

Alternatives to depriving children of their liberty

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Introduction

Produced through the Advancing the Whole System Implementation Group, this document replaces the original [Alternatives to Secure Care and/or Custody](#) guidance published in 2011 as part of the initial suite of [Whole System Approach](#) (WSA) guidance. It seeks to reflect developments in policy, practice and legislation since that time, and to assist practitioners to fully consider alternative approaches, thereby ensuring that deprivation of liberty occurs as rarely as possible, for as short a period as is necessary, and when that represents the best intervention in the particular circumstances.

Its publication comes at a time when the rights of children are of considerable concern in both domestic and international contexts. Nowak (2019) conservatively estimates that [up to 1.5 million children](#) around the world are affected each year, with a further 1 million spending time in police custody. Legal protections are enshrined within a variety of international treaties, most notably the United Nations Convention on the Rights of the Child ([UNCRC](#)) which affords all children specific protections due to their status as children, over and above those rights detailed within the [Human Rights Act 1998 \(HRA\)](#). [Duty bearers](#) therefore have a legal obligation to protect, respect and fulfil the rights of all children, with the state – including Scottish Ministers, Scottish Government officials, Local Authority staff, teachers, social workers, health professionals and police officers – facing much of this responsibility.

The right to liberty touches upon many features of the children's rights landscape, with Nowak (2019, p. 336) calling on duty bearers to “develop and implement a national strategy aimed at replacing the detention of children in penal facilities with non-custodial solutions based upon broad consultation with experts, civil society and children themselves”. Echoing this, [General Comment 24 of the United Nations Committee on the Rights of the Child](#) states that “the child justice system should ... strictly limit the use of deprivation of liberty, from the moment of arrest, throughout the proceedings and in sentencing”. This means that alternatives to depriving children of their liberty should be available for most children. Only a very small number will require to have their liberty removed, and this must only occur where there is an assessed risk of serious harm to either themselves or others, and when aspects of their behaviour cannot be managed safely in the community. Even then, actions of duty bearers must be discharged in accordance with [Article 37b](#) of the UNCRC which states that “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.” Furthermore, General Comment 24 clearly argues that in those exceptional situations where deprivation of liberty is justified as a last resort, its application should be reserved for older children, should be strictly time limited, and subject to regular review.

In doing so, duty bearers must bear in mind Getting It Right for Every Child ([GIRFEC](#)) which underpins all provision of services to children in Scotland, and the WSA for those children in conflict or contact with the law. In addition, where there is a risk of harm to the child from others, or when aspects of the child's behaviour pose a risk to others, then a child protection lens is critical, particularly for those who may be at risk of having their liberty deprived.

To achieve these ambitions, duty bearers must develop scaffolding and supports in line with a sound research base. This guidance – alongside the Children and Young People's Centre for Justice practice guide on [Depriving Children of Liberty and Alternative Measures](#) - outlines measures that can achieve this, and enable those supporting children who face, make or take the highest levels of risk to provide alternative provision wherever possible. In doing so it seeks to support partners to develop credible and robust ways of providing care to children and who are at

risk of being deprived of their liberty, supporting practitioners to meet the ambitions set out within [the Promise](#).

What is deprivation of liberty?

Deprivation of liberty has been defined as the process of removing the personal freedoms of an individual, with a particular focus on their placement and detention within a locked setting (Liefwaard, 2019; Meeler & Todres, 2024; Nowak & Krishan, 2022). In certain circumstances, the removal of liberty can be an infringement of a child's human rights, with [Article 5 of the HRA](#) outlining the limited circumstances in which a deprivation of liberty is permitted. The Article calls for strict safeguards to be in place for those who do experience this measure. These safeguards include the requirement that any deprivation of liberty must be by 'a procedure prescribed by law' and that those who are deprived of their liberty have the right to have the lawfulness of their detention reviewed by a court.

The UK Supreme Court confirmed that whatever the age of a person, their care arrangements will give rise to a deprivation of liberty if the following three conditions are met:

- the objective component of confinement in a particular restricted place for a not negligible length of time
- the subjective component of lack of valid consent
- the attribution of responsibility to the state.

These conditions were first set out by the European Court of Human Rights following the *Storck v Germany* (2005) case and are commonly known as 'the Storck components'. These components require consideration of three distinct aspects of the person's care arrangements, which can be addressed by asking the following questions:

- Is the person confined?
- Is there any valid consent to the confinement?
- Is the state responsible for the confinement?

(Parker, 2022)

Those practicing in this area must remain mindful that "deprivation of liberty means deprivation of rights, agency, visibility, opportunities and love. Depriving children of liberty is depriving them of their childhood" (Nowak, 2019, p. 4). This will no doubt have influenced the thinking of Scotland's [Independent Care Review](#) which concluded that reform must take place to the manner in which Scotland deprives the liberty of children, ending the use of Young Offenders' Institutions (YOI) for children and instead delivering trauma informed care within a secure setting. Following those occasions when liberty is removed, support must be put in place that allows the child to "live fulfilling lives in the community" (Independent Care Review, 2020, p. 80).

Children in conflict with the law in Scotland are most likely to be deprived of their liberty through the Children's Hearings System, through contact with the court system, or a combination of both. The severity and nature of the incident that has occurred, along with their age and legal status often dictate which system will respond to these children. These factors are of critical importance; Scotland's extant legislative landscape currently regards all those under 16, and 16 and 17-year-olds who are subject to a Compulsory Supervision Order (CSO) - as children. Those 16 and 17-year-olds who are not subject to a CSO receive different treatment and are legally defined as adults. The legal status of a child therefore has significant implications for where they may be held if deprived of their liberty by court.

However, the [Children \(Care and Justice\) Scotland Act 2024](#), which was passed by the Scottish Parliament in April 2024, seeks to address this inconsistency. When the relevant provisions of the Act are commenced, it will define a child for these purposes as someone under the age of 18. The timetable for commencement and implementation is at the time of writing being agreed. Meantime, an inconsistent and often complex range of processes relating to children in conflict with the law exist, particularly in terms of deprivation of liberty. From late August 2024, certain provisions within the 2024 Act were commenced, ending the placement of children in YOI, as called for in ‘the Promise’. Whilst this legislation has ended the deprivation of liberty for children within a YOI, this will instead take place within secure care when a court deems it necessary

Children are deprived of their liberty in numerous ways and for various reasons, including: police custody; detention awaiting trial and/or following sentencing; placement in a secure facility for protection, assessment or treatment; or detention as part of the immigration or asylum system (Kilkelly, 2011; Nolan, 2019). There may be levels of overlap and conflict across these systems, as these children often cross both welfare and justice systems, with this contrast between child-friendly responses and justice responses often raising tensions. Scotland’s approach to children in conflict with the law is underpinned by GIRFEC, UNCRC, WSA and child protection, yet its justice systems continue to make limited specific adaptations or accommodations for children.

Mindful of the state’s obligation to children’s rights within UNCRC and other associated treaties, General Comment No. 24 and the conclusion of the Promise, practitioners must seek to limit deprivation of liberty. Both the Human Rights Act 1998 ([HRA](#)) - which incorporated the European Convention on Human Rights ([ECHR](#)) directly into UK law - and the UNCRC contain specific rights in relation to the protection of freedoms and liberty. Article 5 of the HRA clearly sets out the very specific circumstances prescribed by law in which liberty can be removed, whilst Article 37b of the UNCRC has additional safeguards in terms of children, stating that this should only be used as a measure of last resort and for the shortest possible time. In addition, the United Nations Committee on the Rights of the Child (2019, p. 3) specifically highlights that in those limited situations where deprivation of liberty is justified as a last resort, its application is for older children only, is strictly time-limited, and is subject to regular review. When children are referred to a welfare system from the criminal justice system “the principle of ‘measure of last resort’ equally applies to protect children from deprivation of liberty in all institutions” ([UN, A/74/136, 2019](#)). Any deprivation of liberty imposed should be rigorously defensible; it should never be adopted solely for reasons of procedural convenience, and children’s human rights must be considered throughout. Balancing rights and risk of harm is a difficult task and careful consideration of the rights of individuals alongside those of others and wider society which must be underpinned by defensible decision-making and good risk management practice (Kemshall, 2021; Kilkelly, 2023; Kilkelly et al., 2023; Murphy, 2018; Scottish Government, 2021a). Nolan and Suszek (2025) [recently summarised these issues](#) in an accessible document.

There is an expectation from Scottish Government, under WSA policy launched in 2011, that [processes and practices](#) are in place at a local level to ensure that when children come into conflict with the law

- They are actively diverted from formal systems at every opportunity
- Where diversion has not been possible, they are supported to navigate the justice systems until their journey is concluded
- Responses and support are available irrespective of whether or not a child is known to, or currently involved with, services
- If there is a risk of them being deprived of their liberty alternatives are available to:
 - Police, in terms of alternatives to police custody
 - Panel members within the Children’s Hearings System

- Chief Social Work Officers (CSWO)
- Court

Pathways into deprivation of liberty

There are three main pathways by which a child in conflict with the law may be deprived of their liberty in Scotland; namely the Children’s Hearings System, following police detention, or due to the decision of court. Aside from these primary routes the Chief Social Work Officer (CSWO) may use emergency powers to place a child in secure care for a short period, which subsequently triggers an emergency children’s hearing to review ,and further authorise that placement if necessary . In a wider context, children may also be deprived of their liberty due to detention through mental health legislation, or due to perceived breach of immigration law. Children in conflict with the law may be involved in one or more of these systems but are most predominantly responded to by the hearings or justice systems. The intersection and crossover between these systems are challenging to understand and navigate.

Which system responds to a child in conflict with the law is often determined by their age and/or the seriousness of the harm they have or are alleged to have caused. Within this context, the current legal definition of ‘a child’ in Scotland is someone under 16 years of age or under 18 years if subject to a CSO. This has significant implications for those aged 16 or 17 who are not defined as a child in law, and thus affects which system responds to them in a justice context. There is myriad complexity to these questions, due partly to other legislation which refers to children as being everyone under the age of 18, as is the case within the [Children and Young People \(Scotland\) Act 2014](#). Likewise, Article 1 of the [United Nations Convention on the Rights of the Child](#) (UNCRC) defines a child in the same manner and its future incorporation may well have implications for the confusing landscape that exists in this area. Full implementation of the [Children \(Care and Justice\) \(Scotland\) Act 2024](#) will lead to significant changes to the manner in which children in conflict with the law are responded to, namely changing the legal definition of a child in line with the UNCRC, prohibiting the placement of any child in a YOI and permitting greater access to the Children’s Hearings System for those aged 16 and 17. This guidance is therefore both timely and necessary.

Data on children deprived of their liberty

Children in Scotland who come into conflict with the law are most likely to be deprived of their liberty within police custody or secure care.

[Scottish Police Authority figures for 2022/2023](#) indicate that a total of 4,261 children were held in custody over that period. This reflects an increase in the most recent years, although lower than the pre-Covid total of 5,359 in 2019/20. The report suggests that a significant factor in the recorded increased use of police custody is the lack of suitable alternative places of safety.

The [Children’s Social Work Statistics – Secure Care 2023/2024](#) report highlights:

- An average of 60 children were in secure care during that year, up from 59 in 2022/23, but down from 74 and 76 in the previous two years.
- Emergency placements were used on a total of 11 nights, down from 11, 20 and 40 occasions during the previous three years
- An average of 48 children within secure were placed by Scottish local authorities, an increase from 37 during 2022/23 but down from 41 and 47 in the previous two years

- An average of 12 children in secure care were placed there by an authority outwith Scotland, a decrease from 29, 33 and 22 during 2020/2021, 2021/22 and 2022/23 respectively

Whilst occupancy rates fluctuate throughout the year, these figures should be viewed in light of changes to secure care provision, including a significant reduction in secure care demand and capacity over the preceding two decades, reflected in a substantial decrease in overall admissions to secure care. Coinciding with this has been an increased demand from local authorities from outwith Scotland who face a range of challenges in providing care from within their own jurisdictions. (Williams et al., 2022).

Following the passing of the [Children \(Care and Justice\) \(Scotland\) Act 2024](#), the use of YOIs for children is no longer permissible. Even so, relevant data such as the [Scottish prison population statistics from 2022/23](#) demonstrates a trend towards less frequent use of the custodial estate, noting:

- An average of nine children were held within the custodial estate over this year, compared to 14 and 22 in the two prior years
- Slightly over half (50.3%) of children and young people (16-21 years old) were held on remand; a proportion that has remained stubbornly high over the preceding years
- A significant reduction in the overall numbers of individual children and young people entering the prison estate over recent years, specifically; 787 individuals in year 2021/22 compared to 4,909 in 2009/10.

Secure care

Secure care provides therapeutic, trauma informed care for children up to the age of 18. This resource is used when the risk of harm to the child or others is deemed to be at such a level as to require their liberty to be withheld. It serves a variety of functions due to the diverse and complex needs of those who are resident there (Andow, 2024). [Recent research](#) into the secure care population highlights the broad range of concerns that are associated with this cohort, including acts of violence, self-harm, mental ill-health, child sexual exploitation and absconding along with significant levels of interfamilial conflict and harm (Gibson, 2022; Whitelaw & Gibson, 2023). These lead to concern over the child's behaviour towards others, to themselves, or from third parties within the community. Secure care provides child-focussed, relationship- driven therapeutic environments which ought to deliver developmentally appropriate, trauma- and attachment-informed responses to presenting the needs and risks. Approaches adopted within secure varies depending on the needs of the child, the resources within the provision and other, diverse factors.

Scotland's four secure care settings are approved by the Scottish Ministers, having been registered, monitored and inspected by the [Care Inspectorate](#) and [Education Scotland](#) who – amongst other considerations – examine whether the secure care providers are meeting the [Secure Care Pathways and Standards](#) launched in 2020.

Secure care and education in Scotland can be provided for 78 children aged 10 to 18, with six additional 'emergency' or 'respite' places across the centres which would normally only be used if required and on a short-term basis.:

Four independently run charitable organisations deliver secure care, namely:

- Good Shepherd, Bishopton
- Kibble Safe Centre, Paisley

- Rossie Secure Accommodation Services, Montrose
- St Mary's Kenmure, Bishopbriggs

Further details regarding capacity can be found via the [Secure Accommodation Network Scotland](#) and the Scottish Parliament [Justice Committee](#) website.

Legislation related to secure care

Routes into secure care can be complex, with Nolan (2019) highlighting the [various ways](#) a child can enter secure care. Broadly, these relate to childcare legislation and justice legislation.

Admission through childcare legislation

The vast majority of children within secure care have been placed there by virtue of the decision of a children's hearing, which may authorise the use of secure care if certain criteria are met. Firstly, the child must be subject to a [CSO, Interim CSO, medical examination order or warrant to secure attendance](#).

Secondly, the following test - commonly known as the secure care criteria and set out within Sections 83(6), 87(4) and 88(3) of the [Children's Hearings \(Scotland\) Act 2011](#) - must be met, namely:

- That the child has previously absconded and is likely to abscond again, and if the child were to abscond, it is likely that the child's physical, mental or moral welfare would be at risk, or
- That the child is likely to engage in self-harming conduct, or
- That the child is likely to cause injury to another person, and having considered the other options available (including a Movement Restriction Condition (MRC)) that it is necessary to include a secure accommodation authorisation in the order.

Having been satisfied that the child meets one or more of the above criteria, the children's hearing may choose to grant secure care authorisation which can then be implemented by the Chief Social Work Officer for the responsible local authority who has ultimate responsibility for making a decision regarding the implementation of the order, as per [The Children's Hearings \(Scotland\) Act 2011 \(Implementation of Secure Care Accommodation Authorisation\) \(Scotland\) Regulations 2013](#) and accompanying [guidance](#). A decision to place a child within secure must be accompanied by agreement from the head of the secure care centre in question.

In addition to the method outlined above, children can be placed in secure care in instances where they are not subject to an (Interim) CSO, Medical Examination Order or warrant to secure attendance. This applies when the child is accommodated by a local authority under [Section 25](#) of the [Children \(Scotland\) Act 1995](#), or subject to a Permanence Order through [Section 80](#) of the [Adoption and Children \(Scotland\) Act 2007](#). In such instances, provision within the [Secure Accommodation \(Scotland\) Regulations 2013](#) enables the CSWO to place a child into secure accommodation if they meet the aforementioned secure care criteria, and if the head of the secure accommodation agrees. This procedure has been explored more fully by Dyer (2024) in a recent [CYCJ information sheet](#).

Admission through justice legislation

Smaller numbers of children are placed within secure care due to their involvement in the justice system. This may be through remand by court under [Section 51](#) of the [Criminal Procedure \(Scotland\) Act 1995](#) at pre-trial stage, or following conviction whilst awaiting sentencing. Following the 2024 implementation of certain components of the recent Children (Care and Justice) (Scotland) Act, children can no longer be placed within YOI under any circumstances.

Instead, children sentenced to a period of detention are placed within secure care. This would relate to convictions under solemn proceedings through [Section 208 of the Criminal Procedure \(Scotland\) Act 1995](#) or a conviction of murder under [Section 205](#) of that Act. In such instances [a recent briefing paper](#) could assist practitioners to support the child and undertake the range of tasks associated with admission into the secure estate. Children may also be placed within secure care following conviction on Summary matters in line with [Section 44](#) of the same Act, with the CSWO responsible for the decision on when the child should leave the secure setting.

Finally, in certain situations the CSWO and head of secure can agree to utilise secure care for children who would otherwise be held within police custody. The secure care criteria must be met in order for this to apply, and these powers are subject to [Sections 11 and 13 of the Secure Accommodation \(Scotland\) Regulations 2013](#).

[Why we need alternatives to deprivation of liberty](#)

Loss of liberty impacts upon a child's civil liberties and human rights, depriving them of the opportunity to lead independent lives, spend time with family members, engage in education and recreation or to enjoy the other personal freedoms associated with liberty (Kilkelly, 2023; Kilkelly et al., 2016; Liefgaard, 2019). More specifically, it results in the individual losing relationships, placing them at risk of homelessness, fractures existing routines and has adverse effects upon physical and mental health (Haydon, 2016, 2018; Nowak, 2019).

Given the detrimental impact that a loss of liberty can have, it is imperative that these responses are only adopted when no alternative option can address the risks, needs and vulnerabilities of the child. To do so, and to provide safe care and support within the community to children who face, make or take the highest levels of risk, practitioners must make best use of existing frameworks, resources and legislation. This may go some way to ensuring that deprivation of liberty is only used in the most limited and critical of situations.

Irrespective as to whether a child is being responded to through a welfare or justice oriented system, an individualised response is required. This must consider the widest context of their life and experiences whilst the approach must be developmentally, systemically, and trauma informed. The lives of children in question are particularly complex, featuring a range of adversities, needs and risks. Research highlights the diverse vulnerabilities among this population:

- In two studies of children in secure care Gibson (2020, 2021) found that [some 64%](#) and [74% respectively](#) had been exposed to four or more Adverse Childhood Experiences, whilst in a study of children deemed to pose a risk of serious harm to others and themselves Vaswani (2018) found that [59% had been exposed to four or more Adverse Childhood Experiences](#) (ACEs). Exposure of this extent has been shown to lead to a range of adverse outcomes during adolescence and adulthood (Pollmann et al., 2022) including engagement in acts of violence (Baglivio et al., 2020). These findings are significantly higher than UK studies where [around 10% of adults](#) reported such heightened rates of exposure (Hughes et al., 2020).
- Drawing on the same data set, Murphy (2018) found a [substantial presence of mental health conditions](#) including attachment disorder (92%) and post-traumatic stress disorder (75%) within this group. Some 64% of children were believed to experience four or more mental health conditions.
- Those with neurological conditions are disproportionately represented amongst the justice systems and can impact on their pathways into conflict with the law (Allely, 2022; Marshall-Tate et al., 2020), whilst prisoners with such a condition are more likely to subsequently experience mental health problems (McCarthy et al., 2019).

- Those entering the custodial estate have often experienced significant head injury, with [one study showing that 80% of young men](#) in HMP&YOI Polmont had been affected (McMillan et al., 2023). This can lead to increased impulsivity and engagement in a variety of risk taking and harmful behaviours (Borschmann et al., 2020; McMillan et al., 2019).
- Children and young people within the custodial estate have [significant experience of bereavement](#), with more than three-quarters (77%) having experienced at least one traumatic death and two thirds (67%) having experienced four or more bereavements (Vaswani, 2014). Whitelaw and Gibson (2023) similarly note the [high levels of bereavement](#) among both the secure and custodial populations.
- Care experienced people are over-represented within the custodial estate (Carnie & Broderick, 2020)
- Children in conflict with the law frequently experience [Speech Language and Communication Needs](#), often receive little or no diagnosis and have a range of other needs (Holland et al., 2023). This can include difficulties in navigating the legal process (Sowerbutts et al., 2021).
- Some 80% of children placed in secure care by Scottish Local Authorities were believed to be living in relative poverty, with almost half of them living within Scottish Index of Multiple Deprivation zones 1 and 2 (Gibson, 2020).

Principles of good alternatives to deprivation of liberty

There is no agreed or legal definition of what an alternative to deprivation of liberty consists of, and the concept of a true alternative to deprivation of liberty has been challenged ([Moodie, Nolan and Murphy 2020](#)). For those children progressing through the Children's Hearings system, consideration of alternatives to secure care is mandatory, with the [Children's Hearings \(Scotland\) Act 2011](#) specifying that all other options must be considered when secure accommodation authorisation is a possible outcome of the hearing (Moodie, Nolan and Murphy, 2020). Within the Hearings system, the only legislatively defined alternative to secure is an MRC ([Scottish Government, 2014](#) ;[SCRA, 2020](#)). In addition, there is no specified category of registration within care and education regulation and inspection agencies of 'alternatives to secure care'. The absence of a formal definition or responses to children and young people who pose significant risk to themselves or others, enables and obliges practitioners to consider a range of creative and flexible solutions.

Within the court context the following measures are often considered to be alternatives to custody:

- Pre-conviction and pre-sentence bail, and bail supervision which can include electronic monitoring
- [Sentencing disposals](#) which could consist of one or more of the following:
 - [Community Payback Order](#) (CPO) and its various requirements which now includes electronic monitoring at point of sentence,
 - [Restriction of Liberty Order](#) (RLO) which is a standalone electronic monitoring order
 - [Drug Treatment and Testing Order](#) (DTTO) for those over the age of 16

While the consideration of an alternative to depriving a child of their liberty may occur across various systems; the response should always be underpinned by GIRFEC, UNCRC, and consideration of the best interest of the child. Responses should incorporate the following principles and values:

- Recognition of the child's status as a child, and not as a 'mini-adult'
- Multi-agency partnership working
- Including child and parents/ carers in all planning and decision making
- [Rights Respecting](#)
- Developmentally, systemically and trauma informed
- All responses to risk of harm are underpinned by GIRFEC and through the lens of Child Protection (2021), also utilise the [Framework for Risk Assessment Management and Evaluation with children aged 12-17 years: Standards, Guidance and Operational Requirements for risk practice](#) or equivalent local process.
- Proportionate and appropriate restrictions of liberty

Practices across different countries show that better outcomes can be achieved through rehabilitative, non-custodial disposals when the approach incorporates certain features, including:

- holistic supports which address the range of risks, needs, vulnerabilities and strengths experienced by the child and their family
- dynamic approaches which change in nature and intensity as and when required
- participatory in nature, ensuring that the voice of those receiving the support, and the voice of their family, is sought out, listened to
- collaboration and integrative practice involving those delivering support and care through the justice, child welfare and social work systems,
- equality and equity of provision, with sufficient resources allocated to ensure all children and young people receive the same level of service regardless of geographical or legal boundaries
- inclusive approaches that seek to involve families and communities within the child's plan, in the provision of support and which builds relationship based partnerships
- attempts to reduce stigmatisation and labelling
- a commitment to a shared sense of ownership and responsibility

As Nolan and Suszek (2025) stress, [the rights of the child require careful consideration](#) at all times.

[Key points that should trigger consideration of alternative responses](#)

This section explores in more detail the points at which alternative responses to children and young people who face, make or take the highest levels of risk should be considered. In doing so, the roles and responsibilities of those involved are highlighted, with case examples illustrating elements of practice which may assist practitioners to avoid unnecessary deprivation of liberty.

The [WSA toolkit](#) for children appearing at court and [Standards for those working with children in conflict with the law](#) (2021) clearly set expectations of multi-agency discussion amongst partners to respond to children held in police custody and appearing in court. Each local authority and their partners across Police Scotland and beyond should have processes and practice in place to ensure that children and young people are:

- actively diverted from formal systems at every opportunity, including use of [Early and Effective Intervention](#), referral to the SCRA, or [Diversion from Prosecution](#) where appropriate
- supported to [navigate the court system](#) until their journey is concluded.
- provided with support irrespective of whether they are currently involved with services or not

- considered for alternatives measures that avoid the deprivation of liberty, with assessments and proposals shared with
 - police in terms of alternatives to police custody
 - panel members within the Children’s Hearings System
 - Chief Social Work Officers should secure be considered
 - Sheriffs and Judges through the court system.

Police Custody

The [Criminal Justice \(Scotland\) Act 2016](#) provides additional safeguards for children, with [Section 51](#) necessitating the police to safeguard and promote the wellbeing of a child as a primary - though not the only – consideration when deciding whether a child should be arrested, detained, interviewed or charged ([Dyer, 2018](#)). Whilst this Act and the associated police [Criminal Justice Act \(Scotland\) 2016 \(Arrest Process\) Standard Operating Procedures](#) (SOP) and the [Offending by Children](#) (SOP) define children as all under 18s, there are still different protections and actions dependent on whether they are legally defined as a child , and refers to younger children (legally defined a child) and older children (16 &17 years not legally defined a child).

The processes and protections in place under this Act for children in police custody are detailed in the chart below (Dyer, 2018), as well as in [The Child’s Journey: A guide to the Scottish Justice System](#), and in a guide co-produced with children and young people to help other children know about [their rights in custody](#). This process will change upon implementation of relevant components of the [Children \(Care and Justice\) \(Scotland\) Act 2024](#).

Whilst in police custody all children have rights, including the right to a private consultation with a solicitor before or during questioning by the police and to have one other person informed that they are in police custody.

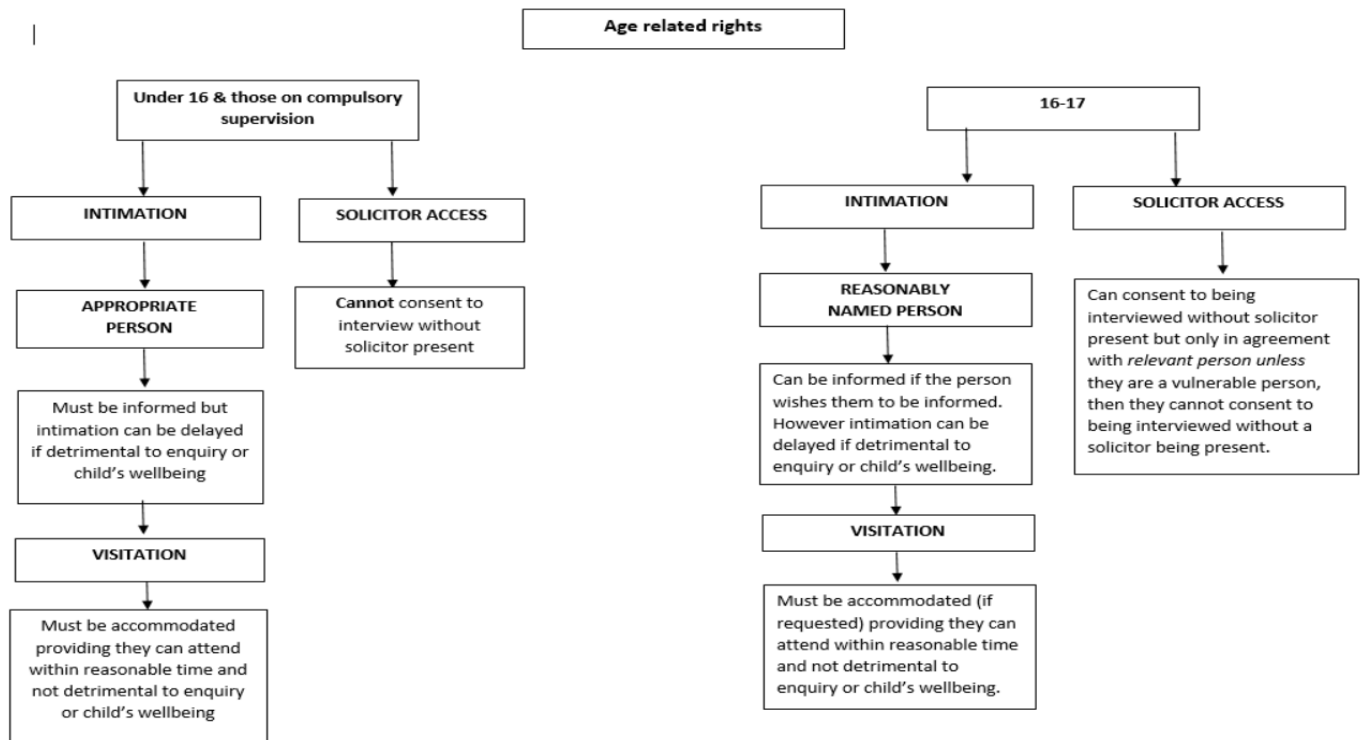
If the child is under 16, or aged 16 and 17 and subject to an (Interim) CSO:

- The police will automatically inform the child’s parent or guardian, who must be granted access to the child by virtue of duties outlined in Section 40 of the Criminal Justice (Scotland) Act 2016
- The child should not be interviewed by the police without a solicitor being present and this right cannot be waived, however in exceptional cases police may proceed with the interview.
- A responsible adult should be present during the interview. This will usually be the parent or guardian: if not available, the police will contact the local authority to provide someone
- If the child is under 16 the local authority may arrange for someone to visit the child.

If the child is aged 16-17 and not subject to an (Interim) CSO:

- The child can request that someone over the age of 18 be informed of their admission into police custody, and they may be able to visit the child if the child requests this, by virtue of duties outlined in [Section 40 of the Criminal Justice \(Scotland\) Act 2016](#)
- The child may be interviewed by the police without a solicitor being present but this right can only be waived if the person who has been informed of the child’s presence in custody agrees

The above conditions are likely to change in the coming years upon the implementation of relevant sections of the [Children \(Care and Justice\) \(Scotland\) Act 2024](#) which is set to make considerable changes in the treatment of all children who come into police custody.



(Dyer, 2018)

When must Social Work be notified?

Sections 38-41 of the [Criminal Justice \(Scotland\) Act 2016](#) contains specific directions regarding police powers and duties when someone under 18 years of age is held in custody, and when social work should be notified. [Section 41\(1\)](#) states that the local authority should be informed of the child's presence in custody as soon as is reasonably practicable if the child is thought to be either:

- subject to a CSO, or
- the police have delayed sending intimation to a parent, carer or someone who has care of the child in order to safeguard and promote the wellbeing of the person in custody.

When a child is believed to be subject to a CSO social work should be notified in order to establish who the appropriate person to be contacted is.

Once notified by police, the local authority can then arrange to visit the child in custody if the child is subject to a CSO or the local authority believes the child to be under the age of 16 and there are grounds to believe that it is necessary to safeguard and promote the child's wellbeing. In addition, the local authority must ensure the person can visit the child within a reasonable time. Importantly, where the local authority does arrange for someone to visit the child then the child will no longer be able to have someone else give intimation of them being in custody or access to another person that is not from the local authority. It is important to note that in a limited number of situations visits from local authority representatives can be refused or restricted by police. Where this has occurred police must record the rationale for such a decision.

To summarise, when a child is being held in police custody to be brought before the court Police Scotland will notify colleagues in the relevant local authority as soon as possible, and when the following certain criteria are met:

Older Children:

- If they are being kept in custody to appear at court

- Since being arrested they have not exercised their right to have an adult advised of their presence in custody and
- Having been reminded of their right to inform an adult, have continued to decline this right.

Younger Child:

- If they are being kept in custody to appear at court
- If they are being released on an undertaking

In these cases the appropriate local authority must be informed of the following:

- The court before which the child is to be brought
- The date on which the person is to be brought before the court and
- The general nature of the offence, which the person has been officially accused of committing.

It is critical to provide support and assistance at the earliest opportunity and establish contact with the child, their family, their legal representative as well as appropriate multi-agency partners. This enables a full discussion regarding the potential outcomes and what support may be required. This may necessitate consideration of credible alternatives to deprivation of liberty and steps that can be taken to manage any potential risk of harm.

This early contact is particularly important where a child is not legally defined a child as the processes to enable access to secure care if there is a risk of deprivation of liberty at that point or if proceeding through court can be perceived as legally and procedurally complex. Thus, it would be beneficial to have as much time as possible to explore and where needed explain and implement, should the child be in agreement.

Due to legislative changes following the [Management of Offenders \(Scotland\) Act 2019](#) information sharing with Criminal Justice Services have now been established with Police, and COPFS respectively.

- Police will notify Criminal Justice Services where an individual has been held in police custody for court, or when a child has been released on an undertaking; and
- Information from prosecutors regarding case marking will be made available to Criminal Justice Services single points of contact in those cases where bail will be opposed, or involves a child

However, if a single point of contact is not in place then communication with appropriate children and family social work services is essential when a child is being held in custody. This measure should not only respond to the welfare issues of the child, but ensure bail supervision assessments are appropriately informed, recognising the specific needs of children and the responses required to support them. Further information is available in Annexe 1 of [Bail Supervision Guidance \(2022\)](#) for children and young adults.

These process changes established in response to the use of electronic monitoring as part of bail should ensure every local authority is made aware when a child is being held in police custody to appear at court where such processes were not previously implemented under the WSA.

Jointly Reported Children

For those children legally defined a child the [Lord Advocate's guidelines on offences committed by children](#) set out when police are required to [jointly report](#) a child to COPFS and Scottish Children's Reporter Administration (SCRA). As per the joint agreement between these bodies, "[Decision making in cases of child accused](#)", there should be discussion between those bodies as to the

most appropriate forum for the case to be dealt with, albeit the final decision lies with COPFS. Whilst the presumption in such cases is for the matter to be dealt with by SCRA this presumption can be rebutted, and children over 12 can still be prosecuted in court. The basis of the decision to prosecute a child is guided by the [Prosecution Code](#), other relevant prosecutorial guidance and the joint agreement between COPFS and SCRA . There are also legislative parameters set out for the forum and decision on placing a case in court for a child who is over 12 and under 16 in [Section 42 of the Criminal Procedure \(Scotland\) Act 1995](#). Section 42(1) provides scope for a child to appear in court, stating that a “child aged 12 years or more but under 16 years may not be prosecuted for any offence except on the instructions of the Lord Advocate, or at the instance of the Lord Advocate; and no court other than the High Court and the sheriff court shall have jurisdiction over [such a child] for an offence”. For children aged 16 or 17 years old not subject to an (Interim) CSO or an open referral to the Principal Reporter they will be reported to the PF unless suitable for a [police direct measure](#). Once again, this practice will change following the enactment of relevant components of the [Children \(Care and Justice\) \(Scotland\) Act 2024](#).

Where there are particular concerns that a jointly reported child may be prosecuted – and therefore at risk of being deprived of their liberty - it is imperative that social work practitioners or relevant services supporting the child are in communication with COPFS and SCRA as swiftly as possible, whilst recognising the limited time available in many instances. They should provide information as to what supports, risk management processes and strategies are available and which could be utilised, highlighting any benefits associated with the Children’s Hearing System.

In addition, practitioners should be aware that a jointly reported child:

- Cannot be kept by the police in a place of safety (whether or not it is a police station) in order to be brought before a court, in accordance with [Sections 21](#) and [22](#) of the Criminal Justice (Scotland) Act 2016. However, [Section 22\(3\)](#) of that Act provides scope for a Chief Inspector to detain the child in police custody if placing them elsewhere would be impracticable, unsafe, or inadvisable due to the person's physical or mental health.
- Can be released on an undertaking to appear at court, in accordance with [Section 26](#) of the Criminal Justice (Scotland) Act 2016, as long as they are being jointly reported to COPFS and SCRA (if under 16 or subject to a CSO), or solely to COPFS (if over 16 and not subject to a CSO).

Practice Example: Jointly Reported Cases

Lewis is 16 years old and has experienced an extremely disrupted, chaotic childhood featuring significant adversity and trauma. His parents' ability to provide care and protection to Lewis and his siblings is affected by their substance abuse difficulties, contributing to several periods where those children were removed from their parents' care over the first five years of his life. Alongside his siblings he was later adopted by a committed and caring family. When Lewis entered his early teens, his parents struggled to respond to his behaviours and keep him safe. The local authority then cared for Lewis within their residential services, but a number of placements were not ultimately able to provide the right support for him. He began to get into trouble, with the most serious incident involving theft of a motor vehicle and robbery, whilst he was also failing to return to his placements. Concerns for his safety and welfare reached the point that the decision was taken to place Lewis in secure care; an experience which he found to be positive.

He developed good relationships with staff and engaged in the interventions delivered. However he was scared and worried about the outstanding charges which he faced and which made it difficult to focus on learning or his future as he expected to receive a custodial sentence.

As Lewis was subject to a CSO the charges in question had been jointly reported, meaning that SCRA could retain jurisdiction for the matter rather than COPFS, as long as COPFS agreed. His allocated social worker initiated contact with police and the responsible case marker, maintaining a close dialogue which enabled them to highlight Lewis' engagement and the progress he was making in secure care. The social worker provided information regarding the supports and interventions in place as well as the plans for his release which included formal risk management process (in the form of [CARM](#)). Subsequently, the decision was taken that the outstanding matters including the robbery and theft of a vehicle would be dealt with through the Children's Hearings System and responsibility held by the Principal Reporter of SCRA.

This reduced Lewis' anxiety and fear about a custodial sentence and potential move into a Young Offenders Institution when he turned 18. He felt that he could now fully focus on engaging with supports within secure. He believed that by resolving outstanding charges prior to his return to the community he would be able to make plans for the future.

Maximising alternatives to police custody

The need to safeguard and promote the wellbeing of children is a primary consideration when deciding whether to detain a child in custody prior to appearance at court. [Police Scotland Standard Operating Procedures](#) highlight that police officers must explore all options to avoid detaining a child in their custody and must fully document reasons why a child in custody cannot be liberated, with police custody being the last resort. To avoid such an occurrence there are several measures to be considered.

Police Undertakings

[Sections 25-30 of the Criminal Justice \(Scotland\) Act 2016](#) outline duties and powers relating to police undertakings. This legislation allows for the individual to be released upon their consent to certain conditions and their undertaking to appear in court at a future date and time once notified. They are also subject to general conditions, including that they should not:

- commit an offence
- interfere with witnesses or evidence or otherwise obstruct the course of justice;
- behave in a manner which causes, or is likely to cause, alarm or distress to witnesses

In some circumstances, additional conditions may be imposed if police believe that to do so is both necessary and proportionate. A parent or guardian is required to sign the undertaking in respect of younger children before they are permitted to leave police custody. In such situations, the local authority should be notified.

Police are also required to consider the wellbeing of the child when deciding how to proceed, with [Section 51 of the Criminal Justice \(Scotland\) Act 2016](#) outlining the duties that fall upon police when responding to all those under the age of 18. The [Lord Advocate's guidance on liberation by the police](#) points out other matters to which consideration should be given, including attention to the views of the child and the proportionality of any action.

In order to maximise the appropriate use of police undertakings, the following steps should be taken by those supporting the child:

- dialogue with the child and their family or caregivers, forming as rounded a picture as possible regarding the circumstances that led to the child entering police custody.
- through dialogue between the child, family, defence agent, social work and police, consideration should be given to the impact of any restrictions imposed by the undertaking . This should seek to avoid inappropriate conditions that hinder the child's wellbeing, such as those that prevent the child from accessing home, spending time with family and friends, or accessing education.
- clarity regarding risk management processes such as [CARM](#) or local equivalent.
- identification of developmentally appropriate resources that can provide proportionate and appropriate support to the child and their family.
- as far as possible within tight time restrictions, communication should take place with police colleagues regarding the above issues, outlining the support and supervision that will be in place should they choose to liberate the child. These measures should be highlighted in order to provide assurances that the immediate safety of others can be secured without the need for the child to be detained in custody.

Practice Example: Use of undertakings

John is 16 years old and subject to a Community Supervision Order. Until recently, he had been living in secure care before moving to supported accommodation in his home local authority. Since then he had struggled to settle in his new accommodation, being unaccustomed to having increased freedom and free time. However, he had developed positive relationships with the workers supporting him although it was difficult for John to maintain the level of engagement with workers. After an evening of drinking with other people his age, his situation deteriorated when he was involved in an incident involving a BB gun. Having tried to shoplift from a nearby shop he used a BB gun to fire at staff in the shop whilst shouting and swearing at them. This resulted in John being arrested and held in custody to appear at court. Police contacted the local out of hours social work team as they felt a secure placement would be preferable to releasing him or keeping him in custody for court.

Social work out of hours were able to provide updated information regarding John's child's plan, his supported accommodation and the supports available to him there. This information enabled police to come to a decision that John would be released on an undertaking with a 7pm to 7am curfew until his court date. Staff from his accommodation were able to support John by collecting him from the police station upon his liberation at 2am.

The following day an emergency multi-agency meeting was held which developed a revised plan to support John and respond to the recent concerns. In addition, a contingency plan identified the steps required to respond to any changes in level of concern for harm to keep both John and the wider community safe, highlighting the specific responses required and which agency would undertake these. Weekly review meetings – involving community police - were set up to ensure the action plan remained responsive to John's level of need and concern, providing him with support to understand and comply with the undertaking conditions, and in particular the curfew. This enabled John's situation to be monitored closely and an early response to any indication the plan was breaking down. Some months later when appearing in court an update of John's situation was conveyed to the sheriff through a court note, thus providing further details of his circumstances and aiding the sheriff to decide how best to deal with the matter.

Factors that enabled this approach to be adopted:

- existing relationships were leveraged to provide a swift response to John's changing circumstances
- clear recoding within electronic casefiles as to the existing child's plan
- communication and dialogue between those supporting John and police colleagues allowed for alternative measures to be employed
- interagency collaboration contributed to a revised child's plan and ongoing monitoring of John's circumstances and subsequent dialogue with the court

Place of Safety

The distinction between 'younger' and 'older' children has significant implications for how they may be dealt with in police custody. Older children – those aged 16 or 17 and not subject to a CSO - may be held in police stations whilst [Standard Operation Procedures](#) state that younger children, "must be kept in a place of safety (as defined in [Section 202 \(1\) of the Children's Hearing \(Scotland\) Act 2011](#)) until taken before the court. The place of safety must not be a police station unless an Inspector or above certifies that keeping the child in a place of safety other than a police station would be: (a) Impracticable, (b) Unsafe, or (c) Inadvisable due to the person's state of health (physical and mental)."

A [Child Detention Certificate](#) is required when the decision has been taken to detain a 'younger child' in a police station and must be endorsed by an officer ranked as Inspector or higher. When the decision to hold a child in custody for court is taken then the local authority must be notified in certain criteria, as outlined on page 14 of this document.

Where an assessment that an undertaking or [investigative liberation](#) is not appropriate, then alternative accommodation for the child should be found. These situations require flexibility as to what could constitute a place of safety that can hold the child's best interests as primary consideration whilst meeting legal safeguards.

This could include, but is not limited to, the following:

- remaining within the family home or that of another family member. Additional supports must be made available.
- foster or residential childcare, again with additional supports
- self-contained emergency housing placement provided by housing colleagues, with members of the child's family, or residential staff, moving to reside with the child for that period of time.

Critical to success of any alternative package and response is an expectation of access to intensive support services or equivalent with practitioners who are experienced in supporting children and families in what is a traumatic and often confusing period. This support should be flexible to meet the needs of the child and their placement prior to appearing at court should that be the outcome.

In circumstances where a chief social work officer deems it necessary to deprive a child of their liberty they could be placed in secure care through a place of safety under [Section 22 of the Criminal Justice \(Scotland\) Act 2016](#) until they appear at court. This is permitted in accordance with [Regulation 12 of the Secure Care Accommodation \(Scotland\) Regulations 2013](#) if the requirements under regulation 11(3) (a) and (b) are both met. The child can only be held there if the Chief Social Work Officer and head of centre considers this measure to be necessary (Nolan, 2019). For older children – who are not provided with the protection of a CSO - this would be an opportunity to explore use of [Section 25 of the Children \(Scotland\) Act 1995](#) as a means of creating a legal pathway for use of secure care where necessary and appropriate. The process outlining how to do so is outlined in detail in [recent CYCJ practice guidance](#), with further details regarding Section 25 powers [being outlined by CELCIS](#).

Practice Example: Use of Place of Safety

Maya was 15 years old, living at home with her parents and two older sisters. Neither she nor her family had ever come into contact with social work. Following long standing disputes with her siblings Maya was charged with assault after using a knife to injure one of her sisters. After being called by neighbours, police arrived at the home where Maya and her parents described what had happened, whilst her sister was taken to hospital.

Initial steps were taken among police officers to consider whether a secure care placement was needed for Maya, however on reflection they took a view that the secure care threshold had not been met. After a discussion among police and social work colleagues, a decision was reached to place Maya with her maternal aunt due to concerns over Maya's risk to her sisters, utilising their powers outlined within their Standard Operating Procedures to place a child in a Place of Safety. Social work practitioners were unable to offer any additional information about the suitability of the placement, however police liaison with the parents discovered that Maya enjoyed a decent relationship with her aunt and they foresaw no reason why she would not be settled there.

Maya remained there for a number of days whilst social work practitioners undertook an initial assessment of the family circumstances and suggested steps that could be taken to resolve the ongoing conflict. Maya appeared at court and was granted bail, returning home at that point.

Court

This section will outline steps that can be taken to support children being prosecuted at court, including consideration of alternatives to remand. It will also consider occasions where secure care can be used. It is important to emphasise that the practice previously outlined within this document, and the supports required to robustly scaffold any alternative measure, are equally applicable in this context. Thus, whilst the system or context in which the child is being responded to and the processes and legislative actions permitted may change, what constitutes a robust and credible alternative to deprivation of liberty does not change.

When a court determines an alternative to deprivation is not appropriate, this will now only take place in secure care rather than a Young Offenders' institution (YOI) following changes made through the [Children \(Care and Justice\) \(Scotland\) Act 2024](#), which created a legal pathway to all those under the age of 18 to be placed there, even if the child is not subject to an (Interim) CSO. Whilst this change results in children being accommodated in a child care placement, it remains a deprivation of liberty that removes a wide range of their human rights and agency, and which can cause trauma to the child and their family.

Court Notes

A key component in achieving effective 'court support' in line with the WSA is the use of Court Notes for those children appearing in court. Produced in line with [Section 42\(8\) of the Criminal Procedure \(Scotland\) Act 1995](#), these provide an opportunity to share key items of information with sheriffs and judges, outlining a concise overview of the child's situation such as whether they are currently involved with services, their involvement in the Children's Hearings System or family dynamics which may impact upon Bail. It is also an opportunity to share with the sheriff what supports are in place, or may be made available to support the child through their court journey. By sharing these details with the sheriff and judge, they may be better equipped to determine whether bail is granted, what conditions are attached and to take a more rounded position on issues such as remand and the alternatives that are being offered by the local authority. Alternatives to remand could include bail supervision, with electronic monitoring being adopted to monitor any additional bail conditions that are deemed appropriate. Alternative provision may include instigation of risk management process such as [CARM](#) or their local equivalent or releasing the child to the care of the relevant Local Authority.

Practice Example: Court Support & Court Notes

Chris was 17 years old, diagnosed with a moderate learning disability, and didn't have any social work involvement. Following a disagreement with, and assault upon, family members Chris had been held in police custody. Police officers did not wish to detain Chris however they could not release him as he could not return home. Unfortunately, having explored all options with his family and with out of hours social work - as per local WSA processes and practice - no alternative accommodation could be identified and he was held in the police cells overnight. The next day, social work practitioners and partners continued to link with his family, eventually securing alternative accommodation in order to reduce the risk of Chris being remanded when he appeared in court.

In addition to this, he was visited in the court cells by voluntary sector partners who deliver court support with the aim of helping him to understand what had happened, what the outcome of court may be, and to gain a better understanding of his circumstances. These visits also served as wellbeing checks and aided them to liaise with his solicitor and family. These visits, and the work of the social work department, enabled a court note to be produced which highlighted relevant and proportionate information regarding Chris's general situation, confirmed that alternative accommodation was available, and outlined the wider supports available to Chris on a voluntary basis.

Chris was subsequently released on bail and received continued support to maintain the supported accommodation provided by housing, and adhere to bail conditions and attend all court related appointments and dates. Without this support Chris would have had no accommodation to be bailed to and likely have been remanded either until accommodation was identified or until his next court appearance.

Bail and Supervised Bail Schemes

When a child first appears at court, the sheriff will often have to make a decision based on limited information, in short timescales, and with limited resources as to whether it is necessary to remand the child or whether bail should be granted. This may also include additional or special bail conditions deemed appropriate by the court. This decision is one solely for the judiciary, but [recent reports highlight](#) that decision-makers need relevant and timely information to make informed and critical decisions in the limited time available to them (McEwan et al., 2020). Social work and other partners must therefore provide all relevant and appropriate information to court in order to support the best possible decision .

One option that could be considered is bail supervision, which involves individuals being supported to comply to their bail conditions by social work practitioners or those from the third sector. It is intended as a credible intervention that provides additional monitoring and support, providing the court with greater confidence to utilise an option other than remand for those cases where they deem the wider risk to the public to be elevated. It may require individuals to meet with a bail supervisor or relevant agency several number of times each week or at a frequency deemed appropriate. In order for someone to be considered for bail supervision an assessment of their suitability, and likelihood and ability to comply with the conditions of supervised bail should be undertaken by social work upon the request of court, or where local arrangements are such that they carry out an assessment of the individual's suitability for bail supervision and electronic monitoring upon learning that bail is being opposed by the Procurator Fiscal. The range of issues that should be considered in such an assessment have been outlined by the Scottish Government in [Bail Supervision National Guidelines](#). If an individual placed on bail or supervised bail fails to adhere to the conditions then this constitutes a further offence and they are liable to be prosecuted.

Those elements of the [Bail and Release from Custody \(Scotland\) Act 2023](#) that have been implemented to date have resulted in a number of significant changes to the delivery and use of bail, including in material changes to [Part III of the Criminal Procedure \(Scotland\) Act 1995](#), and in particular to Section 23C which relates to considerations the Court must give in deciding whether to bail or remand someone. This section refers to grounds on which the court may elect to refuse bail. These considerations include an appraisal of the risk that should the child be granted bail they may:

- abscond;
- fail to appear in court as required;
- commit further offences;
- interfere with witnesses;
- otherwise obstruct the course of justice;

A range of other factors are also taken into consideration, with the court requiring to have regard to all material considerations. Such considerations include, but are not limited to, the following:

- nature and seriousness of the offence;
- probable disposal of the case if convicted;
- whether the person was subject to a bail order, other court order, on licence, or on a period of deferment of sentence when the alleged offences were committed;
- the character of the person, including:
 - previous convictions;
 - previous breach of bail or licence;
 - whether they are currently serving a sentence or have recently served a sentence;
 - associations and community ties of the person.

Public interest and safety may play a role in the decision to refuse bail, with Section 23B setting out the requirement for the court to consider the extent to which the public interest could, if bail were granted, be safeguarded through the use of bail conditions. The court – in such instances – may therefore require further information from local authority representatives as to what measures would be put in place to achieve this.

Finally, Section 23D of this Act sets out legislative powers during solemn proceedings, with a person only to be granted bail if exceptional circumstances are present.

Bail Conditions

Under the statutory provisions contained in [Part III of the Criminal Procedure \(Scotland\) Act 1995](#), a range of conditions can be imposed when bail is granted. Section 24(5)(a - e) of the Act outlines standard bail conditions. In addition, Section 24(4)(b) allows the court or Lord Advocate, in granting bail, to impose 'further conditions' considered necessary to ensure that standard bail conditions are observed. The court may decide to add bail supervision as one of these further conditions of bail in order to support compliance with the standard conditions.

Additional conditions attached to bail can take various forms, and in theory could be anything deemed necessary in the circumstances specific to the child. These are often requested by COPFS where bail is not opposed but standard conditions are not deemed sufficient to mitigate perceived risk.

Research by Skellington Orr et al. (2022) found that [those conditions that are most often requested include the following](#); that the child:

- does not approach, contact or attempt to contact the complainer, witnesses or other named individuals
- stays out of certain addresses, locations or areas

- adheres to a curfew
- attends a police station on a periodic basis
- presents at the door of their home when visited by police
- surrenders their passport
- refrains from entering certain 'City Exclusion Zones'
- surrenders their electronic devices or internet-enabled devices

As the special conditions can be tailored to the individual it is important that those supporting a child at court, as well as providing court notes, liaise effectively with court social work, defence solicitors, and COPFS to flag what supports are available, and thus reduce the likelihood of inappropriate conditions being requested or imposed. Communication with defence solicitors is critical, as they must recognise and highlight the impact of any conditions on the child. This is particularly relevant for the same reasons noted within the considerations of release from police custody with conditions. The implication of inappropriate conditions being imposed could significantly increase the child's likelihood of breaching any such bail conditions thereby increasing their prospects of being remanded. It is also important that the child is aware of the bail conditions and understands what these mean for them, as they must agree to them before they can be imposed.

Bail Review

[Section 30 of the Criminal Procedure \(Scotland\) Act 1995](#) sets out legislative provision relating to bail reviews, which can be undertaken in those instances where bail has been refused by the court, or the court has granted bail but the individual in question has not accepted conditions associated with bail. Bail reviews may also take place in those circumstances where an individual has initially accepted bail conditions but now seeks to have any of the conditions removed or varied. To request a bail review, the child must issue a request through their legal representative; the court can then consider the application and may review the decision and/ or conditions imposed. However, this is only possible if the person's situation has changed materially, or they can provide information that was not available to the court when the decision was originally reached.

[Section 31 of the Criminal Procedure \(Scotland\) Act 1995](#) sets out how the prosecutor may also appeal bail decisions where they can provide the court with information that was not available at the time the decision was taken, whilst [Section 32 of the same Act](#) provides opportunities for an individual to appeal against the decision reached by court regarding bail.

Bail reviews and appeals are further opportunities for the child's legal representative to highlight the range of options that can be made available were the child to be granted bail. Practitioners should therefore communicate these options to the relevant legal representative, or use court notes, to highlight these options.

Where someone has appeared before the court on petition and bail has been refused, and the individual has then been committed for further examination in custody they will be held in custody, usually for seven days (colloquially known as a 'seven day lie down'), noting that it can be up to 8 days in law, before coming back to court for a full committal hearing. This provides a further opportunity to give the court and legal representatives details of revised child plans and thus practitioners should focus time and energy into developing the robust plans that will satisfy court that risk can be managed within the community.

This may include additional bail conditions to respond to the particular risks associated with the child's circumstances, requiring consideration of wraparound supports, increased levels of supervision and a consideration of the suitability of electronic monitoring as a feature of bail. Moreover, the local authority should consider the use of [CARM](#) process or respective local risk

management process for children, and a change of residence including to Local Authority care where necessary.

[Release the child to care of Local Authority - Place of Safety](#)

[Section 51\(1\)\(a\)\(ii\) of the Criminal Procedure \(Scotland\) Act 1995](#) enables court to commit a child under 16 years of age - or who is 16 or 17 years and subject to an (Interim) CSO – into the care of a local authority to be detained in a “suitable place of safety chosen by the local authority”. In this context ‘Place of Safety’ is defined within [Section 202 of the Children's Hearings \(Scotland\) Act 2011](#), providing scope for the local authority to place the child within the family home, with relatives, in residential care, a hospital or other suitable residential setting.

If the child is deemed to meet the secure care criteria, the child may be placed within secure care, by virtue of [Regulation 12](#) of the [Secure Care Accommodation \(Scotland\) Regulations 2013](#) as long as the conditions of [Regulation 11\(3\)\(a\) and \(b\)](#) of those regulations are met. In such an instance, the approval of the relevant Chief Social Work Officer and head of secure care centre are required, with normal review processes to monitor the care plan and confirm that secure criteria continue to be met. Caution should be exercised in using secure care, as the use of Section 51(1)(a)(ii) by court could be interpreted as a proactive decision not to use their powers to remand. Practitioners should therefore ensure that they are clear as to the court’s reasoning behind the use of Section 51 powers before proceeding further.

Detaining a child in secure care under this legislation does not require the authorisation of a Children’s Hearing, but this does not prevent a referral being made to the Children’s Reporter if it is assessed that the child might be in need of compulsory measures of supervision. If the child is subject to a CSO, there would subsequently be an opportunity to consider the use of an MRC as part of a plan to move the child into a less restrictive setting. It is critical that any change of circumstances - such as moving residence - is accompanied by a detailed and robust child’s plan, clearly setting out how services will support the child and those around them, manage the potential areas of concern, and maintain credible risk management strategies in accordance with existing [CARM](#) guidance.

This provides an opportunity for an (Interim) CSO with secure care authorisation to be made or alternatively an MRC with the child being supported in their community. If the secure care centre has been named with the order then a bail hearing may be required in the following circumstances, although legal advice on this matter varies:

- the child is deemed to no longer meet the secure care criteria and Chief Social Work Officer makes the decision for them to leave secure care or to seek the imposition of an MRC
- when notified of the child being placed in secure care the Principal Reporter does not arrange a hearing as criteria for such grounds not met for consideration of compulsory supervision
- Children’s Hearing does not make a secure care authorisation
- Children’s Hearing implements an MRC and the child returns to the community

If any of the above occur following a secure care placement being named as the place of safety then court must be notified within seven days of a change of address in accordance with [Section 25\(2B\) of the Criminal Procedure \(Scotland\) Act 1995](#)

Practice Example: Released to care of Local Authority – Place of Safety from court

Denise was a 16 year old child, subject to a CSO in relation to parental substance misuse and other challenging situations within the family home. As a consequence of these issues a decision had been made several years ago that she reside within a local authority children's home where she had remained since. Over the past six months or so Denise's behaviour had grown increasingly worrying, including episodes of going missing, self-harm and dropping out of school.

Following a party with friends she had got involved in an altercation with another child, using a bottle to assault them and causing a deep cut to their neck. She was subsequently charged and appeared in court, where bail was opposed by the Procurator Fiscal.

Mindful that any period of remand would likely last for several months, and following dialogue with the defence agent, the local authority utilised court notes to outline the supports that could be made available to Denise were she to be remanded. The court note also highlighted that if the Sheriff was minded to do so, that Denise could be released into the care of the local authority who would then place her in a place of safety chosen by the authority under [Section 51\(1\)\(a\)\(ii\) of the Criminal Procedure \(Scotland\) Act 1995](#). As the secure care criteria were met, the Chief Social Work Officer agreed to place the child in secure care under [Regulation 12 of Secure Accommodation \(Scotland\) Regulations 2013](#). On that basis, the child remained in secure care for two months, at which point the local authority secure screening group took the view that she no longer met the secure care criteria and recommended that she return to her placement within residential care. This did not require a further court hearing to confirm or approve that decision, nor was it necessary to attend a Children's Hearing.

Sentencing

In January 2022 the [Scottish Sentencing Council](#) published revised guidelines relating the sentencing of those who are under the age of 26 at the time a plea of guilty, or when a conviction is secured. "[Sentencing Young People](#)" mandates an approach to people of that age which focusses on rehabilitation, not merely punishment, given that this cohort generally have lower levels of maturity and greater capacity for change and desistance (O'Rourke et al., 2020). In addition to reflecting the evidence base for a different approach to sentencing children and young people, it reiterates the rights of the child under UNCRC and the distinct manner in which children and young people should be treated in comparison to adults. The guidelines highlight that chronological age is not the sole marker for assessing maturity and is more reflective of a developmental approach and in considering the level of responsibility they should have regard to the intellectual and emotional maturity of the child or young person at the time the offence was committed. This is particularly important given the timescales that can occur between being charged and the conclusion of their case before the court. Thus, highlighting any such time lapse with particular consideration of changes in the child's situation and ability to reflect as well as their insight into their behaviour and the impact of their actions in any Justice social work report will be critical. Where changes in their development and maturity are not evident, it may be helpful to consider any evidence that aids understanding as to why this could be the case, which can put into context the analysis of risk of harm and strategies to reduce its occurrence as well as impact alongside those strengths and capacity building interventions (Scottish Government, 2021b)

Guidance regarding the completion of Justice Social Work Reports for Court is available within [Scottish Government guidance](#) (Scottish Government, 2023), whilst guidance regarding the [National Outcomes and Standards for Social Work Services in the Criminal Justice System](#) (Scottish Government, 2010) and [delivery of Community Payback Orders](#) (Scottish Government, 2022) may also be of benefit.

Informing sentencing

The remainder of this section focusses on sentencing options and framing these for the court's consideration with relevance to alternatives to deprivation of liberty. Information on court processes and practice in relation to children can be accessed in [Children and Young People in Conflict with the Law: policy, practice and legislation](#), an annual guide from the [Children and Young People's Centre for Justice](#) which addresses many relevant factors in supporting children who may be deprived of their liberty and which is updated annually.

The purpose of the Justice Social Work Report to court is to aid sentencing decisions. All reports for court in relation to a child must be underpinned by the GIRFEC principles and informed by an appropriate risk assessment tool, with the [Risk Management Authority](#) providing an appraisal and summary of many suitable instruments in their [RATED guide](#). In addition, each Justice Social Work Report must comment on the option of remittal to a children's hearing for disposal for all children aged 17 years and 6 months or younger, [Restriction of Liberty Orders](#) and of the responsibility of Scottish Ministers if sentenced via [Section 205](#) or [Section 208](#) of the [Criminal Procedure \(Scotland\) Act 1995](#). Consideration of all relevant disposals should be given to ensure the most appropriate options are put before the courts.

Framing the potential disposals for the court's deliberation should emphasise how each option will meet the needs of the child, build capacity and abilities, whilst reducing likelihood and potential for further harm to be caused. When presenting preferred options before the court for the disposal, reports should:

- detail how the plan will address the issues identified through the risk assessment and analysis.
- clearly outline what is in place and can be accessed, as well as any formal risk management process required such as CARM.
- Highlight those services or that are already in place, as well as those that may need to be sourced through funding, and what timeframe these steps may be relevant.
- Highlight the range of actions that can be taken within the framework of the Children's Hearings System should court elect to remit to that body.

Whether remitted to the Children's Hearings System or retained within court any plan of intervention could include a form of electronic monitoring. Within remittal to Children's Hearings System, that would only be available currently where a child meets the secure care criteria, and in such instances an MRC could be incorporated into a CSO along with an appropriate care plan that addressed the underlying needs, risks and vulnerabilities. If the court does not remit the case then electronic monitoring is available as a specific requirement of a Community Payback Order, or standalone [Restriction of Liberty Order](#), however standalone use of EM with a child is not best practice as provides no additional supports or intervention.

This plan can then be framed within the appropriate disposal, with advice and remittal always being considered. Under other disposals, the proposed child's plan should be referenced and explained how its objectives would be delivered through other disposals such as a Community Payback Order.

Remittal to Children's Hearings System

Remittal to the Children's Hearings System is rarely utilised by Scotland's courts and across all local authorities ([Henderson, 2017](#)), with recent figures showing that on average only 5% of children whose cases could be remitted to the Children's Hearings System are in fact remitted

(Dyer, 2021). Henderson (2017) illustrated that of the children from their study all had backgrounds characterised by trauma and neglect with 98% being involved in the hearings system prior to the request for advice or remittal from court.

All children aged under 17 years and six months can be remitted from court to the Children's Hearings System unless the sentence is fixed by law by virtue of [Section 49 \(5\) Criminal Procedure \(Scotland\) Act 1995](#). For all children subject to an (Interim) CSO the High Court *may* and the sheriff court *shall* obtain advice from the Children's Hearings System as to how the case should be disposed of. The court can then elect to maintain jurisdiction of the case itself, or remit responsibility for disposal of that matter to the children's hearing at which point the court's involvement ceases, unless the child appeals the decision to remit to the Children's Hearings System.

When producing a Justice Social Work Report at the point of sentencing, the author must give consideration of remittal to the Children's Hearings System in every instance of a child under the age of 17 years and six months. Existing [standards for those supporting children in conflict with the law](#) mandates that Justice Social Work Reports make reference to remittal to the Children's Hearings System, as well as use of Restriction of Liberty Orders. This report must therefore outline how these steps would respond to the risks, needs and vulnerabilities of the child, and note any benefits that may be associated with a remittal. Scottish Government guidance adds that remittal may be an appropriate disposal even in instances that would normally attract a period of detention (Scottish Government, 2021c)

If the case is remitted to the Children's Hearings System, the children's hearing will then decide whether to make a CSO, or if there is a CSO in place, whether to continue or vary that Order, including granting secure care authorisation if appropriate.

Practice Example: Remittal to Children's Hearing

Nina was 17 years old, having been subject to a CSO for the past four years after issues relating to parental abuse came to light and she moved to live with her grandmother. Three months ago she was found in possession of drugs, resulting in her being charged under the Misuse of Drugs Act. She pled guilty at her court appearance, with her lawyer stressing the importance of court seeking the advice of the Children's Hearing.

At the advice hearing, her social worker outlined the resources that would be made available to Nina, including referral to a third sector provider who would offer guidance and education relating to drug use and the law. Nina was willing to engage with this service and expressed this at the Hearing. This contributed to the Children's Hearing offering advice to court, recommending that court remit this matter to the Children's Hearings System. This was echoed within the Justice Social Work Report, which highlighted the benefits of such a disposal whilst other options were not as appropriate.

This was communicated to Nina's defence agent who drew on both submissions in their address to court, with the Sheriff agreeing with the social work recommendation. Nina then attended a subsequent Hearing where this was formally concluded, with her receiving the support of the relevant agency.

Children's Hearings System

Unique to Scotland, a Children's Hearing is a legal tribunal featuring a Children's Hearing (or 'panel') of three lay people who seek to respond to the needs and circumstances of children, including in instances of welfare concerns and following alleged episodes of harm caused by the child. The remit of a Children's Hearing is to determine whether a child requires compulsory measures of care - applied via a CSO or (Interim) CSO – or not. A CSO may have a range of conditions attached to it, including that a child resides in residential or secure care, or in alternative family care. The Hearing may also elect to impose an MRC for those children who are deemed to meet the secure care criteria.

The [Children's Hearing Practice and Procedure Manual](#) provides detailed information regarding the processes involved in decision making, and those matters to be considered when a child appears at a hearing. This guidance also highlights the importance of the panel chair in ensuring that the child and their relevant person(s) understand that there are distinct stages with regards to [secure care authorisation](#), and that whilst a panel may make a secure care authorisation it can only be utilised if the Chief Social Work Officer and head of secure centre (where the child may be placed) are in agreement.

On those occasions that a child is deemed to have met the secure care criteria, panel members must consider all alternative options including the use of electronic monitoring through an MRC. [Sections 83\(4\) and \(6\) of the Children's Hearings \(Scotland\) Act 2011](#) are of relevance in this instance, stipulating that an MRC may only be imposed if the child meets one or more of the criteria for secure care, and a Children's Hearing or Sheriff thereafter determines that this condition should be included in the CSO, or Interim CSO.

Whilst an MRC is a primary alternative measure when a child is at risk of secure care it is not the only one, and a proportionate response reflecting the minimum intervention required to achieve the desired outcomes remains the priority.

It may be the case that a robust wraparound support plan with intensive monitoring and supervision strategies, such as voluntary curfews agreed with the child and family may satisfactorily manage and reduce the risk to a more manageable level, for example. Further consideration of the use of MRCs can be found later in this document.

When use of secure care is being considered, it is important to explore all potential options, with practitioners requiring to evidence which approaches have been attempted, why alternative measures are not appropriate, and why secure care is required at that time. To do so, the practitioner must consider the child's risks, needs and vulnerabilities in addition to their strengths, protective factors and supports. This must also contribute to a comprehensive assessment of their current situation, drawing on a recognised risk assessment tool that best reflects the individual profile of that child and their family. Whilst not an exhaustive list, the following points should be considered:

- Consideration of [CARM](#) or local formal risk management process has been explored and a decision taken whether on this is required or not, with evidence and reasoning for that decision being clear and transparent.
- Review and oversight of existing and proposed risk management plan to ensure restrictions on freedoms and interventions are proportionate and necessary to reduce the risk of harm occurring, and build up the child and support system's capacity and abilities through developmentally appropriate opportunities.

- A full and comprehensive risk assessment - using an appropriate risk assessment tool – must be undertaken, featuring an analysis of the potential risk of harm to the child and to others. This should lead to clear intervention and harm reduction strategies that address identified needs and build on those positive aspects of the child’s life.
- Clear evidence of the child and family’s involvement in risk management process and development of the risk management plan should be highlighted. Where the relevant practitioner has been unable to secure their involvement, or they have been unwilling to participate in this activity, then this should be recorded. Agreement or dissent from the existing plan should be noted.
- Gaps, missing information or limitations to the assessment of risk and need should be highlighted, and a plan formulated as to how to address these if possible.
- Prior to seeking secure care admission or use of an MRC, local authorities and their partners should consider the child’s circumstances through a ‘secure care screening group’ or similar process. This should explore whether alternative resources and responses can be put in place, and to highlight areas of unmet need which may affect success of the risk management plan.
- All alternatives to depriving a child of their liberty, whilst ensuring the safety of the child and those around them, must be explored and any decision not to utilise one or more of these alternatives should be articulated in a clear and transparent manner. This must include consideration of an MRC, in addition to other potential proportionate strategies and responses which may be more appropriate than restricting the child’s liberty.
- When an MRC is considered appropriate the child and family’s views and agreement must be sought. Whilst consent is not required for this measure to be imposed, the measure is more likely to succeed when they are in agreement and included in the decision making process.
- Consideration of, and adherence to, the [Secure Care Pathways and Standards](#) and [Standards for those working with children in conflict with the law](#) should be demonstrated, in addition to relevant local processes and procedures.

Practice Example: Bespoke Alternative to Secure Care

Justin was 15 years old and lived with his mother in a small village on a Scottish island, in a local authority which seldomly used secure care over the preceding few years. Practitioners supporting Justin were concerned he is at risk of entering secure care due to the potential for acute harm to occur, with aspects of Justin's behaviour towards others being alarming, and threats from others towards him. He spent his free time with an older group of children and young adults, some of whom were known to hold pro-criminal attitudes and speak openly about their interest in violence and weapons. This was reflected in Justin's social media use which glorifies and promotes toxic masculinity, status and reputation whilst degrading and disrespecting women. This may have contributed to ongoing conflict with his mother. Moreover, Justin was recently being charged with possession of a knife, purchased through online platforms. He stated that he bought the knife to protect himself from young adults with whom he has had an ongoing dispute over the past six months, and who assaulted him last month causing him to accrue a broken rib concussion.

Police and social work practitioners have become increasingly concerned over Justin's conduct with some believing that a residential placement on the mainland would be desirable, whilst others believe that this would not effect any change and may increase the medium to long term risk Justin faces, nor would it address his use of online platforms. Those working with Justin recognised that in order to support him they needed to reconsider how they managed the risk of harm, and tolerate a higher level of risk of harm than they would usually hold.

They consulted with CYCJ and local authorities with experience of providing a more robust type of intensive support and risk practice; this introduced them to the concept of a [contextual safeguarding approach](#) which they incorporated into their response for Justin. They also sought provision of intensive support from external providers. As this was not available they developed their own bespoke intensive response for Justin - drawing on staff from across the local authority - that could hold and manage the level of potential risk whilst meeting his developmental needs and working with his family and partners. Working alongside partners was seen as critical to ensure a shared understanding of what was being undertaken, confidence that it could hold the level of risk they identified, and collectively work together to manage, contain and reduce potential for harm. Given the pressure of the situation, opportunities for Justin to spend time with his family were created and which aimed to rebuild strained relationships.

Following an assault on another young person police charged him with the offence, placed him on a 7pm-7am police bail curfew and seized his phone as evidence. This reduced his contact with friends, the majority of whom were known through online spaces. He subsequently attended a children's hearing where a placement in secure care was considered, however his social worker outlined the plan which had been put in place including the police curfew, regular contact with social work staff, involvement in leisure activities with family and referral to mental health services. The plan sought to develop his sense of self away from the image cultivated amongst peers, promoting his self-confidence in other activities, building relationships and pro-social modelling. This plan was approved by the panel who chose not to utilise secure care, enabling Justin to remain within the family home.

Some time later a range of benefits of this approach were identified. Justin enjoyed improved relationships and a change in self-identity that led him to recognise the risks of violence. Whilst underlying issues remained, strong relationships with male staff members allowed him to explore masculinity in a safe way. The local authority learned from this experience, developing skills and confidence in managing a level of harm that they had rarely encountered, and which could have led to Justin being placed on the mainland within secure care. From a financial perspective, this bespoke response saved the Local Authority almost £1000 per day.

Movement Restriction Condition

An MRC can be a [creative tool](#) used to either prevent a child being deprived of their liberty, or returned to the community following a period in secure care.

In both instances the use of an MRC should be accompanied by a high degree of support, with the electronic monitoring element of the resource not sufficient on its own to address the risks that a child may face or pose. It is often referred to as a “step-down” from secure care, providing a significant level of restrictions whilst they still meet the secure care criteria. MRCs can be imposed for a maximum of 12 hours in any one day, however this does not need to be a continuous block over the course of the day and can be used in creative, flexible ways.

Legislation permits for more flexible use of the MRCs, such as being used to restrict a child **to** a location for the time period required or **away** from a location, although in the latter case this would usually be for 24 hours. However, the use of the 12 hour timeframe and over what number of days can be far more flexible and tailored to the individual context of the child. The application of MRCs in the Children’s Hearings System has often been limited, with restrictions frequently adopting the maximum 12 hour window over seven days. Practitioners should seek to be more responsive to the analysis of risk, and develop an understanding of the timeframes and patterns of when a child may be more likely to be involved in harmful behaviour. Through this they can propose a more tailored approach that incorporates intensive wraparound supports.

MRCs are a monitoring tool that can provide the space for the human and relational engagement to have an impact. The tag itself can act as a physical reminder that the child can use as a prompt to show others that they need to leave a situation or cannot go with them because they are being monitored. They can use the MRCs as a strategy to enable them to act without losing face, or if they do not feel confident enough dealing with pressure from others, they can help them to avoid or remove themselves from situations whilst they develop confidence and assertiveness skills. Any MRC must be necessary, proportionate and consistent with the child’s welfare as well as being integrated within the child’s plan, have clarity as to its role, within the interventions and strategies used to manage, contain, and reduce the likelihood of harm occurring and the impact should it occur. There should be clear contingency plans in place should the current formal risk management plan deteriorate as well as clear understanding of what is tolerable in terms of compliance and non-compliance with the MRC. This should include a plan of what response will be taken following any episodes of non-compliance, by whom, and within what timeframe.

[The Children’s Hearings \(Scotland\) Act 2011](#) (2011 Act) , and [The Children's Hearings \(Scotland\) Act 2011 \(Movement Restriction Conditions\) Regulations 2013](#) contain the relevant legal basis for use of MRCs and [Scottish Government Guidance was revised in October 2014](#). The 2011 Act defines an MRC as

- “(a) a restriction on the child’s movements in a way specified in the movement restriction condition, and
- (b) a requirement that the child comply with arrangements specified in the movement restriction condition for monitoring compliance with the restriction.”

The [Movement Restriction Condition Regulation 2013 policy note](#) emphasises the importance that an MRC is not used in isolation but that, “for a very small number of young people, an MRC can be an effective intervention, provided it is just one part of an intensive programme of supervision and support, including educational provision. The regulations provide that an MRC cannot,

therefore, be imposed without a child's plan that covers the range of elements in such a programme and how it will be delivered." This view of integrated use of an MRC with support is further reflected in [SCRA directive 26](#), which states, "the decision to make a young person subject to an MRC cannot be taken separately from a decision about related packages of support, their nature, scope and duration."

Features of an MRC may include:

- that a child wear a 'Radio Frequency' electronic monitoring device (tag) with periods of restriction of no more than 12 hours in any 24 hour period,
- restrictions on where the child may spend their time, or must not be near. As such the MRC can be either **to** or **from** a specified address, or both.
- discontinuous activation, meaning that periods of restriction can occur at various periods throughout the day, and do not have to be continuous in their duration. These periods can be selectively chosen to reflect the needs of the child and can be split throughout the 24-hour period as long as they do not total more than 12 hours over the course of one day, and can be enacted on as little as one day of the week.
- 'radio frequency' communication from the tag (which is almost always worn around the child's ankle) and the monitoring box within the specified address by radio frequency to the tag when the restriction times are in force, which establishes their presence if restricted to an address or lack of presence if restricted away from an address. Restricted away from an address would be most likely continuous 24hrs x 7 days.
- review of the MRC every six months at the most, with earlier reviews at a Children's Hearing should this be required, and in reflection of child's development, any changes in circumstances or revised risk formulation. Each review of an MRC should consider the impact that these restrictions have upon the child's rights.
- an incentivised approach which reduces the duration and frequency of the restricted periods. This would be in response to increased resilience and capacity to manage risk, development of positive behaviours and a reduction in concerns around the child. Following consideration by all parties, a decision could then be made to relax the existing restrictions.

In all instances, a comprehensive support plan must accompany an MRC. It must not be used in isolation, and must be accompanied with a child's plan and supports which respond to the level of risk, needs and vulnerabilities identified within a formulation of risk. Moreover, assistance and supports to the child's family must be considered in order to assist them to care for their child. Appendix 1 contains a range of issues that should be considered when determining whether or not to utilise an MRC.

Practice Example: MRC as step-down from secure

Robert was 17 years old, with a CSO in place which led to him being cared for within a residential children's house. Following a conviction for three counts of assault and possession of a knife he was placed into the care of the local authority by court under [Section 51\(1\)\(a\)\(ii\) of the Criminal Procedure \(Scotland\) Act 1995](#). As the secure care criteria were met, the Chief Social Work Officer agreed to place the child in secure care under [Regulation 12 of Secure Accommodation \(Scotland\) Regulations 2013](#).

Robert remained there for four months, during which time his social worker and residential care staff remained in frequent contact, with support from Forensic Child and Adolescent Mental Health Services delivering counselling and contributing towards a revised risk formulation. This revised assessment highlighted a range of concerns over his attitude towards violence and an intention to return to drug use upon his move out of secure care. He also highlighted aspects of his life that he wanted to change, including access to training and re-establishing his relationship with his siblings.

With his 18th birthday six months away, discussion took place regarding Robert's future. A view was formed that whilst the secure care criteria was still currently met, that an alternative resource was preferable in order that he did not experience a 'cliff-edge' reduction in support and supervision upon his birthday, when he would be required to leave secure care. Following discussion with his residential children's home staff, Robert was given information about an MRC, helping him to understand the range of limitations this could place upon him and the potential freedom it would bring. With a revised formulation now in place and a child's plan which responded to the highlighted areas of concern, the local authority decided to make use of an MRC to support Robert's transition from secure care back to his previous children's home.

The Children's Hearing agreed with this proposal, varying the existing CSO to include an MRC which called on Robert to remain within his accommodation between 9pm – 7am each day. Robert's engagement and cooperation with this measure resulted in these restrictions being relaxed, allowing him to stay out until 11pm on certain occasions, and eventually limiting these restrictions to weekends only where those supporting Robert felt he was most at risk.

Alongside the MRC was a revised child's plan which maintained his support from Forensic Child and Adolescent Mental Health Services, who now offered consultative support to staff within his accommodation. This allowed him to regulate his emotions to a greater extent, whilst staff were more confident in identifying and responding to issues of concern. Plans were made to for Robert to remain in this placement beyond his 18th birthday as a result of the settled state he now found himself in.

In order to pre-empt potential risks to the MRC, and to ensure that the child's plan was effective, collaboration was needed between Robert, his social worker, residential staff and his allocated workers from Forensic Child and Adolescent Mental Health Services. This necessitated regular planning meetings, a multidisciplinary risk assessment and sustained efforts to repair and develop relationships with staff. Regular discussions amongst all parties allowed for flexibility to be incorporated into the use of the MRC, whilst stressing the implications for Robert should he refuse to cooperate with this aspect of his child's plan. Targets were agreed amongst all parties as to what Robert would require to demonstrate in order for relaxation of the MRC to take place.

Together with other elements of the child's plan, this approach enabled Robert to make a smooth transition to the community, whilst avoiding the longer term impact of extended periods of detention in secure care or a YOI.

Conclusion

Alternatives to depriving children of their liberty are required at various points across the complex systems that respond to children in conflict with the law. There is no definitive template or approach that should be taken in such circumstances, and instead this guidance promotes the creation of bespoke and tailored support plans which respond to the individual circumstances of the child and their family. Moreover, the supports and supervision put in place should be underpinned by a rights respecting approach to those in conflict with the law, mindful of the obligations and duties outlined within international treaties such as the UNCRC and domestic policy drivers such as GIRFEC and WSA. Present throughout each step must be an evidence-based understanding of practice and of child development, locating the child's circumstances and behaviour within the context of their biological and psychological maturity, whilst cognisant of the environmental and societal factors that influence their circumstances and adversities that may have influenced their behaviour. By adopting such a position, practitioners are better placed to create alternatives to deprivation of liberty that respond to the needs, risks, vulnerabilities and strengths of the child and their support networks.

Creation and delivery of supports which avoid the unnecessary deprivation of liberty requires effective collaborative practice, and it is imperative that this task does not rest solely on the lead practitioner, but is a shared task amongst those adults and agencies in the child's life who have a responsibility and duty to keep them and others safe. Partnership working with the child and their family is particularly important, and all efforts must be taken to place their views and role at the centre of any child's plan.

Appendix 1: What to consider when using an MRC

The following points for consideration may aid the process of considering the merits of an MRC.

- As a minimum, [CARM](#), or local formal risk management process should be explored, and a decision taken as to whether formal risk management is required or not. Decision making should be clear and well-evidenced.
- Whatever process is deemed appropriate, there should be clear evidence of review and oversight of any risk management plan, to ensure restrictions on freedoms and interventions are proportionate and necessary. Plans should look to reduce the risk of harm occurring and impact should it occur whilst building the capacity of the child and their support system ensuring developmentally appropriate opportunities.
- The Child's Plan should be informed by a full risk assessment using appropriate risk assessment tool, with analysis of the potential risk of harm from aspects of the child's behaviour to others. It should also consider the risk of harm posed to the child by others. This should include potential indicators of an increase / decrease in the likelihood of harm occurring, clear intervention and harm reduction strategies that address identified needs, build strengths, and reduce the likelihood and impact of potential harm occurring with contingency plans in place that can be triggered if required (Scottish Government, 2021a).
- Any limitations to the proposed plan should also be stated.
- Consideration through secure care screening processes to ensure appropriate resources and responses are in place or highlight areas of unmet need which may affect the success of the risk management plan.
- There should be clear evidence that the child and family have been included in the risk management process and development of the risk management plan. Any areas of disagreement should be noted within the plan.
- All alternatives to depriving a child of their liberty where they could be safely supported to remain in the community should be explored and any decisions as to why this is suitable or not should be clear and transparent. This must include MRC and other potential proportionate strategies and responses which may be more appropriate than an MRC.
- When an MRC is appropriate the child and family's views and agreement must be sought. Whilst their agreement is not required for an MRC to be made it is more likely to have the desired impact when they agree and feel included.
- When an MRC is appropriate then it is critical that there is clarity over how it will reduce the risk of harm occurring. It may be helpful to consider the following:
 - During which times will the restrictions be active, and over how many days a week? The MRC must fit around the child's situation and needs rather than being imposed for a blanket 7 days, 12 hours each day unless this is assessed as appropriate, proportionate, and necessary.
 - What contingency plans are in place to provide respite if the situation at home breaks down or becomes difficult? Is there a second address that can be used?
 - How is time for positive activities such as sports clubs, visits with family or time with positive peers incorporated into the plan?
 - What amount of flexibility will be accepted should the child struggle to precisely adhere to it? What can be tolerated by the system? What will engagement and success look like?
 - Who will respond, and what will that response look like, should the child not return in time for their curfew, or leave when they are not supposed to?
 - Is there a need to include an 'away from' element within the MRC, such as away from a specific person or place? Can the restriction be to a place other than the home address, e.g., school or placement?

- Should the child's movement be restricted **to** an address or **from** an address?
 - Could both options be used?
 - What impact will these measures have upon the child and those they live with?
 - Will an MRC place stress upon relationships within the home environments?
 - What specific responses are required to scaffold the child and those who care for them?
- There should be a clear connection between [Secure Care Pathways and Standards](#), [Standards for those working with children in conflict with the law](#) and local processes and procedures.

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