



A brief guide to the legislation relevant to the care and protection of children in Scotland

1. RIGHTS OF THE CHILD

a) United Nations Convention on the Rights of the Child (1989) UNCRC

An international agreement which prescribes the rights of all children and young people under the age of 18. The rights in the Convention generally cover three areas: participation, a child's right to have a say in decisions which affect them; provision, providing of services to promote health and education; and protection, the right to be protected from all forms of abuse, harm and exploitation at all times.

The UK is a signatory to the UNCRC and must report to a UN Committee on steps taken to promote and respect these rights.

A Bill to incorporate the UNCRC into law in Scotland has been passed. The Bill aims to ensure that children's rights are legally protected and that public authorities are legally required to respect and protect children's rights in all the work that they do. This new legislation will come not effect in July 2024.

b) European Convention on Human Rights (1950)

This convention is legally binding in the UK because its provisions were introduced into the law of Scotland by the Human Rights Act 1998 and the Scotland Act 1998. The rights prescribed apply to children and adults. The main articles of relevance are:

Article 8: right to respect for private and family life, home and correspondence.

Article 3: the right not to be tortured or experience inhuman or degrading treatment.

Courts and public authorities must act in a manner which is consistent with these rights and can only interfere (in some cases) where there is a legitimate reason to do so. The protection of children is one such reason. For a copy of the Convention see http://www.hrcr.org/docs/Eur_Convention/euroconv.html

c) Children and Young People (Scotland) Act 2014

The Children and Young People (Scotland) Act 2014 put the UNCRC into a Scottish statute for the first time. It encourages Scottish Ministers and public bodies to consider children's rights and requires them to prepare reports on what they are doing to progress children's rights. The Act also gives more powers to the Children and Young People's Commissioner Scotland.

d) Commissioner for Children and Young People (Scotland) Act 2003

This Act created the role of Scotland's Commissioner for Children and Young People. The Commissioner promotes and safeguards the rights of children living in Scotland as set out in UNCRC.

2. DISCLOSURE CHECKS

a) Rehabilitation of Offenders Act 1974

Generally, criminal convictions become spent after a period of time (which depends on the sentence imposed by the court at the time of conviction). As a result of this Act spent convictions, generally, do not have to be disclosed to potential employers.

b) Exclusions and Exceptions (Scotland) Amendment Order 2010

There are certain jobs and voluntary positions for which prospective employers need to know about a person's criminal record to decide whether they are suitable for the position, e.g. regulated work with children and protected adults. This [Order](#) lists the positions and professions where there is an exception to the general rule on non-disclosure of convictions.



c) Police Act 1997

Part V of this legislation made it possible for local authorities, third sector organisations (e.g. sports organisations) as well as other organisations to seek to obtain criminal record certificates on individuals likely to undertake direct work with children and other vulnerable groups.

d) Protection of Vulnerable Groups (Scotland) Act 2007

This Act supersedes the previous legislation contained in the Protection of Children (Scotland) Act 2003. All organisations have a legal responsibility to ensure that any individual who will be in regulated work with children or protected adults is not listed on the Children's List and/or Adult's List, which bars them from working with children and/or protected adults.

Regulated work with children includes:

- caring for children
- teaching, instructing, training or supervising children
- being in sole charge of children
- having unsupervised access to children
- being a host parent.

e) Disclosure (Scotland) Act 2020

This Act, which received royal assent on the 14 July 2020, simplifies the process for disclosing criminal history information about people. It defines and sets out the process of how certain offences are disclosed and introduces a new appeals procedure. The Act amends the PVG Scheme to simplify the levels of disclosure and makes it mandatory for those who want to work with children, young people or vulnerable adults to become members of the PVG scheme. Membership of the scheme is renewable every five years.

3. CRIMINAL OFFENCES

a) Criminal Procedure (Scotland) Act 1995

Schedule 1 to this Act contains a list of offences against children, e.g. abandonment or wilful neglect. Someone who has committed an offence which is listed in this Schedule is often referred to by professionals as a "Schedule 1 offender".

b) Children (Equal Protection from Assault) (Scotland) Act 2019

This act gives children and young people the same rights of protection from assault as adults. It removes the right of parents to physically punish children and young people.

c) Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005

Addresses the predatory behaviour of those who "groom" children with the aim of abusing them by introducing a new offence of "grooming". Enables the police to take preventative action before the child meets the perpetrator. Provides the police and courts with additional powers to apply for, and grant, a Risk of Sexual Harm Order on those who are considered to pose a risk to children.

d) Sexual Offences (Amendments) Act 2000 – Sexual Offences (Scotland) Act 2009

Introduced a new offence of abuse of trust applicable to "positions of trust" for example teachers, residential care workers who are looking after children and young people who are in full time education, detained under a court order, looked after in a hospital/ children's home or other establishment providing social care or in foster care.

Coaches and sports volunteers are not currently captured within this legislation, but organisations are lobbying governments to amend the legislation.



LIST OF RELEVANT LEGISLATION

Safeguarding Guidance Document

Section 55 of this Act also allows for a Scottish resident to be convicted of an offence committed abroad if it would be deemed a criminal offence in Scotland. It is no longer necessary for the behaviour to be illegal in the country where it occurs. For example, unlawful sexual intercourse with a 12-year-old in Asia would be able to be prosecuted in Scotland.

e) **Protection from Abuse (Scotland) Act 2001**

While the primary focus of this legislation is women subjected to domestic abuse and the potential legal remedies available to them, parts of this Act can be applied to attempts to safeguard the interests of children, particularly given what is now known about the impact of abuse on children.

4. OTHER

a) **Children (Scotland) Act 1995**

The main piece of legislation covering child welfare and protection. Covers the rights and responsibilities of parents, the role of the local authority, the Children's Hearing System and introduced a number of measures for taking action to protect children in an emergency. This Act clearly states that the best interests of the child must always be considered, and children should be given an opportunity to have a say on matters which affect them, should they wish to do so.

b) **Age of Legal Capacity (Scotland) Act 1991**

Children under 16 do not generally have legal capacity. This act sets out the circumstances in which children are regarded as having legal capacity including the ability to consent to medical treatment.

c) **The Age of Criminal Responsibility (Scotland) Act 2019**

This act ensures that no child under the age of 12 will be treated as an offender in the Scottish Justice System.

d) **Data Protection Act 1998**

Applies to any information, however it is obtained and used, which relates to living persons. Covers how such information is to be gathered, stored, processed and protected. All organisations that hold or process personal data must comply.

e) **[General Data Protection Regulation](#)**

A piece of EU legislation which sets out the principles of informing individuals and getting their permission to collect and store data.