



lawyers for
children & young people

RIGHTS OF CHILD OR YOUNG PERSON

(Children and Young People (Scotland) Act 2014)

UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (UNCRC)

Categories of Rights:

- General Rights: *right to life, prohibition against torture, freedom of expression, thought & religion, right to information & privacy*
- Protective measures: *measures to protect children from economic and sexual exploitation, to prevent drug abuse & other forms of abuse & neglect*
- Civil status of children: *rights to acquire nationality, preserve identity, stay with parents, be reunited with family*
- Government & Welfare: *rights to health services, social security, education, leisure*
- Children in special circumstances: *refugees, orphans, handicapped children, minority groups, deprived children*
- Procedural considerations: *International Committee monitoring implementation*

Core Principles:

- A. Non-Discrimination: [Article 2](#)
- B. Protection - Welfare of the Child: [Article 3](#)
- C. Right to Life, Survival and Development: [Article 6](#)
- D. Participation: [Article 12](#)

The UK signed the UNCRC on 19 April 1990, and it was ratified on 16 November 1991.

EUROPEAN CONVENTION ON HUMAN RIGHTS (ECHR)

This applies to all ages including children.

Core Principles:

- A. Obligation on States to ensure rights and freedoms in ECHR:
- B. Prohibition of Discrimination in enjoyment of ECHR rights:
- C. Margin of Appreciation
- D. Proportionality

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Community Law Advice Network, Scottish Registered Charity (SC039156), Company Limited by Guarantee (SC335011)

Legal services provided by Clan Childlaw Ltd, Company Limited by Guarantee (SC479226)

Registered Office for Community Law Advice Network and Clan Childlaw Ltd: Norton Park, 57 Albion Road, Edinburgh, EH7 5QY

Enforcement:

ECHR is incorporated into UK domestic law by the Human Rights Act 1998

- Proposed legislation is subject to pre-scrutiny to determine its compatibility with ECHR
- Courts can issue a “declaration of incompatibility” if legislation is inconsistent with provisions of ECHR
- Unlawful for public authority to act in manner incompatible with ECHR right and can be challenged in court by individual who claims to be victim

CHILDREN & YOUNG PEOPLE (SCOTLAND) ACT 2014

PART 1 CHILDREN’S RIGHTS

Duties of Scottish Ministers in relation to the rights of children

- **Keep under consideration** whether there are any steps which they could take which would or might secure better or further effect in Scotland of **UNCRC requirements**, taking “such account as they consider appropriate of any relevant views of children of which the Scottish Ministers are aware.”= “... a requirement on the Scottish Ministers to keep under review their approach to implementation of the UNCRC.”“There is no obligation on Scottish Ministers to actively obtain [the] views [of children].”
If they consider it appropriate to do so, take any of the steps identified by that consideration
- **Promote public awareness & understanding** of the rights of children
Reflects purpose behind Article 42 UNCRC.“This could involve, for example, targeted work within schools, the development of information materials, the preparation of guidance for professionals and the provision of support to other organisations who have a role in promoting children’s rights in Scotland.”
- **Report** to Scottish Parliament **every 3 years**

Duties of public authorities in relation to the UNCRC

- **Publish report** every 3 years of what steps taken to secure better or further effect within its areas of responsibility of **UNCRC requirements**
- May be joint report

“**Rights of Children**” includes UNCRC, and first & second optional protocols (1st & 2nd OP)¹

“**UNCRC requirements**” means rights & obligations in Part 1 UNCRC, Arts 1-6(1), 6(3) & 7 1st OP, Arts 1 to 10 2nd OP

¹ 1st OP: on involvement of children in armed conflict; 2nd OP: on sale of children, child prostitution & child pornography

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“Public Authorities” listed in Schedule 1:

- | | |
|--|--|
| 1 A local authority | 11 The Scottish Sports Council |
| 2 Children’s Hearings Scotland | 12 The Chief Constable of the Police Service of Scotland |
| 3 The Scottish Children’s Reporter Administration | 13 The Scottish Police Authority |
| 4 A health board | 14 The Scottish Fire and Rescue Service |
| 5 A special health board(eg NHS Education Board, NHS 24) | 15 The Scottish Legal Aid Board |
| 6 Healthcare Improvement Scotland | 16 The Mental Welfare Commission for Scotland |
| 7 The Scottish Qualifications Authority | 17 The Scottish Housing Regulator |
| 8 Skills Development Scotland Co. Lt | 18 Bòrd na Gàidhlig |
| 9 Social Care & Social Work Improvement Scotland | 19 Creative Scotland |
| 10 The Scottish Social Services Council | |

CHILDREN & YOUNG PEOPLE (SCOTLAND) ACT 2014

PART 2 CHILDREN’S COMMISSIONER

The Commissioner for Children and Young People (Scotland) Act 2003 established the office of the Children’s Commissioner in Scotland. The general function is to promote and safeguard the rights of children with particular emphasis on the rights set out in the UNCRC.

General Investigation (*similar to the current provisions in section 7 of the 2003 Act*)

- Into whether, by what means & to what extent a service provider has regard to the rights, interests & views of children and young people in making decisions or taking actions that affect them
- Only if raises issue of particular significance to children and young people generally or to particular groups of children and young people

Individual Investigation (*new powers*)

- Into whether, by what means and to what extent a **service provider** had regard to the rights, interests & views of a child and young person in making a decision or taking an action that affected that child and young person
- Only if investigation would not duplicate work that is properly the function of another person

Must report to Scottish Parliament on general investigation; May report on individual investigation.

Report may include requirement on service provider to respond to recommendation, saying what has done/proposes to do or reasons for doing nothing.

Must publish response in general investigation (unless SCCYP considers publication inappropriate); May publish response in individual investigation

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RIGHTS OF THE CHILD OR YOUNG PERSON

(Children's Hearing (Scotland) Act 2011)

Pre-hearing Panel:

- Right to ask for a pre-hearing panel to consider someone being made a relevant person (s.79*)
- Right to ask for a pre-hearing panel to consider excusing a child or relevant person from attending the hearing (s.79)
- Right to ask for a pre-hearing panel to consider whether it is likely that secure accommodation authorisation will be made (and therefore legal representation for the child may be accessed) (s.79)
- Right to notification of a pre-hearing panel (r.45)
- Right to provide written representations or to give a report or other document to the pre-hearing panel (r.26)
- Right to attend a pre-hearing panel and to make verbal representations (s.78)
- Right to ask for special methods to communicate with a hearing or pre-hearing panel in certain circumstances (r.19)
- Right to be notified of a decision and the reasons for the decision of a pre-hearing panel (r. Part 12)
- Right to appeal the decision of a pre-hearing panel to deem or not deem a relevant person (s.160)

Before the Children's Hearing:

- Right to notification of a hearing (Rules Part 12)
- Right to provide written representations or to give a report or other document to a hearing (r.23)
- Right to get a copy of grounds, reports or other information being provided for the hearing (unless the Reporter decides that the child is incapable of understanding (r.18)**)
- Right to have the report writers include views in a report provided, including views provided to the local authority by another person (r.8)
- Right to have a safeguarder provide an opportunity to express views and for the safeguarder to include the views and the means by which the safeguarder obtained the views in the safeguarder's report
- Right to be told of information being withheld from a person (r.15)



At the Hearing:


- Duty to attend a children's hearing unless excused (s.73)
- Right to attend a children's hearing (s.78, s.79 and s.103)
- Right to have a representative attend a children's hearing and to have a legal representative attend (s.78)
- Right to Legal Aid and advice (s.191)
- Right to object to the chair of the hearing granting permission to someone (who is not considered necessary for the proper consideration of the matter before the hearing) to attend the hearing (s.78)
- Right to be informed of the substance of any relevant report or other relevant document at the hearing
- Right to have the panel members introduced and for the purpose of the hearing to be explained (r.59(1))
- Right to object to someone attending the hearing who is not necessary to the discussion at the hearing (s.78)

* 's.' refers to a section of the Children's Hearings (Scotland) Act 2011 and 'r.' refers to a rule of the Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013

** text in blue denotes rights that are exclusive to the child unlike other rights that are common to relevant persons

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At the Hearing (continued)

- Right to have the chair of the hearing explain the grounds and to ask if the grounds are accepted (s.90)
- Right to be asked whether documents provided for the hearing accurately reflect any views expressed by him or her (s.121) and if they do not, for the chair to try to clarify their views (r.58(2)).
- Right to be given the opportunity to express a view and for the hearing to have regard to that view (s.27).
- Right to be informed of the availability of children's advocacy services (s.122).
- Right to have the chair of the hearing take reasonable steps to ensure that he or she understands and participates in the proceedings (r.6).
- Right, during the hearing, if wishes to express a view, for the chair to make reasonable arrangements to express views in a manner preferred by the child (r.6, 19)
- Right to ask for the hearing to be adjourned (r.7)
- Right to be asked if all relevant information and documents for the hearing have been received and that there has been an opportunity to review and whether they have been understood (r.58).
- Right to be informed of the substance of any relevant report or other relevant document (r.60).
- Right to have their views obtained, in relation to reports, documents or any matter that the hearing consider, as to what measures would be in their best interests (r.60).
- Right to have an interpreter or to have other steps taken to secure participation (r.61)
- Right to be told of decision, reasons and appeal and related suspension rights at a hearing (r.62).

At court:

- Right to be represented at court by another person who need not be a solicitor (s.104, 113)
- Right to accept the grounds at court (s.105)
- Right to ask the court for a hearing on evidence (s.106)
- Right to apply to the court to have a review of the grounds established (s.110)

Reviewing the compulsory supervision order

- Right to request a review of a compulsory supervision order (s.132)
- Right to request a review of a court decision on grounds (s.110)

Appealing decisions:

- Right to appeal a decision of a children's hearing including a decision that gives or removes relevant person status (s.142, 154, 160)
- Right to appeal the grounds for referral established by the sheriff to a higher court (s.163)
- Right to request that evidence be heard at an appeal against a hearing's decision (s.155)
- Right to request a hearing to consider suspending a hearing decision that is being appealed against (s.158)
- Right to obtain leave of the court to appeal if deemed a frivolous or vexatious appellant (s.159)
- Right to appeal a decision to deem or not deem or to undeem a relevant person (s.160)
- Right to appeal against a decision to implement or not to implement a secure authorisation (s.162)
- Right to appeal from the sheriff to a higher court in certain circumstances (s.163-5)
- Right to appeal to the Sheriff Principal about a decision of the sheriff court about which local authority is the relevant local authority for a child (s.167)
- Right to legal aid and advice (s.191)

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