

Legislation and government guidance

FAQs

- What is the relevant legislation that underpins child protection?
- What does the law say about children having to wear booster seats?
- What government publications are relevant to child protection?

This is intended as a brief guide to the legislation relevant to the care and protection of children in Scotland. Sports organisations should obtain advice from a solicitor in relation to specific legal issues.

What is the relevant legislation that underpins child protection?

INTERNATIONAL CONVENTIONS

United Nations Convention on the Rights of the Child (1989) UNCRC

An international agreement which prescribes the rights of all children and young people under the age of 18. The rights in the Convention generally cover three areas: participation (e.g. a child's right to have a say in decisions which affect them), provision (e.g. provision of services to promote health and education) and protection (e.g. the right to be protected from all forms of abuse, harm and exploitation at all times).

The UK is a signatory to UNCRC and must report to a UN Committee on steps taken to promote and respect these rights. Whilst not legally binding, the Convention is highly influential on decisions made by courts and public authorities about the lives of children.



European Convention on Human Rights (1950)

This convention is legally binding on the UK because its provisions were introduced in to the law of Scotland by the Human Rights Act 1998 and the Scotland Act 1998. The rights prescribed apply to children and adults. The main articles of relevance are:

Article 8: right to respect for private and family life, home and correspondence

Article 3: the right not to be tortured or experience inhuman or degrading treatment

Courts and public authorities must act in a manner which is consistent with these rights and can only interfere (in some cases) where there is a legitimate reason to do so. The protection of children is one such reason. It may be useful to see a copy of [the Convention](#).

UK and SCOTTISH LEGISLATION

Rehabilitation of Offenders Act 1974

Generally, criminal convictions become spent after a period of time (which depends on the sentence imposed by the court at the time of conviction). As a result of this Act spent convictions, generally, do not have to be disclosed to potential employers.

Exclusions and Exceptions (Scotland) Amendment Order 2010

There are certain jobs and voluntary positions for which prospective employers need to know about a person's criminal record to decide whether they are suitable for the position e.g. regulated work with children and protected adults. This Order lists the positions and professions where there is an exception to the general rule on non-disclosure of convictions.

Police Act 1997

Part V of this legislation made it possible for local authorities, third sector organisations (e.g. sports organisations) as well as other organisations to seek to obtain criminal record certificates on individuals likely to undertake direct work with children and other vulnerable groups.

Age of Legal Capacity (Scotland) Act 1991

Children under 16 do not generally have legal capacity. This act sets out the circumstances in which children are regarded as having legal capacity including the ability to consent to medical treatment.

Criminal Procedure (Scotland) Act 1995

Schedule 1 to this Act contains a list of offences against children e.g. abandonment or willful neglect. Someone who has committed an offence which is listed in this Schedule is often referred to by professionals as a "Schedule 1 offender".

Children (Scotland) Act 1995

The main piece of legislation covering child welfare and protection. Covers the rights and responsibilities of parents, the role of the local authority, the Children's Hearing System and introduced a number of measures for taking action to protect children in an emergency. This Act clearly states that the best interests of the child must always be considered and children should be given an opportunity to have a say on matters which affect them, should they wish to do so.

Data Protection Act 1998

Applies to any information, however obtained and used, which relates to living persons. Covers how such information is to be gathered, stored, processed and protected. All organisations that hold or process personal data must comply.

Sexual Offences (Amendments) Act 2000 – Sexual Offences (Scotland) Act 2009

Introduced a new offence of abuse of trust applicable to “positions of trust” which involve looking after children and young people who are in full time education, detained under a court order, looked after in a hospital/ children’s home or other establishment providing social care or in foster care.

Section 55 also allows for a Scottish resident to be convicted of an offence committed abroad if it would be deemed a criminal offence in Scotland. It is no longer necessary for the behaviour to be illegal in the country where it occurs. Unlawful sexual intercourse with a 12-year-old somewhere in Asia, for example, would be able to be prosecuted in Scotland.



Protection from Abuse (Scotland) Act 2001

While the primary focus of this legislation is women subjected to domestic abuse and the potential legal remedies available to them, parts of this Act can be applied to attempts to safeguard the interests of children, particularly given what is now known about the impact of abuse on children. The primary remedy offered by the Act is that of the powers of arrest being attached to an interdict, regardless of the relationship between the abused and the abuser.

Criminal Justice (Scotland) Act 2003

Amended the law in Scotland in relation to the physical punishment of children by parents. This Act makes it illegal for parents to hit a child on the head, hit a child with an implement and to shake a child.

Commissioner for Children and Young People (Scotland) Act 2003

This Act created the role of Scotland's Commissioner for Children and Young People. The Commissioner promotes and safeguards the rights of children living in Scotland as set out in UNCRC.

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

Addresses the predatory behaviour of those who "groom" children with the aim of abusing them by introducing a new offence of "grooming". Enables the police to take preventative action before the child meets the perpetrator. Provides the police and courts with additional powers to apply for, and grant, a Risk of Sexual Harm Order on those who are considered to pose a risk to children.

Protection of Vulnerable Groups (Scotland) Act 2007

All organisations have a legal responsibility to ensure that any individual who will be in regulated work with children or protected adults is not listed on the Children's List and/or Adult's List, which bars them from working with children and/or protected adults. Regulated work with children includes:

- caring for children
- teaching, instructing, training or supervising children
- being in sole charge of children
- having unsupervised access to children
- being a host parent.

This legislation is often referred to as the PVG Scheme. It is a membership scheme for people doing regulated work with children and/or protected adults in Scotland. For an organisation to check an individual against a list, they can request an individual becomes a PVG Scheme member by applying for a Scheme Record. A Scheme Record disclosure will provide the organisation and individual with any vetting information, criminal conviction information, if they are on the Sex Offender's Register, relevant non-conviction information from police forces and any prescribed civil orders. This information may then help employers to make safer recruitment decisions. Short scheme records and statements of scheme membership are other forms of disclosure available to organisations and individuals.

Organisations also have a legal duty to refer individuals who meet the referral criteria to Disclosure Scotland to be considered for listing. The PVG Scheme is managed and delivered by Disclosure Scotland. Organisations can register directly with Disclosure Scotland to access this vetting information.

For more information and details on PVG see our [briefing](#) or the [Scottish Government website](#).

[What does the law say about children having to wear booster seats?](#)

These regulations mean that all children aged three and above, until they reach either their 12th birthday or 135cm in height must wear an appropriate child restraint for their weight. For all passengers over this height or age, a seat belt must be worn if available. This applies to all drivers – not just parents. If you are convicted of failing to ensure that a child passenger is using an appropriate child restraint or wearing a seat belt according to these legal requirements, you could face a fine of up to £500. Claims against your motor insurance cover could also be affected.

What government publications are relevant to child protection?

See [Government guidance and publications FAQs](#)