Good Practice in Action 052
Legal Resource

Understanding child protection in Scotland

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Context

This resource is one of a suite prepared by BACP to enable members to engage with the current BACP *Ethical Framework for the Counselling Professions* in respect of counselling children and young people with regard to child protection in Scotland.

Purpose

The purpose of this resource is to provide information for counsellors and counselling service providers in respect of legal matters and government policy relating to child protection in Scotland.

Using the Legal Resources

The membership agreement with BACP establishes a contractual commitment by members to abide by the *Ethical Framework for the Counselling Professions*, which includes a responsibility for members to keep the skills and knowledge relevant to their work up to date.

The Legal Resources cannot constitute legal advice or guidance in specific cases, nor are they sufficient on their own to resolve legal issues arising in practice. The Legal Resources do not give a full statement of the law. They are solely intended to support good practice by offering general information on legal principles and policy applicable at the time of writing. The Legal Resources are intended for information purposes only and are not a substitute for professional advice. BACP and the author accept no responsibility for and accept no liability as a result of any person acting or refraining from acting on the basis of the Legal Resources.

Practice issues and dilemmas are often complex, and may vary depending on clients, particular models of working, the context of the work and the therapeutic interventions provided. We therefore strongly recommend consulting your supervisor, and also, wherever necessary, a suitably qualified practitioner or lawyer. Some professional insurers will provide legal advice as part of their service.

BACP and the author make no representation or warranty as to the completeness or accuracy of the information contained in the Legal Resources. References in this resource were up to date at the time of writing but there may be changes in particular to the law, government departments, government policies and guidance, websites and web addresses. Organisations and agencies may also change their practice or policies, so please be alert for any changes that may affect your therapy practice.

In this resource, the words 'counselling,' 'therapist' and 'therapy' are used to refer specifically to counselling and psychotherapy.

The terms 'practitioner' and 'counselling related services' are used generically in a wider sense, to include the practice of counselling, psychotherapy, coaching and pastoral care.

While this resource is 'stand-alone', it should be read together with Good Practice in Action 053 Legal Resource: *Understanding the Children's Hearing System in Scotland* for a fuller understanding of child protection in Scotland.

1 Introduction

It is not our intention in this resource to turn practitioners into lawyers, but rather to provide them with sufficient information and signposts to see where boundaries and responsibilities lie, and to decide when it is necessary to seek further legal help. Scottish Government policies with regard to children and child protection are extensive, and practitioners should be familiar with the guidance which affects their work. There are a considerable number of relevant guidance documents, which are regularly revised, and the Scottish Government continues to develop and publish more. These are all available on the Scottish Government website at: www.gov.scot/Topics/People/Young-People (see also information at Appendix 8).

All practitioners have a contractual duty of care to their clients and a professional duty of care under the law of negligence (delict). They are also subject to the ethical standards of their professional organisation and may be contractually bound to organisations with which they work, to comply with any relevant employment, child protection or data protection policies and procedures. Breach of contract may lead to disciplinary or legal proceedings. It is best practice for any self-employed counsellor working with children and young people to have a clear idea of how the child protection procedures in their region operate and also to have access to appropriate legal and practice advice and support. Counsellors must also acquire appropriate insurance cover (*Ethical Framework*, Good Practice, point 19). Some useful resources are listed at the end of this resource.

2 The legal context in Scotland

2.1 Status of law and guidance

Scottish child law is derived from a considerable body of statute law and subsidiary legislation (both Westminster and Scottish) and case law. This law must be compliant with international conventions including the European Convention for the Protection of Human Rights and Freedoms (ECHR), and with the United Nations Conventions ratified by the UK, such as those on the rights of children (CRC – often referred to as the UNCRC) and disabled persons (UNCRPD). It should be understood that the ECHR is an international convention not European Law and therefore compliance is still required and is not affected by the departure of the UK from the EU.

Case law comprises the decisions of the courts as they interpret and apply the statutory legislation to issues in individual cases. It works on a hierarchical basis: the decisions of the higher courts bind those of the lower courts, which should in general obey the higher courts' rulings on specific legal issues. Thus, the decision of a sheriff is not as influential as a decision by the Court of Session; or the UK Supreme Court. Decisions by higher courts are binding on the courts below them. The hierarchy of courts in Scotland with regard to Children's Hearings matters is:

Supreme Court; Court of Session Inner House; Court of Session Outer House; Sheriff Appeal Court; Sheriff Court.

There is a considerable body of Scottish law which regulates children's protection and also children's rights and responsibilities, including but not limited to: Age of Legal Capacity (Scotland) Act 1991; Children (Scotland) Act 1995; Children (Equal Protection from Assault) (Scotland) Act 2019; Children's Hearings (Scotland) Act 2011; Children and Young People (Scotland) Act 2014; Education (Scotland) Act 1980, Standards in Scotland's Schools etc. Act 2000; Education (Additional Support for Learning) (Scotland) Act 2004; Education (Additional Support for Learning) (Scotland) Act 2009; Vulnerable Witnesses (Scotland) Act 2004, the Children (Scotland) Act 2020, the Victims and Witnesses (Scotland) Act 2014 the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 and the UNCRC (Incorporation) (Scotland) Act 2024.

In addition to law, there is a body of guidance, some of which is made under statutory powers and therefore carries a limited legal force. Sources of guidance in force in Scotland at the time of writing are listed at the end of this resource under 'Useful links'. However, as mentioned earlier, the law is always evolving and so, as a matter of good practice, do watch for changes. Good sources of information to help you keep updated are local authority lawyers, local authority child protection or safeguarding committees, Children's Hearings Scotland (CHS) and the Scottish Children's Reporter Administration (SCRA). Local authority or education authority training may also be available.

2.2 Meaning of child for the purposes of child protection

Who is a 'child' in Scottish law?

The age of majority in Scotland is 18, but, for most purposes, persons cease to be 'children' at the age of 16. Between 16 and 18 years of age they are considered to be 'young people'.

Those aged 16 or 17 do not need parental permission to make most decisions. The law governing this comes from a number of Scottish and UK statutes and is complex, inconsistent and sometimes contradictory. Although there are some limitations, young people are, for most practical purposes, able to make adult decisions including: to marry or enter into a civil partnership, where to live, consent to sex, work full time (after school leaving date) and enter into a contract (with some limitations and protections) and to make medical decisions (with limited exceptions). If a young person lacks capacity a parent or carer can only make financial or welfare decisions if they first obtain the appropriate financial or welfare guardianship. (For information on parental responsibilities and rights see Appendix 2).

Who is a child for the purposes of child protection?

The definition of child is wider for child protection than for most legal purposes.

It includes:

- a person who is under the age of 16 years
- a person who is aged between 16 years and 18 years who is subject to a compulsory supervision order imposed by a children's hearing (for the purposes of the hearing only)

- a person who is aged between 16 years and 17 years 6 months who has been referred to a children's hearing, but whose case has not yet been decided by the hearing. He or she may be subject to an interim compulsory supervision order. Again, the definition of child is for the purposes of the hearing only. A person aged between 16 and 18 who is 'looked after' by their local authority (known as a 'looked after child') has status of 'child' for the purposes of 'looked after' status only

- a person who is of 'school age', which can include those who have passed their

- 16th birthdays. This has specific applications which include for children's hearings.

2.3 The rights and interests of the child in 'child protection'

In Scottish child law, the 'overarching principles' are applied to the legal processes of the civil court and children's hearings in making decisions about children. These are contained in the Children's Hearings (Scotland) Act 2011 (the 2011 Act).

In particular the child has a right to a view and to express that view in 'all matters affecting the child' (UNCRC Article 7), and this is embedded in Scottish Government policy including child protection. The rights of a child who is going through the children's hearings are actually quite extensive. There are both active and passive rights. (See Good Practice in Action 053 Legal Resource: *Understanding the Children's Hearing System in Scotland*, which can be downloaded at: www.bacp.co.uk/gpia for further information on the overarching principles.) (See also section 5 (GIRFEC).)

While child protection investigations and protective measures exist to identify children who are or have been, at risk of serious harm and to prevent further harm, it is undeniable that the experience can be distressing, stressful and difficult for the child. When an investigation is handled poorly, no matter how well intentioned the adults, it can add to the harm endured by the child.

The experiences of the children in the Eilean Siar case have led directly to the development of the *Guidance on Joint Investigative Interviewing of Child Witnesses in Scotland* (www.gov.scot/Publications/2011/12/16102728/0).

- the child must be treated as an individual during investigation, any prosecution of an alleged abuser, and in any child protection steps
- the child's interests are paramount – not the needs of investigation, prosecution or defence

- the child has a right to make some of the decisions regarding their needs (subject to capacity), such as: vulnerable witness options (see part 11); whether to submit to forensic medical examination; medical or psychological assessment; and whether to participate in therapeutic work. Note that no consent from either child or persons with parental responsibilities and rights is required for joint investigative interviewing or for the video recording of the same – consent is required for using the recording for training purposes

- the child has a right to be kept informed and to understand the process

- advocacy for the child should be considered at each stage of the process. Advocacy in this instance can mean a professional lay advocate or a supporter chosen by the child. In some cases, such as court and some children's hearings, the child may require qualified legal representation (see GPiA 053 for further details). Readers are directed to (Children's advocacy guidance – gov.scot (www.gov.scot). Special provision for a right to advocacy services for children's hearings was introduced by s.122 of the 2011 Act.

More information may be found at Children's advocacy in children's hearings: CRWIA – gov.scot (www.gov.scot)

The child should also be given written records of decisions about the outcome of an investigation, unless it would impede a criminal investigation and/or unless the child would not be able to understand it:

- to be given the opportunity to express a view in children's hearings, court, child protection case conferences and planning meetings, and to have that view heard and taken into account in accordance with the age and maturity of the child

- to have their personal and sensitive personal information protected by the provisions of data protection legislation (see Appendix 5) and the GDPR and only shared where justified, proportionate, and in accordance with that legislation.

See GPiA 105 on the UKGDPR (www.bacp.co.uk/about-us/contact-us/gdpr). The rights of children have been included throughout the resource as applicable.

2.4 The rights of parents and persons with parental responsibilities and parental rights (PRRs)

The right to respect for family life is enshrined in the European Convention on Human Rights (Article 8) and thus must form part of child protection although the interests of the child are paramount and 'trump' the rights of parents. The rights of persons with parental responsibilities and rights (PRRs) to 'parent' their child and to carry out their parental responsibilities must be respected in the process. Where the suspected abuser is a person with PRRs, the exercising of their parental responsibilities and rights may need to be regulated by a court or a children's hearing. A children's hearing may not remove PRRs, but a decision may suspend some or all of those rights. Only a court may remove PRRs. Not all parents have PRRs, and not all persons who have PRRs are parents. Further information about PRRs can be found in Appendix 2.

It should be understood that in the process of child protection, the cooperation and understanding of those who are directly involved in the care of the child are essential, this will include persons with PRRs, but will also include those with significant involvement in the life of the child such as carers. Thus, at child protection conferences and other planning meetings, it is common practice to include those involved in the life of the child.

They will have useful contributions to make to planning for the child and, unless they are to be excluded from the life of the child because of safety concerns, much of the practical carrying out of the child protection plan will devolve to them. Thus, they should expect to:

- be notified of and invited to meetings, unless it is not appropriate
- receive written confirmation of decisions regarding the outcome of an investigation, unless it would impede a criminal investigation
- have their views recorded and taken into account
- be provided with an explanation of the process and their rights
- have any special needs, such as disability, language or others, taken into account and appropriate assistance and necessary adjustments provided
- have their personal information protected by data protection legislation and only shared when justified and proportionate under that legislation (see Appendix 5).

It should be noted that the child does not have the right to attend child protection planning meetings/case conferences, and children are routinely absent due to the often upsetting nature of the discussions, but child protection guidance requires that if the child is capable of forming a view and wishes to express that view, then that must be available to the CPPM.

3 What is child abuse?

3.1 The meaning of the term

The term 'child abuse' is being replaced by 'child maltreatment' which is rather more nuanced. There is no simple legal definition of child abuse or maltreatment. This has advantages as a firm legal definition can be too rigid. The World Health Organisation defines it thus:

> *Child abuse or maltreatment constitutes all forms of physical and/or emotional ill treatment, sexual abuse, neglect or negligent treatment or commercial or other exploitation, resulting in actual or potential harm in the child's health, survival, development or dignity in the context of a relationship of responsibility, trust or power.*

Child maltreatment

Article 19 of the United Nations Convention on the Rights of the Child (CRC) which the UK signed in 1990 and ratified in 1991 requires States parties to:

...take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

The UNCRC (Incorporation) (Scotland) Act 2024 has the effect of making the CRC directly enforceable in Scottish Courts.

The Orkney Inquiry at para 15.4 provides an interesting description of child abuse:

The term 'abuse' is understood to cover all forms of ill-treatment or neglect of a child. The abuser will often possess some dominant status in relation to the abused and the word 'abuse' may well imply that the one is taking some undue advantage of the other.

In most cases the abuse will arise in the context of a dominant relationship but there may be cases where the element of dominance does not extend beyond the carrying out of the act of abuse itself. The abuse can occur in a setting where the child is also receiving love and care.

It is worth noting that when it comes to child protection, abuse is understood to be maltreatment of the child within the family circle rather than by 'outsiders', unless the abuse is facilitated by parents/ carers or happens due to neglectful failure to protect the child. While the child who is abused by a stranger or mere acquaintance will, of course, be affected by the experience, he or she will usually be supported and nurtured by his or her family who will want and accept professional supports. That child is unlikely to need formal 'child protection' measures. Institutional abuse is outwith the scope of this resource. Where the child has been abused outwith the home or was placed at risk of such abuse, and it occurred through the actions or neglect by those with PRRs then it does become a child protection concern.

The grounds for referral contained in s. 67 of the Children's Hearings (Scotland) Act 2011 list the reasons for which a child may be referred to the children's hearing and it is notable that none of the grounds simply cite 'child abuse'. Instead the 17 different grounds contain not only acts against children by commission and omission, but also acts by the child which pose a serious risk to the child or others (for details of the grounds for referral the reader is directed to GPiA 053 Legal Resource: *Understanding Children's Hearing System in Scotland*.

3.2 The indicators of abuse

Although not contained in any statute, it is accepted that there are four indicators of abuse. Summarised very briefly they are:

Physical abuse: Physical abuse is the deliberate causing of physical harm to a child. The Children (Equal Protection from Abuse) (Scotland) Act 2019, removed the previous defence of reasonable chastisement. Any parent using physical chastisement will be liable to be charged with assault.

Emotional abuse: Emotional abuse can consist of deliberate acts – scapegoating, insulting, belittling, threatening behaviour and other hostile treatment, as well as more passive failure to provide emotional nourishment, support and affection. The impact on the child's development can be profoundly damaging. Again, there can be a certain 'grey' area as to what behaviour amounts to emotional abuse – the deciding factor is the impact on the individual child. Emotional abuse is one of the most common of the concerns recorded where children are placed on the child protection register Children's Social Work Statistics 2022-23 – Child Protection – gov.scot. This is likely to be because it is accepted that all types of abuse include a level of emotional abuse.

Neglect (including non-organic failure to thrive): As opposed to physical or sexual abuse, which requires positive actions, neglect is the failure to provide the child with the care that he or she needs. A parent has the parental responsibility to safeguard and promote the health, welfare and development of the child (see Appendix 2). This includes: the day-to-day care of the child; provision of adequate nourishment; appropriate clothing, medical/dental care; safe and suitable living conditions. It does not have to be deliberate, the neglect may arise from factors such as parental drug or alcohol abuse or mental illness. It does not include circumstances which are beyond the control of the parent. Neglect can be a single incident but is more commonly a pattern of failure.

Sexual abuse: The law on sexual offences against children is contained in the Sexual Offences (Scotland) Act 2009 (the 2009 Act). The Act divides children into two groups by age: younger children who are aged under 13 years, and older children who are 13-15 years of age. All sexual offences against children are serious, but those against younger children are treated as being even more serious.

Sexual abuse is not limited to physical touching but includes a wide range of behaviour including exposing a child to sexual activity and to sexual images.

The relevant excerpt of the Act is available in Appendix 3.

It should be noted that it is not necessary for that behaviour to be considered to be sexual abuse for the motive of the abuser to be sexual gratification; it may also be for the purposes of humiliating, alarming or distressing the child (2009 Act ss. 23(2) (b) and 33(2)(b)). It should also be noted that older children may be accused of offences under the Act.

Children aged over 12 and under 16 who are engaging in consensual sexual activity with each other are subject to the criminal law under that Act, as there is no exception for this age group (2009 Act s.37(4)). (See Appendix 3.)

None of these types of abuse exist in isolation. For example, you could not believe that a child who has been physically or sexually abused has not also been emotionally abused. The indicators do not exist to define abuse, but:

> *... have some convenience as distinguishing different kinds of behaviour which may give rise to different problems in investigation or discovery, to differences in the course of action to be taken against the abuser and to different methods in the provision of relief and treatment for the abused.* (Orkney Inquiry para 15.4)

Cultural practices: In recent years we have come to understand that there are cultural practices which amount to abuse, including female genital mutilation (FGM), and forced marriage. Practitioners who work with adults who have suffered these forms of abuse should be alert to the possibility that the children of such clients may be at risk themselves, even if the client is opposed to the practice. It should be noted that while some are concerned with the cultural practice of circumcision of boys, this is not normally considered to be abuse, but the circumstances may be such as to give rise to concerns, particularly if the procedure is not done under medical supervision, and in the case of an older boy, is done without consent.

Ritual or organised abuse: This is abuse that can be organised and systematic, takes place over a long period of time and involves multiple abusers.

Sometimes the definitions divide it into two types of abuse.

The Cleveland, Orkney, and Rotherham Inquiries show how difficult and complex these cases are, how much care must be taken by agencies, such as social work and the police, in sharing information and acting on it, and the terrible cost when investigations go wrong.

Trafficked children: There is increasing awareness of the rising incidence of trafficked children.

Children trafficked into the UK: Children may be trafficked into the UK from other countries. Some children are trafficked by families desperate to get their children a better life despite the associated risks, while other children are being trafficked for exploitation such as sexual exploitation or for purposes of economic exploitation including modern slavery. Children may be trafficked alone or with family members. Trafficking is not a specific ground of referral to the children's hearing but will generally be covered by one or more of the grounds (e.g. 'lack of parental care').

Children trafficked within the UK: : Some children may also be trafficked within the UK. The use of children to transport drugs within the UK is commonly known as 'county lines'. Press reports suggest that the incidence of this rose very considerably during the pandemic. These children are frequently abused and girls, in particular, may be sexually exploited.

Institutional abuse: We have also come to understand that the treatment of children by agencies and organisations can amount to 'institutional abuse'.

The last type of abuse is beyond the scope of this resource, but practitioners whose work may involve them in working with these children will need to ensure that they are familiar with government policy and guidance.

Practitioners who work with individuals who were subject to institutional abuse are directed to Redress Scotland which is the body which decides on applications for compensation (Redress Scotland – Survivors are at the heart of the Redress Scotland process).

3.3 The indicators of risk

In many of the child death inquiries and serious case reviews hindsight reveals missed indicators of risk.

The commonly accepted risks include:

- domestic abuse (including a new partner with a history of domestic abuse)
- problematic alcohol abuse
- problematic drug abuse.

However, it can also be argued that the following could be included:

- a parent or close family member who has experienced FGM or attempted FGM
- a sibling or close family member who has experienced forced marriage or attempted forced marriage
- breast binding
- serious mental health problems in parent/carer or child
- vulnerable parent/carer including learning disability.

The presence of any of the latter risks does not indicate that there is an automatic child protection concern but should flag up the possibility of concern. It is also wise to beware of assuming that because of a family incidence of FGM, breast binding or forced marriage that any child of the family is likely to undergo the same abuse.

3.4 Disability

There has been a slow awakening to the fact that disabled children can be particularly vulnerable to abuse. In fact, many studies have shown that disabled children are approximately three times more likely to experience abuse.

Disabled children are also less likely to be believed if they say that they are experiencing abuse, and often have limited opportunities to tell someone about what is happening to them. They may also have communication difficulties and be reliant on the abuser to help them to communicate.

4 When the risk arises from the child's own behaviour

4.1 The types of risk

Sometimes the risk to the child comes from the child's own behaviour. Scottish Children's Reporter Administration statistics for the year 2023/24 (available at SCRA's Official Statistics 2023/2024 – SCRA) show that of the 10,197 who were referred to the children's reporter (please note that the number of children is different from the number of referrals as a child may be referred multiple times):

- 2,701 (6,382 referrals) were referred as having been alleged to have committed an offence (ground j). The number of alleged offences was 13,198 and include: non-sexual crimes of violence, sexual crimes, crimes of dishonesty, fire-raising (Scottish legal term for arson) and vandalism, motor vehicle crimes and other offences. The most common types of alleged offences were assault, threatening or abusive behaviour and vandalism. The children were aged between 12 and 16+ due to the age of criminal responsibility in Scotland being 12 years. Of the children referred for alleged offences in 2023/24:

  – 974 were referred for one offence

  – 1,117 were referred for two to five offences

  – 293 were referred for six to nine offences

  – 317 were referred for 10 or more offences.

Of the children referred to the hearing on other behavioural grounds:

– 16 were referred as having misused alcohol (ground k), the average age was 14.3 years

– 20 were referred as having misused a drug (ground l), the average age was 15 years

– 1,165 were referred for conduct harmful to self or others (ground m), the average age was 14.1 years

– 87 were referred as beyond the control of a relevant person (ground n), the average age was 13.1 years

– 783 (797 referrals) were referred as having failed to attend school without a reasonable excuse (ground o) the average age was 12.7.

> The inclusion of children under the age of five may be the result of confusion in those making referrals and may be in regard to children not attending nursery. As the school leaving date determines when a child may leave school, children may be aged over 16 and still required to attend. It should be noted that it is not always the child who decides that they will not attend, parents may fail to ensure attendance. This is particularly likely to be the case with younger children.

Practitioners' child protection policies should include procedures to be followed where the threat to the child (or others) comes from the child. Readers are directed to GPiA 053 Legal Resource: Understanding the Children's Hearing System in Scotland for further reading concerning the child who is referred to the system because of their own behaviour.

4.2 Responding to risk caused by the child's behaviour

Where the behaviour of the child is putting themself or others at significant risk, it may be necessary for the child to be brought to a children's hearing and to be made subject to a compulsory supervision order (GPiA 053 Legal Resource: *Understanding the Children's Hearings System in Scotland*). Where a compulsory supervision requirement alone is not managing the child's behaviour, more restrictive measures may be needed.

Apart from the compulsory treatment order for children whose mental health has reached a crisis (and which is not a measure open to either a court or children's hearing), there are two measures which may be imposed by a hearing (or a sheriff). These are: a movement restriction condition and placement in secure accommodation.

4.2.1 Movement restriction condition

This is an order which, when included in a compulsory supervision order (or an interim order), can restrict the child's liberty in a specified way. It can, and usually does, involve 'tagging'. It is appealable to the court by the child and each relevant person.

It does allow the child to remain at their place of residence (which may not be at home) avoiding placement in secure accommodation or close support. (Children's Hearings (Scotland) Act 2011 s. 84 and the Children's Hearings (Scotland) Act 2011 (Movement Restriction Conditions) Regulations 2013 (SSI 2013/210).) The tag does not record all of the child's movements. It will simply record whether the child is in their place of residence during the hours when they are required to be there. SCRA statistics show that 17 children were subject to Movement Restriction Conditions during 2023-2024.

4.2.2 Secure accommodation

There are only four establishments in Scotland that offer secure placements. None are specialist units. Children may be placed in specialist units in England if necessary.

None of the Scottish units are large; the maximum number of children and young people that can be accommodated in the largest unit is 24, and the total number of beds across Scotland is only 80 with additional beds available for emergency or respite.

The number of places has been reduced over recent years. All are mixed, boys and girls. The units are secure in the sense that those accommodated are not free to leave the unit, and movement within the unit can be restricted as necessary. The numbers of Scottish young people being placed in secure accommodation has fallen year on year according to SCRA statistics. The number of children placed in secure accommodation during 2023-2024 was 110. Of these 98 were subject to interim orders and 80 were made within Compulsory Supervision Orders (CS). This reveals that a substantial number of the children placed in secure accommodation under an interim order had that placement continued under the subsequent CSO.

All sections of statute cited in this section are from the Children's Hearings (Scotland) Act 2011 unless otherwise stated.

There are three routes into secure accommodation:

a. Where a person under 18 (and over the age of 12) has been convicted of a criminal offence by an adult court, he or she may be sentenced to a specified period of time in secure accommodation, which may be more appropriate for a young person than a young offender's institution (Criminal Procedure (Scotland) Act 1998 ss. 205, 207 and 208). Sentencing guidelines for those aged under 25 may be accessed at sentencing-young-people-guideline-for-publication.pdf.

b. Authorisation contained in a temporary order, such as a warrant to secure attendance at a children's hearing (s. 88(2), or an interim compulsory supervision order (s. 86). While there is no specific provision for including keeping the child in secure accommodation in a child protection order, s. 37(2) does allow for the sheriff to include any measure necessary for the care, protection, treatment or control of the child.

c. Authorisation contained in a compulsory supervision order (including an interim variation of a compulsory supervision order (s. 83(4)).

Information regarding these may be found in GPiA 053 Legal Resource: *Understanding the Children's Hearing System in Scotland.*

The placing of a child (the definition of a child for children's hearings' purposes includes young persons between the ages of 16 and 18) in secure accommodation means that their liberty is seriously curtailed, and their family life is interfered with. This must be justified and proportionate or it may be deemed to be an infringement of their rights under the European Convention on Human Rights (Articles 1 and 8). Thus, the law places limits on the time of the placement and strict conditions for implementing authorisation for secure accommodation when granted by a children's hearing:

- the conditions for placing a child in secure accommodation under s. 83(6) are very strict and the hearing *must* have considered that they have been satisfied and that no other measures, particularly a movement restriction condition, would answer. The conditions include serious risk caused by the child to others or to him or herself (including self-harm).

- the decision of the hearing is appealable to a sheriff and the child must have legal representation at the children's hearing where the decision is made (this does not apply to warrants or interim orders due to the urgent nature of those orders).

- the hearing does not place the child in secure accommodation – it gives authorisation to the chief social work officer for the local authority to do so. That individual must be satisfied that it is in the best interests of the child to be so placed and that the unit being considered can answer the child's needs. If the decision is not to implement, the child will be placed in alternative accommodation, which should be named in the order authorising placement in secure accommodation. The requirements for this and the following bullet points are contained in The Children's Hearings (Scotland) Act 2011 (Implementation of Secure Accommodation Authorisation) (Scotland) Regulations 2013 (SSI 2013/212).

- the child has the right to appeal these decisions to a sheriff. It should be understood that the appeal is not limited to the decision to implement secure accommodation authorisation – but also the decision not to implement it.

- the head of the unit must also agree with the placement. They must not only be satisfied that the placement is suitable for the child, but also that it would not be detrimental to other children in the unit (reg. 6(3) Children's Hearings (Scotland) Act 2011 (Implementation of Secure Accommodation Authorisation) (Scotland) Regulations 2013 (SSI 2013/212)).

- the authorisation cannot last for more than three months without being reviewed by a children's hearing.

- the child and each relevant person can appeal the decision by the chief social work officer.

- there must be regular reviews of the placement by the chief social work officer to evaluate whether it continues to be in the child's interests to be placed in secure accommodation, and whether the particular unit can continue to answer the child's needs – if the answer to either of those questions is no, then the child must be removed and placed in alternative accommodation. A children's hearing will be convened to review the CSO and the measures contained therein.

While in the unit the child will have a full physical health assessment and will continue to receive an education and any other support required. Contact with family may be regulated and supervised depending on the measures contained in the order which placed the child there, and the procedures of the individual unit. On removal from the unit it is usual for the child to move at first to a close support unit. The child's plan must include pathway planning for movement from secure accommodation and onward to the day they leave care.

5 Getting it right for every child (GIRFEC)

5.1 The origins of GIRFEC

One of the more distressing aspects of the many child death inquiry reports, produced in Scotland and other parts of the UK, is that report after report notes the same failings including:

- lack of a common language between organisations and agencies with regard to child protection concerns
- lack of effective cooperation between organisations and agencies
- failures in record keeping
- failure to share information between agencies
- failure to act effectively on shared information
- lack of a clear chain of responsibility
- lack of clarity about which individual or agency has responsibility for what work or support with the child or family
- lack of training for professionals on child abuse
- lack of effective supervision for workers

- no shared polices or approaches
- duplication of services with different approaches
- failure to spot the signs before the situation became dangerous
- failure to provide information and support to the child and parents/carers
- failure to give the child an opportunity to express a view
- focus on the right of the parent/s to parent rather than on the child's welfare
- failure to listen to children or family members/carers
- failure to see the child as an individual, particularly in cases where multiple children were involved.

In early 2004 the Government launched a consultation into the children's hearings' system. Partly as a result of the responses to that consultation and partly in response to the findings of various inquiries and serious case reviews was the introduction of the policy initiative called 'Getting it Right for Every Child' commonly referred to as GIRFEC. GIRFEC became central to the Scottish Government approach.

Since that time GIRFEC has developed further, culminating in the provisions of the Children and Young People (Scotland) Act 2014, which has enshrined many of the principles into law although not all of that Act is in force at time of writing and some of which is in force is currently being amended. While much of the early GIRFEC response was focused on improving the response to child protection concerns, more recently there has been an added emphasis on resolving issues before they reach the level where child protection steps are required. The Scottish Government has developed a considerable body of guidance, much of which is listed at the end of this resource; all of the guidance includes the GIRFEC principles.

5.2 The GIRFEC principles

These are quoted from the Scottish Government guidance.

The GIRFEC approach:

- is child-focused. It ensures the child or young person – and their family – is at the centre of decision-making and the support available for them.
- is based on an understanding of the wellbeing of a child. It looks at a child or young person's overall wellbeing – how safe, healthy, achieving, nurtured, active, respected, responsible and included they are – so that the right support can be offered at the right time.

- is based on tackling needs early. It aims to ensure needs are identified as early as possible to avoid bigger concerns or problems developing.

- requires 'joined-up' working. It is about children, young people, parents, and the services they need working together in a coordinated way to meet their specific needs and improve their wellbeing.

For an explanation of the concept of 'wellbeing' see Appendix 6, Glossary of acronyms/abbreviations.

5.3 The named person

The concept of the 'named person' arose from cases of children who were in local authority care or whose circumstances required the involvement of multiple professionals.

It was found that children and families who have multiple-agency support and involvement can feel overwhelmed and unsure who to contact for help and information. Having one of the professionals assigned as 'named person' provides children and parents/carers with a clear source of information. Where there is a child's plan or child protection plan, there must be a named person. That individual has the responsibility of ensuring that children and parents/ carers understand what is happening and is an easily available source of information. It has proved very successful in these cases.

The Children and Young People (Scotland) Act 2014 introduced a 'named person' for every child in Scotland and required that any individual or agency holding information 'that may be useful' share that information with the named person. A group of parents and charities raised an action in court to oppose this. It reached the Supreme Court as The Christian Institute and others (Appellants v The Lord Advocate (Respondent) (Scotland) [2016] UKSC 51 | 2017 S.C. (U.K.S.C.) 29 | 2016 S.L.T. 805 | 2016 S.C.L.R. 448 | [2016] 7 WLUK 790 | [2016] H.R.L.R. 19 | [2016] E.L.R. 474 | (2016) 19 C.C.L. Rep. 422 | 2016 G.W.D. 22-401. The court found that the information sharing part of the Act was beyond the competence of the Scottish Parliament. In autumn 2019 the Government accepted that the scheme, as intended in the Children and Young persons (Scotland) Act, could not be made compliant with Data Protection legislation and withdrew that part of the 2014 Act together with the Children (Information Sharing) (Scotland) Bill.

The well-established named person role for children with multi-disciplinary support, or who are subject to a compulsory supervision order is not dependent on the Act and will continue. Practitioners are directed to: www.bacp.co.uk/about-us/contact-us/gdpr. Practitioners are advised to record any consent to the sharing of information and the specifics of what information could be shared and with whom. Where there may be a question of the child's capacity to consent extra care must be taken and all steps recorded.

Where the practitioner has information of relevance to child protection that information may be shared if the requirements of the GDPR and Data Protection legislation are satisfied. (See 13).

Interested readers may read the judgment in the named person case *Christian Institute and others (Appellants) v The Lord Advocate (Respondant) (Scotland)* and on the Supreme Court website in the law reports, viz, 2017 SC (UKSC) 29, 2016 SLT 805, 2016 SCLR 448 at: www.supremecourt.uk/cases/uksc-2015-0216.html.

6 What is child protection?

Any steps taken to prevent a child from avoidable harm caused to the child by the action or inaction of another or, indeed, by the child can be called child protection. Most child protection steps are actually taken by the parent(s) or carer(s) of the child. The parent who ends an abusive relationship for the sake of the child or the parent who seeks help because of the impact of his or her mental health, drug or alcohol misuse is a parent who is protecting a child. Where the parent is the cause of the harm or risk of harm or is unable to protect the child from their own behaviour then the state must intervene. Formal child protection steps are not always required as voluntary help may be willingly accepted or even requested. Where it is not, intervention may have to take the form of compulsory intervention. Intervention by the state through its agencies is an interference in the right of the parent to parent, the right of the child to be parented by their parent(s), and the child and parent(s)' right to a private life. Steps taken must be proportionate and must be open to challenge by the parent or the child. Thus, a child may not be removed from the care of a parent or person with parental responsibilities and rights without a decision by a court or children's hearing except in an emergency situation by the authority of a justice of the peace order or by a constable (see 10.1). The process must be fair.

This resource is designed to give practitioners an understanding of the processes of child protection, the vocabulary, and the rights of children, parents, families and carers.

6.1 The child protection process

It should be understood that child protection does not only mean the legal measures of child protection orders and children's hearings. Most child protection cases do not require court or hearings.

Scottish Government guidance describes the process of formal child protection as:

1. Recognition of harm or potential harm
2. Sharing concerns and initial information gathering
3. Joint investigation/assessment
4. Medical examination and assessment
5. Child protection case conferences
6. Child's plan (see Appendix 6).

It is obvious that for this process to be effective there must be cooperation between the various agencies and professionals and a shared understanding of the principles and language is absolutely essential. Also essential is the involvement of the child (where able) and the parent(s)/ carers. They must be at the heart of the process.

6.1.1. Recognition of harm or potential harm

For the meaning of 'harm' readers are directed to the definition in Appendix 6. There are a number of ways that harm or potential harm may be identified:

- incidents may be reported by those present
- concerns may be raised by family, carers, friends or neighbours
- professionals may spot physical or behavioural signs
- the child may allege abuse
- the investigation into the alleged abuse of one child may lead to concerns being raised about other children.
- police may become concerned about the welfare of children when called to an incident or during investigation of an alleged offence.

- The child may have been alleged to have committed a criminal offence. Note that this only applies to children aged over 12 years
- The child may be behaving in a way that puts themself or others at risk of harm.
- The child may have been alleged to have committed a criminal offence. Note that this only applies to children aged over 12 years
- The child may be behaving in a way that puts themself or others at risk of harm.

The statistics on the website for the Scottish Children's Reporter Administration (www.scra.gov.uk) provide details of the sources of referrals for children by the ground of referral.

The great majority of referrals from professionals come from social work and the police, with a smaller number from medical and educational professionals. The statistics do not tell us how those agencies became aware of the concern.

Readers are directed to section 12 on concerns which arise in the therapeutic setting.

Sharing of information and initial information gathering

The sharing of information about a child is at the heart of GIRFEC. The sharing of personal and sensitive information is protected by the provisions of the Data Protection Act 2018 (the 2018 Act) and the GDPR even in child protection matters. When each agency is in sole possession of information a full picture of the child and their life is incomplete. Minor concerns may appear insignificant in isolation, but when gathered together may prove significant. For the most part the sharing of information in this sense does not require breaching the provisions of the Data Protection Act 2018. Where information about a child arises from observation, individuals and agencies are entitled and encouraged to share that concern. A typical example is: a school has noted a child behaving in a way that gives rise to concern, or a health professional is concerned that a child has been physically abused or neglected. Where the sharing of information has been given informed consent, there is no difficulty apart from ensuring that sharing is in accordance with that consent. Difficulties arise where the information is protected by the Data Protection Act, and consent is either refused, or it is not appropriate to seek it as it may place the child at greater risk. The criteria are contained in schedule 1 s. 18 of the Data Protection Act 2018. (For further information see Appendix 4, GPiA 053 Legal Resource: *Understanding the Children's Hearing System in Scotlan*d and GPiA 105 on the UKGDPR.)

Joint investigation/joint interviewing

Dealing with complex cases of child abuse is one of the most difficult areas of work for all the professionals involved: social work, police, lawyers, medical and psychological services, courts and the children's hearings.

The professional and personal demands placed on those involved in dealing with complex cases cannot be understated.

Joint investigations are undertaken by social work and the police where there are concerns that an offence has been or may be committed against a child. Health services are inevitably involved.

The offence may be neglect, physical or sexual abuse, or other types of offences, such as: trafficking, modern slavery, using a child for begging, forced marriage or FGM among others. Investigations can be complex, particularly where more than one child is involved. Joint investigative interviews may be used where abuse is suspected, as part of a criminal investigation, or where both are involved.

A joint investigative interview involves police and social work planning together and working in a coordinated way. It will involve medical professionals. Careful planning is required. The results of the investigation will inform more than just any criminal prosecution but will also be used where formal child protection steps are being considered, including for the purposes of a referral to the children's hearing or a child protection order.

Where it is suspected that a child has been abused, there will be a need to speak to the child to find out what the child can say about what may have happened – providing the child is old enough to participate. Even very young children can provide information if interviewed with skill. Investigative interviews are undertaken jointly by police and social work. Joint investigative interviews are not limited to police investigation of possible criminal law breaches but may also be to gather information to assist in deciding whether the child is in need of protection.

The experience of being interviewed is never easy and there is a fine balance to be kept between obtaining best evidence and the needs of the child; the needs of the child are paramount. It must be understood that the needs of the child supersede the needs of a criminal investigation. Those undertaking the interviews must be well trained and well supervised and the process must be carefully planned.

The Orkney Inquiry revealed that the joint interviewing of the children had not been planned or coordinated to provide consistency and the purpose and approaches were not fully understood by those undertaking the interviews. The children endured multiple interviews – up to 10 per child. Not all of those undertaking the interviews were adequately trained and the recording of the interviews was inadequate.

The Guidance for Joint Investigative Interviewing is available at Guidance on Joint Investigative Interviewing of Child Witnesses in Scotland – gov.scot.

Joint interviews require careful planning to ensure that the needs of the individual child are understood and accommodated.

A practitioner who is known to be working with the child may well have valuable information about the child, which would assist the interviewers, such as:

- the child's present emotional state
- any particular anxieties or sensitivities
- the range of behaviours
- any particular needs.

It may be considered that there is a potential requirement for the child to be seen by a psychologist. If this is the case the police will seek advice from COPFS (Crown Office and Procurator Fiscal Service).

Medical examination and assessment

Medical professionals must be at the heart of planning for children, particularly 'looked after children' (see definition in Appendix 6). Children who are accommodated away from home are entitled to have a medical assessment and to have their medical care made an integral part of their child's plan (medical care should be in all children's plans). Any child may have needs which require examination and assessment, but which have nothing to do with child protection.

A child may have a disability or a chronic condition, or educational special needs, which need to be properly assessed. In most cases the parent and child will be happy to participate and may actually have asked for the assessment. Medical examination of a child may be necessary to determine if the child has been neglected or abused. If the parent does not agree then it may be necessary to obtain a child assessment order from a sheriff or a children's hearing (see Appendix 6 Definitions for child assessment order and GPiA 053 Legal Resource: *Understanding the Children's Hearings System for medical examination order*).

It should be understood that a child who has capacity cannot be forced to submit to a medical examination (this includes assessment and psychological assessment) (Age of Legal Capacity Act 1991 s. 2) and Children's Hearings (Scotland) Act 2011, s. 186.

Readers are directed to the Scottish Government guidance for information on the assessment tools which are in use throughout Scotland. A good source of information is the National Guidance for Child Protection in Scotland. National Guidance Scotland | Child Protection.

7 Child Protection Planning Meetings/Child protection case conferences

7.1 How is a CPPM held?

It is local authority social workers who decide whether a child protection case conference (CPPM) should be held, although any individual or agency may request one. The CPPM is of great importance and must be chaired by a person who has had specific training. The person responsible for taking the minutes must also have had specific training. The Orkney Inquiry and the Caleb Ness review identified serious deficiencies in the way the child protection case conferences worked and there is now very detailed guidance and required timescales produced by the Scottish Government. These are contained in the National Guidance for child protection in Scotland 2021 updated 2023.

7.2 Attendance at a CPPM

Deciding whether a child is at risk of serious harm is a multi-agency decision (see definition of serious harm in Appendix 6). It is essential that the professionals with knowledge of the child and family attend or, at the very least, are represented. It was a serious weakness in both the Caleb Ness and Baby Peter cases that no medical professionals attended the CPPMs. The parent(s)/carers and the child should be invited unless inappropriate and may each bring a supporter. The child and their parent(s) have no right to attend and therefore no means to appeal the decision that they should not be present.

7.3 What does a CPPM do?

There are different types of CPPM: initial, pre-birth, review and transfer.

The formal purpose of the CPPM includes:

- deciding whether the child has suffered or will suffer significant harm from abuse or neglect
- deciding whether a child protection plan is needed. If so the plan will be developed and kept under review (the child protection plan will be incorporated into the child's plan)

- deciding whether to place or keep the child's name on the child protection register and which concerns will be placed on the register
- deciding whether legal safeguards are necessary to protect the child or ensure compliance and, if this is the case, a referral will be made to the children's reporter by the CPPM
- identifying the lead professional
- identifying the named person.

Initial

The purpose of the initial CPPM is to share information to ensure that the risks to the child are properly identified and to identify what actions (see above) must be taken to reduce those risks, together with the time scales for those actions.

Review

Where a child's name has been placed on the child protection register the situation must be kept under review. Situations can change and the child's plan may need to be changed in response. The review will always have to consider whether the child's name needs to be kept on the register. The first review must be within three months of the initial CPPM and after that reviews should be at least every six months.

Pre-birth

Where there are concerns about a child prior to birth a CPPM may be held to consider what actions may be necessary at the time of birth. No legal actions can be taken prior to birth as under Scottish law an unborn child is not a 'legal person' but because the register has no legal force, unborn children may be entered on it. While no legal action can be taken pre-birth, it is lawful, in appropriate circumstances for a Child Protection Order to be obtained immediately after birth – cf *J v Lord Advocate, E v Lord Advocate* [2013] CSOH 27, 2013 SLT 347.

Transfer

If the child and family are moving permanently to a new local authority in Scotland a CPPM will be held. It will consider: whether the child still needs to be on the

Register; to consider the situation as a whole, and to ensure that the relevant information is provided to the new local authority.

8 Child protection plans

Where a child has been identified as being at risk of significant harm (see definitions) a child protection plan must be agreed and incorporated into the child's plan (see Appendix 6). The plan should provide detail as to:

- the identified risks and what is needed to reduce them
- the identified needs and what is needed to meet them
- what actions must be undertaken – who is responsible for each of the tasks and the time scales
- any supports and resources
- how the plan will be monitored and reviewed.

All of the professionals and agencies involved with the child should participate in the child's plan meeting and the involvement of the parent(s), carers and the child (subject to age and ability to understand and participate) is essential as some of the tasks may be their responsibility. There are times when the involvement of a parent or carer may be felt to be inappropriate. The professionals may feel that they need to discuss the case freely and that the presence of a parent/carer will inhibit that freedom. It is essential that the child and his or her parent(s)/carers understand the plan, the expectations, and the supports. All participants should have a written copy of the plan. There will also be a full and comprehensive risk assessment. Where the child is subject to a compulsory supervision order or any order by a children's hearing or a court, any such measures will be incorporated into the plan.

9 Child protection register

9.1 What is the legal status of the register?

The register is a tool for child protection – it has no legal force and therefore there is no appeal to the sheriff against a decision to put a child on the register (a judicial review might be possible but that is a complex question and beyond the scope of this resource). It is, to use the phrase of the Baby Peter Serious Case Review 'an important signal to other agencies that they should carefully monitor their welfare' (para 4.1.9).

9.2 What is on the register?

It contains the names and details of each child who has been placed on the register. Where it used to be the case that the register had to contain a category of registration, now it is sufficient to record the areas of concern. These can be extensive. As mentioned above, a child who is not yet born may be placed on the register.

9.3 Who can see the child protection register?

The register is not a public document. It does not form part of the child's records.

Access to the register must be available 24 hours per day for all professionals who need to make an enquiry about a child – such as medical, educational and social work staff. The child and parent(s)/carers should be provided with information about the register and the child's entry in it.

9.4 Where is the child protection register?

Each local authority is required to have and to maintain a child protection register. Some local authorities may maintain a joint register. Social services will appoint a Keeper. A list of Keepers of child protection registers and contact points are kept by the Scottish Government. The Keeper is responsible for ensuring that the register is up to date. Changes to details relating to a child on the register should be notified to the Keeper as soon as practicable. Where a child moves to another area it is necessary that that local authority is notified. A temporary registration may be made if the child is only in the area for a short time.

The Keeper is also responsible for attempting to trace a child who is on the register and whose whereabouts become unknown.

9.5 How is a child's name entered on the register?

Where a child protection case conference has identified that a child has or is likely to suffer significant harm, the child will be placed on the register following the CPPM. The areas of concern will be identified by the CPPM.

9.6 When and how is a child's name removed from the register?

This is a decision which is made by a review CPPM. The child's name is removed once it has been decided that there is no longer cause to believe that the child is or is likely to experience serious harm. This may be because: the situation has been resolved; because further steps have been taken, such as a residence order being obtained under s. 11 of the Children (Scotland) Act 1995; the child has been adopted; a permanence order is in place or the child is now over the age of 16.

10 Formal legal steps

Where the family or child cannot or will not work with child protection processes then formal legal measures will be considered. The formal steps that may be taken include:

- removal of the child by the police in an emergency situation
- an order to remove or keep a child in a place of safety granted by a justice of the peace
- a child protection order granted by a sheriff
- a child assessment order granted by a sheriff (or a children's hearing if the child is subject to a compulsory supervision order or has been referred to a hearing but grounds are not yet established and an interim order has been made)
- a medical examination order issued by a children's hearing or varied by a sheriff
- an order issued by a children's hearing including:
  - interim compulsory supervision order
  - compulsory supervision order
  - interim variation of a compulsory supervision order
  - medical examination order
- a permanence order
- an adoption order – with or without authorisation for adoption
- a parenting order.

Information on the above orders is also available in GPiA 053 Legal Resource: *Understanding the Children's Hearing System in Scotland* and GPiA 025 Legal Resource: *Adoption law within the counselling professions in Scotland.*

10.1 Emergency protection of children other than child protection orders

There are times when the situation that the child is in requires an urgent response and it may not be possible to obtain a child protection order.

The Police

A police constable (that means any police officer of whatever the rank since each police officer is also a constable) is empowered to remove a child to a place of safety if they consider that it is necessary to do so to protect the child from significant harm or further harm. The criteria are the same as would be applied by a sheriff in considering a child protection order.

This is a sensible measure to ensure that a child in a dangerous situation may be removed on a temporary basis. It is meant to deal with an urgent situation only. It can last no more than 24 hours. Examples of such situations include: a parent or carer has been killed or injured; a parent or carer is incapacitated by drink or drugs: a parent has injured the child. The police will alert social services and the child may be cared for by relatives or given a temporary placement by the local authority social work department. (Children's Hearings (Scotland) Act 2011 s. 56)

Justice of the Peace

Where a sheriff is not available to deal with an application for a child protection order (perhaps because of a weekend or public holiday), a Justice of the Peace may be asked for an order (Children's Hearings (Scotland) Act 2011 s. 55). This is usually applied for by a local authority. The criteria are the same as for a child protection order. This type of order may order the production of the child or the removal of the child in a similar way to a child protection order, but the child may not be kept in a place of safety for more than 24 hours. A Justice of the Peace is a lay magistrate. They are not legally qualified but sit in the justice of the peace court with a legally qualified advisor. The order may be obtained out of hours and does not require the presence of the advisor.

10.2 Child Protection Orders

A child protection order is a short-lived order made by a sheriff where there is an urgent concern about a child. The order is granted by a sheriff on application by either a local authority or an individual (there are separate provisions for each type).

The relevant provisions are contained in the Children's Hearings (Scotland) Act 2011 and all sections cited here are from that Act.

The hearing is informal and is normally held in chambers (the Sheriff's office) with no one present but the sheriff, sheriff clerk and the local authority social worker with or without a local authority lawyer.

The order is draconian in its effect and may only be used where there are reasonable grounds to suspect that the child has been or is being treated in such a way that the child is or is likely to suffer 'significant' harm (s.38 and 39). During 2022/23, 442 child protection orders were granted by the courts. SCRA statistics show that 48% of those children were under the age of two years. Comparisons with previous years are not as reliable at present due to the impact of the Covid years.

The order will do one or more of:

- specify the person and authorise them to remove the child to a place of safety and keep them in that place (s.37(2)(b)). Where the whereabouts of the child are unknown (the child may be being hidden) the order can require any person to produce the child to a specified person (s.37(2)(a))

- authorise the prevention of the removal of the child from any place where they are currently staying. This is most commonly used where a newly born child is to be kept in hospital – such as a child born addicted to the drugs used by the mother. (s.37(2)(c))

- authorise an assessment of the child's health or development or the way in which the child has been or is being treated or neglected (s.37(2)(d).

It can also contain any measure that is necessary to safeguard or promote the welfare of the child. These can include:

- a contact direction (s.41) regulating contact with a person or a class of persons (ie maternal family) – including requiring that there be no contact, or that it be supervised.

  Contact is considered to be so important that a sheriff MUST consider whether a contact direction is needed when making a CPO

- an information non-disclosure direction (s.40). This prevents any specified information, including the whereabouts of the child being given to a specified person (see Appendix 6)

- a parental responsibilities and rights direction (s.42). This is a direction which specifies how a person with parental responsibilities and rights must fulfil those responsibilities or rights with regard to treatment, which may arise from any assessment authorised in the order (see above). Further information about Child Protection Orders, particularly the measures that may be included, and the connection with the children's hearing system is available in GPiA 53 Legal Resource: *Understanding the Children's Hearing System in Scotland*.

Due to the urgent nature of a CPO it is normally implemented immediately. If no effort has been made to implement it within 24 hours the rule is that it will end. If efforts to implement have been unsuccessful – such as where the child has been removed to an unknown location – it will last for a maximum six days to allow further attempts to be made. Once the order has been implemented, a child protection order has a very short life.

The children's reporter will be notified and must arrange a children's hearing to take place on the second working day after the hearing has been implemented (s.45) unless they are either notified that an application has been made to the court to terminate or vary the order, or they have exercised the power to terminate the order or vary a direction attached to it (s.53). The children's hearing has the power at the second working day hearing to continue the CPO for a further six working days and may vary it by removing, changing or adding directions. Further information is available in GPiA 053 Legal Resource: *Understanding the Children's Hearing System*. The CPO cannot be appealed, but the child and each relevant person may apply to the sheriff for the varying or termination of the CPO. This must be done within three days (s.49).

A child protection order will normally lead to a children's hearing being arranged by the children's reporter unless they have exercised their discretion under s.53 not to continue the CPO (see GPiA 053 Legal Resource: *Understanding the Children's Hearing System in Scotland*). In 2022/23, 434 hearings were held to consider Child Protection Orders. For information on the orders that may be made by a children's hearing, readers are directed to that resource.

11 Children as witnesses

Children may be required to be witnesses in the criminal court or in children's hearings proofs. A proof is the Scottish legal term for a hearing before a judge in which evidence is lead. It applies to all civil court matters and to criminal hearings where there is no jury. Where there is a jury it is a trial. There are no juries in civil actions or children's hearings proofs.

Where the person is under 18 years of age they are automatically held to be 'vulnerable witnesses'. The provisions of the Criminal Procedure (Scotland) Act 1995, the Vulnerable Witnesses (Scotland) Act 2004 and the Victims and Witnesses (Scotland) Act 2014 govern the measures available to ensure that the child can give evidence in the way that best suits the needs of the child. The Crown Office, Fiscal Service and SCRA all avoid using child witnesses unless there is no other way of obtaining best evidence.

The text of the Vulnerable Witnesses (Scotland) Act may be found at: Legislation.gov.uk. The guidance may be found at Criminal Hearings.

Direct evidence does not necessarily require the presence of the child in the court room; the child may give evidence by video link from another part of the court or from a suitable remote location depending on the nature of the offence or through the use of evidence on commission. All offences of violence against the person or sexual offences should allow the child to give evidence from suitable remote location. Children First maintains a number of these locations and the Scottish Government is slowly rolling out the 'Bairns' Hoose' resources (Bairns' Hoose – Scottish Barnahus: vision, values and approach – gov.scot).

11.1 Criminal court

Children may be called as witnesses in criminal cases by the prosecution or the defence. The youngest child witness that we are aware of was aged three when giving evidence.

It may be that the child is alleged to be the victim of an offence, or was a witness to an incident or incidents, which has led to an adult or a child being prosecuted in the criminal court.

The age at which a child can be held to have committed a criminal offence is 12 years. There can be special measures in court for a child accused, such as less formal procedure and avoidance of the use of wigs and gowns.

The Vulnerable Witnesses (Criminal Evidence)(Scotland) Act 2019 makes special provision for child witnesses (aged under 18) in criminal trials where the libelled (alleged) offences are of a particularly serious nature such as: murder, culpable homicide, assault to the danger of life, abduction, plagium (stealing of a child), some sexual offences, an offence under s.1(1) of the Domestic Abuse (Scotland) Act 2018, human trafficking, FGM. The Act makes provision for the child to give evidence by commission or for the evidence in advance of the hearing. A child under the age of 12 will always have the advantage of the provisions of the Act. A child who is over 12 and has sufficient understanding may choose to give their evidence in court. If so the child may choose from measures such as a supporter seated nearby and/or a screen so that they cannot see (or be seen by) the accused. The criminal courts try to ensure that the evidence in chief (that is the first evidence led by the prosecution) is provided via the recordings of the Joint Investigative Interview rather than the being led in evidence on the day.

Practitioners who work with child witnesses should ensure that they have an understanding of the process. Scottish Guidance may be found at Pre-recording witness evidence – Victims and witnesses – gov.scot.

11.2 Children as the accused in adult criminal court

TThe Age of Criminal Responsibility (Scotland) Act 2019 reduced the age at which a child may commit a criminal offence in Scotland to 12 years, although the United Nations Committee on the Rights of the Child has recommended that it be raised to 14 years.

'Child' for these purposes will include a person aged 16 and 17 years who is subject to a compulsory supervision order; or a person over the age of 16 years who was referred to the Principal Reporter before they turned 16 but either the reporter has not made their decision regarding referral, or the hearing has been arranged or held and no decision has been made.

The Lord Advocate's Guidelines on Offences alleged to have been committed by children (Lord Advocates Guidelines to the Chief Constable on the reporting to Procurators Fiscal of Offences alleged to have been committed by children.pdf (copfs.gov.uk) details which offences should be jointly reported to the Procurator Fiscal and the Children's Reporter. Where a case is jointly reported there will be a discussion between the PF and the reporter to decide which should take the case. In reality it is the PF who will decide as the reporter may not over-ride their decision. Whoever takes the case will then consider the evidence and decide whether the case will proceed. The Disclosure (Scotland) Act 2020, which is not yet in force, will have the effect of making all childhood offences immediately 'spent'. It will also remove childhood offending from Disclosure Certificates except for the most serious offences which were dealt with through either a court or the children's hearing. Where the decision is made to include such offences it will only apply to a level 2 disclosure and the person will have a right to make a review application.

The more serious offences will not be jointly reported but will proceed to adult court if the Crown Office and Procurator Fiscal Service (COPFS) considers that there is sufficient evidence. These are:

- offences which are required by law to be prosecuted on indictment (jury trial in either the Sheriff Court or the High Court)
  - Firearms Act 1968 ss.16,17(1) and (2) and 18(1)
  - Road Traffic Act offences which could lead to disqualification
  - Criminal Law (Consolidation) Act 2009 s. 5(1)
  - Sexual Offences (Scotland) Act 2009, ss. 1,2,18 and19
- Offences which normally give rise to solemn proceedings (before a judge and jury in the High Court.

Children's hearing's proofs

Where a child has been accused of a criminal offence, or an individual who is over 16 but who is already subject to a compulsory supervision order is accused of an offence, and it has been agreed by the procurator fiscal and the reporter that the appropriate forum is the hearings' system rather than the criminal court, a proof will take place before the sheriff where the ground of referral has been denied (or not understood). The standard of proof is the criminal standard of proof (beyond reasonable doubt). Where it is the ground of referral that the child has been the victim of a schedule one offence and the ground of referral has been denied (or not understood) a proof will take place before the sheriff but the standard is the civil standard (balance of probabilities). In both instances a child may be called as a witness either because they are alleged to be the victim of the offence or because they were a witness to an alleged criminal offence involving a child (as victim or perpetrator).

12 Therapeutic work and child protection

12.1 Awareness of child protection concerns

All practitioners should be aware of child protection concerns whether they work directly with children or not. Practitioners who work with children will already have child protection procedures in place and will have an awareness of the issues.

Practitioners who work with adults should also either have child protection procedures in place, if self-employed, or be aware of child protection policies and procedures if employed. They should also be aware of potential child protection concerns and how and when to report those concerns. A practitioner who works with a parent or carer should be prepared to consider child protection steps if they become aware that the client's situation is such that it is having or is *likely* to have a serious adverse impact upon the children of that client's household. A practitioner whose client has alcohol or substance abuse problems, or whose mental health may be affecting their ability to care for a child, should give consideration as to whether child protection steps are warranted. The same applies to practitioners who work with family groups.

Child protection procedures should include the steps to take in the event that a practitioner is told by a client that they were abused as a child, particularly if the client also says that the alleged perpetrator has current contact with children. Each situation is different, and practitioners should use their judgment and take advice where appropriate.

Where the concerns are less serious but may give rise to wellbeing concerns for a child, all practitioners should have an awareness of GIRFEC and consider discussing with the client (whether parent/carer or child) whether a referral to social services would be welcomed.

Practitioners who work with families will also have cases with child protection procedures in place and should be prepared to discuss wellbeing concerns with the child and family as a whole if they arise.

Practitioners should be aware that data protection legislation must be complied with before sharing personal information. (See section 13 on confidentiality and information sharing.)

12.2 When allegations of abuse are made in the therapeutic setting

If an adult or a child makes allegations of abuse in the therapeutic setting practitioners must exercise great care. It is common parlance to refer to these as 'disclosures' but it is much better practice to use 'allegations' as 'disclosure' implies that the incident(s) is(are) established fact(s).

In the event that an allegation is made, practitioners must refer to their or their agency's child protection practice to avoid any potential consideration of evidence contamination. The Scottish Government has produced very detailed guidance for the joint investigative interviewing of child witnesses and some of it is applicable here. If called to give evidence in court as expert witnesses practitioners should be careful to ensure that their evidence is soundly based. Since the decision of the Supreme Court in Jones v Kaney [2011] UKSC 13, [2011] 2 AC 398, [2011] 2 All ER 671, it can no longer be assumed that professional expert witnesses are immune from suit. Such witnesses should, for example, be careful not to be tempted, when being questioned, to stray beyond their field of expertise: readers may remember the 'cot deaths' case of *R v Clark (Sally) (Appeal against Conviction) (No 2), Court of Appeal (Criminal Division), 11 April 2003, [2003] EWCA Crim, [2003] 2 FCR 447* (discussed in Meadows v GMC [2007] QB 462) (www.gov.scot/Publications/2011/12/16102728/0).

If a child makes allegations of abuse during therapeutic work – particularly physical or sexual abuse – this is not an investigative interview.

The Guidance states that:

> *the child should be allowed to provide any voluntary account, however, should not be interviewed or questioned in any detail by the professional as this may undermine the reliability of admissibility of any information subsequently provided at interview.*

This is equally applicable whether this is the first time the child has spoken of abuse or whether abuse is being investigated, prosecuted, or a children's hearing proof is to take place.

The next steps:

- you 'should record details of what was said by the child, those persons present and the time, date and location in written format as soon as reasonably practicable'
- if the child is currently a witness the police should be notified as soon as possible thereafter to enable child protection procedures to be considered and implemented if necessary
- if there is no current investigation or prosecution or hearings case and there is an active threat to the child that the abuse will continue – then you may also contact the police OR contact the local authority duty social work team.

In either case you should not automatically contact the child's parents or carers – that is a matter for discussion with police and social workers. If you know who the child's social worker is contact them. If not, contact the duty team.

Whether you tell the child what you are doing is a matter for judgment according to the particular circumstances. It may be that the child has revealed information to you in the hope that you will do something to stop it and will be willing for you to contact police or social services. In the case of a young child it may not be appropriate to tell them that you are taking child protection steps.

Practitioners who work with adults MUST be aware that there is potential for child protection not only where an adult client alleges a child has been or is being abused, but also where an adult client alleges that he or she was abused as a child. There is potential for other children to be at risk.

See Appendix 8 the section on links for court, witnesses, and support for the victims of crime and: *Working with Children and Adults Who May be at Risk of Self-harm: Practice Guidance on Information Sharing, Protection and Confidentiality* www.gov.scot/Resource/0040/00406619.pdf

A useful guide to reporting to the police has been made available by Police Scotland at www.scotland.police.uk/advice-and-information/child-abuse.

12.3 Therapeutic work with the child witness

There can be some reluctance to start or continue with therapeutic work with a child or family where the child is a witness in a criminal court case particularly where it is alleged that the child is a victim. There is often a belief that in those circumstances there can be no therapeutic work undertaken. This is simply wrong. The interests of the child in this are the paramount consideration and the COPFS cannot prevent therapeutic work. However, practitioners in this situation must exercise great care. The risk is always that the child's evidence will be challenged as having been contaminated during the work. Practitioners are referred to the COPFS guidance Pre-trial therapy provision for victims of sexual crime | COPFS.

Similarly, there should be no barrier where a child is to be a witness in a children's hearings proof before the sheriff.

Note: warning for those who may wish to undertake work with child witnesses: Those who work with child witnesses must be trained in this specialised work. For practitioners who do not do so, it is advisable to undertake some child protection training. It may be available through your local authority.

13 Confidentiality and information sharing

There is understandable concern about contacting child protection when the consent of a client is not given, or it might place the child at more risk for consent to be sought. It is important to understand that sharing child protection concerns does not necessarily mean that the details of the therapeutic work must be revealed.

13.1 Sensitive personal information

All records concerning an individual's mental health are 'sensitive categories of personal data' in s.11 and schedule 1, part 1 of the Data Protection Act 2018 and accordingly have a very high level of protection (see Appendix 4 for the relevant excerpt from that Act). Unless consent (GDPR Art 9) to the sharing of information has been given, information may only be shared where it is necessary to protect the child or another person (see appendix 4). The provisions are not dissimilar to those of the previous Data Protection Act and the protections are not weaker. The General Data Protection Regulation (GDPR) of the EU, which the Act brings into UK law is very clear that sharing information is not to be undertaken lightly. Where the child has no capacity then permission must be given by a person with parental responsibilities and rights. It is not necessary to have permission from all persons with parental responsibilities and rights. Consent is explained by the Information Commissioner as being: 'any freely given specific and informed indication of his wishes by which the data subject signifies his agreement to personal data relating to him being processed'. This means that the person has a good understanding of:

- what information is to be shared
- who it will be shared with
- what the purpose of sharing is
- who will have access to the information
- the likely consequences of sharing.

For information on reports for the children's reporter the reader is directed to see GPiA 053 Legal Resource: *Understanding the Children's Hearing System in Scotland.*

13.2 Children, capacity and privacy (see also 12.3)

It is important to have some understanding of the law of capacity in Scotland. While the Age of Legal Capacity (Scotland) Act 1991 s.1 states that children have no capacity under the law to enter into a legal transaction, section 2 provides exceptions to this. The most important exceptions for practitioners are:

- medical treatment: where, in the opinion of a qualified medical practitioner, the child has sufficient understanding of the proposed treatment or procedure (this includes medical examination and assessment and psychological treatment and assessment), then the child has the capacity to agree (or not) to that treatment or procedure. It is the qualified medical practitioner who decides. The meaning of medical practitioner is fairly wide. It includes doctors of medicine, dentists, nurses, midwives, pharmacists, physiotherapists, clinical psychologists and other practitioners who are regulated by the medical professions. When the child has capacity, the persons with parental responsibilities and rights have no veto over the child's decision.

- transactions which are of a type usual for the age and circumstances of the child and not on unfair terms. A child cannot enter into a transaction which requires a written contract, but other services certainly qualify. This includes counselling services which are provided free to the child, such as some counselling available in schools or from voluntary agencies, sexual health advice from non-medical agencies and so on.

Where a child has the capacity to make the decision, then the parent's consent is irrelevant – it is the child who makes the decision. Thus where a child has capacity under the Age of Legal Capacity (Scotland) Act 1991 (s.2), the child has the right to the same confidentiality as an adult client – and that precludes sharing personal information with those with parental responsibilities and rights or anyone else without the child's consent. This means that the child must have a good understanding of what information is to be shared and with whom.

Children over the age of 12 are presumed to have sufficient understanding to consent to sharing information but this is not absolute (Data Protection Act 2018 s.208). It will be for the practitioner to be satisfied that the child does have capacity.

It should also be understood that a child whose parents/carers have contracted for therapeutic services still has a right to confidentiality. You should not automatically share sensitive information without the consent of the child. Where the capacity of the child is possible practitioners would be wise to keep a record of their considerations and their reasons for making a decision on the child's capacity to engage or refuse therapeutic services.

13.3 Reporting child protection concerns

In an ideal situation, your client will consent to the sharing of child protection concerns and may even want your help to seek support. Where that is not the case and you have child protection concerns, you should consider carefully what the perceived risk to the child is and the level of risk. If you consider that the risk reaches the threshold of 'protecting the vital interests' of the child or another – that means that there is a serious risk of harm – then you must take action to protect the child. If you are employed your employer should have a policy. If your services have been contracted for by the local authority or an agency your contract will likely have child protection clauses. The National Guidance for Child Protection in Scotland 2021 updated 2023 contains useful information for those who may find themselves in the position of having to report concerns about a child. Supporting documents – National Guidance for Child Protection in Scotland 2021 – updated 2023 – gov.scot.

Further information can be found at: GPiA 053 Legal Resource: *Understanding the Children's Hearing System in Scotland*, regarding being a witness. (See www.bacp.co.uk/gpia and in Appendix 8.)

You should keep careful records of any concerns, actions taken or not taken and the reasons. Records should be made as soon as possible after the concern has risen. You should have access to advice (see introduction).

The Information Commissioner's Office guide to information to safeguard children is available at: guide to information sharing | Search | Information Commissioner's Office. Practitioners must exercise particular care in record keeping when working with a child witness. See www.cps.gov.uk/legal-guidance/safeguarding-children-victims-and-witnesses www.cps.gov.uk/legal-guidance/pre-trial-therapy

14 The personal impact of working with abused children

Practitioners will be aware that working with those who have been abused, particularly children who are dealing with the aftermath of abuse, and who are also currently faced with investigation and being a witness, is not only professionally, but also emotionally demanding. Where a history of abuse is unknown and a client makes unexpected allegation of abuse during therapeutic work, it is an immense compliment to the practitioner's ability in creating a trusting relationship, but it can be distressing and stressful to deal with. Practitioners should ensure that they have sufficient support in place to help them to deal with the personal impact of the work.

15 Criminal injuries compensation

A child who has been abused may qualify for an award under the Criminal Injuries Compensation scheme. This will be the duty of those with parental responsibilities and rights where they are not involved in the abuse, but local authorities are now expected by Scottish Government to ensure that the possibility of an award has been investigated and the necessary steps taken if the child is a 'looked after' child. Further information is available in the resource on GPiA 053 Legal Resource: *Understanding the Children's Hearing System in Scotland* (www.bacp.co.uk/gpia).

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Appendices

Appendix 1
UNCRC: Articles 1 – 41

Article 1

For the purposes of the present Convention, a child means every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier.

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 6

1. States Parties recognize that every child has the inherent right to life.

2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 10

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contact with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

   (a) (For respect of the rights or reputations of others; or

   (a) (For the protection of national security or of public order (ordre public), or of public health or morals.

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

To this end, States Parties shall:

(a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;

(b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;

(c) Encourage the production and dissemination of children's books;

(d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;

(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 21

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

(b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

(c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;

(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organizations.

Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family.

In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

Article 23

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

   (a) To diminish infant and child mortality;

   (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;

   (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution;

   (d) To ensure appropriate pre-natal and post-natal health care for mothers;

   (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;

(f) To develop preventive health care, guidance for parents and family planning education and services.

(g) States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

(h) States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Article 25

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 26

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

   (a) Make primary education compulsory and available free to all;

   (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

   (c) Make higher education accessible to all on the basis of capacity by every appropriate means;

   (d) Make educational and vocational information and guidance available and accessible to all children;

   (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1. States Parties agree that the education of the child shall be directed to:

   (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

   (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

   (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

   (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

   (e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

   (a) (Provide for a minimum age or minimum ages for admission to employment;

   (b) (Provide for appropriate regulation of the hours and conditions of employment;

   (c) (Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

(a) The inducement or coercion of a child to engage in any unlawful sexual activity;

(b) The exploitative use of children in prostitution or other unlawful sexual practices;

(c) The exploitative use of children in pornographic performances and materials.

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 37

States Parties shall ensure that:

a. No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below 18 years of age;

b. No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

c. Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

d. Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.

3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.

4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Article 41

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

(a) The law of a State Party; or

(b) International law in force for that State.

Appendix 2

Parental responsibilities and rights (PRRs)

1. Who has parental responsibilities and rights and how they are acquired?

A. Mothers – A mother always has automatic PRRs with respect to any child she gives birth to.

B. Married fathers – If the biological father is married to the child's mother at the time of (or subsequent to) the conception of their child, he automatically has PRRs for their child.

C. Unmarried fathers of children whose birth was registered in Scotland AFTER 4 May 2006 – Where the child's parents were unmarried and the child's birth was registered outside of Scotland there are complexities and advice should be taken.

In Scotland, an unmarried father automatically acquires parental responsibility for his child if, with his consent, he is named as the child's father on the registration of the child's birth. This law does not operate retrospectively and does not give PRRs to unmarried fathers whose child was born before 4 May 2006.

D. An unmarried father who does not qualify under C above may acquire parental responsibility for their biological child if he:

- Signs and registers an agreement with the mother of the child under s.4 of the 1995 Act

E. Is awarded PRR by a court under section 11 of the 95 Act Second female parents:

Section 4A of the 95 Act provides that where a child has a parent by virtue of s. 43 of the Human Fertilisation and Embryology Act 2008 the biological mother and the other parent (who may be a woman) may sign an agreement whereby the other parent is to be treated as a parent by virtue of s.42 of the 2008 Act. [Practitioners who encounter this type of situation should direct the client towards legal advice rather than try to give firm advice themselves.]

F. Other persons: persons other than biological parents can acquire PRRs by:

a. An order of a court under s.11 of the 95 Act.

b. A person who is granted a residence order under s.11 of the 95 Act has parental responsibilities and rights for as long as the child continues to reside with them and the order is in existence.

c. A person who has been made guardian under the will by a person who has since died has full PRR.

2. Parental responsibilities and rights: what are they?

Parental responsibilities and rights (PRRs) are contained in sections 1 and 2 of the Children (Scotland) Act 1995. The 95 Act is clear that these must be exercised for the benefit of the child so parents have a duty to carry out their PRRs in the best interests of their child.

Parental responsibilities:

1. *to safeguard and promote the child's health, development and welfare.* This gives parents a duty to care for their child properly and refers to the day-by-day care of the child that they need to grow and develop. It would include ensuring that the child is appropriately fed, clothed and housed, is educated, and receives necessary treatments such as medical and dental care and so on.

2. *to provide, in a manner appropriate to the stage of development of the child – (i) direction; (ii) guidance, to the child.* This is the responsibility to provide boundaries and guidance.

3. *if the child is not living with the parent, to maintain personal relations and direct contact with the child on a regular basis.* Where a child is not resident with a parent, that parent has a duty to maintain that relationship with the child for the benefit of the child.

4. *to act as the child's legal representative.* This means acting for the child's interests by making decisions that have legal consequences on behalf of a child who cannot make decisions for him or herself. Examples include; managing the child's money, or obtaining services for the child including counselling.

It will not be appropriate for a parent to act as the child's legal representative in any proceedings wherein the parent is alleged to have harmed or neglected the child.

Parental rights:

1. *to have the child living with him or otherwise to regulate the child's residence:* This is an important right and may only be interfered with by the state if it is necessary for the protection of the child, or where there is a dispute between persons with PRRs. In Scotland only a court or a children's hearing can make the decision to remove a child from the care of a person with PRR. Removing a child from parental care does not necessarily remove the right to determine the residence of the child, and removal of parental rights is a decision only a court can make.

Parents can only decide where their child lives until the child's 16th birthday. Beware the myth that children can decide from the age of 12. Note that this right also allows a parent to decide that the child will live with someone other than themselves.

2. *to control, direct or guide, in a manner appropriate to the stage of development of the child, the child's upbringing:* This parallels the responsibility above and gives parents the power to carry out their responsibility.

3. *If the child is not living with him, to maintain personal relations and direct contact with the child on a regular basis.* This parallels the responsibility above and gives parents the power to carry out their responsibility, but the interests of the child trump the right of the parent. This right is protected in law and is the reason that regulation of contact requires a children's hearing or court decision.

4. *to act as legal representative for the child.* This parallels the responsibility above and gives parents the power to carry out their responsibility. (See note at end of para 4 above.)

Appendix 3
Sexual offences against children

Sexual Offences (Scotland) Act 2009 (This Act is highly specific. It aims to be comprehensive and its provisions are generally clear, but the detailed nature of its provisions makes it complex and where practitioners have difficulty legal advice should be sought.)

18 Rape of a young child

If a person ("A"), with A's penis, penetrates to any extent, either intending to do so or reckless as to whether there is penetration, the vagina, anus or mouth of a child ("B") who has not attained the age of 13 years, then A commits an offence, to be known as the offence of rape of a young child.

19 Sexual assault on a young child by penetration

a. If a person ("A"), with any part of A's body or anything else, penetrates sexually to any extent, either intending to do so or reckless as to whether there is penetration, the vagina or anus of a child ("B") who has not attained the age of 13 years, then A commits an offence, to be known as the offence of sexual assault on a young child by penetration.

b. Without prejudice to the generality of subsection (1), the reference in that subsection to penetration with any part of A's body is to be construed as including a reference to penetration with A's penis.

20 Sexual assault on a young child

(1) If a person ("A") does any of the things mentioned in subsection (2) ("B" being in each case a child who has not attained the age of 13 years), then A commits an offence, to be known as the offence of sexual assault on a young child.

(2) Those things are, that A:

a. penetrates sexually, by any means and to any extent, either intending to do so or reckless as to whether there is penetration, the vagina, anus or mouth of B,

b. intentionally or recklessly touches B sexually,

c. engages in any other form of sexual activity in which A, intentionally or recklessly, has physical contact (whether bodily contact or contact by means of an implement and whether or not through clothing) with B,

d. intentionally or recklessly ejaculates semen onto B,

e. intentionally or recklessly emits urine or saliva onto B sexually.

(3) Without prejudice to the generality of paragraph (a) of subsection (2), the reference in the paragraph to penetration by any means is to be construed as including a reference to penetration with A's penis.

21 Causing a young child to participate in a sexual activity

If a person ("A") intentionally causes a child ("B") who has not attained the age of 13 years to participate in a sexual activity, then A commits an offence, to be known as the offence of causing a young child to participate in a sexual activity.

22 Causing a young child to be present during a sexual activity

(1) If a person ("A") either:

a. intentionally engages in a sexual activity and for a purpose mentioned in subsection (2) does so in the presence of a child ("B") who has not attained the age of 13 years, or

b. intentionally and for a purpose mentioned in subsection (2) causes B to be present while a third person engages in such an activity, then A commits an offence, to be known as the offence of causing a young child to be present during a sexual activity.

(2) The purposes are:

a. obtaining sexual gratification,

b. humiliating, distressing or alarming B.

(3) Without prejudice to the generality of subsection (1), the reference:

a. in paragraph (a) of that subsection to A engaging in a sexual activity in the presence of B, includes a reference to A engaging in it in a place in which A can be observed by B other than by B looking at an image, and

b. in paragraph (b) of that subsection to B being present while a third person engages in such an activity, includes a reference to B being in a place from which the third person can be so observed by B.

23 Causing a young child to look at a sexual image

(1) If a person ("A") intentionally and for a purpose mentioned in subsection (2) causes a child ("B") who has not attained the age of 13 years to look at a sexual image, then A commits an offence, to be known as the offence of causing a young child to look at a sexual image.

(2) The purposes are—

a. obtaining sexual gratification,

b. humiliating, distressing or alarming B.

(3) For the purposes of subsection (1), a sexual image is an image (produced by whatever means and whether or not a moving image) of:

a. A engaging in a sexual activity or of a third person or imaginary person so engaging,

b. A's genitals or the genitals of a third person or imaginary person.

24 Communicating indecently with a young child etc.

(1) If a person ("A"), intentionally and for a purpose mentioned in subsection (3):

a. sends, by whatever means, a sexual written communication to, or

b. directs, by whatever means, a sexual verbal communication at, a child ("B") who has not attained the age of 13 years, then A commits an offence, to be known as the offence of communicating indecently with a young child.

(2) If, in circumstances other than are as mentioned in subsection (1), a person ("A"), intentionally and for a purpose mentioned in subsection (3) causes a child ("B") who has not attained the age of 13 years to see or hear, by whatever means, a sexual written communication or sexual verbal communication, then A commits an offence, to be known as the offence of causing a young child to see or hear an indecent communication.

(3) The purposes are:

a. obtaining sexual gratification,

b. humiliating, distressing or alarming B.

(4) In this section:

"written communication" means a communication in whatever written form, and without prejudice to that generality includes a communication which comprises writings of a person other than A (as for example a passage in a book or magazine), and "verbal communication" means a communication in whatever verbal form, and without prejudice to that generality includes:

a. a communication which comprises sounds of sexual activity (whether actual or simulated), and

b. a communication by means of sign language.

25 Sexual exposure to a young child

(1) If a person ("A") intentionally and for a purpose mentioned in subsection (2) exposes A's genitals in a sexual manner to a child ("B") who has not attained the age of 13 years, with the intention that B will see them, then A commits an offence, to be known as the offence of sexual exposure to a young child.

(2) The purposes are:

a. obtaining sexual gratification,

b. humiliating, distressing or alarming B.

26 Voyeurism towards a young child

(1) If a person ("A") does any of the things mentioned in subsections (2) to (5) in relation to a child. ("B") who has not attained the age of 13 years, then A commits an offence, to be known as the offence of voyeurism towards a young child.

(2) The first thing is that A, for a purpose mentioned in subsection (6), observes B doing a private act.

(3) The second thing is that A operates equipment with the intention of enabling A or another person ("C"), for a purpose mentioned in subsection (7), to observe B doing a private act.

(4) The third thing is that A records B doing a private act with the intention that A or another person ("C"), for a purpose mentioned in subsection (7), will look at an image of B doing the act.

(4A) The fourth thing is that A operates equipment beneath B's clothing with the intention of enabling A or another person ("C"), for a purpose mentioned in subsection (7), to observe:

a. B's genitals or buttocks (whether exposed or covered with underwear), or

b. the underwear covering B's genitals or buttocks, in circumstances where the genitals, buttocks or underwear would not otherwise be visible.

(4B) The fifth thing is that A records an image beneath B's clothing of:

a. B's genitals or buttocks (whether exposed or covered with underwear), or

b. the underwear covering B's genitals or buttocks, in circumstances where the genitals, buttocks or underwear would not otherwise be visible, with the intention that A or another person ("C"), for a purpose mentioned in subsection (7), will look at the image.

(5) The sixth thing is that A:

a. installs equipment, or

b. (constructs or adapts a structure or part of a structure, with the intention of enabling A or another person to do an act referred to in subsection (2), (3), (4), (4A) or (4B).

(6) The purposes referred to in subsection (2) are:

a. obtaining sexual gratification,

b. humiliating, distressing or alarming B.

(7) The purposes referred to in subsections (3) (4), (4A) and (4B) are:

a. obtaining sexual gratification (whether for A or C),

b. humiliating, distressing or alarming B.

(8) (Section 10 applies for the purposes of this section as it applies for the purposes of section 9 (the references in that section to section 9(3), (4A) and (5) being construed as references to subsections (3), (4A) and (5) of this section).

27 Belief that a child had attained the age of 13 years

It is not a defence to a charge in proceedings under any of sections 18 to 26 that A believed that B had attained the age of 13 years.

28 Having intercourse with an older child

If a person ("A"), who has attained the age of 16 years, with A's penis, penetrates to any extent, either intending to do so or reckless as to whether there is penetration, the vagina, anus or mouth of a child ("B"), who:

a. has attained the age of 13 years, but

b. has not attained the age of 16 years, then A commits an offence, to be known as the offence of having intercourse with an older child.

29 Engaging in penetrative sexual activity with or towards an older child

(1) (1) If a person ("A"), who has attained the age of 16 years, with any part of A's body or anything else penetrates sexually to any extent, either intending to do so or reckless as to whether there is penetration, the vagina or anus of a child ("B") who:

a. has attained the age of 13 years, but

b. has not attained the age of 16 years, then A commits an offence, to be known as the offence of engaging in penetrative sexual activity with or towards an older child.

(2) Without prejudice to the generality of subsection (1), the reference in that paragraph to penetration with any part of A's body is to be construed as including a reference to penetration with A's penis.

30 Engaging in sexual activity with or towards an older child

(1) If a person ("A"), who has attained the age of 16 years, does any of the things mentioned in subsection (2), "B" being in each case a child who:

a. has attained the age of 13 years, but

b. has not attained the age of 16 years, then A commits an offence, to be known as the offence of engaging in sexual activity with or towards an older child.

(2) Those things are, that A:

a. penetrates sexually, by any means and to any extent, either intending to do so or reckless as to whether there is penetration, the vagina, anus or mouth of B,

b. intentionally or recklessly touches B sexually,

c. engages in any other form of sexual activity in which A, intentionally or recklessly, has physical contact (whether bodily contact or contact by means of an implement and whether or not through clothing) with B,

d. intentionally or recklessly ejaculates semen onto B,

e. intentionally or recklessly emits urine or saliva onto B sexually.

(3) Without prejudice to the generality of paragraph (a) of subsection (2), the reference in the paragraph to penetration by any means is to be construed as including a reference to penetration with A's penis.

31 Causing an older child to participate in a sexual activity

If a person ("A"), who has attained the age of 16 years, intentionally causes a child ("B"), who:

a. has attained the age of 13 years, but

b. has not attained the age of 16 years, to participate in a sexual activity, then A commits an offence, to be known as the offence of causing an older child to participate in a sexual activity.

32 Causing an older child to be present during a sexual activity

(1) If a person ("A"), who has attained the age of 16 years either:

a. intentionally engages in a sexual activity and for a purpose mentioned in subsection does so in the presence of a child ("B"), who:

(i) has attained the age of 13 years, but

(ii) has not attained the age of 16 years, or

b. intentionally, and for a purpose mentioned in subsection (2) causes B to be present while a third person engages in such an activity, then A commits an offence, to be known as the offence of causing an older child to be present during a sexual activity.

(2) The purposes are:

a. obtaining sexual gratification,

b. humiliating, distressing or alarming B.

(3) Without prejudice to the generality of subsection (1), the reference:

a. in paragraph (a) of that subsection to A engaging in a sexual activity in the presence of B, includes a reference to A engaging in it in a place in which A can be observed by B other than by B looking at an image, and

b. in paragraph (b) of that subsection to B being present while a third person engages in such an activity, includes a reference to B being in a place from which the third person can be so observed by B.

33 Causing an older child to look at a sexual image

(1) If a person ("A"), who has attained the age of 16 years, intentionally and for a purpose mentioned in subsection (2) causes a child ("B"), who:

a. has attained the age of 13 years, but

b. has not attained the age of 16 years, to look at a sexual image, then A commits an offence, to be known as the offence of causing an older child to look at a sexual image.

(2) The purposes are:

a. obtaining sexual gratification,

b. humiliating, distressing or alarming B.

(3) For the purposes of subsection (1), a sexual image is an image (produced by whatever means and whether or not a moving image) of:

a. A engaging in a sexual activity or of a third person or imaginary person so engaging,

b. A's genitals or the genitals of a third person or imaginary person.

34 Communicating indecently with an older child etc.

(1) If a person ("A"), who has attained the age of 16 years, intentionally and for a purpose mentioned in subsection (3), sends, by whatever means, a sexual written communication to or directs, by whatever means, a sexual verbal communication at, a child ("B") who:

a. has attained the age of 13 years, but

b. has not attained the age of 16 years, then A commits an offence, to be known as the offence of communicating indecently with an older child.

(2) If, in circumstances other than are as mentioned in subsection (1), a person ("A"), who has attained the age of 16 years, intentionally and for a purpose mentioned in subsection (3), causes another person ("B") who is a child described in paragraphs (a) and (b) of subsection (1) to see or hear, by whatever means, a sexual written communication or sexual verbal communication, then A commits an offence, to be known as the offence of causing an older child to see or hear an indecent communication.

(3) The purposes are:

a. obtaining sexual gratification,

b. humiliating, distressing or alarming B.

(4) In this section:

"written communication" means a communication in whatever written form, and without prejudice to that generality includes a communication which comprises writings of a person other than A (as for example a passage in a book or magazine), and "verbal communication" means a communication in whatever verbal form, and without prejudice to that generality includes:

a. a communication which comprises sounds of sexual activity (whether actual or simulated), and

b. a communication by means of sign language.

35 Sexual exposure to an older child

(1) If a person ("A"), who has attained the age of 16 years, intentionally and for a purpose mentioned in subsection (2) exposes A's genitals in a sexual manner to a child ("B") who:

a. has attained the age of 13 years, but

b. has not attained the age of 16 years, with the intention that B will see them, then A commits an offence, to be known as the offence of sexual exposure to an older child.

(2) The purposes are:

a. obtaining sexual gratification,

b. humiliating, distressing or alarming B.

36 Voyeurism towards an older child

(1) If a person ("A"), who has attained the age of 16 years, does any of the things mentioned in subsections (2) to (5) in relation to a child ("B") who:

a. has attained the age of 13 years, but

b. has not attained the age of 16 years, then A commits an offence, to be known as the offence of voyeurism towards an older child.

(2) The first thing is that A, for a purpose mentioned in subsection (6), observes B doing a private act.

(3) The second thing is that A operates equipment with the intention of enabling A or another person ("C"), for a purpose mentioned in subsection (7), to observe B doing a private act.

(4) The third thing is that A records B doing a private act with the intention that A or another person ("C"), for a purpose mentioned in subsection (7), will look at an image of B doing the act.

(4A) The fourth thing is that A:

a. without another person ("B") consenting, and

b. without any reasonable belief that B consents, operates equipment beneath B's clothing with the intention of enabling A or another person ("C"), for a purpose mentioned in subsection (7), to observe B's genitals or buttocks (whether exposed or covered with underwear) or the underwear covering B's genitals or buttocks, in circumstances where the genitals, buttocks or underwear would not otherwise be visible.

(4B) The fifth thing is that A:

a. without another person ("B") consenting, and

b. without any reasonable belief that B consents, records an image beneath B's clothing of B's genitals or buttocks (whether exposed or covered with underwear) or the underwear covering B's genitals or buttocks, in circumstances where the genitals, buttocks or underwear would not otherwise be visible, with the intention that A or another person ("C"), for a purpose mentioned in subsection (7), will look at the image.

(5) The sixth thing is that A:

a. installs equipment, or

b. constructs or adapts a structure or part of a structure, with the intention of enabling A or another person to do an act referred to in subsection (2), (3), (4), (4A) or (4B).

(6) The purposes referred to in subsection (2) are:

a. obtaining sexual gratification,

b. humiliating, distressing or alarming B.

(7) The purposes referred to in subsections (3), (4), (4A) and (4B) are:

a. obtaining sexual gratification (whether for A or C),

b. humiliating, distressing or alarming B.

(8) Section 10 applies for the purposes of this section as it applies for the purposes of section 9 (the references in that section to section 9(3), (4A) and (5) being construed as references to subsections (3), (4A) and (5) of this section).

37 Older children engaging in sexual conduct with each other

(1) If a child ("A"), being a child mentioned in subsection (2), does any of the things mentioned in subsection (3), "B" being in each case a child mentioned in subsection (2), then A commits an offence, to be known as the offence of engaging while an older child in sexual conduct with or towards another older child.

(2) The child is a child who:

a. has attained the age of 13 years, but

b. has not attained the age of 16 years.

(3) The things are that A:

a. penetrates sexually, with A's penis and to any extent, either intending to do so or reckless as to whether there is penetration, the vagina, anus or mouth of B,

b. intentionally or recklessly touches the vagina, anus or penis of B sexually with A's mouth.

(4) In the circumstances specified in subsection (1), if B engages by consent in the conduct in question, then B commits an offence, to be known as the offence of engaging while an older child in consensual sexual conduct with another older child.

(5) In paragraph (b) of subsection (3), the reference to A's mouth is to be construed as including a reference to A's tongue or teeth. Pt 4 s. 37(1)-(5): Scotland

38 Penetration and consent for the purposes of section 37

(1) This section applies for the purposes of section 37.

(2) Penetration is a continuing act from entry until withdrawal of whatever is intruded.

(3) "Consent" means free agreement (and related expressions are to be construed accordingly).

(4) Without prejudice to the generality of subsection (3), free agreement to conduct is absent in the circumstances set out in section 13(2) (references in that section to A and B being construed in accordance with section 37).

(5) A person is incapable, while asleep or unconscious, of consenting to any conduct.

(6) Consent to conduct does not of itself imply consent to any other conduct.

(7) Consent to conduct may be withdrawn at any time before, or in the case of continuing conduct, during, the conduct.

(8) If the conduct takes place, or continues to take place, after consent has been withdrawn, it takes place, or continues to take place, without consent.

39 Defences in relation to offences against older children

(1) It is a defence to a charge in proceedings:

a. against A under any of sections 28 to 37(1) that A reasonably believed that B had attained the age of 16 years,

b. against B under section 37(4) that B reasonably believed that A had attained the age of 16 years.

(2) But:

a. the defence under subsection (1)(a) is not available to A:

(i) if A has previously been charged by the police with a relevant sexual offence,

(ia) if A has a previous conviction for a relevant foreign offence committed against a person under the age of 16, or

(ii) if there is in force in respect of A a risk of sexual harm order,

b. the defence under subsection (1)(b) is not available to B:

(i) if B has previously been charged by the police with a relevant sexual offence,

(ia) if B has a previous conviction for a relevant foreign offence committed against a person under the age of 16, or

(ii) if there is in force in respect of B a risk of sexual harm order.

(3) It is a defence to a charge in proceedings under any of the sections mentioned in subsection (4) that at the time when the conduct to which the charge relates took place, the difference between A's age and B's age did not exceed 2 years.

(4) Those sections are:

a. section 30(2)(a), but not in so far as the charge is founded on:

(i) penetration of B's vagina, anus or mouth with A's penis,

(ii) penetration of B's vagina or anus with A's mouth, tongue or teeth,

b. section 30(2)(b) or (c), but not in so far as the charge is founded on sexual touching or other physical activity involving:

(i) B's vagina, anus or penis being touched sexually by A's mouth,

(ii) A's vagina, anus or mouth being penetrated by B's penis,

(iii) A's vagina, anus or penis being touched sexually by B's mouth,

c. section 30(2)(d) or (e)

d. any of sections 31 to 36.

(5) In paragraphs (a) and (b) of subsection (2):

a. "a relevant sexual offence" means an offence listed in schedule 1,

aa (aa)"a previous conviction for a relevant foreign offence" means a previous conviction by a court in a member State of the European Union other than the United Kingdom for an offence that is equivalent to one listed in paragraph 1, 4, 7, 10, 13 (so far as applying to an offence listed in paragraph 1, 4, 7 or 10) or 14 of schedule 1,

b. "a risk of sexual harm order" means an order under section 2 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9) or section 123 of the Sexual Offences Act 2003 (c.42).

(5A) Any issue of equivalence arising in pursuance of subsection (5)(aa) is for the court to determine.

(5B) For that purpose, an offence may be equivalent to one listed in paragraph 1, 4, 7, 10, 13 (so far as applying to an offence listed in paragraph 1, 4, 7 or 10) or 14 of schedule 1 even though, under the law of the member State (or part of the member State) in question, it is an offence:

a. regardless of the age of the victim, or

b. only if committed against a person under an age other than 16 years.

(6) The Scottish Ministers may by order modify schedule 1 so as to add an offence against a child which involves sexual conduct or delete an offence listed there.

(7) It is not a defence to a charge in:

a. proceedings under any of sections 28 to 37(1) against A that A believed that B had not attained the age of 13 years,

b. proceedings under section 37(4) against B that B believed that A had not attained the age of 13 years.

40 Special provision as regards failure to establish whether child has or has not attained certain ages

(1) Deeming provision 1 applies to a trial where:

a. A is charged with an offence under any of sections 28 to 36 or 37(1),

b. there is a failure to establish beyond reasonable doubt that B was a child who had attained the age of 13 years at the relevant time, and

c. the court or, in the case of a trial of an indictment, the jury is satisfied it is established beyond reasonable doubt that B had not attained the age of 16 years at the time.

(2) Deeming provision 2 applies to a trial where:

a. B is charged with an offence under section 37(4),

b. there is a failure to establish beyond reasonable doubt that A was a child who had attained the age of 13 years at the relevant time, and (c) the court or, in the case of a trial of an indictment, the jury is satisfied it is established beyond reasonable doubt that A had not attained the age of 16 years at the time.

(3) Deeming provision 3 applies to a trial where:

a. A is charged with an offence under section 37(1),

b. there is a failure to establish beyond reasonable doubt that A was a child who had not attained the age of 16 years at the relevant time, and

c. the court or, in the case of a trial of an indictment, the jury is satisfied it is established beyond reasonable doubt that A had attained the age of 13 years at the time.

(4) Deeming provision 4 applies to a trial where:

a. B is charged with an offence under section 37(4), Sexual Offences (Scotland) Act 2009 Page 27

b. there is a failure to establish beyond reasonable doubt that B was a child who had not attained the age of 16 years at the relevant time, and

c. the court or, in the case of a trial of an indictment, the jury is satisfied it is established beyond reasonable doubt that B had attained the age of 13 years at the time.

(5) Where any of the deeming provisions apply, references in sections 28 to 37 to A or B having or not having attained a particular age are to be construed in accordance with this section and section 41.

(6) In this section and section 41, the "relevant time" is when the conduct to which the proceedings relate occurred.

41 Special provision as regards age: deeming provisions

The deeming provisions are:

B is to be deemed for the purposes of the proceedings to be a person who has attained the age of 13 years at the relevant time.

Deeming provision 1

A is to be deemed for the purposes of the proceedings to be a person who has attained the age of 13 years at the relevant time.

Deeming provision 2

A is to be deemed for the purposes of the proceedings to be a child who has not attained the age of 16 years at the relevant time.

Deeming provision 3

B is to be deemed for the purposes of the proceedings to be a person who has not attained the age of 16 years at the relevant time.

It should be noted that the old common law sexual offences such as lewd and libidinous behaviour were not repealed but run in tandem with the Sexual Offences (Scotland) Act 2009.

Appendix 4
Data protection and sharing information

Data Protection Act 2018

s. 11 (1)

(1) For the purposes of Article 9(2)(h) of the [UK GDPR] 1 (processing for health or social care purposes etc), the circumstances in which the processing o**f personal d**ata is carried out subject to the conditions and safeguards referred to in Article 9(3) of the [UK GDPR] 1 (obligation of secrecy) include circumstances in which it is carried out— (a) by or under the responsibility of a health professional or a social work professional, or (b) by another person who in the circumstances owes a duty of confidentiality under an enactment or rule of law.

Sched 1.(18)

18 Safeguarding of children and of individuals at risk (1) This condition is met if— (a) the processing is necessary for the purposes of— (i) protecting an individual from neglect or physical, mental or emotional harm, or (ii) protecting the physical, mental or emotional well-being of an individual, (b) the individual is— (i) aged under 18, or (ii) aged 18 or over and at risk, (c) the processing is carried out without the consent of the data subject for one of the reasons listed in sub-paragraph (2), and (d) the processing is necessary for reasons of substantial public interest. (2) The reasons mentioned in sub-paragraph (1)(c) are— (a) in the circumstances, consent to the processing cannot be given by the data subject; (b) in the circumstances, the controller cannot reasonably be expected to obtain the consent of the data subject to the processing; (c) the processing must be carried out without the consent of the data subject because obtaining the consent of the data subject would prejudice the provision of the protection mentioned in sub-paragraph (1)(a).

(3) For the purposes of this paragraph, an individual aged 18 or over is "at risk" if the controller has reasonable cause to suspect that the individual— (a) has needs for care and support, (b) is experiencing, or at risk of, neglect or physical, mental or emotional harm, and (c) as a result of those needs is unable to protect himself or herself against the neglect or harm or the risk of it. (4)

In sub-paragraph (1)(a), the reference to the protection of an individual or of the well-being of an individual includes both protection relating to a particular individual and protection relating to a type of individual.'

The sharing of personal information where there is concern that a child may be at substantial risk of harm is permitted by the law. Put simply, if a practitioner has reason to believe that a child (or other person) is at serious risk of harm they are entitled to share:

- The relevant information
- With the appropriate person.

All practitioners should have child protection procedures in place whether as sole practitioners or provided by the employer if an employed practitioner.

Data Protection Act 2018

s. 208

(1) (1) Subsections (2) and (3) apply where a question falls to be determined in Scotland as to the legal capacity of a person aged under 16 to –

a. exercise a right conferred by the data protection legislation, or

b. give consent for the purposes of the data protection legislation.

(2) The person is to be taken to have that capacity where the person has a general understanding of what it means to exercise the right or give such consent.

(3) A person aged 12 or over is to be presumed to be of sufficient age and maturity to have such understanding, unless the contrary is shown.

GENERAL DATA PROTECTION REGULATION

Practitioners are directed to BACP resource GPiA 105 on UKGDPR for guidance. With regard to children consenting with regard to the sharing of information, the applicable article is Article 8. The UK has taken the option to reduce the age of consent to 12 years.

Art. 8 GDPR Conditions applicable to child's consent in relation to information society services

1. [1]Where point (a) of Article 6(1) applies, in relation to the offer of information society services directly to a child, the processing of the personal data of a child shall be lawful where the child is at least 16 years old.

[2]Where the child is below the age of 16 years, such processing shall be lawful only if and to the extent that consent is given or authorised by the holder of parental responsibility over the child.

[3]Member States may provide by law for a lower age for those purposes provided that such lower age is not below 13 years.

2. The controller shall make reasonable efforts to verify in such cases that consent is given or authorised by the holder of parental responsibility over the child, taking into consideration available technology.

3. Paragraph 1 shall not affect the general contract law of Member States such as the rules on the validity, formation or effect of a contract in relation to a child.

Special protection is given to children by Recital 38:

Special protection of children's personal data*

[1]Children merit specific protection with regard to their personal data, as they may be less aware of the risks, consequences and safeguards concerned and their rights in relation to the processing of personal data.

[2]Such specific protection should, in particular, apply to the use of personal data of children for the purposes of marketing or creating personality or user profiles and the collection of personal data with regard to children when using services offered directly to a child.

[3]The consent of the holder of parental responsibility should not be necessary in the context of preventive or counselling services offered directly to a child.

Registration with the Information Commissioner

Most therapists now use some form of digital processing for making appointments, keeping records and other communications with clients, colleagues and employers in the provision of their therapy services.

Communications within a counselling or psychotherapy service (in whatever context it takes place), particularly appointments or other data related to providing and receiving services, constitute 'sensitive personal data'. Failure to register with the Information Commissioner when required to do so is an offence of strict liability, punishable with fines. Counsellors deciding whether or not to register should consult the Scottish Information Commissioner's Office for assistance.

Appendix 5
Glossary of terms

Note:

Whilst the information contained in this appendix is accurate as at time of writing the Scottish Government is commissioning a comprehensive review of policy, practice, services and structures in current child protection. The particular focus will be on the child protection committees, initial and significant case reviews and the child protection register.

Child's plan

A child's plan is a tool to ensure that where a child requires support there is a single plan, which will be agreed and used by all agencies working with the child. The needs of the child are assessed and the more complex the needs of the child the greater the need for proper assessment and coordination. Even if only one source of support is required there should be a child's plan. All agencies will be involved in agreeing the plan as will the parent(s), carers and the child (where able). Where there are child protection concerns, a child protection plan will be agreed and will be incorporated into the child's plan. When the child protection concerns are no longer active, the child protection plan will be removed from the child's plan. The need for support will be assessed and the child's plan amended accordingly. A child's plan is an active process. Responsibility for coordinating and recording the child's plan belongs to the lead professional.

Harm and significant harm

As part of the GIRFEC approach the Scottish Government has provided definitions of 'harm' and 'serious harm' in the National Guidance for Child Protection in Scotland 2014 to ensure that different agencies and professionals understand what is meant when the terms are used.

Harm

It is worth quoting the section on 'harm' in full:

> '*"Harm" means the ill treatment or the impairment of the health or development of the child, including, for example, impairment suffered as a result of seeing or hearing the ill treatment of another. In this context, "development" can mean physical, intellectual, emotional, social or behavioural development and "health" can mean physical or mental health.*'

Significant harm

The guidance goes on to state 'Whether the harm suffered, or likely to be suffered, by a child or young person is "significant" is determined by comparing the child's health and development with what might be reasonably expected of a similar child.'

Significant harm may arise from a single incident, a serious of incidents or an 'accumulation of concerns'. Thus, a pattern of incidents which might not give rise to significant harm individually may do so cumulatively.

It should be noted that the guidance states that the decision as to whether a child has suffered significant harm or is likely to do so is complex and is a decision to be made after a multi-agency assessment.

Implementation authority

This is the local authority which has responsibility for carrying out the CSO and any measures included. The IA is the authority which has closest connection with the child. Where the child is accommodated away from their home in another local authority area, the original authority will generally be the implementation authority.

Lead professional

Where more than one agency is involved in supporting a child a single professional will be identified to take on the role of coordinating the support the child and family receive (see child's plan). Where there are child protection concerns this will normally be a social worker.

The role of the lead professional is an important one as it is his or her responsibility to ensure that the actions in the child's plan (and the child protection plan contained therein) are undertaken as agreed and according to the agreed timescales.

Looked after child

A child has 'looked after' status if one of the following applies:

- The child is cared for by the local authority on a voluntary basis (s.25 Children (Scotland) Act 1995)
- The child is subject to a Child Protection Order
- The child is subject to an order by a children's hearing including: a compulsory supervision order, interim compulsory supervision order, interim variation of compulsory supervision order
- The child is subject to a permanence order
- The child has been removed by a constable under emergency powers
- The child is subject to a protection order from another UK jurisdiction.

Looked after status gives the local authority duties towards the child including to 'safeguard and promote' their welfare, and, if the child is looked after at or after their 16th birthday, they have the right to ask the local authority to assess needs until they reach 26.

Member of the same household

This is a member of the same family unit, it does not necessarily require that these be persons who live under the same roof or be related by blood, marriage or civil partnership.

Non-disclosure

A person who has parental rights and parental responsibilities (PRRs) has the right to know where that child is placed, if the decision of a sheriff or hearing is that the child must be accommodated away from home. This may be through an order of a hearing or a court under the Children's Hearings (Scotland) Act 2011.

To deny a person with PRRs the knowledge of the whereabouts of the child is an interference with the right to determine the residence of the child and the ability to exercise PRRs and is therefore a serious step. Of the 3,185 children who were subject to a compulsory supervision requirement in the year 2015-2016, 1,105 were subject to non-disclosure orders and, of the children subject to an interim order, 114 were subject to a nondisclosure order.

Procurator fiscal

This is the official, always a lawyer, responsible for prosecution of crime in the Sheriff Court. There is one procurator fiscal for each sheriff court and a number of procurator fiscal deputes, all just tend to be called the procurator fiscal in court parlance. See www.crownoffice.gov.uk.

Risk

All children experience some risk in childhood – a childhood where all risk was eliminated would be a sterile experience, the concern in child protection is the unacceptable risk.

Readers are directed to the National Risk Assessment Toolkit which is available at National Risk Assessment Framework: www.gov.scot/Resource/0040/00408604.pdf.

Wellbeing

The concept of wellbeing was introduced into Scottish law in the Children and Young People (Scotland) Act 2014. It is likely to cause some confusion as the legal concepts of 'best interests' and 'welfare' are used in all other legislation regarding children and are well understood.

There is no clear definition in the Act of wellbeing, rather what has been incorporated are the 'SHANARRI' indicators which are not easy of legal interpretation and application. SHANARRI stands for:

- safe
- healthy
- achieving
- nurtured
- active
- respected
- responsible
- included.

More information is available in the National Child Protection Guidance.

Appendix 6
Glossary of acronyms/abbreviations

CHS – Children's Hearings Scotland

Close connection – having significant contact with

COPFS – Crown Office and Procurator Fiscal Service

CPPM – child protection case conference

CPPM – child protection professionals meeting

CPO – child protection order

CRC – The UNCRC's preferred abbreviation for the United Nations Convention on the Rights of the Child

CSO – compulsory supervision order

ECHR – European Convention on Human Rights

GDPR – General Data Protection Regulation,

UKGDPR – the United Kingdom GDPR

ICSO – interim compulsory supervision order

IVCSO – interim variation of a compulsory supervision order

SCRA – Scottish Children's Reporter Administration

SLAB – Scottish Legal Aid Board

UNCRC – United Nations Committee on the Rights of the Child, also used to mean the United Nations Convention on the Rights of the Child

UNCRPD – United Nations Convention on the Rights of Persons with Disabilities.

Appendix 7
Scottish Government guidance and other resources

Child's plan briefing Child's plan
Getting it right for every child (GIRFEC) – gov.scot (www.gov.scot)

Child protection Guidance for Health Professionals
www.gov.scot/search/?q=Child+protection+Guidance+for+Health+Professionals+&cat=sitesearch

Child Protection Learning and Development 2024 National Framework: Analysis of Local Implementation
www.celcis.org/knowledge-bank/search-bank/national-guidance-child-protection-scotland-2021-analysis-local-implementation

Children and Young Witnesses at Court Children and young witnesses at court – mygov.scot Code of Practice to Facilitate the Provision of Therapeutic Support to Child

Witnesses in Court Proceedings B38819 Child Wit PR/TEXT final
Code-of-Practice-Therapuetic-Support-for-Child-Witnesses%20(2).pdf

Crown Office Prosecution Code
The Code for Crown Prosecutors | The Crown Prosecution Service

Getting our Priorities Right
Contents – Getting our priorities right: good practice guidance – gov.scot

GIRFEC :
National Practice model
Welbeing (Shanarri)
Values and Principles
Lead Professionals
Girfec resources
are all available at Getting it right for every child (GIRFEC) – www.gov.scot

Guidance on children's advocacy: Scottish Government (being refreshed at time of writing

Children's advocacy guidance – .gov.scot

Guidance on Joint Investigative Interviewing of Child Witnesses in Scotland

Guidance on Joint Investigative Interviewing of Child Witnesses in Scotland – gov.scot

United Nations Convention on the Rights of the Child implementation: introductory guidance – gov.scot (www.gov.scot)

Vulnerable Witnesses (Scotland) Act explanatory notes Vulnerable Witnesses (Scotland) Act 2004 – Explanatory Notes

Scottish Government Guidance on Victims and Witnesses Pre-recording of evidence by witnesses Pre-recording witness evidence – Victims and witnesses – gov.scot

Police Scotland: Information on Child abuse: Child abuse – Police Scotland

Joint protocol between Police Scotland and Crown Office and Procurator Fiscal Service: In Partnership Challenging Domestic Abuse

joint-domestic-abuse-protocol.pdf

Lord Advocate's Guidelines to the Chief Constable on the Reporting to Procurators Fiscal of offences alleged to have been committed by children Lord Advocate's guidelines on offences committed by children | COPFS

Decision making in cases of children jointly reported to the Procurator Fiscal and Children's Reporter Decision making in cases of child accused | COPFS

National Guidance for Child Protection in Scotland 2023 National Guidance Scotland | Child Protection

National Guidance for Child Protection in Scotland 2014. Contents – National guidance for child protection in Scotland: protecting disabled children from abuse and neglect – gov.scot (www.gov.scot)

National Guidance – Under-age Sexual Activity: Meeting the Needs of Children and Young People and Identifying Child Protection Concerns www.gov.scot/Publications/2010/12/02143509/0

National Risk Assessment Framework: National Risk Framework to Support the Assessment of Children and Young People – gov.scot

The Charter explanatory booklet Protecting Children and Young People: The Charter Explanatory Booklet | The Learning Exchange Charter_booklet_new3

Safeguarding Children In Scotland Who May Have Been Trafficked | The Learning Exchange

Scottish Sentencing Council Sentencing Young People Sentencing Guidelines sentencing-young-people-guideline-for-publication.pdf

Working with Children and Adults Who May be at Risk of Self-harm: Practice Guidance on Information Sharing, Protection and Confidentiality Working with children and adults who may be at risk of self harm: practice guidance – gov.scot

Many local authorities have made their procedures in child protection available online and are easily found.

Appendix 8
Awareness of child protection concerns

World Health Organisation: Preventing Child Maltreatment: A guide to taking action and generating evidence. www.who.int/publications/i/item/preventing-child-maltreatment-a-guide-to-taking-action-and-generating-evidence

The Report into the inquiry into the removal of children from Orkney in February 1991 Inquiry into the Removal of Children from Orkney in February 1991 – GOV.UK

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References and further reading

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GMC (2008) *Consent: patients and doctors making decisions together.* www.gmc-uk.org/guidance/ethical_guidance/consent_guidance_index.asp.

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Kilbrandon report: *Children and Young Persons*, Scotland 1964, HMSO Cmnd 2306 www.gov.scot/Resource/Doc/47049/0023863.pdf.

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Appendix 9
Relevant legislation and subsidiary legislation, international conventions

Relevant legislation

Abusive Behaviour and Sexual Harm (Scotland) Act 2016

Age of Criminal Responsibility (Scotland) Act 2019

Children (Scotland) Act 1995

Children (Protection from Abuse) (Scotland) Act 2019

Children's Hearings (Scotland) Act 1995

Children's Hearings (Scotland) Act 2011

Children and Young People (Scotland) Act 2014

Children (Equal Protection from Abuse) (Scotland) Act 2019

Civic Government (Scotland) Act 1982 as amended by the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005

Criminal Justice and Licensing (Scotland) Act 2010

Criminal Procedure (Scotland) Act 1995

Data Protection Act 1998

Domestic Abuse (Scotland) Act 2018

Education (Scotland) Act 1980

Forced Marriage etc. (Protection & Jurisdiction) Act 2011

Human Rights Act 1998

Matrimonial Homes (Family Protection) (Scotland) Act 1985

Mental Health (Care and Treatment) (Scotland) Act 2003

Prohibition of Female Genital Mutilation (Scotland) Act 2005.

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

Protection of Vulnerable Groups (Scotland) Act 2007

Sexual Offences (Scotland) Act 2009 parts 4 and 5

Social Work (Scotland) Act 1968

Vulnerable Witnesses (Scotland) Act 2004

Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019

Victims and Witnesses (Scotland) Act 2014

UNCRC (Incorporation) (Scotland) Act 2024

Relevant Subsidiary Legislation

Children's Hearings (Scotland) Act 2011 (Compulsory Supervision Orders etc.:

Further Provision) Regulations 2013 (SSI 2013/149)

Children's Hearings (Scotland) Act 2011 (Implementation of Secure Accommodation Authorisation) (Scotland) Regulations 2013 (SSI 2013/212)

Children's Hearings (Scotland) Act 2011 (Modification of Primary Legislation) Order 2013 (SSI 2013/211)

Children's Hearings (Scotland) Act 2011 (Modification of Subordinate Legislation) Order 2013 (SSI 2013/147)

Children's Legal Assistance (Fees) (Miscellaneous Amendments) (Scotland)

Regulations 2013 (SSI 2013/144)

Children's Legal Assistance (Scotland) Regulations 2013 (SSI 2013/200)

Children's Hearings (Scotland) Act 2011 (Movement Restriction Conditions) Regulations 2013 (SSI 2013/210)

Children's Hearings (Scotland) Act 2011 (Rehabilitation of Offenders) (Transitory Provisions) Order 2013 (SSI 2013/146)

Children's Hearings (Scotland) Act 2011 (Review of Contact Directions and Definition of Relevant Person) Order 2013 (SSI 2013/193)

Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013 (SSI 2013/194)

Children's Hearings (Scotland) Act 2011 (Transitional, Savings and Supplementary Provisions) Order 2013 (SSI 2013/150)

Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Amendment Rules 2015 (SSI 2015/21)

Children's Hearings (Scotland) Act 2011 (Safeguarders: Further Provision) Regulations 2012 (SSI 212/336)

Children's Hearings (Scotland) Act 2011 (Safeguarders Panel) Regulations 2012 (SSI/54)

The Public Bodies (Joint Working) (National Health and Wellbeing Outcomes) (Scotland) Regulations 2014 (SSI 2014/343)

Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019 (Commencement no. 1 and Transitional Provisions) Regulations 2019/392 SSI.

European legislation and international conventions

The Council of Europe Convention on Action against Trafficking in Human Beings, 2007, 2008

The European Convention on Human Rights 1950

European Union Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims / Directive 2011/36/EU

The General Data Protection Regulation

The United Nations Convention on the Rights of the Child 1989

The United Nations Convention on the Rights of Persons with Disabilities, 2008-2010.