

SCRA response to the Scottish Government's consultation

Background

The Children's Hearings System is Scotland's distinct system of child protection and youth justice. Among its fundamental principles are:

- whether concerns relate to their welfare or behaviour, the needs of children or young people in trouble should be met through a single holistic and integrated system
- a preventative approach, involving early identification and diagnosis of problems, is essential
- the welfare of the child remains at the centre of all decision making and the child's best interests are paramount throughout
- the child's engagement and participation is crucial to good decision making

SCRA operates the Reporter service which sits at the heart of the system. SCRA employs Children's Reporters who are located throughout Scotland, working in close partnership with panel members and other professionals such as social work, education, the police, the health service and the courts system.

SCRA's vision is that vulnerable children and young people in Scotland are safe, protected and offered positive futures. We will seek to achieve this by adhering to the following key values:

- The voice of the child must be heard
- Our hopes and dreams for the children of Scotland are what unite us
- Children and young people's experiences and opinions guide us
- We are approachable and open
- We bring the best of the past with us into the future to meet new challenges.

Response

We welcome the opportunity to comment on the updated Letter of Rights developed by the Scottish Government. We welcome and fully support the idea that individuals arrested and detained by the police should have their rights made clear to them in an easily comprehensible and accessible format. This is particularly important in the relatively rare cases where children are arrested and detained. We continue to believe that the best option is for a separate letter specifically aimed at children and young people. We welcome the discussions that have so far taken place and look forward to engaging further with the Scottish Government on this matter.

While we have no specific comments on the two additional rights incorporated into the new draft, we welcome the opportunity to revisit the letter in more general terms. In particular, we note that there is some ambiguity in the legislation as to whether the child-specific rights included in the letter only apply to those aged under 16 or whether they are intended to apply to some 16/17 year olds as well.¹ We welcome

¹ Section 15(4) of the Criminal Procedure (Scotland) Act 1995 gives to a child the right to have intimation to parents and for them to have a right of access.

therefore that the letter of rights is drafted in a way that makes clear that certain 16 and 17 year olds have these additional rights.

As the letter makes clear that the rights apply to “a child” under the definition in the Children’s Hearings (Scotland) Act 2011, then currently, the wording relating to 16/17 year olds is not entirely accurate. As we have indicated previously, for the purposes of the 2011 Act, a child includes not just a 16/17 year old subject to a Compulsory Supervision Order (CSO), but also a 16/17 year old with an “open” referral to the Reporter, providing that referral was made before their 16th birthday.

We recognise that it may not always be entirely straightforward to work out which 16 or 17 year olds this applies to. For example, the Reporter may only just have received the referral and has not yet written out to the child to tell them about it. It is not possible therefore to simply give the general letter to a 16 or 17 year old and to expect them to work out whether they have the rights or not. This reinforces the point about the need for a separate child-specific letter.

At an early stage of detaining the 16/17 year old, the police have to work out if they are a “child” in terms of the Criminal Procedure (Scotland) Act 1995. That will include checking their own IT systems which will include any information received from the reporter about whether the young person is subject to a CSO or has an “open referral”. Having made that determination, the police will be able to give the 16/17 year old the appropriate letter.

In the interim, while the child specific letter is being developed, we suggest the following form of words for the general letter:

You have the right to be visited by your parent or guardian at the police station, if:

- *You are under 16, or*
- *You are 16 or 17 and are subject to a Compulsory Supervision Order, or*
- *You are 16 or 17 and were referred to the Children’s Reporter before your 16th birthday and that referral is still being considered by the Reporter*

You do not have the right to communicate with this person, unless:

- *You are under 16, or*
- *You are 16 or 17 and are subject to a Compulsory Supervision Order, or*
- *You are 16 or 17 and were referred to the Children’s Reporter before your 16th birthday and that referral is still being considered by the Reporter*

The police must try to inform your parent or guardian that you are at the police station and your parent or guardian can come and support you at the police station, if:

- *You are under 16, or*
- *You are 16 or 17 and are subject to a Compulsory Supervision Order, or*
- *You are 16 or 17 and were referred to the Children’s Reporter before your 16th birthday and that referral is still being considered by the Reporter*

Conclusion

We welcome the update to the letter and hope that a child specific version can be introduced as soon as possible.

**SCRA
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Section 15(7) says that in s.15(4) “child” means a person under 16 years of age. However, in the interpretation section in s.307 it says that “child”, except in section 46(3) of and Schedule 1 to this Act, has the meaning assigned to that expression for the purposes of section 199 of the Children’s Hearings (Scotland) Act 2011 (which includes certain 16 and 17 year olds).

