

Youth Justice Standards

Consultation

October 2019

Introduction

Preventing offending is integral to our vision of Scotland as the best place to grow up – Getting it Right for Every Child in Scotland. Our vision of Scotland as the best place to grow up extends to all of our children. A preventative approach has the best chance of reducing crime, improving life chances and making good use of public resources. Timely, appropriate and effective interventions are necessary to address offending and harmful behaviour and ensure communities and children stay safe from crime.

In Scotland, we have a proud record of taking a holistic approach to the needs of our children. For those involved in offending behaviour we remain committed to tackling the causes and impact of offending behaviour together with addressing wider needs. As far as possible children should be kept out of formal measures, whether that be through the Children’s Hearings System or the Criminal Justice System, with proven alternative interventions utilised to address the behaviour and its causes. Interventions must be timely, proportionate and credible to ensure victims and communities have confidence that unacceptable and harmful behaviour is being challenged.

The youth justice strategy ‘Preventing Offending Getting it Right for Children and Young People’, the Whole System Approach (WSA) and Getting it Right for Every Child (GIRFEC) provide the overarching policy frameworks for youth justice practice in Scotland. GIRFEC provides a consistent way for people to work with children and their families. It supports families by making sure children receive the right help, at the right time, from the right people. The aim is to help children grow up feeling loved, safe and respected so that they can realise their full potential.

The first national standards for Scotland’s Youth Justice Services were published in 2002. In 2007 Audit Scotland published a performance update report which recommended that the Scottish Executive (now Scottish Government) should develop measures that capture performance and outcomes across the youth justice system. In 2012 the national standards for Youth Justice Services were updated and formed the basis of the [Guide to Youth Justice in Scotland](#), published and up-dated annually by the [Centre for Youth and Criminal Justice](#) (CYCJ).

In 2018 the [National Youth Justice Advisory Group](#) (NYJAG) highlighted the need for updated standards which provide a framework for the audit of services which support children involved in offending behaviour. It was identified that the standards should include core principles and data sets which support local and national data collection to help monitor progress, service improvement and evidence improved outcomes for children.

The United Nations Convention on the Rights of the Child (UNCRC) defines a child as any person below the age of 18 years, therefore the term child/children has been used for the purposes of these standards. It is acknowledged that whilst the UNCRC and Scottish Government policy recognises all under 18’s as children, they are subject to different procedures and are afforded different supports depending on their age and legal status and the seriousness of the offence they are suspected of committing. These standards cover practice for all children under the age of 18, but

as practice in Scotland develops it may be appropriate for these standards to consider an older age range.

The Youth Justice Quality Standards outlined in this document are aimed to complement the [Health and Social Care Standards](#) which came into effect on 1 April 2018. The Health and Social Care Standards are underpinned by five principles: dignity and respect, compassion, be included, responsive care and support, and wellbeing. They are for everyone, irrespective of age or ability. As well as informing the Care Inspectorate's new inspection and scrutiny frameworks, the Health and Social Care Standards are being used to continually improve the quality of services across health, social care, early learning, childcare, children's services, social work and community justice. The Secure Care Standards will also align with the Health and Social Care Standards.

National Performance Framework

Scotland's National Performance Framework aims to create a more successful country, give opportunities to all people living in Scotland, increase wellbeing, create sustainable and inclusive growth, reduce inequalities and give equal importance to economic, environmental and social progress. This is underpinned by core values - to treat all our people with kindness, dignity and compassion, respect the rule of the law and act in an open and transparent way. The framework sets out national outcomes with progress being measured against 81 national indicators. The outcomes which are specifically relevant to youth justice are:

- We grow up loved, safe and respected so that we realise our full potential
- We live in communities that are inclusive, empowered, resilient and safe
- We are well educated, skilled and able to contribute to society
- We are healthy and active
- We respect, protect and fulfil human rights and live free from discrimination

The standards outlined in this document are aimed to complement the National Performance Framework.

Core Principles

Scotland's unique approach to youth justice builds on Lord Kilbrandon's report (1964) by responding to deeds in the context of needs. The view of Lord Kilbrandon, which led to the creation of the Children's Hearings System, was that it was not useful to categorise children based on their offending alone, but to look behind the presenting problems to find the underlying causes in the life of the individual child. He concluded that children who offend and children in need of care and protection all shared a common experience – a failure in upbringing.

We want to make Scotland the best place in the world for a child to grow up. Recognising, respecting and promoting the rights of children is essential to achieving this. The UNCRC sets out the fundamental rights of children. Article 12 clearly outlines that children who are capable of forming their own views have the right to

express their views freely in all matters affecting them. It follows that children must be supported to be heard at all stages within the youth and criminal justice system.

Work with children involved in offending behaviour must consider their overall wellbeing and be underpinned by GIRFEC principles. Approaches with children who present with offending behaviour may need to be in partnership with child protection. Many children who display offending behaviours are also highly vulnerable and may have experienced crime and trauma in their own lives. An assessment of their vulnerability as well as the risk of harm they may present to others needs to be taken into account. Work with children who display harmful behaviour needs to consider and prioritise their protection as well as tackling behaviours that can have an impact on others. Whilst this can be complex and challenging, it is critical in terms of the wellbeing of the child, the people they have (or may potentially have) harmed and the confidence the community has in relation to the support, welfare and protection of children.

All children should be included, engaged and involved in education. Exclusion should only be used as a last resort. There is an expectation that education authorities and schools use the [Included, Engaged and Involved](#) guidance when developing policies and procedures on exclusion.

Promoting children's positive mental health and wellbeing is crucial to supporting them to realise their potential. Children and their families must be supported to enable them to have good mental health and wellbeing and have access to help which is local, responsive and evidence based.

Research relating to brain development highlights that it is not until the mid-20s, and possibly later, that the brain is fully developed. Given this, it is crucial that children are supported to understand and retain important information. As stated above children's voices must be heard in relation to matters that affect them and they must be supported to be heard at all stages within the youth and criminal justice system. Supporting children with speech, language and communication needs at an early stage is essential to ensure that they are treated fairly, are clear what is expected of them and that they are included in decision making.

The Children and Young People (Scotland) Act 2014 ("the 2014 Act") outlines the duties for corporate parents across Scotland. These duties aim to ensure that collectively we focus on the task of safeguarding and promoting wellbeing, to ensure children do not face additional barriers because of care experiences. Organisations who are listed as "corporate parents" for the purposes of Part 9 of the 2014, and their practitioners who support children who engage in offending behaviour, must be clear on their corporate parenting responsibilities.

We are committed to a safer, stronger Scotland by supporting everyone's right to feel safe in their home and community. Victims, including children and adults, must have access to information, supports and opportunities to access restorative justice.

Standards

These standards outline the minimum expectations for all strategic and operational services delivering youth justice in the community, secure care and young offender's institutions (YOI). The standards will influence how services are designed and delivered and will focus on the functions of youth justice rather than processes, thus offering the opportunity for flexibility to meet local needs. These standards are recognised by the Scottish Government, National Youth Justice Advisory Group (NYJAG), Youth Justice Improvement Board (YJIB) and Justice Board and they are to be followed by those to whom they relate.

Integration and sustainability of the WSA to offending behaviour is part of the strategic planning landscape including Community Planning, Children's Service Planning and Community Justice. Local and national partners have a key role to play and will be supported by the Youth Justice Improvement Board (YJIB).

Standard 1 - Prevention and Early Intervention

Standard 2 - Children's Hearing System

Standard 3 - Alternatives to Prosecutorial Action

Standard 4 - Court

Standard 5 - Secure Care and Young Offenders Institution (YOI)

Standard 6 - Risk Assessment and Care and Risk Management

Standard 7 - Transitions

Standard 8 - Improving Outcomes

Standard 1 Prevention and Early Intervention is available to every child in Scotland who is involved in or at risk of offending.

Early and Effective Intervention (EEI) aims to respond to children who come to the attention of the Police for offending, concerning or harmful behaviour. The overall aim is to improve the outcomes of children by ensuring proportionate responses and ensuring the right response is provided for a child, at the right time. EEI is underpinned by the principles of GIRFEC and UNCRC. EEI provides options to deal with and support children who engage in low level offending, concerning or harmful behaviours. Interventions must be timely and proportionate whilst ensuring communities see unacceptable behaviour is being challenged. Children should not have increased contact with the police as a result of being cared for within a residential placement. The EEI Framework of Core Elements sets out best practice for the effective delivery of EEI, providing a shared language and where possible a commonality of processes.

1.1	Local multi-agency partnership arrangements are in place to support lawful and proportionate information sharing, planning, decision making and review mechanisms to reduce risk and meet needs.
1.2	Children must have access to supports on a voluntary basis and not require a referral to a formal system to receive the support they need. Initial denial of the crime or behaviour should not prevent the child being considered for EEI. A child who is not already subject to a compulsory supervision order in the Children's Hearings System should only be

	referred to the Children's Reporter if it is considered that they may require compulsory measures.
1.3	Support and interventions with children who are referred to the Children's Reporter are offered at the earliest opportunity and not delayed awaiting the outcome of a referral. Supports must be holistic and consider the whole family.
1.4	Prevention and early intervention supports are underpinned by UNCRC, GIRFEC, Child Protection and/or Care and Risk Management (CaRM) processes with agreed pathways for escalation where required.
1.5	Where appropriate, victims are informed of the outcome of early and effective intervention processes.
1.6	Systems are in place locally to identify outcomes for individual children to support the measurement of effectiveness of supports and interventions.
1.7	Systems are in place to collate data at a local and national level on the number of children charged with an offence, those dealt with via voluntary measures and those referred to the children's reporter and/or the Crown Office and Procurator Fiscal Services. This will provide a clear overview of the scale of offending by children and support effective targeting of resources.

Standard 2 Children referred to the Children's Reporter receive support at the earliest opportunity and those who are subject to a Compulsory Supervision Order (CSO) have a child's plan in place which is reviewed at regular intervals and supported by appropriate risk assessment tools.

2.1	Guidance on referral to the Reporter – Information for Partners must be followed when referring a child, taking into consideration all of the wellbeing indicators.
2.2	When a child continues to be in need of care and protection a CSO should not be terminated due to their non-engagement alone, or due to there being an outstanding matter or order via the Criminal Justice System in place (or pending).
2.3	All children in the Children's Hearings System, as a result of offending behaviour, have their needs and risks assessed using the GIRFEC national practice model and appropriate structured professional judgment risk assessment tools for high risk behaviours utilising the evidence base in the Risk Management Authority (RMA) Risk Assessment Tools Evaluation Directory (RATED) .
2.4	High risk behaviour is assessed, managed and reviewed following the Framework for Risk Assessment Management and Evaluation (FRAME) for local authorities and partners – for children and young people under 18, which includes guidance on the CaRM process.
2.5	It is important that only cases that fall within the Lord Advocate's Guidelines are jointly reported, to prevent children who should be dealt with in the Children's Hearings System entering the criminal justice system. Guidance on Decision Making in Cases of Children Jointly Reported to the Procurator Fiscal and Children's Reporter must be considered. The presumption for all children who are jointly reported is that they will be dealt with by the Children's Reporter.

Standard 3 Where appropriate, children should be dealt with out with formal systems. Where that is not possible consideration must be given to the use of alternatives to prosecutorial action, which includes diversion.

3.1	Reports submitted by Police Scotland to the Crown Office and Procurator Fiscal Service (COPFS) must include all relevant information available to support the Procurator Fiscal to mark the case and make a decision.
3.2	Decisions made regarding children referred to COPFS should be made timeously. Any delay in criminal proceedings involving child accused should be minimised and cases dealt with as efficiently and effectively as possible.
3.3	Local services must be available to ensure person centred approaches so that, where referral to the Children's Reporter is not an option, children can be effectively diverted from prosecutorial action.
3.4	COPFS must advise children on the final outcome of the case.
3.5	National guidance on diversion must be followed.

Standard 4 All children must have access to supports when going through the Court process. To support the delivery of child centred justice all cases for a child accused should be accelerated through the court process.

4.1	Effective partnership working arrangements are in place between Scottish Courts, Crown Office and Procurator Fiscal Service, Children's Reporter, Police Scotland, third sector and local authorities to enable timely information sharing to ensure children involved in the court process are supported at the earliest opportunity.
4.2	Where a child is at risk of entering custody (either by virtue of being remanded or sentenced) their case should be heard as early as possible in the court day to support their transition into custody.
4.3	Criminal Justice Social Work Reports (CJSWR) prepared for children must follow the National Outcomes and Standards practice guidance whilst also considering each of the wellbeing indicators. Reports must be supported by relevant risk assessment tools. Reports must comment on the option of advice/remittal to a children's hearing, restriction of liberty orders and of the responsibility of Scottish Ministers if sentenced via section 205 or 208 of the Criminal Procedure (Scotland) Act 1995.
4.4	The support provided to all under 18's in the court process should provide a holistic individualised response. This includes practical supports to address identified needs, process and procedural guidance, links with justice system professionals and support until completion of the court process. Once concluded additional support should be available for the child in relation to any court disposal.
4.5	Children made subject to Court orders must be supported to understand any specific requirements and the potential consequences of not complying with these. National practice guidance on Community Payback Orders should be followed.
4.6	All Scottish Courts must have in place arrangements for children appearing from custody to minimise the use of cells, handcuffs or facilities where adult accused are being held. Courts must have access to

	information about the child including wellbeing needs, risks and vulnerabilities to assist with decision making.
4.7	Children held in secure care, YOI or appearing from police custody must be transported to and from Court using transport which is appropriate for children, minimises delays and does not put them in contact with adult prisoners or accused. The Scottish Government are responsible for transporting children sentenced via section 205 or 208 of the Criminal Procedure (Scotland) Act 1995.

Standard 5 The arrest, detention or imprisonment of a child shall be in conformity with the law and used only as a measure of last resort and for the shortest appropriate period of time (UNCRC), this includes Secure Care and Young Offenders Institutions (YOI).

5.1	The Secure Care Pathway and Standards must be adhered to.
5.2	Community alternatives must be explored and the potential suitability for this shared with key decision makers. Where these options are not pursued, the reasons should be clearly recorded.
5.3	Before a Children's Hearing makes a child subject to a Movement Restriction Condition (MRC), the hearing members should satisfied themselves that the child meets the statutory criteria for secure care and that all other community alternatives have been considered / exhausted.
5.4	Wherever practicable, appropriate and permitted by the terms of the sentencing warrant, children under 18 who are subject to a Compulsory Supervision Order (CSO) who require to be deprived of their liberty by the criminal court are to be cared for within the secure estate. Placement in a YOI is a last resort and should only be used by the court when all other alternatives are unavailable.
5.5	All children who enter secure care or custody via court will be supported at the earliest opportunity to start planning for their transition back to the community. All relevant information must be sent to the secure care provider or YOI the day the child enters. The first stage in this will be an initial custody review or a review via the Looked After Children (Scotland) Regulations 2009 .
5.6	Guidance and legislative requirements on contact with children throughout their stay in secure care or custody must be followed.
5.7	Children must have access to supports when transitioning back to the community. This includes support with accommodation, finances, education, training and employment, health and substance use and family support and should be detailed in a Transition Plan.

Standard 6 Risk assessment is a crucial step in Care and Risk Management (CaRM) to identify which children require services, the type and intensity of service provision required and in guiding appropriate care planning. Undertaking different depths of assessment in response to different levels of risk presented by children is essential.

6.1	The selection of appropriate risk instruments, which support a professional judgement approach, is the responsibility of the practitioner and the agency. The assessment tool must be appropriate for the age and
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	developmental level of the child and guided by the evidence base outlined by the Risk Management Authority (RMA) in the Risk Assessment Tools Evaluation Directory (RATED). Tools designed to be used with adults must not be used with children.
6.2	The Framework for Risk Assessment Management and Evaluation (FRAME) for children and young people under 18 must underpin practice when assessing, managing, reducing and evaluating the risks presented by offending and/or harmful behaviour.
6.3	Local partnerships must have clear protocols in place to ensure Care and Risk Management (CaRM) processes are followed when children display harmful sexual behaviour and/or behaviour involving violence or where a pattern of significant escalation of lesser behaviours suggests that an incident of a serious nature may be imminent (irrespective of the legal status of the incident).
6.4	Systems are in place to collate data at a local and national level on all children supported through CaRM based protocols. This must include referrals, nature of concerning behaviour, legal status and age, decision making as to whether CaRM meeting is necessary, review meetings and number exiting the CaRM process and reasons for this. This will provide a clear overview of the effectiveness of processes to reduce the risk of harm and will support effective targeting of resources.

Standard 7 Transitions can be stressful and challenging. It is essential that children are supported with their transition between placements, support services and systems to help them prepare and understand the transition.

7.1	Local partnerships have arrangements in place to support partnership working to ensure delivery of smooth and gradual transitions which are person centred, planned and appropriately paced, and consider needs and risks.
7.2	Local systems are in place to ensure continuity of assessment, planning and intervention for children transitioning.
7.3	Children transitioning to adult services must have an identified professional contact to take over from the lead professional.
7.4	All relevant information, including risk assessments, formulations and risk reduction plans must be shared as part of the transition planning.

Standard 8 To support improving outcomes it is expected that the quality of service provision for children involved in or at risk of offending will be measured using the standards outlined in this document.

8.1	Scottish Government will analyse and publish data from a range of sources including SCRA, Scottish Courts, Police Scotland, Crown Office and Procurator Fiscal Service and Local Authority, annually to support local and national evaluation of youth justice.
8.2	Local partnerships have arrangements in place to ensure support for victims of crime regardless of the age of the person responsible, this may include Restorative Justice.
8.3	Local partnerships have mechanisms in place to measure the impact of supports to children involved in or at risk of offending.

Responding to this Consultation

We are inviting responses to this consultation by 23rd January 2020.

Please respond to this consultation using the Scottish Government's consultation hub, Citizen Space (<http://consult.gov.scot>). Access and respond to this consultation online at <https://consult.gov.scot/children-and-families/youth-justice-standards>. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 23rd January 2020.

If you are unable to respond using our consultation hub, please complete the Respondent Information Form to:

Youth Justice Team
Scottish Government
2A South
Victoria Quay
Edinburgh, EH6 6QQ

Handling your response

If you respond using the consultation hub, you will be directed to the About You page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document.

To find out how we handle your personal data, please see our privacy policy: <https://beta.gov.scot/privacy/>

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.gov.scot>. If you use the consultation hub to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so. An analysis report will also be made available.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or at YouthJusticeStandards@gov.scot.

Scottish Government consultation process

Consultation is an essential part of the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.gov.scot>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

Youth Justice Standards: Consultation

RESPONDENT INFORMATION FORM

Please Note this form **must** be completed and returned with your response.

To find out how we handle your personal data, please see our privacy policy:
<https://beta.gov.scot/privacy/>

Are you responding as an individual or an organisation?

- Individual
- Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
- Publish response only (without name)
- Do not publish response

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes

No



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