Children's Care and Justice - Possible Changes to the Law

Easy Read

April 2022

Scottish Government
Riaghaltas na h-Alba
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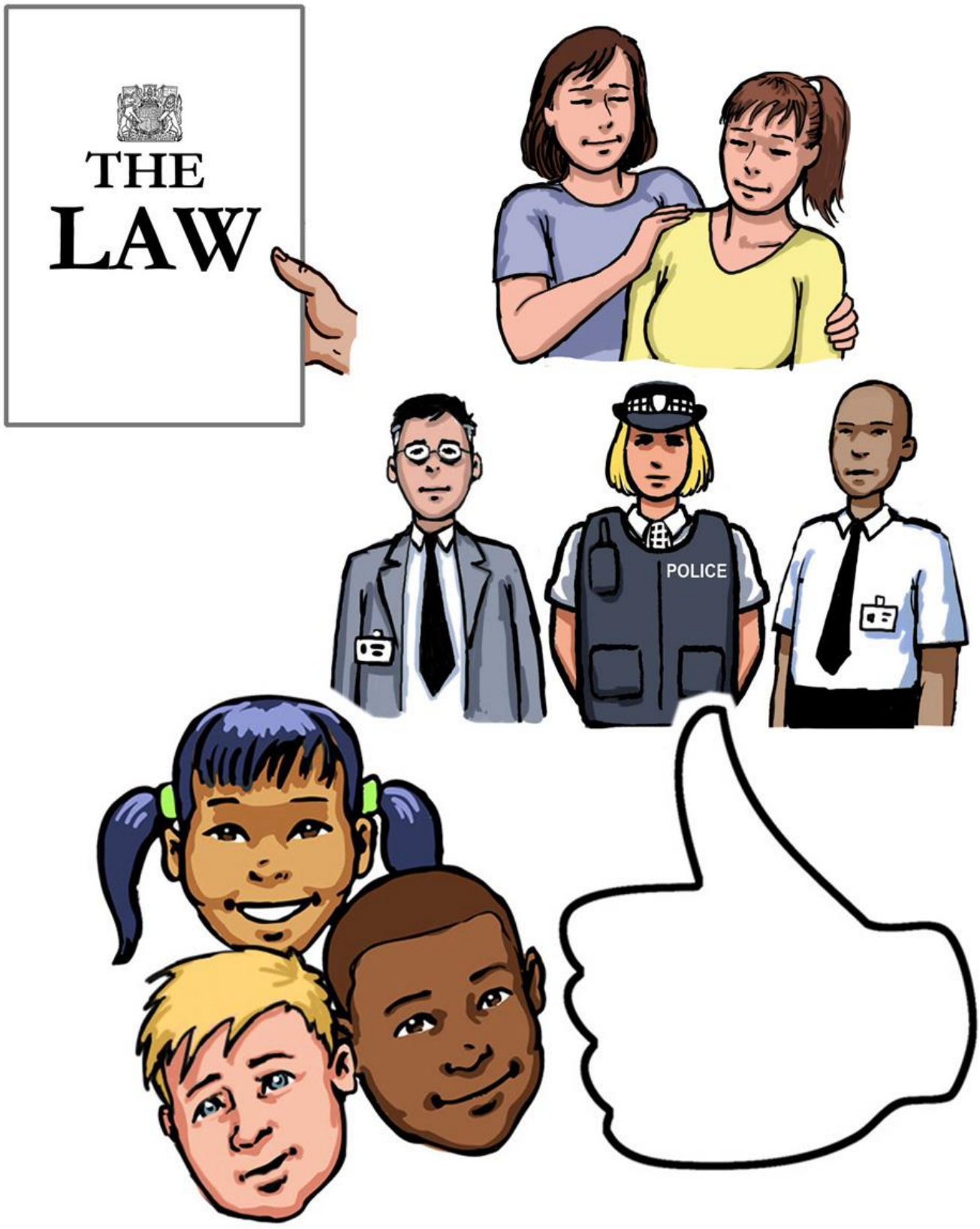
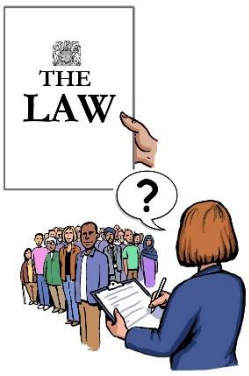


Easy Read Version

What is a Consultation?



The law says that the Scottish Government has to ask people their views before important changes are made.

When the Scottish Government asks people for their views it is called a Consultation.

The Scottish Government would like your views on how we can protect and support children. This is especially those in conflict with the law.

We want to make sure all children get the right support. Your views will help inform changes to the law.

The responses should be made by **22nd June 2022.**

Why should I get involved?

The changes could have a big impact on different people, including children and young people. We want to hear from as many people as possible.

We especially want to hear from children and young people. We know you are the experts.

We know that lots of children and young people like to answer questions with people they know. We have made a guide to help workers gather your views. This is available to anyone here.

You do not need to answer all questions. Only the ones you want to.

We are planning to hold some sessions for children and young people on the consultation. The team working on the law would also be happy for you to get in touch or to try and meet with you and any groups. You can contact them at: CC&JBill@gov.scot.

Giving your answers

Please give us your answers to this consultation online here.

Please give your answers before the closing date of **22nd June 2022**.

If you are unable to give us your answers online, please complete the Respondent Information Form and send it to: CC&JBill@gov.scot.

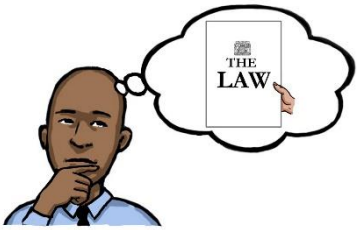
What we do with your answers

If you ask for your answers to be kept private, we will not publish them. The Scottish Government follows the Freedom of Information (Scotland) Act 2002. This includes requests we get for information about this consultation.

What happens next?

If you have given permission for your answers to be made public your answers will be published at http://consult.scotland.gov.uk. If you use Citizen Space to give your answers you will get a copy of them sent to you by email.

Following the closing date, all answers will be looked at with other information we have. We will make a report saying what we did with the information.



This information will then be shared with Scottish Ministers. They will decide what changes to the law and suggest these to Parliament. Parliament makes law. Different people might want different changes. Scotland's Parliament will then decide what changes are made to the law.

Comments and complaints

If you have any comments about how this consultation has been done, please send them to: http://consult.gov.scot.

The Children's Hearings System

The children's hearings system is the care and justice system for children. Some children do not have all their needs met. They can face risks in their lives. This may have been going on a long time. It can be complicated.

Concerns about a child can be reported to the Children's Reporter. This is a professional who makes the decision about if a child needs to go to a children's hearing or not. The children's hearing is made up of 3 people. They are called the panel members. Panel members make decisions to support children.

Now all children under 16 can go to a children's hearing. Some 16 and 17 year olds can. A hearing can make a decision to help the child and make sure they get the help they need.

The law is the rules that a country has. If someone does not stick to the law we say they have broken the law or are in conflict with the law. This means they have committed an offence.

Children who get in trouble with the law may be vulnerable and have had problems in their lives. Children over 12 can be reported to the Children's Reporter and the Procurator Fiscal when they break the law and commit a serious crime.

The Procurator Fiscal is the professional who decides to take a case to court or not. When a child has been referred to both the Children's Reporter and Procurator Fiscal, they will talk. The Procurator Fiscal will decide whether the child should go to a children's hearing or a court.

We asked people before if we should change the law so that all children under 18 can have a children's hearing. This includes children at risk of abuse or harm due to the behaviour of other people and all children who are charged by the police.

Most people agreed that this change should be made and we want to make this happen.

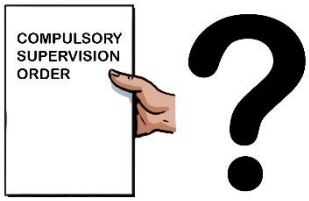
This change will mean there are a lot of things to think about. More children will go to a hearing. More people who have been harmed by a child, including other children and their families, will use the children's hearings system.

The children's hearings system is different to the criminal justice system and court. The hearing system is not about punishment. It is about the child's needs and welfare and if they need protection or support in their life. What the child's hearings system and the criminal justice system can do is different.

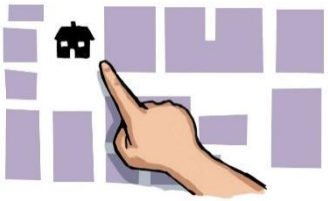
Information and support where a person has been harmed by a child who went to a children's hearing

People told us that more information and support would need to be available to people who have been harmed.

Children and young people were less clear if more information should be given. Some felt more should be given. Others felt this should be on a case-by-case basis. The child's personal details or the support they were being given should not be shared.



If a child goes to a hearing, it will be decided if a compulsory supervision order is needed. This is a legal document which allows people, like a social worker, to help the child.



This order can say a child has to do or not do certain things. This may be where they should live, who they can see, and where they can go.

Just now the person who has been harmed would not be told about these things. They are only told if a hearing was arranged, what the result was and general information.

We want to make sure anyone harmed by a child's behaviour can get the support they need. There is lots happening to try to make sure all children get the support that they need.

But people who have been harmed told us they do not always get help or enough help. It can be hard to get and they need to go to different organisations. This can be harder if they go to the same school or live near the child who has harmed them. We want to know if people who have been harmed should get more support.

We also wonder if there should be a single person to contact for each person who has been harmed. They would give information, help and support.

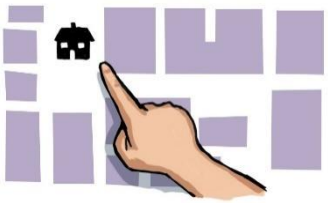
This should make it easier for people who have been harmed to get the information and help they need. This person could be part of the children's hearings system, social work, education, a victim support organisation or another organisation.

Using the children's hearings system as much as we can

We want to use the children's hearings system so that children and young people get the support they need. To do that we are thinking about what other supports need to be available.

Some of the options we are thinking about are:

- If a compulsory supervision order is made, panel members could think about if the person who has been harmed. They may need protection from harm. This could mean that the child cannot go near a person or to places like where that person lives



- More children to have an electronic tag. This will limit and check where they go. This should be if the child is likely to cause serious harm to another person

- Sheriffs and judges to ask the hearing for advice about what to do next. This is when the child has been found guilty. Now they can only do this for some children.

Children cannot be supported in the children's hearings system after they turn 18. Some young people have told us their support stops then. We are thinking about children being able to get support in the children's hearings system after they turn 18.

1. If you been harmed by another child who went to a children's hearing, can you think of any information or support that would have been helpful?

2. Should more information be shared with a person who has been harmed? This would be if a child has an order which says they cannot do certain things that relate to the person harmed.

☐ Yes ☐ No

If yes, what should this include?

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3. Where a person has been harmed by a child should more support be available to the person who has been harmed?

☐ Yes ☐ No

If yes, what should this include?

4. Should there be a single person to contact for each person who has been harmed?

☐ Yes ☐ No

Any comments, like in which organisation should this person be based?

5. Should panel members think of other options to keep people safe?

☐ Yes ☐ No

If yes, do you have any ideas?

6. Should children be able to stay in the children's hearings system after their 18th birthday?

☐ Yes all children

☐ Only some children (please explain who)

☐ No

If yes, to what age?

The Criminal Justice System

The criminal justice system is all organisations and professionals that deal with crime and the courts. A court is the place where a decision is made about whether someone has committed a crime.

There are different kinds of courts, they might have a Sheriff or a Judge. Children under 18 can go through the criminal justice system and court.

Courts

Children and young people have told us about the difficulties they have at court. It can be hard to understand and can be traumatic.

We want more children to go to the children's hearings system. However the most serious cases will still go to the criminal justice system.

There are already things happening to make courts better for children. We have lots of ideas about what more we could do.

Children in secure care and Young Offenders Institutions

Some children are in secure care or Young Offenders Institutions. This might be because they are in conflict with the law or have caused harm to someone. Other children are in secure care because they are at risk of being harmed.

Secure care and Young Offenders Institutions are different. Secure care is a form of care, not about punishment. Children are cared for in homely units. There are more staff and they are trained differently.

There have been concerns about children in Young Offenders Institutions. We are thinking about not using them for children aged under 18.

We want to make sure that all children or care leavers get the support they need. This should continue after a child's stay in secure care or a Young Offenders Institution.

Identifying children who go to court

It is usually against the law to identify a child in the criminal justice system. The judge can do this when the court decides the public should know.

The public may be interested in a child's identity if serious harm has been caused. However this can have an impact on the child and their family.

We are thinking about changing this so that a judge can only identify a child to protect the public. We might change this so a child's identity is protected until they are 26.

7. Do you think the criminal justice system should be changed for children?

☐ Yes ☐ No

If yes, how can the system be changed?

8. Where a child has been remanded or sentenced , should this be in secure care rather than a Young Offenders Institution?

☐ Yes ☐ No

9. Should we stop using Young Offenders Institutions for children under 18?

☐ Yes ☐ No

Should there be any exceptions?

10. If you have been in secure care, can you think of anything that should change if more children who are in conflict with the law are going to be placed in secure care?

11. Should councils have to support children and care leavers who are in secure care or Young Offenders Institutions more?

☐ Yes ☐ No

12. Should we change the rules on identifying children?

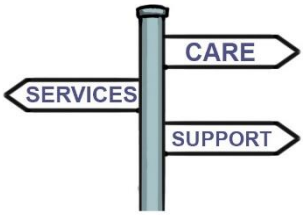
☐ Yes ☐ No

Are these changes the right ones?

Secure Care

Secure care aims to give children a high level of support and education. This is in a caring environment. Their rights are respected to make things better for them now and in the future.

Placing a child in secure care



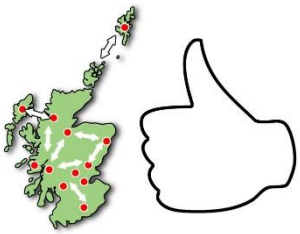
There are lots of ways a child can be placed in secure care. This might involve the children's hearings system, police, criminal justice system or social work.

These can be complicated. This is mainly for 16/17 year olds. They sometimes have to go to a Young Offenders Institution as they have not been to the children's hearings system before.

When a child is going to be placed in secure care, the council or the Scottish Government will arrange this. Different areas have different ways of deciding when a child is to be placed in secure care.

There are five secure care centres in Scotland. Their managers decide if they can offer a bed to meet a child's needs. This means across Scotland we do not know how many children are being considered for secure care. We do not know about children's experiences of secure care.

There are times when a child needs to be placed in secure care but there are no beds available. We want to make sure that the children who are placed in secure care are those who need it the most.

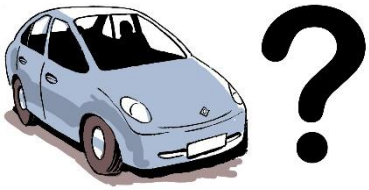


We are wondering if there should be a joined up way of deciding which children should be placed in secure care.

There is a Secure Welfare Coordination Unit in England and Wales that all councils use to arrange secure care placements.

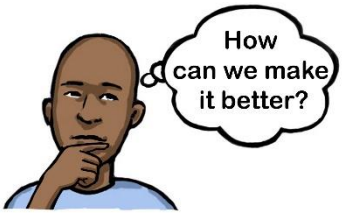
In Northern Ireland there is a panel of professionals who are involved in making decisions about placing children in secure care across the whole country.

Secure transport



Children who are in secure care or going to secure care, court or medical appointments, can be transported in lots of different ways. This might be by their social worker, staff from secure care, the police, or secure transport from private organisations.

Children have told us that these journeys could be better. They should be able to go with people they know and trust. They should not have to wait long times for transport. They should know what will happen.



Just now it can be difficult to make sure this happens. We want to know if we should do more about secure transport.

Secure care for young people

Children can only stay in secure care until their 18th birthday. Children placed through the criminal justice system may have to move on to a Young Offenders Institution, even if they only have a few days left of their sentence.

We don't think this is right. We want to change this so they can stay beyond their 18th birthday. Any decision would be made on an individual basis.

There is lots of think about. After a child turns 18 they are classed as an adult. Children and adults should not be cared for together unless this is in the child's best interests. Children should only stay in secure care for as short a time as possible and this must be lawful.

13. Should all children under 18 be able to be placed in secure care where this is needed and in their best interest?

☐ Yes ☐ No

Please explain, including if you think this should only be for some children?

14. Should there be a better way across Scotland to decide which children should be placed in secure care?

☐ Yes ☐ No

If yes, do you have any ideas?

15. If you have been in secure care before, can you think of anything that should change to make secure transport better?

16. Do you agree children should be able to remain in secure care beyond their 18th birthday, where necessary and in their best interests?

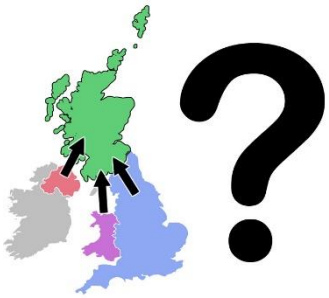
☐ Yes for all children

☐ Yes but only for some children (please explain)

☐ No

If yes, for how long?

Residential Child Care and Cross-border Placements



Some children are placed in residential care in Scotland from other parts of the UK. There have been concerns about this. Children can be far away from their homes, families and friends.

We want fewer children to be placed from other parts of the UK in Scotland. This should only happen in exceptions when it is in the best interests of the child.

We want to make sure there is more protection for children who are placed in care in Scotland from elsewhere in the UK.

One way of doing this would be to set standards for residential care. These would be for all children in residential care in Scotland, including those placed from elsewhere in the UK.

Now all children in Scotland living in secure care or residential care have access to an advocate. They help them have their views heard. This is not always the case for children placed from elsewhere in the UK. We think advocates have an important role and that all children should have access.

17. Should there be standards for residential care for children and young people in Scotland?

☐ Yes ☐ No

Can you think of any standards that should be included?

18. Do you agree that all children and young people from elsewhere in the UK living in Scotland should be offered an advocate?

☐ Yes ☐ No

Restraint

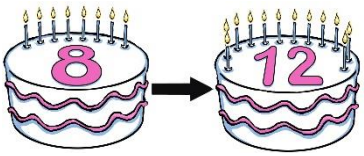
Children in secure care and residential care can be restrained by staff when this is the only option to keep them safe. Restraint may be safely holding the person. There are laws and guidelines about this.

The Independent Care Review heard a lot about restraint. It can be frightening, painful and embarrassing for children. We are working so it is used very rarely.

19. Should there be more law and guidance on restraint?

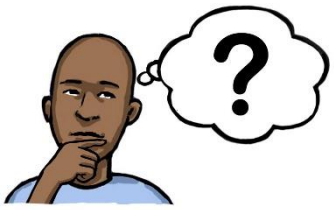
☐ Yes ☐ No

The age of criminal responsibility



The age of criminal responsibility is the minimum age that a child can be arrested or charged by the police for breaking the law. In Scotland this has increased from 8 to 12.

If a child under 12 is involved in a serious incident the police and services can take action. However the behaviour is not treated as criminal.



Lots of other countries have a higher age of criminal responsibility than 12. We are thinking about increasing this in Scotland. The age of criminal responsibility will be looked at again by 2024.

20. Should the age of criminal responsibility in Scotland be looked at before 2024?

☐ Yes ☐ No

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The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-80435-318-9 (web only)

Published by The Scottish Government, April 2022

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS1046690 (04/22)