babies, infants, children and young people. Reflecting years of campaigning by children's advocacy groups and those with lived experience of various forms of care, the review reached a range of conclusions regarding residential childcare, relationships, family ties, secure care and much more (Johnson & Steckley, 2023; Morris, 2022; Nolan et al., 2023; Wilson, 2022; Woodier, 2023) and triggered a review of how Scotland's CHS operates, resulting in the 'Hearings for Children' report (Mackie, 2023). With its conclusions suggesting monumental changes to how the CHS operates, the outcome of the recently concluded public consultation is eagerly awaited.

In addition to providing the catalyst for change within the CHS, The Promise made wide-reaching conclusions on the future of the social welfare, care and justice systems. Some of these relate to children and young people in a broad sense, such as the greater provision of trauma-informed principles being followed or the availability of intensive family support when required. Several conclusions relate more specifically to those in conflict with the law, such as ending the use of YOIs for children and embedding a rights-based approach to children in conflict with the law.

These conclusions have no doubt influenced the recently passed Children (Care and Justice) (Scotland) Act 2024 which is set to significantly change Scotland's response to children in conflict with the law, and for those children aged 16 or 17 who need care and protection. While the sequencing and timetabling of distinct components of the Act are yet to be finalised, as stated earlier, the Act has had an immediate impact of ending the use of YOIs for children, in late August 2024. The Act will also lead to an increase in the upper age limit for referrals to the CHS, thus providing support and protection to all children, if necessary, and a host of other developments.

During this time, Scotland also passed legislation to embed UNCRC into legislation and practice. Although this legislation was challenged by the UK Government and taken to the Supreme Court, resulting in exclusions of legislation made before Scotland became a devolved nation, the amended legislation was passed in the Scottish Parliament in December 2023 and commenced in July 2024. The UNCRC (Incorporation) (Scotland) Act 2024 recognises all children up to age 18 as children and will ensure their rights are upheld within the various systems supporting them.

Incorporation of the UNCRC into Scots law is a further step towards a rights-respecting

approach and has the potential to make significant changes to how Scotland meets the needs of children who come into conflict with the law. Since the Act came into force, several material changes have been achieved. However, more must be done to achieve a rights-respecting approach to children and young people in conflict with the law, with specific attention to Articles 12, 37 and 40 of the UNCRC, which will be discussed below.

In 2020, CYCJ published *Rights-Respecting; Scotland's Approach to Children in Conflict with the Law*, outlining how Scotland could truly be a rights-respecting nation (Lightowler, 2020). This approach ensures that children are not unduly criminalised or stigmatised because of their behaviour, but instead, are supported to address that behaviour and be rehabilitated. It recognises that children in conflict with the law often have significant underlying needs and a failure to address these, is a violation of their human rights. This includes the provision of mechanisms to enable access to justice when their rights are not upheld, delivering effective and timely remedies. A rights-based approach also considers the need to ensure public protection and acknowledges the harm that can sometimes be caused to others by a child's behaviour. This has been adopted by the Scottish Government in their new vision and priorities – Justice for Children and Young People (Scottish Government, 2024d). This vision includes the extension of the WSA, which remains an ambition for Scotland today.

To embed an approach to youth justice that respects, protects, and fulfils children's human rights, legislators, policymakers and practitioners must focus on the implementation of relevant international human rights standards. These include preventing children from entering the youth justice system; if in the system, ensuring their participation; promoting alternatives to detention, and treating children with dignity and worth throughout all stages of the youth justice process. Such measures are not a matter of 'goodwill', rather they are a legal obligation to which Scotland - through the UK - has signed up by ratifying the UNCRC and other international human rights treaties. Further still, the UNCRC is now enforceable domestically following the incorporation of the UNCRC into Scots Law.

There are 54 articles in the convention which all hold equal weight and are universal, indivisible and interdependent. To be truly rights-respecting for all children, Scotland needs to embed all articles into practice. However, this paper gives specific attention to Articles 12, 37 and 40 and sets out our new ambitions in relation to these.

### **Article 12 – Participation**

Every child has the right to express their views, feelings and wishes in all matters affecting them, and to have their views considered and taken seriously. This right always applies, for example during immigration proceedings, housing decisions or the child's day-to-day home life (Article 12).

**Ambition 1 - Processes ensure children can express their views and have these considered at both individual and systemic levels.**

Progress has been made in creating the space and audience for children and young people to use their voices to influence change. However, this is happening in isolated areas and without universal opportunities to participate meaningfully in decisions affecting them, in their communities and policymaking. Expanding these options, and ensuring they are heard by those in power, must become the norm over the next decade.

As Scotland strives to “Keep The Promise”, to move towards UNCRC incorporation, and to become a rights-respecting nation, greater attention and focus have been given to the role that Article 12 plays in the lives of children; emphasising their right to express their views in all decisions that affect them, and that these decisions are heard and taken into consideration by the professionals. General comment 12 also reiterates the child’s right to be heard and aims to support States parties in the effective implementation of Article 12 by strengthening understanding of and proposing basic requirements. Until we truly adopt this approach, the participation of children will be tokenistic, and their rights not upheld.

The Promise highlights that children need to be able to meaningfully participate in all justice systems of which they are a part, to have their views heard, stressing that they cannot do this within systems such as adult Courts (2020).

We know that children in conflict with the law often have a limited understanding of the procedures facing them (Daly & Rap, 2019), and therefore, the approach of the systems that children are part of, need to adapt and support them to allow them to participate in the proceedings. Furthermore, around 50-70% of children in conflict with the law have speech, language, and communication difficulties (Anderson et al., 2016), adding further importance to supporting children to understand the procedures and ultimately support them to express their views, feelings and wishes in the matters affecting them.

General Comment 24 also states that “children with developmental delays or neurodevelopmental disorders or disabilities (for example, autism spectrum disorders, fetal alcohol spectrum disorders or acquired brain injuries) should not be in the child justice system at all, even if they have reached the minimum age of criminal responsibility. If not automatically excluded, such children should be individually assessed” (OHCHR, 2019, p. 7). Practice experience, waiting times for these specific assessments, and data, highlight however, that currently children with these conditions are not only prosecuted without adequate assessment of their developmental capacity, but are also over-represented in the justice system, and (anecdotally) seem to be heavily over-represented in prevent referrals.

In research, the rights of children who commit the most serious harm receive relatively little attention despite this being where it can be most difficult to remain rights-respecting

(Lightowler, 2020). Although some children can commit very serious offences, it is important to remember that regardless of this, they are still children and rights-holders and have the right to be able to express their views and participate.

### **Article 37 - Deprivation of liberty**

Children must not be tortured, sentenced to the death penalty or suffer other cruel or degrading treatment or punishment. Children should be arrested, detained or imprisoned only as a last resort and for the shortest time possible. They must be treated with respect and care and be able to keep in contact with their family. Children must not be put in prison with adults (Article 37).

The UNCRC explicitly recognises that children, by their very status, require further protections in addition to those enshrined in human rights statutes. Alternatives to depriving children of their liberty should be the default position, and detention should only be used for those who present a risk to themselves or others, as a last resort and for the shortest time possible (Article 37b).

#### **Ambition 2 - Legislative change to prevent children from being detained in police custody.**

**With children repeatedly citing the experience of police custody as traumatic, and the use of police cells often unnecessary, Scotland must push forward with endeavours to end this practice by developing places of safety and examining legal obstacles to achieve this ambition. By ending child detention in police cells children's rights can be further respected and protected.**

The detention of children in police custody poses a significant challenge to children's rights with research, indicating that this can be one of the most distressing and traumatising aspects of the justice experience (Vaswani et al., 2024).

Depriving a child of their liberty is one of the most critical decisions a professional can make due to the potential consequences for the child. Even very short periods of detention can have a disproportionately negative impact on a child's physical, emotional and cognitive well-being and development due to their developmental stage (HM Inspectorate for Prisons in Scotland, 2019). Full assessments of risk and need are essential to evidence when a child can remain in their community, and community alternatives should always be offered to the decision-makers.

Children have advised that police custody is the most traumatising aspect of their justice journey, impacting upon their mental health, well-being and overall development:

"I was crying myself to sleep, I was taking an anxiety attack and I was an emotional wreck that night. Then I was just like crying all weekend, they would come in every so often and say "are you alright?" and I'd be like "aye" but even though I was greetin' they would just walk away [...]." (Vaswani et al., 2024). This is not a unique position to Scotland (Bevan, 2021)

In response, Police Scotland have publicly acknowledged that police cells are not suitable places of safety for children to be detained. However, until there is a change in legislation to prevent children from being 'required' to be taken to a police station to have their 'rights upheld' by having access to a solicitor, and more suitable places of safety available, there is currently no other option within Scotland. Articles 37 and 40 of the UNCRC state that children should only be detained as a last resort, for the shortest time, and in conditions that are appropriate to their needs, promoting a sense of 'dignity and worth', and not with adults, unless in their best interest. In line with these UNCRC stipulations, our position is that no child should be held in a police cell. Alternative trauma-informed environments should be used to interview children and then a place of safety if the child is deemed to present such a risk to themselves or others that they cannot return home. The current legislation needs to be amended to reflect this.

A Bairns' Hoose offers holistic, child-centred support to those who have been victims or witnesses of abuse and to children under the age of criminal responsibility whose behaviour has caused harm. Bairns' Hoose is all about connecting services around the needs of the child by collaborating across agencies and disciplines. The four-room approach does this by bringing together child protection, health, justice, and recovery services in one setting. It's important to reduce the number of times children are asked to retell their stories as this can be difficult and re-traumatising. Instead, trauma-informed practice is prioritised to support the child's recovery in a safe, respectful, friendly, and welcoming environment. Currently, this support does not extend to children who have caused harm over the age of criminal responsibility despite the significant weight of evidence, much of it generated in Scotland through an extensive longitudinal study, Edinburgh Study of Youth Transitions and Crime, suggesting that it is impossible to separate children who cause harm from those who have been harmed. In effect, they are the same children.

### **Ambition 3 - Implement a reimagined future for secure care, where children can remain in their local communities.**

The next 10 years ought to see a change in the design, delivery, and experience of secure care for those small numbers of children who require to be there. Building on CYCJ's Reimaging Secure project, Scotland must take the opportunity to explore all possibilities and think creatively about our response to children who face, make or take the highest level of risk.

In December 2022, CYCJ was commissioned to 'reimagine a future' for secure care and alternatives to secure care to meet the calls from the Independent Care Review (2020), uphold

rights as stipulated by the UNCRC, and plan for the removal of children from YOIs. This was in response to the conclusion of The Promise which stated:

“Scotland’s response to the small number of children who need this level of security, care and protection must look radically different. [...] There must be absolute clarity that the underlying principle of Secure Care is the provision of therapeutic, trauma-informed support” (Independent Care Review, 2020, p. 80).

The resulting ‘Reimagining Secure Care Report’ (CYCJ, 2024) outlines a vision for a reimagined future world in Scotland. The report highlights the need for significant system changes to ensure Scotland’s children are treated first and foremost as children, with a trauma-informed and rights-respecting approach. Developed using insights from children, young people, their families, and professionals, the report advocates for an integrated model of care centred on the needs of children and families.

This vision is grounded in the belief that children should remain within their families wherever possible. When that is not feasible, they should be supported within their communities, with services working together to provide flexible and dynamic care that is tailored to the individual needs of each child. The report calls for a move away from the current secure care model towards more community-focused, therapeutic environments. Currently, there is an issue nationwide concerning the transport of children to secure care following an appearance in Court. The increased use of community-focused care would support the unnecessary trauma placed on children being transported to secure care in addition to reducing the huge cost that this places on local authorities and the Scottish Government.

At the time of writing, the Scottish Government is considering their response to the report and proposals within.

Overall, any deprivation of liberty should be used as a last resort and where all other options have been explored for a child, after all as Nowak (2019) describes “deprivation of liberty is deprivation of childhood” (p34).

#### **Ambition 4 - Improve the environment, care and support provided within Young Offender Institutes (YOIs).**

While removing children from YOIs has led to a more age-appropriate response for children who have been deprived of their liberty, Scotland must now turn its attention to the custodial estate for young people. The physical environment, range of interventions and support, and the skills and capacity of its workforce need improvement to meet its objective of rehabilitation and reintegration.

Research evidence highlights the detrimental long-lasting impact of YOIs on children and young people, negatively affecting psychological, social, and physical developmental opportunities and having lasting adverse consequences to future life chances. A

heartbreakingly stark fact is the number of children and young people who have taken their own lives in YOIs in Scotland (Lightowler, 2020) which includes a child as recently as July 2024. The Expert Review of Provision of Mental Health Services at HMPYOI Polmont highlighted key areas for improvement including tackling the social isolation of children in custody, and the need to support engagement with family and friends (HM Inspectorate for Prisons in Scotland, 2019). Working in a trauma-informed way was also highlighted by evidence as being crucial when working with some of the most distressed children in custody. Research with over 200 prison officers in Scotland highlights this practice as being 'lacking' or 'unable to happen' within YOIs due to the conflict between care and control (Vaswani & Paul, 2019).

As highlighted at the end of August 2024, the Children (Care and Justice) (Scotland) Act 2024, ended the imprisonment of children under 18 in YOIs. Children in Scotland are instead sentenced or remanded to secure care if their risk cannot be managed in the community (Nolan, 2024). Although the number of 18–20-year-olds spending time within the Scottish Prison Service estate has drastically reduced over the past 10 years, there were still 426 individuals in this age group in custody in 2022/23.

### **Article 40 – Justice Processes**

A child accused or guilty of breaking the law must be treated with dignity and respect. They have the right to legal assistance and a fair trial that takes account of their age. Governments must set a minimum age for children to be tried in a criminal court and manage a justice system that enables children who have been in conflict with the law to reintegrate into society (Article 40).

Additionally, our use of language about how we discuss children is vitally important in upholding their dignity and respect and in the prevention and minimisation of labelling and stigmatisation. Since 2014, there has been a shift in the use of language in Scotland. The term “children in conflict with the law” is now widely used, recognising that terms like ‘young offender’ and ‘perpetrator’ can lead to stigmatisation and should be avoided where possible. Research indicates that stigma can impact a child’s engagement with their community and can impact their access to opportunities from which they could benefit (Deakin et al., 2022). Furthermore, having a label assigned to you as a child can result in feelings of low self-worth, alienation, and loss of ambition, and in turn limit a child’s life chances. Children themselves have also been campaigning through organisations like ‘Our Hearings Our Voice’ to change the language used when professionals are describing them and their behaviour.

Progress towards a rights-respecting justice system has been made through an increased ACR. Following several decades of campaigning (McAra & McVie, 2023), the Scottish Parliament’s decision to increase the ACR from 8 to 12 reflects a significant, albeit conservative, step forward. While this increase is to be welcomed, it cannot be overlooked that international standards and the penal policy of our neighbours leave Scotland with an

**Ambition 5 - Increase the Age of Criminal Responsibility (ACR) to 16, to be in line with the most progressive nations in the world.**

**The increase in the ACR has shown that Scotland can make significant changes in this area, and we can do so again. Increasing the ACR to 16 not only adheres to The Promise and international guidance from the United Nations but creates a more appropriate system to support those children who cause harm. With existing frameworks in place to respond in a non-criminal manner, Scotland could help children avoid the caustic elements of its legal system.**

ACR that is somewhat behind its contemporaries (Donnelly, 2020), and fails to keep pace with the recommendations of the UNCRC which calls for a minimum ACR of 14, and recommends that states opt for 15 or 16 (McAra & McVie, 2023). Moreover, Scotland's Independent Care Review (2020, p. 91) concluded that "Scotland must aim for the age of minimum criminal responsibility to be brought in line with the most progressive global governments alongside efforts to prevent criminalisation of all children",

Coming into force in December 2019, the increase in ACR has had minimal impact upon the police and legal systems, with episodes of significant harm by a child under the ACR being extremely rare and as such there is both a policy and political imperative to make further steps in this area.

Following three years of civic and statutory bodies monitoring the implementation of this Act, Holyrood is about to enter a formal review of the ACR, bringing with it the opportunity to keep pace with our international contemporaries. The ACR review group has collated analyses of the impact of the move to 12, suggesting practical, legislative, and operational considerations. Meanwhile, McAra and McVie (2023) have produced vast empirical and ethical evidence for a further increase in ACR, highlighting that there is an "ethical and empirical case" (p. 1) for raising the age of criminal responsibility past the current age of 12.

Currently, the number of children aged 12 and 13 in conflict with the law who are involved in high-risk behaviours is very low, suggesting that an increase in age to the European minimum of 14 may not result in high numbers of children being dealt with through the Act rather than standard police procedures. The evidence concerning children and brain development demonstrates why we should not hold children as young as 12 and 13 criminally responsible for their actions. Furthermore, the research evidence and data collected suggest that the ACR in Scotland could be raised to 16 with very little impact on prosecutorial or court services. Figures for 2018/19 show that only 15 children under the age of 16 were convicted in Court (Scottish Government Criminal Proceedings in Scottish Courts bulletin).

During the last 10 years, the CHS has managed the behaviour of children who present a significant risk. They would continue to do so, should the age be increased further. However, evidence collected by the ACR and victims group acknowledged that there may be an



existing gap in providing support to child victims which requires to be addressed to meet the needs of all children. Practice including restorative justice could support the rights and meet the needs of all children involved by giving them a voice and ownership to address their needs. Consistent availability of quality restorative justice services could support this gap without the need to criminalise the child who has caused harm.

The aim of the Children (Care and Justice) (Scotland) Act 2024 is “to introduce trauma-informed, age-appropriate support for children involved with care and justice services”, so this must take account of the developmental needs of children and the inadvertent impact of a low ACR on longer-term outcomes and life chances.

As a minimum, CYCJ supports an increase in the age of criminal responsibility to 16, with the forthcoming ‘Promise Bill’ offering an ideal vehicle to achieve this.

### **Ambition 6 - Youth Courts should be available across Scotland.**

**We need to ensure all children under 18 can access the CHS. Only in exceptional circumstances should a child appear in Court, and then adaptations should be made to ensure the court process is child-centred, meets General Comment 24, and that they are closed courts to uphold a child's right to privacy.**

**Until the creation of Youth Courts, adaptations can be made in court to recognise the status of all children, as being under the age of 18. A Youth Court Blueprint (2023) has been developed so that courts can follow.**

General Comment 24 states that courts should be closed as standard practice for all children to uphold their right to privacy, which additionally promotes their ability to participate in proceedings, supporting their rights under Article 12.

To truly uphold the UNCRC, all children under 18 who cannot be seen in the CHS, should appear in a Youth Court, where their needs and risk as a child can be taken into account. In Scotland, we currently have three Youth Courts, though as they are run as sentencing courts/deferred sentence courts, children are still appearing in adult courts. The sentencing guidelines for young people up to age 26, support decision-making for children, but until we change the court environment, Scotland could be seen to be in breach of UNCRC guidelines.

For those children who must attend court, research carried out by Brown and Vaswani (2023), identified several factors that can impact a child or young person’s experience of court which should be taken into consideration. This includes how the courtroom is configured or arranged including the size of the courtroom and what clothing is worn by the professionals; the extent to which the child or young person understands the language being used including ensuring all adults have specific training in relation to this; and to what extent they can meaningfully engage with the process as meaningful opportunities must be available to

allow children and young people to directly engage with proceedings if they wish. To address these issues, Youth Courts must be developed and utilised with these key factors in mind.

### **Ambition 7 - Stop the use of Tasers, strip-searching and pain-induced restraint of children.**

There is much we still do not know about the treatment of children in a variety of situations. This led the Children's Commissioner to investigate the treatment of children by Police Scotland. Other establishments have also been under review by the Care Inspectorate in relation to restraint practice. We need to ensure in Scotland that we are not harming children and managing any risk-taking behaviour in more child-friendly ways.

Children should not be subjected to 'torture or other cruel, inhuman or degrading treatment or punishment' (Article 37a) and they should be treated with dignity and respect (Article 40). Despite these rights, there are still concerns about how children are treated in Scotland.

The Care Inspectorate recently published data on [restrictive practice](#) in Scotland. This report highlighted the high numbers of children being restrained in care homes, school care accommodation and secure care, and those being subject to seclusion. To meet conditions of the UNBCRC and the Promise, this practice needs to change. The Care Inspectorate are using this report as their base line data to measure progress over forthcoming years.

Strip searching in Scotland is considered a routine practice, with data received through a Freedom of Information request to Police Scotland highlighting that 1,089 children were strip searched between January 2020 and March 2022, three of whom were 13 years old.

The use of Tasers by Police Scotland is still a concern for children in conflict with the law. In the period 2023/24, Tasers were used 388 times with them being fired 44 times. On these occasions, Tasers were used on children as young as 12 years old 43 times. This included several stages of use including being drawn, aimed and red dot being administered. On two occasions the Taser was discharged on a child, one aged 15 and one aged 16.

On 20<sup>th</sup> November 2024, the Children's Commissioner for Scotland announced an investigation into the use of force by Police Scotland. Data indicates that children are twice as likely to experience the use of force than adults. This could be in contradiction to Article 40 and being treated with dignity and respect. The results of this investigation will be published in the New Year.

The Committee on the Rights of the Child published their latest Concluding Observations on the UK and Northern Ireland in 2023. The report expressly states that legislative measures should be taken to "explicitly prohibit, without exception, the use of: (i) harmful devices including spit hoods, Tasers, plastic bullets, attenuating energy projectiles and other

electrical discharge weapons against children; (ii) strip searches on children; and (iii) solitary confinement, isolation, seclusion and restraint as disciplinary measures” (p. 9).

**Ambition 8 - Fully capture relevant data for children and young people in conflict with the law.**

**If Scotland is serious about better understanding the pathways into conflict with the law, the circumstances of those in trouble, and the outcomes for those in receipt of youth justice services then greater capacity to capture the data that will answer these questions is necessary.**

General Comment 24 on children’s rights in the child justice system (2019) and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) both urge States parties to systematically collect data and to use this data and research for planning, policy formulation and evaluation. The lack of reliable and comprehensive data has been an issue for a considerable length of time and has been highlighted within this report. It has also been commented on in the latest UK Concluding Observations (CRC,2023) where it recommends that the State party strengthens its data-collection system ensuring that the data are disaggregated by “age, sex, disability, geographical location, ethnic origin, nationality and socio-economic background” (p. 4). This is essential if we are to properly monitor the upholding of children’s rights and ensure these rights are upheld for all children.

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## Conclusion

Scotland has enjoyed an increasing appetite for welfare-based policy and legislation concerning children and young people in conflict with the law over the past 10 years, returning to the ethos of Kilbrandon that was lost in the 2000s. This has led to an increase in the ACR and Scottish policy and legislation aimed at upholding the rights of children in conflict with the law, for example by reducing the numbers of children in YOIs in 2021 and stopping the use of YOIs altogether for those under 18 in 2024.

This move in Government policy in Scotland to uphold children's rights has been a position that has developed over the past 10 years and has been influenced by stakeholders and practitioners within the youth justice field. This position of viewing children as children, and children in conflict with the law as children in need, was further enhanced by the Lord Advocates Guidelines which changed the presumption of children who were jointly reported to the Procurator Fiscal and CHS, in favour of keeping children out of criminal courts and, when they did appear in court, that their age and stage of development was taken into account, through new sentencing guidelines for young people up to age 26.

These developments within sentencing practice and youth justice policy have greatly contributed towards Scotland taking a leading role within the UK in upholding children's rights. This has contributed to the UNCRC being incorporated into Scots law and through legislation acknowledging all under-18-year-olds as children within the legal system. This allows for the necessary changes within practice to ensure all children are treated as such, including removing them from YOIs and extending the CHS to all children under 18. This further reinforces the welfare position in Scotland and corrects the previous disparity in law relating to the treatment of 16- and 17-year-olds.

The recent vision published by the [Scottish Government, A Rights-Respecting Approach to Justice for Children and Young People: Scotland's Vision and Priorities](#), sets out their commitment to a rights-respecting approach for children and young people in conflict with the law. Despite this, it is recognised that Scotland still has work to do to be truly rights-respecting and to meet the requirements of the UNCRC. Issues remain about children being able to meaningfully participate in justice processes; their care when deprived of their liberty; and being treated with dignity and respect. Among the challenges foregrounded by the incorporation of UNCRC is how 16- and 17-year-old children are responded to, balancing their right to autonomy with the duties of the state to protect them from harm and to provide care (Kirk, 2024). The authors, therefore, propose eight new ambitions for the next 10 years, believing that these take Scotland closer to being the best place for children and young people in conflict with the law to grow up and a better, fairer nation for all:

**Ambition 1 – Processes ensure children can express their views and have these considered at both individual and systemic levels.**

**Ambition 2 – Legislative change to prevent children from being detained in police custody.**

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**Ambition 3 – Implement a reimagined future for secure care, where children can remain in their local communities.**

**Ambition 4 – Improve the environment, care and support provided within Young Offender Institutes (YOIs).**

**Ambition 5 – Increase the Age of Criminal Responsibility (ACR) to 16, to be in line with the most progressive nations in the world.**

**Ambition 6 – Youth Courts should be available across Scotland.**

**Ambition 7 – Stop the use of Tasers, strip-searching and pain-induced restraint of children.**

**Ambition 8 – Fully capture relevant data for children and young people in conflict with the law.**

While the ambitions are specific to youth justice systems, we also recognise the crucial importance of working with others on the prevention agenda in the years ahead to address underlying issues such as poverty, child criminal exploitation, corporate parenting duties, and school exclusion/seclusion.

As Scotland enters the second quarter of the 21<sup>st</sup> Century, it can look back at the progress it has made over the past decade with some degree of satisfaction. But we must not rest on our laurels; the current youth justice system is not achieving all that it could, or indeed should. To take a further step towards a system that best serves the interest of the country and its children and young people a range of ambitions have been outlined within this report. The authors believe that these ambitions are bold, but within the grasp of Scotland should we be brave enough to grasp the thistle. We look forward to reflecting on this in 10 years, to assess what progress has been made and ask once again if Scotland's response to children and young people in conflict with the law is fit for the future, or indeed the present.

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