

UNCLASSIFIED

**United Kingdom of Great Britain and Northern Ireland**

**Contribution to the UN Global Study on Children Deprived of Liberty**

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**Abbreviations**

|                     |  |
|---------------------|--|
| BAME                | Black, Asian and Minority Ethnic   |
| DTO                 | Detention and Training Order   |
| First Time Entrants | First time entrants to the Youth Justice System are children and young people aged 10 – 17 who receive their first youth caution or court conviction recorded on the Police National Computer. |
| MACR                | Minimum age of criminal responsibility   |
| NPM                 | National Preventive Mechanism  |
| UK                  | United Kingdom of Great Britain and Northern Ireland (comprising England, Northern Ireland, Scotland and Wales)  |
| YJS                 | Youth Justice System   |

## **UK contribution to the UN Global Study on Children Deprived of Liberty**

1. Within the UK, there are three jurisdictions: England and Wales; Northern Ireland; and Scotland. The contribution below focuses primarily on the criminal justice system, referring as appropriate to websites where more detailed information can be found.

### **Children deprived of liberty within the administration of justice**

#### *Minimum age of criminal responsibility*

2. The MACR in England, Wales and Northern Ireland is 10 years old. The Children and Young Persons Act 1933 sets the MACR in England and Wales. The MACR in Scotland is currently 8, but new legislation has been introduced in the Scottish Parliament to raise the age to 12.<sup>1</sup>

#### *Youth justice system*

3. In England and Wales there is a separate youth justice system where children are dealt with differently to adults. This youth justice system has a separate statutory principle established by the Crime and Disorder Act 1998, which is “to prevent offending by children and young persons”. The majority of criminal cases involving children are heard in a separate youth court and children and young people are subject to a distinct sentencing framework. Children and young people can also be tried in the Crown Court where they are either being tried with an adult, are charged with certain specified very serious offences or where the sentencing powers of the youth court would not be adequate. Cases heard in the youth court are heard by specially trained magistrates and judges and proceedings are less formal; some differences include not allowing members of the public into the court without permission, automatic reporting restrictions for children and young people involved, and calling the child or young person by their first name. Adjustments can also be made in the Crown Court to accommodate the needs of children. For those children who are detained there are separate youth custodial establishments, which differ from adult prisons. These include the facilities to provide the education and training parts of several youth sentences.
4. In Scotland, children under the age of 12 cannot be prosecuted in a criminal court. It is possible to prosecute children aged 12-15 in the criminal court but only on the instructions of the Lord Advocate. Children who are alleged to have committed a criminal offence are referred to the Children’s Reporter and only dealt with by the criminal justice system in exceptional circumstances. There were 22 children aged between 12 and 15 proceeded against in Scotland’s courts in 2016-17. The Reporter’s primary function is to consider reports for children and young people which come to their attention and then make a decision as to whether (a) the child or young person is in need of protection, guidance, treatment or control and (b) it might be necessary for a compulsory supervision order to be made in relation to the child or young person. Where the Reporter considers that a compulsory supervision order should be made in respect of the child or young person, they must refer that child or young person to a Children’s Hearing, which is a statutory, welfare-based system for children and young people who are in need of care

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<sup>1</sup> <http://www.parliament.scot/parliamentarybusiness/Bills/107986.aspx>

and protection. One of the grounds on which a child or young person can be referred to a Children's Hearing is that they have committed an offence. Children can be referred on this ground from the age of 8, in line with the current MACR in Scotland (see paragraph 2 above). Where a child aged 12 or over is referred under this ground, the system diverts them from the justice system, taking over the responsibility from the courts. The Children's Hearing System is normally concerned with children under the age of 16 but there are certain circumstances where Children's Hearings will have involvement with children up to the age of 18. The average number of under 18s in custody in Scotland has decreased by 79% - from 223 in 2006 to 47 in 2018 - with diversion from prosecution cases for 16-17 year olds having increased - from 142 in 2010-11 to 408 in 2016-17.

### *Detention of children*

5. Legally, children can be subject to detention from age 10 in England and Wales. This is rare and no children aged 10 and 11 have been sent to immediate custody since 2010. Children under the age of 12 cannot receive a Detention and Training Order DTO (the main custodial sentence for under 18s), and those aged 12-14 can only receive a DTO if the court is of the opinion that they are a persistent offender. This means that children under 12 can only be sentenced to custody at a Crown Court for a very serious offence. The youth justice system extends to age 17, and once a young person turns 18 they can be subject to detention in the adult system. People under 18 who are sentenced to custody are sent to secure establishments for young people, not to adult prisons.
  
6. In Scotland, no young person under the age of 18 can be detained in an adult prison. Those aged 16-17 can be placed in a young offenders institution (YOI). Those who have been sentenced in the criminal court, or who are subject to a compulsory supervision order from a Children's Hearing can be detained in secure residential accommodation following a referral to a Children's Hearing on welfare or offence grounds. Scotland has 84 secure beds for children. This form of residential care aims to provide a nurturing environment and safe boundaries to help these highly vulnerable children re-engage and move forward positively in their communities.
  
6. Statistics on children deprived of liberty are available at:
  - England and Wales: <https://www.gov.uk/government/statistics/youth-custody-data> ; <https://www.gov.uk/government/statistics/youth-justice-annual-statistics-2016-to-2017>
  - Northern Ireland: <https://www.justice-ni.gov.uk/articles/population-statistics-quarterly-updates>
  - Scotland: <http://www.sps.gov.uk/Corporate/Information/SPSPopulation.aspx>

### *Sentencing of children*

7. There is no form of capital punishment used in the UK.
  
8. England and Wales have sentences designed specifically for under 18s and provide the court with a range of flexible community options, as well as custodial sentences as a last resort. Between 2007 and 2017, the number of children and young people sentenced to

immediate custody in England and Wales has dropped by 73%<sup>2</sup>, and there has been a focus on keeping young people in the community. The following disposals are available for children convicted of a criminal offence in England and Wales:

- Fines: courts have the power to fine children and young people after they have been convicted of a criminal offence. Fines reflect the severity of the offence committed and the offender's ability to pay.
- Referral Orders: a community sentence where young people are required to agree a contract of rehabilitative and restorative elements to be completed within the sentence. Where a young person is before a court charged with a criminal offence for the first time and pleads guilty, the court must impose (in most cases) a referral order. The length of the sentence can be for a minimum of three months and a maximum of twelve months.
- Youth Rehabilitation Order (YRO): a community sentence where the court can select from 18 different requirements to tailor the sentence to the young person. The maximum duration for a YRO is three years
- DTOs: a sentence where children and young people between 12 and 17-years-old spend half of the duration of their sentence in custody and the second half in the community. The sentence can last between four months and two years.
- Long-term detention: a longer term custodial sentence is available for children and young people where the offence committed carries a maximum sentence of at least 14 years' imprisonment or is one of the offences listed in section 91 of the Powers of Criminal Courts (Sentencing) Act, 2000. Children and young people can also receive an extended sentence if their offence meets the criteria set out in section 226B of the Criminal Justice Act 2003.
- Detention at Her Majesty's Pleasure: this is the mandatory sentence for children and young people when they are convicted of murder. The court sets a tariff, which sets the point at which a convicted child or young person can be considered for release. The starting point for consideration of the tariff is 12 years, and this can then be adjusted by the sentencing court taking into consideration the individual circumstances of the case. The offender can apply for a tariff review once they have served half of the duration of the tariff set by the sentencing court.

9. Children and young people under the age of 18 cannot receive a "whole-life" order, this type of sentence is only available to adults. The longest sentence children and young people can receive is a sentence of Detention at Her Majesty's Pleasure, which is the mandatory sentence for murder. When sentencing a child or young person to Detention at Her Majesty's Pleasure the court sets a tariff, which sets the point at which a convicted child or young person can be considered for release. The starting point for consideration of the tariff is 12 years, and this can then be adjusted by the sentencing court taking into consideration the individual circumstances of the case. The offender can apply for a tariff review once they have served half of the duration of the tariff set by the sentencing court.

10. Statistics on sentencing in England and Wales are available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/707662/sentencing-2017-tool.xlsx](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/707662/sentencing-2017-tool.xlsx); <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2017>

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<https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2017>

11. The Scottish Sentencing Council is developing guidance on the sentencing of young people<sup>3</sup>.

#### *Offending prevention programmes*

12. The UK Government is supporting several programmes for prevention and diversion work, focusing on mental health provision and school inclusion, to address the root causes of crime and prevent children entering the YJS. We are working to increase the identification of mental health needs for children not in mainstream schools, and we are supporting the Young People's Mental Health Transformation Programme, with the aim that more children and young people receive the right intervention at the earliest possible stage. Furthermore, there are several prevention programmes the UK Government has committed to within the recently published Serious Violence Strategy<sup>4</sup>. Alongside this, there has been a greater emphasis on diverting children from the YJS. Children responsible for low-level offending can be effectively dealt with by the police with informal disposals, cautions and restorative justice approaches. The number of First Time Entrants has fallen by 85% between the financial year ending March 2007 and the financial year ending March 2017 and by 11% between year ending 2016 and year ending 2017<sup>5</sup>.

#### **Children deprived of liberty for migration-related reasons**

13. The latest published figures on immigration detention (including an overview of the immigration system in the UK) can be found at:  
<https://www.gov.uk/government/collections/immigration-statistics-quarterly-release> ;  
<https://www.gov.uk/government/statistics/immigration-statistics-year-ending-june-2018>
14. Data on children entering, leaving and in migration-related detention are primarily available in tables dt\_02\_q, dt\_09\_q and dt\_13\_q of the detention tables:  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/734188/detention-jun-2018-tables.ods](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/734188/detention-jun-2018-tables.ods)

#### **Children deprived of liberty under mental health legislation**

15. In 2016/17, there were 1,044 cases of children aged 17 and under being detained under the Mental Health Act 1983 in England.<sup>6</sup> Information on numbers of people aged 17 and under detained under the Mental Health Act 1983 in England was not collected prior to 2016-2017.

#### **General information**

16. General statistics on the UK population can be found at:  
<https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populat>

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<sup>3</sup> <https://www.scottishsentencingcouncil.org.uk/>

<sup>4</sup> <https://www.gov.uk/government/publications/serious-violence-strategy>

<sup>5</sup> Page 9 of <https://www.gov.uk/government/statistics/youth-justice-annual-statistics-2016-to-2017>

<sup>6</sup> Source: Mental Health Act Statistics 2016-17, NHS Digital, 2017. <https://digital.nhs.uk/data-and-information/publications/statistical/mental-health-act-statistics-annual-figures/mental-health-act-statistics-annual-figures-2016-17-experimental-statistics>

[ionestimates/datasets/populationestimatesforukenglandandwalesscotlandandnorthernireland](#)

### **Independent Reports**

17. The latest Annual Report and also the Detention Population Data Mapping Project 2016-17 of the independent UK NPM can be found at:  
<https://www.nationalpreventivemechanism.org.uk/>
  
18. The review of the youth justice system in England and Wales by Charlie Taylor (and the UK Government's response thereon) can be found at:  
<https://www.gov.uk/government/publications/review-of-the-youth-justice-system>
  
19. The review into the treatment of BAME individuals in the criminal justice system (and the UK Government's response thereon) can be found respectively at:  
<https://www.gov.uk/government/publications/lammy-review-final-report>;  
<https://www.gov.uk/government/publications/lammy-review-government-response>. A 2018 update on the UK Government's progress in response to the review can be found at:  
<https://www.gov.uk/government/publications/tackling-racial-disparity-in-the-criminal-justice-system-2018>