

Briefing for the Citizen Participation and Public Petitions Committee on petition [PE2139](#): Automatic expulsion for children charged with committing a crime against another child, lodged by Maria Giordano

Brief overview of issues raised by the petition

The petitioner is seeking a national policy whereby pupils who are charged on suspicion of committing a crime against another child are automatically expelled.

In the information provided along with the petition, the petitioner states that there have been “circumstances where a person accused of rape is sitting in a classroom with the alleged victim”. The petitioner appears to be concerned with the most serious of offences and situations where the victim attends the same school.

Policy and law on exclusions

Local authorities have the power to exclude children and young people from school. The Schools General (Scotland) Regulations 1975 set out the grounds for excluding a pupil and the process education authorities must follow. Exclusions here mean both temporary exclusions and being permanently removed from a school roll. The 1975 regulations (as amended) state—

“An education authority shall not exclude a pupil from a school under their management to which he has been admitted, except where:

- (a) they are of the opinion that the parent of the pupil refuses or fails to comply, or to allow the pupil to comply, with the rules, regulations, or disciplinary requirements of the school; or
- (b) they consider that in all the circumstances to allow the pupil to continue his attendance at the school would be likely to be seriously detrimental to order and discipline in the school or the educational well-being of the pupils there.”

An exclusion does not affect the right of the child to education and education authorities’ duties to ensure the provision of school education, albeit this might be through alternative provision.

School exclusions can happen for various reasons, such as serious breaches of school rules or behaviour that poses a risk to others. [Most exclusions are temporary, meaning the pupil is expected to return to their original school after a set period.](#) In very rare cases, a pupil may be permanently removed from the school register and will need to continue their education elsewhere. The Local authorities would normally retain the duty to educate a child that has been excluded.

The Scottish Government has issued national guidance, [Included, Engaged and Involved Part 2](#). This states that the overarching aim of the guidance is to “support schools, communities and their partners to keep all children and young people fully included, engaged and involved in their education ... [and] the need for all members of a learning community to be safe and feel protected.”

In relation to decisions to exclude a pupil, the guidance states—

“Excluding a child or young person from school, whatever their individual circumstances, is an extremely serious step. It can have a serious impact upon learning and their future outcomes.

“Therefore, in all circumstances it is necessary to consider whether the exclusion will lead to improved outcomes for the child or young person. Targeted support should be explored and exhausted to ensure the ongoing wellbeing and stability of placement of the child or young person, with exclusion from school always being the last resort.”

How offending behaviour in children and young people is handled in the courts and Children Hearings

In law, a child is normally defined as a person under the age of 18. The age of criminal responsibility in Scotland is 12 years old.

Approaches to criminal justice for criminal behaviour of children in Scotland is characterised by a focus on supporting the underlying needs of the child in order to support better outcomes in the future. The Children and Young People’s Centre for Justice explains that “underpinning the philosophy and practice with both children and young people who come into conflict with the law is a welfare approach”.

A key element of the approach to dealing with children’s offending behaviour is the Children’s Hearings System. The purpose of the children’s hearings system is to determine what measures may be required to address the behaviour and welfare of children. It seeks to ensure that appropriate care, protection and supervision is implemented. Children may be referred to the hearings system in relation to situations where they have been or may be harmed by others, or where their own behaviour causes concern. This includes situations where it is alleged that they have committed an offence, though most referrals to the hearings system are on non-offence grounds.

Where a child is under the age of 12 and accused of an offence, the police can still investigate but could only refer the child to the hearings system on non-offence grounds as they are under the age of criminal responsibility. They cannot be charged with an offence.

Where a child is over the age of 12, the police will investigate and where there is sufficient evidence they will charge the child with the offence. They will then report this to either the Children's Reporter only or jointly to the Children's Reporter and the Procurator Fiscal.

The majority of children under the age of 16 who offend are dealt with through the Children's Hearings System rather than the criminal courts.

The [current Lord Advocate's guidance](#) to police outlines three categories of offence which require to be jointly reported to the Children's Reporter and the Procurator Fiscal. These are:

- very serious offences, e.g. murder or rape
- children aged 15 years or over which in the event of conviction oblige or permit a court to order disqualification from driving
- offences alleged to have been committed by people who are aged 16 or 17 and are subject to a Compulsory Supervision Order, although there are situations where only reporting to the Children's Reporter is appropriate.

The Children (Care and Justice) (Scotland) Act 2024 will make a number of amendments to the Children's Hearings (Scotland) Act 2011, including that the possibility of referral to the children's hearings system will include all children under the age of 18. The 2024 Act is not yet fully in force.

Both the courts and the Children's Hearing have a range of disposals that can be utilised, including ordering that the child or young person be placed in secure care, albeit this is rare. A Compulsory Supervision Order made by a Children's Hearing would place duties on the local authority, which could include where the child lives and also the types of support that should be provided to the child. They cannot currently include restrictions on a child entering a certain place or contacting a specified individual, though the 2024 Act (when in force) will introduce this.

Multi-agency approaches and risk assessment

Multi-agency approaches are undertaken through the Getting It Right for Every Child Approach (GIRFEC). This approach intends to support different professions to work together through a shared understanding of well-being and structures, including lead professionals and named persons. Approaches to support the child should be set out in a Child's Plan.

Where a child or young person has been accused of a serious crime, it is likely that social work and/or other services will consider how to support the

child or young person and whether there is continuing risk of harm. [Scottish Government guidance states](#):

“When parts of a child's behaviour poses a risk of serious harm to self or others, everyone in the system around the child has a duty to intervene and protect the child from causing such harm and to reduce the risk or impact of further harm. The rights of all children, including those who have harmed also need to be protected by the system around them.”

Previous petition in relation to higher education

In 2023 and 2024, the Citizen Participation and Public Petitions Committee considered a [petition calling for the introduction of national safeguarding guidance for universities on the handling of sexual misconduct cases](#). The petition included a call for guidance to include clearly defined measures to ensure campus safety where a convicted sex offender or a person awaiting trial for a serious sexual offence is enrolled at an institution. The Committee closed the petition on 12 June 2024.

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13 February 2025

The purpose of this briefing is to provide a brief overview of issues raised by the petition. SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public. However, if you have any comments on any petition briefing you can email us at spice@parliament.scot

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