

# Information about the framework for child and adult protection in Scotland

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This guidance has been developed to complement the Methodist Connexion Safeguarding Handbook which applies across England, Wales, Scotland and the Island jurisdictions. Information about the specific provisions in Scotland are provided in this document.

## **1. Context**

Some of the key elements which support the integrated and multi-agency approach in Scotland are set out below, in chronological order. Some of the provisions relate specifically to either children or adults. Many apply to both.

- Police (Scotland) Act 1967. This Act lays down the general functions and jurisdiction of the police in Scotland.
- Social Work (Scotland) Act 1968 (as amended). This is the legislation which provides the mandate for social work intervention in Scotland.
- The UN Convention on the Rights of the Child was ratified by the United Kingdom in 1991. Wherever possible, the Scottish Government seeks to implement the various articles within the Convention.
- The Children (Scotland) Act 1995 (as revised), This is the primary piece of legislation which sets out the range and scope of local authority intervention in the lives of children and their families. The duties of local authorities within this legislation are, in the main, discharged by statutory social work services.
- Police Act 1997 (as amended) - Part V of this piece of legislation provides the responsibility and authority for 'disclosure checks' on individuals by local authorities or third sector organisations etc.
- Adults with Incapacity (Scotland) Act 2000
- The National Strategy to Address Domestic Abuse in Scotland (2000) set the framework for response to domestic abuse.
- Protection from Abuse (Scotland) Act 2011 - while the primary focus of this legislation is women subjected to domestic abuse and the potential legal remedies available to them, the Act also attempts to safeguard the interests of children, i.e. through the requirement on statutory agencies to assess the impact of domestic abuse on children.
- Mental Health (Care and Treatment) (Scotland) Act 2003
- The Adult Support and Protection (Scotland) Act 2003 introduced a duty on Scottish councils to establish Adult Protection Committees (APC). The aim of an APC is to assist agencies to deliver consistent high level adult protection services.

- Criminal Justice (Scotland) Act 2003 - Section 51 of this Act clarifies that it is an offence to punish a child in any manner that involves 'a blow to the head, shaking or the use of an implement.'
- The Mental Health (Care and Treatment) (Scotland) Act 2003. Sets out the right to advocacy for adults in specified situations.
- The Children's Charter (2004)- sets out a list of demands that children should feel entitled to make. The Framework for Standards - is the detailed means for translating the commitments made in the Children's Charter into practice.
- The Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 - introduced a number of offences including that of 'grooming' a child under the age of 16 for sexual purposes and Risk of Sexual Harm Orders that aim to protect children and young people from persons who may not have been convicted of any criminal offence but who have engaged in some level of sexually explicit behaviour or communication in respect of a child under 16.
- The Prohibition of Female Genital Mutilation (Scotland) Act 2005 - makes it an offence for a person to carry out specified female genital mutilation procedures on another person or to aid or abet another person to carry out such procedures
- The Adult Support and Protection (Scotland) Act 2007 - introduced duties and powers to safeguard adults who may be at risk of harm. Under this Act, a person aged 16 or over is defined as an "adult at risk" where all of the following apply:
  - (i) Is unable to safeguard their own well-being, property, rights or other interests;
  - (ii) is at risk of harm, and
  - (iii) because they are affected by disability, mental disorder, illness or physical or mental infirmity, are more vulnerable to being harmed than adults who are not so affected.
- The Protection of Vulnerable Groups (Scotland) Act 2007 – introduced a focus on safer recruitment and safe working practice. Implemented in February 2011.  
**Separate guidance on implementation in the Methodist Church in Scotland is available.**
- Getting it Right for Every Child (GIRFEC) (2008) is a national approach to help all professionals supporting children and young people in Scotland. It promotes the need for a multi-agency co-ordinated approach to identifying concerns, assessing needs and agreeing outcomes for children.
- Sexual Offences (Scotland) Act 2009 - translated a number of common law offences - including rape - into statutory offences and clarified the issue of consent. Sections 42-45 of the Act introduced a new offence relating to the breach of a position of trust in respect of a child.
- Safer Lives: Changed Lives (2009) A shared approach to tackling violence against women in Scotland. It also gives guidance about tackling forced marriages.
- National Guidance for Child Protection in Scotland (2010), This provides the national framework within which statutory and voluntary sector agencies can understand and

agree processes for working together to safeguard and promote the welfare of children and young people. In addition to guidance about the four main strands of abuse (physical, sexual, emotional abuse and neglect) it gives guidance on ritual abuse and abuse by organised networks or multiple abusers

- As at February 2011, the Scottish Government is consulting on a Bill – Forced Marriage etc. (Protection & Jurisdiction) (Scotland) Bill.
- Local Authority Child Protection Committees give information and guidance on child protection processes to statutory organisations such as local authority services, health services and the police, as well as to the voluntary sector.
- The website Survivor Scotland is a Scottish Government-run website for victims of childhood sexual abuse: [www.survivorscotland.org.uk](http://www.survivorscotland.org.uk)
- [www.childprotectionscotland.org](http://www.childprotectionscotland.org) -the Scottish Government's child protection website

## **2. Children in need**

Children who are defined as being 'in need', (section 93(4)(a) of the Children (Scotland) Act 1995), are those whose vulnerability is such that they are unlikely to reach or maintain a satisfactory level of health or development, or their health and development will be significantly impaired, without the provision of services (section 22 of the Children (Scotland) Act 1995), or they are disabled or affected by a disability. The critical factors to be taken into account in deciding whether a child is in need are:

- what will happen to a child's health or development without services being provided and
- the likely effect the services will have on the child's standard of health and development.

## **3. Child abuse and significant harm**

Child abuse has many forms. There are four identified categories of abuse as described in the *National Guidance for Child Protection in Scotland* (2010): physical, emotional, sexual and neglect. It is important not to investigate but to seek advice.

The Children (Scotland) Act 1995 introduced the concept of *significant harm* as the threshold that justifies compulsory intervention in family life in the best interests of children, and gives local authorities a duty to make enquiries to decide whether they should take action to safeguard or promote the welfare of a child who is suffering, or likely to suffer, significant harm. It is the threshold used by the courts and relevant child protection agencies in deciding whether compulsory intervention into family life might be in the best interests of the child.

There are a range of orders that a local authority may apply for and some of these grant them a share in the parental responsibility for the child. The most far-reaching of these in Scotland is a Child Protection Order (CPO), which commits the child to the care of the local authority.

In Scotland there is a strong emphasis on inter-agency working and the delivery of children's services but the primary responsibility for ensuring a co-ordinated and effective response to child protection rests with the Child Protection Committees.

#### **4. Reporting concerns to statutory services**

It is Methodist Church policy that statutory agencies should always be notified first, especially when there is a serious risk of harm or risk of serious harm or in checking out whether this is the case. This should occur even if the facts are not clear. It is not our role to investigate in matters that are of a criminal nature. If in doubt you must speak with the relevant social work department who have the power to intervene and investigate. In addition, the police, NSPCC and the Scottish Children's Reporter Administration (SCRA) have powers to intervene in these circumstances.

While those making referrals should seek, in general, to discuss any concerns with the family and, where possible, seek their agreement to make referrals, this should only be done where such discussion and agreement-seeking will not place a child at increased risk of harm. The National Guidance for Child Protection in Scotland (2010) sets out some general principles for information sharing in relation to the management of reports of alleged abuse.

#### **5. Allegations**

Allegations of abuse or misconduct in relation to children by church officers will be referred to the relevant social work department and investigated in accordance with their advice. National guidance, including advice on how to respond to allegations/concerns of abuse, is available on the Scottish Government's child protection website - [www.childprotectionscotland.org](http://www.childprotectionscotland.org).

An investigation may result in various actions. It may be shown that the person has no case to answer or they may be charged with an offence and the Procurator Fiscal Service (PFS) be asked to consider prosecution. In order for the PFS to sanction a prosecution they have to believe that there is more than a 50% chance of gaining a conviction and also that it is in the public interest to prosecute. The person may admit the truth of the allegation and accept a police caution.

One outcome of the investigation into a concern may be that a referral to the PVG Scheme is required. See the separate PVG guidance.

## **6. Responsibilities of trustees**

In Scotland the Office of the Scottish Charity Regulator and Methodist Insurance require all local bodies to have a safeguarding policy in place. The responsibility for implementation lies with the relevant trustee body; that is, the Church Council and Circuit Meeting as delegated to the person with pastoral charge. In Scotland, these duties include::

- a) to refer cases to Disclosure Scotland where allegations lead to disciplinary action or someone resigns pending the disciplinary action.
- b) to make a report to both the Office of the Scottish Charity Regulator and the relevant Insurance company in respect of serious safeguarding matters.

## **7. Registration with the Care Commission (Scotland)**

In Scotland, a service which provides care for children on non-domestic premises for a total of more than 2 hours per day and on at least 6 days per year, must register with the Scottish Commission for the Regulation of Care and work to the relevant national care standards. Information is available at [www.carecommission.com](http://www.carecommission.com).

## **8. Significant Case Reviews**

In Scotland, Child Protection Committees undertake Significant Case Reviews whenever a child dies or is seriously injured and abuse or neglect is known or suspected to be a factor. The purpose of these Reviews is to:

- establish whether there are lessons to be learnt from the case about the way in which local professionals and organisations work together to safeguard and promote the welfare of children
- identify clearly what those lessons are, how they will be acted on, and what is expected to change as a result and as a consequence,
- improve inter-agency working and better safeguard and promote the welfare of children.

## **9. Reporting to the Office of the Scottish Charity Regulator.**

Guidance is available in Scotland on the website of the Office of the Scottish Charity Regulator (OSCR) – [www.oscr.org.uk](http://www.oscr.org.uk) – about when a case should be notified to the regulator.

## **10. Safeguarding Adults**

In Scottish adult protection laws an adult is usually defined as a person who is 16 or over.

In respect of adult support and protection in Scotland, the statutory framework governing adult protection establishes specific criteria for identifying an 'adult at risk'. It is important to understand that in the Scottish context, the term 'vulnerable adult' does not appear as a definition in the Scottish adult protection legislative context.

## **11. Forced Marriage**

In Scotland, a couple cannot be legally married unless both parties are at least 16 on the day of the wedding and are capable of understanding the nature of a marriage ceremony and of consenting to the marriage. Parental consent is not required.

A clear distinction must be made between a forced marriage and an arranged marriage. In an arranged marriage, both spouses are primarily responsible for choosing a marriage partner for their child or relative, but the final decision as to whether or not to accept the arrangement lies with the potential spouses and both must give their full and free consent.