

Vulnerable Children and Young People Legislative Framework



SCOTTISH EXECUTIVE

LEGISLATIVE FRAMEWORK

The United Nations Convention on the Rights of the Child

1. The Scottish Executive is committed to the principles set out under the UN Convention on the Rights of the Child ratified by the UK Government in 1991. The Convention is not a law but a code that recognises that children and young people in Scotland have rights. There are 54 articles in the Convention covering rights such as the right to express and have their views taken into account on all matters that affect them; the right to play, rest and leisure and the right to be free from all forms of violence. The provisions of the European Convention on Human Rights are legally binding on the Executive.

The Children (Scotland) Act 1995

2. The Children (Scotland) Act 1995 is centred on the needs of children and young people and their families and defines both parental responsibilities and rights in relation to children and young people. It sets out the duties and powers available to public authorities to support children and young people and their families and to intervene when the child or young person's welfare requires it. These duties and powers include provisions to protect children and young people from abuse and neglect through a range of measures including the provision of accommodation, services for the child and young person and wider family. The essential principles behind the Act are:
 - each child or young person has the right to be treated as an individual;
 - each child or young person who can form his or her own views on matters affecting him or her, has the right to express those views if he or she wishes;
 - parents should normally be responsible for the upbringing of children and young people and should share that responsibility;
 - each child or young person has the right to protection from all forms of abuse, neglect or exploitation;
 - so far as is consistent with safeguarding and promoting the child or young person's welfare, the public authority should promote the upbringing of children and young people by their families;
 - any intervention by a public authority should be properly justified, and should be supported by services from all relevant agencies working in collaboration.

In support of these principles three main themes run through the Act:

- The welfare of the child or young person is the paramount consideration when his or her needs are considered by Courts, Children's Hearings and local authorities.
 - No Courts should make an Order relating to a child or young person and no Children's Hearing should make a supervision requirement unless the Court or Hearing considers that to do so would be better for the child or young person than making no Order or supervision requirement at all.
 - The child or young person's views, taking appropriate account of age and understanding should be taken into account where major decisions are to be made about his or her future.
3. All agencies which work with children and young people have a shared responsibility for protecting children and young people and safeguarding their welfare. Local authorities have a specific legal duty in terms of the Children (Scotland) Act 1995 to safeguard and promote the welfare of children and young people in need in their area. This welfare responsibility is carried out by the local authority department with responsibility for social work services. Those bodies responsible for education, health, the police and other persons or agencies with a role in providing children's services also have significant responsibilities for the protection of children and young people. *Protecting Children – A Shared Responsibility* provides guidance on how agencies and professionals should work together to protect children and young people from abuse and neglect, and to safeguard and promote their welfare. The duty to safeguard and promote the welfare of children and young people in need falls upon the local authority as a whole and embraces social work services, education, housing and any other relevant services required to safeguard and promote the welfare of such children and young people.

Running Away

4. Children and young people do not have a legal entitlement to live independently of the care of an adult with parental responsibility. A young person who wishes to leave home before the age of 16 may, under certain circumstances, apply for a residence Order under the Children (Scotland) Act 1995 to live with another responsible adult who may then assume parental responsibility for the duration of the Order. In certain circumstances, a Court may grant an Order transferring parental rights and responsibilities. It is an offence for anyone to harbour or conceal a child (in respect of whom a parental responsibility Order

has been made) who has run away, or been taken away, or whose return is requested; or to induce, assist or incite a child or young person to run away, stay away or who takes a child or young person away from the placement where he/she is being looked after.

5. In general 16- and 17-year-old runaways are in a different legal position to younger runaways. Sixteen and 17 year olds can legally live independently and can access housing in their own right. They have access to some financial benefits and do not have to take part in compulsory education. Those leaving care are also eligible for a package of support.

Refuge Provision

6. Local authorities may provide short-term refuge in designated or approved establishments and households for children or young people who appear to be at risk of harm and who request refuge (Section 38 of the Children (Scotland) Act 1995). There is statutory provision for three forms of refuge. The local authority may provide a child or young person with refuge in a residential establishment controlled or managed by them, if that establishment is designated by the local authority as a suitable place of refuge. Alternatively the local authority may designate the household of a foster carer or other approved carer as a suitable place of refuge for a child or young person at risk of harm and arrange for the foster carer or approved carer to provide the child or young person with refuge in their household. The local authority may also approve the use of a registered residential establishment for the purposes of providing refuge for children and young people.
7. Children or young people may seek refuge in response to many different problems including family conflict, abuse or neglect. They may already be living away from home in accommodation provided by a local authority. They may be troubled by difficulties at school, problems with drugs or alcohol, pregnancy or offending. Refuge may be provided for a period of up to 7 days or, in exceptional and limited circumstances, for a maximum of 14 days.

The Criminal Law on the Sexual Exploitation of Children through Prostitution

8. There is a range of offences under Scots law, both at common law and under statute, to tackle the exploitation of others through prostitution, whether by coercion, procurement, trading in prostitution or brothel keeping. The Criminal Law (Consolidation) (Scotland) Act 1995 is relevant in this area and contains a number of provisions which apply to children and young people. However, any person who engages in sexual acts with a child or young person may be

committing statutory and/or common law offences against that child or young person in question. Those who abuse children and young people in any way will be subject to the criminal law and may be liable for prosecution under statutory and/or common law.

9. The age of consent to sexual activity is 16. Anyone engaging in sexual activity (whether for money or not) with a girl or boy under 16 is committing an offence under statutory and/or common law. Depending upon the circumstances, the person having sex with a child or young person could be liable for prosecution for unlawful sexual intercourse, indecent assault or other serious offences. The penalties for common law offences are limited only by the Court in which they are prosecuted and in the High Court may attract up to life imprisonment. The maximum penalties for statutory offences are set out in the relevant statute.
10. Children and young people kept for the purposes of prostitution are not breaking the law. Many children and young people sexually exploited through prostitution may not be “soliciting” or “loitering”. These are offences which only relate to activity in public places. Children and young people may be found in rooms hidden away from public view (in relatively affluent as well as deprived areas). Owners or occupiers of any premises who allow these to be used to abuse children through prostitution are breaking the law. The children involved are not.

Criminal Law Relating to Prostitution

11. Prostitution, heterosexual or homosexual, is not, in itself, an offence. However, Section 46 of the Civic Government (Scotland) Act 1982 provides that a prostitute, whether male or female, who for the purposes of prostitution:
 - Loiters in a public place;
 - Solicits in a public place or any other place so as to be seen from a public place; or
 - Importunes any person who is in a public place, is guilty of an offence.

The maximum penalty for a conviction under s46 of the 1982 Act is a fine not exceeding £500.

12. Under the law of Scotland a child under the age of 8 cannot commit a criminal offence. Children over that age committing prostitution offences are likely to be referred to the Children’s Hearing System to which such a child could also be referred if beyond parental control or exposed to moral danger.

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