

To: SOCIAL WORK COMMITTEE		Subject: CONSULTATION DRAFT CHILDREN'S HEARINGS (PROVISION OF INFORMATION BY PRINCIPAL REPORTER) (PRESCRIBED PERSONS) ORDER 2003.
From: DIRECTOR OF SOCIAL WORK		
Date: 28 AUGUST 2003	Ref.: JD/FS/LG	

## 1. PURPOSE OF REPORT / INTRODUCTION

- 1.1 To seek Committee approval to submit the attached response on Children's Hearings (Provision of Information by Principal Reporter) (Prescribed Persons) Order 2003 to be submitted to the Scottish Executive.

## 2. BACKGROUND

- 2.1. The Scottish Executive has issued the above consultation document to a wide range of agencies including local authorities. The document relates to a draft Order that is to be made under Section 53 of the Criminal Justice (Scotland) Act 2003, which received Royal Assent in March 2003.
- 2.2. The Order identifies Victim Support Scotland, the Criminal Injuries Compensation Board (CICB) and insurance companies as being entitled to receive certain information from the Principal Reporter regarding offence cases referred to him.
- 2.3. The Scottish Strategy for Victims provided the framework for work in relation to victims of young people being dealt with through the Criminal Justice System. Scottish Ministers intend to achieve the same objectives in a different way for the Children's Hearing System, reflecting the fact that the Hearing system is primarily focussed on identifying and addressing the needs and deeds of children and young people referred to it.
- 2.4. The ethos of the Children's Hearing System is distinct from the Criminal Justice System in that Hearings are held in private and information is restricted to a few individuals and agencies. Victims in particular have been excluded from this process.
- 2.5. The Scottish Executive intends this Order will require the Principal Reporter to divulge certain information to victims, relevant persons and others who have been affected by the actions of children and young people referred on offence grounds.
- 2.6. Only persons against whom offences are committed will be entitled to receive case-specific information.
- 2.7. A twelve month pilot project is planned commencing Autumn 2003 in Forth Valley.
- 2.8. Responses to the document are requested by 28<sup>th</sup> August 2003.

### 3. PROPOSALS / CONSIDERATIONS

- 3.1. The document sets out the above proposals which will impact on present practice.
- 3.2. Requiring further consideration is that the needs, rights and interests of all children involved in this process are of paramount importance and this includes the child or young person who has committed the offence.
- 3.3. To allow progress of CICB claims and insurance claims the order will empower the Reporter to share information with insurance companies and the Criminal Injuries Compensation Board. Issues of confidentiality merit further consideration ie any information should be passed on a "need to know" basis and there should be restricted access within the company or agency to which it has been passed.
- 3.4. Victim Support Scotland will also be given responsibility for assessing the support needs of the victim, including access to specialist counselling services.
- 3.5. The victim will have an entitlement to information about the progress of the case subject to the discretion of the Reporter as to what information can be passed on.
- 3.6. North Lanarkshire Council welcomes the proposals set out in the draft Order in terms of support to victims, however it is crucial that the needs of all children and young people involved in the process, both victim and young perpetrator must be of paramount consideration.
- 3.7. Further consideration will require to be given to the resourcing and funding issues in relation to Victim Support Scotland.
- 3.8. The twelve month pilot will allow evaluation of protocols, process and operational practice and highlight issues to be addressed prior to any expansion.

### 4. FINANCIAL / PERSONNEL / LEGAL / POLICY IMPLICATIONS

- 4.1. The purpose of this report is to advise Committee of the proposals and the possibility of developments. There are no implications for North Lanarkshire at the present time.
- 4.2. Following the consultation process and the evaluation of the pilot project, the Executive will give further consideration to the Order and implications.

### 5. RECOMMENDATIONS

5.1 Committee is asked to:

- (i) Agree the submission of the attached comments to the Scottish Executive
- (ii) Otherwise note the contents of the report

A copy of the document is available in the members library.



**Jim Dickie**  
**Director of Social Work**  
**30 July 2003**

*For further information on this report please contact M Fegan, Head of Social Work Services TEL: (01698 332001)*

**North Lanarkshire Council**  
Social Work Department  
Children, Families & Justice  
Scott House  
73-77 Merry Street  
Motherwell ML1 1JE



Contact: Susan Devlin  
Our Ref: SD/FS/FMcC  
Your Ref:  
Date: 6 August, 2003

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*Director of Department  
Jim Dickie*

Mr Scott Wood  
Scottish Executive Education Department  
Young People & Looked After Children Division  
Area 2 B (South)  
Victoria Quay  
Edinburgh  
EH6 6QQ

Dear Mr Wood,

**Consultation: Draft Children's Hearings (Provision of Information by Principal Reporter) (Prescribed Persons) Order 2003**

North Lanarkshire Council welcomes the opportunity to comment on the above document. Efforts to assist victims are welcomed, however, this needs to be balanced against the needs of children and young people.

The following are comments on issues which the Council feels need further consideration. The comments are numbered and relate to the numbered sections as laid out in the consultation document.

**PURPOSE OF REPORT**

Paragraphs 1-4 accepted.

**BACKGROUND TO POLICY DEVELOPMENT**

5. Accepted
6. It is crucial to the Children's Hearing system that cases are heard in private to allow full discussion of wider issues of often sensitive family circumstances which impact on a child/young persons behaviour. Sharing information with relevant parties, including victims must be on a need to know basis and limited only to facts or issues which are necessary to progress, for example, a criminal injuries compensation claim. It is important that information is not disseminated widely which could result in acts of negative behaviour e.g. revenge or retribution against a child/young person and his/her family.

## **CRIMINAL JUSTICE (SCOTLAND) ACT 2003**

7. Annex A - is specific to two main areas of information which can be divulged by the Principal Reporter, Section 2 (a) and (b); this specific criteria is welcomed and will assist the Principal Reporter when consideration has to be given to the request for information to be given to a relevant person. It also ensures standardisation rather than discretion in interpretation.

## **CONSULTATION**

8. The Order enhances existing practice by S.C.R.A. (Scottish Children's Reporter Administration) in the need to provide information to the Criminal Injuries Compensation Authority and Insurance Companies. Striking the balance between the needs of a child committing an offence against the needs of the victim to gain suitable compensation may be different at times. The needs and interests of all children and young people should be given paramount consideration.
9. In terms of the definition of those persons entitled to receive information, it is accepted that those identified are considered relevant, however, again care must be taken in terms of information provided and ensuring issues of confidentiality remain intact for the child in question. This is particularly so when information shared is to parties such as insurance companies where a number of non-relevant people may then have the opportunity to gain access to that information.
10. Clarity as to the term "natural legal persons" - what constitutes a natural legal person. Consideration could be given to an appendix of glossary terms to clarify this and any other point which may need to be convened for example roles and responsibilities of Principal Reporter. The pilot scheme is welcomed and will provide an opportunity to evaluate the practice, as set out in the document.

## **VICTIM SUPPORT SCOTLAND**

12. The document gives Victim Support Scotland (V.S.S.) and key agencies new responsibilities to contact victims from the outset and inform the Reporter if the victim wishes further information relating to the case.
13. Liaison between V.S.S. and the Principal Reporter will be crucial to ensure victims who wish to participate in the information scheme receive relevant information and timeously.
14. While V.S.S are to be the only prescribed body at this time, if future consideration is given to other bodies/organisations, careful scrutiny must be given to any organisation which develops to offer a counselling and support service to victims.

## **SUMMARY OF INFORMATION TO VICTIM'S PILOT SCHEME**

16. Bullet Point 3. This point suggests that V.S.S. in its assessment of the victim will decide if there is a need to refer to a "specialist" counselling service. V.S.S. would need to know the availability of such services to avoid raising expectations which cannot be met. If assessment of the victim's circumstances, including a decision as to the need for "specialist" counselling, it will be necessary to look at the existing training of V.S.S. support staff, currently mainly volunteers, identify gaps and provide suitable training to allow staff to undertake and which at times could be a complex assessment of victims needs.

Bullet Point 4. Giving the victim or relevant person the opportunity to opt out of the process is important. However as their feelings on this may change, they would perhaps need a further opportunity to reconsider their decision to opt out. Consideration needs to be given to how to deal with conflict arising between the wishes of a "relevant person" (parent/carer) and the child victim in terms of opting in or out of the process.

Bullet Point 6. Given the role of V.S.S., consideration should be given to the Principal Reporter updating V.S.S. at this stage.

Bullet Point 7. Practice Guidance is crucial in terms of advice to the Principal Reporter as to levels of discretion he/she has with regard to what information can/cannot be passed.

Bullet Point 8. Clarity will be needed as to what conditions of a supervision requirement would be considered appropriate to share with a victim. Conditions are often personal to a child's specific needs.

Independent evaluation of the pilot project is welcomed and should address operational issues such as communications, outcomes, gaps in systems and implications for roll out.

## **CONSULTATION**

18. Bullet Point 1. Further consideration needs to be given to the possible role of other support agencies which victims may choose to access, particularly in relation to information sharing by the Reporter. Once again the needs of all children involved are paramount and issues of confidentiality, privacy and the protection of all children need to be considered. The Guidance note should address this issue and provide clarity for the Principal Reporter.

Bullet Point 3. The purpose for which the information is required should be specific, for example, the need for the victim to pursue relevant compensation, to enhance the service of counselling for the victim.

Bullet Point 3. Restrictions for the use of information and the conditions for the criteria for its use need to be clear and addressed within the practice guidance in order that the response by the Principal Reporter can be timeous and the overall practice effective.

## **GENERAL**

- The role of V.S.S. is crucial and would imply additional staffing, recruitment of volunteers and additional training, be considered.
- The above would have financial implications and further consideration of these developments will be required along with sources of funding.
- There may be Data Protection issues which need further legal consideration.
- In the case of child victims there could be conflict between the wishes/needs of the child to pursue compensation and the wishes of the parent/carer. In such cases independent support to the child may be required and the source of this would need to be identified.
- There is already concern in terms of timescales for dealing with referrals made to the Reporter's Administration. This order places additional responsibilities upon the Reporter's Administration and further consideration will be required about the implications for progressing referrals timeously.

Whilst the needs of the victim should not be ignored these must be balanced against the best interests of the child/young person.

Should you require any further information, please do not hesitate to contact me.

Yours sincerely



## SCOTTISH EXECUTIVE

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Children and Young People's Group

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Edinburgh EH6 6QQ

See Distribution List

Telephone: 0131-244 1676  
Fax: 0131-244 3547  
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**RECEIVED BY**

**16 JUN 2003**

**DIRECTOR OF  
SOCIAL WORK**

Your ref:  
Our ref: YJH 10/4/3

11 June 2003

Dear Sir / Madam

### **CONSULTATION: DRAFT CHILDREN'S HEARINGS (PROVISION OF INFORMATION BY PRINCIPAL REPORTER) (PRESCRIBED PERSONS) ORDER 2003**

#### **Purpose**

1. I enclose for consultation a copy of a draft Order that is to be made under section 53 of the Criminal Justice (Scotland) Act 2003, which received Royal Assent in March 2003.
2. This letter sets out the background to the draft Children's Hearings (Provision of Information by Principal Reporter) (Prescribed Persons) Order 2003 and explains what the Order is intended to do.
3. The Order identifies Victim Support Scotland, the Criminal Injuries Compensation Authority and insurance companies as being entitled to receive certain information from the Principal Reporter regarding offence cases referred to him.
4. You are invited to comment on the implications of the draft Order which sets out those agencies and third parties with whom the Principal Reporter may share information on offence cases, the uses they can make of that information and the conditions attached to its use.

#### **Background to policy development**

5. The Scottish Strategy for Victims provided the framework for work in relation to victims of young people being dealt with through the criminal justice system. Scottish Ministers intend to achieve the same objectives in a different way for the children's hearings system, reflecting the fact that the hearings system is primarily focussed on identifying and addressing the needs and deeds of children and young people referred to it.

6. Although the ethos of the children's hearings system is distinct from the criminal justice system, Ministers have considered how relevant information might be imparted to victims and relevant persons. Unlike the court process, which takes place in public, children's hearings take place in private with the focus being on the welfare of the child. By their very nature, discussions in hearings can often be confidential and involve personal details of family life that go wider than the offending behaviour itself. Confidentiality is therefore needed partly to protect often vulnerable children from undue attention and to create an atmosphere in which private matters can be properly discussed. Because of this, information has been limited to only a few individuals and agencies and victims, in particular, have been excluded from this process.

### **Criminal Justice (Scotland) Act 2003**

7. Ministers consider that the almost absolute bar on the disclosure of information can no longer be justified. The Executive has been engaged in discussion with representatives of the children's hearings system and with Victim Support Scotland since January 2002 to explore what might be done to open up the system and provide information to individual victims and their families. A number of options were developed, considered and evaluated. Section 53 of the Criminal Justice (Scotland) Act 2003 ("the 2003 Act") has been approved by the Scottish Parliament, and will enable the Principal Reporter to divulge certain information to victims, relevant persons and others who have been affected by the actions of children referred to him on offence grounds. The relevant section is attached at Annex A. In order to facilitate this, it is also necessary to identify other persons and agencies with whom the Principal Reporter may share information.

### **Consultation**

8. The draft Order deals with the definition of the third parties that could be entitled to receive information about the processing and outcome of a referral to the hearings system. At present, the Scottish Children's Reporter Administration (SCRA) deals administratively with enquiries from the Criminal Injuries Compensation Authority and insurance companies, attempting to balance the confidentiality of the child referred against the needs of the victim to gain suitable compensation. Information regarding the receipt of referrals and the decisions taken in certain cases need to be confirmed directly by SCRA to enable compensation claims to be progressed.

9. We propose to define those persons entitled to receive information, including those persons who make determinations as to whether to pay compensation to the victim in respect of any loss injury or damage suffered by the victim arising from the offence, and those offering information, advice, counselling and support to victims.

10. Only natural legal persons against whom offences are committed will be entitled to receive case-specific information. It is not intended to include companies and other legal persons suffering loss as a consequence of child offending. A 12-month pilot project is planned commencing Autumn 2003 in Forth Valley.

### **Criminal Injuries Compensation Authority**

11. Scottish Ministers wish to expressly enable SCRA to provide to third parties involved in compensating victims, in particular the Criminal Injuries Compensation Authority. The

Authority was established following the Criminal Injuries Compensation Act 1995, and requires statutory access to information about the decision taken in respect of a referral to the Reporter, to enable the progression of a claim arising from the circumstances of that referral made to the Criminal Injuries Compensation Scheme.

### **Victim Support Scotland**

12. Victim Support Scotland (VSS) is a voluntary organisation that is being funded by the Executive to provide information, advice and support to victims of crime. Victims will be directed to VSS as the first port of call. The Order will enable VSS to request information from the Principal Reporter directly, in order to discuss that information with the victim as part of the counselling service.

13. If the victim decides to participate in the information scheme, the Principal Reporter will contact them directly to advise of decisions taken at key stages in the process, where it is appropriate in all the circumstances of the case.

14. For further support and advice, the victim will be referred to VSS who will have the time, resources and training to manage the victim's needs sensitively. While VSS are to be the only prescribed body for this purpose at present, the entitlement could be made available to other organisations providing counselling and advice services to victims of crime as are approved by Scottish Ministers.

### **Insurers**

15. From time to time, insurance companies and others concerned in evaluating, quantifying and administering claims deal with cases of loss arising from a referral to the Principal Reporter on offence grounds. Some insurance companies require confirmation direct from the Principal Reporter that a referral has been received in respect of a particular incident, or that certain action has been taken with regard to the case in question to allow a claim to be processed. The Reporter will therefore be empowered to share information to the extent that is required to verify and process insurance claims.

### **Summary of Information to Victims Pilot Service**

16. By way of background, the service to victims will broadly be as follows:

- Offence / Incident occurs
- Police notify VSS with victim contact details
- VSS contact victim, providing general and local (but not, at this stage, case-specific) advice and information relating to youth justice and the children's hearings system. Materials and advice will be appropriate to the individual victim, taking account of age, disability and ethnicity. An assessment will be made as to whether VSS should have ongoing direct contact with the victim or whether there is a need to refer the case on to a "specialist" counselling service.
- At this stage the victim or relevant person (for example, the parent of a child victim) would be given the opportunity to opt out of the scheme to provide updates on the

progress and outcome of their specific case. Unless the victim (or relevant person) indicates otherwise, information will be supplied as a matter of course.

- VSS will confirm with the Principal Reporter and other appropriate agencies whether the victim wants further information regarding their case.
- If the victim wishes further information relating to their case, the Principal Reporter will write to the victim (or relevant person) after the Reporter's initial investigation and decision, giving information (this will not include identification of the young person(s) referred to the Reporter). The Reporter can decide to:- not to refer to a hearing ; to seek advice, guidance and assistance from the local authority; or to convene a children's hearing to consider compulsory supervision.
- The Reporter will have discretion as to what information, if any, it will be appropriate to pass to the victim in all the circumstances of the case. The interests of the child referred will remain paramount in this consideration – practice guidance will be issued to Reporter.
- If a children's hearing is to be convened, the Reporter will again write to the victim, at the end of the hearings process, giving any appropriate information relating to the outcome of the case (whether or not compulsory supervision had been imposed) and in some cases, supplying specific conditions inserted in any supervision requirement. It will be made clear in this communication that VSS – rather than the Reporter- will be the victims' contact for further advice, clarification and support.

17. The Principal Reporter will produce the appropriate guidance for such cases and any further relevant issues. It has been agreed that project management of the pilot will be through VSS, steered by the Victim's Issues sub-group of the Youth Justice Steering Group. Independent evaluation will be commissioned.

### **Consultation**

18. In particular, your views are sought as regards:

- Other persons who may require information from the Principal Reporter to provide support and advice to victims

With reference to those persons already identified in the Draft Order, we would welcome your comments on:

- The purposes for which information is provided
- The conditions and restrictions on use of the information

19. Under the Code of Practice on open government, responses will be made available to the public, unless respondents ask that their comments remain confidential.

20. Further copies or alternative versions of this paper may be obtained by calling 0131 244 1676 or by emailing Scott Wood at [scott.wood@scotland.gsi.gov.uk](mailto:scott.wood@scotland.gsi.gov.uk). Alternatively, the

consultation paper will be available in the "Consultation" section of the Scottish Executive website. <http://www.scotland.gov.uk/views/views.asp>

21. Please send responses and comments to the following address before **Thursday 28 August 2003**:

Scott Wood  
Scottish Executive Education Department  
Young People & Looked After Children Division  
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Fax: 0131 244 3547

**Youth Justice Team  
Young People & Looked After Children Division  
Scottish Executive Education Department**

## ANNEX A – SECTION 53 OF THE CRIMINAL JUSTICE (S) ACT 2003

### 53 " Provision by Principal Reporter of information to victims

- (1) Where the Principal Reporter has received information about a case in which it appears that an offence has been committed by a child, the Principal Reporter may provide any information about the case as is mentioned in subsection (2) to any person mentioned in subsection (3) if (and only if)—
  - (a) the information is requested by the person; and
  - (b) the Principal Reporter is satisfied that—
    - (i) the provision of the information would not be detrimental to the best interests of the child concerned in, or any other child connected (in any way) with, the case; and
    - (ii) it is appropriate in the circumstances of the case to provide the information.
- (2) The information is information as to—
  - (a) what action the Principal Reporter has taken in the case; and
  - (b) any disposal of the case,in so far as the information relates to the offence.
- (3) The persons are—
  - (a) any person against whom the offence appears to have been committed or, where that person is a child, any relevant person; and
  - (b) any other person or class of persons, subject to such conditions, as may be prescribed.
- (4) In this section—

“child” means a person who has not attained the age of eighteen years;

“the Principal Reporter” has the same meaning as it has in Part II of the Children (Scotland) Act 1995 (c.36);

“relevant person” in relation to a child means—
  - (a) any parent enjoying parental responsibilities or parental rights under Part I of that Act;
  - (b) any person in whom parental responsibilities or rights are vested by, under or by virtue of that Act; and

any person who appears to be a person who ordinarily (and other than by reason only of that person’s employment) has charge of, or control over, the child.

SCOTTISH STATUTORY INSTRUMENTS

2003 No. [ ]

**CHILDREN AND YOUNG PERSONS**

The Children's Hearings (Provision of Information by Principal Reporter) (Prescribed Persons) Order 2003

*Made* [ ] 2003

*Laid before the Scottish Parliament* [ ] 2003

*Coming into force* [ ] 2003

The Scottish Ministers, in exercise of the powers conferred by section 53(3)(b) of the Criminal Justice (Scotland) Act 2003<sup>(1)</sup>, and of all other powers enabling them in that behalf, hereby make the following Order:

**Citation, commencement and interpretation**

1.—(1) This Order may be cited as the Children's Hearings (Provision of Information by Principal Reporter) (Prescribed Persons) Order 2003 and shall come into force on [ ] 2003.

(2) In this Order-

“the 2003 Act” means the Criminal Justice (Scotland) Act 2003;

“the 2000 Act” means the Financial Services and Markets Act 2000<sup>(2)</sup>;

“authorised person” means a person who is authorised for the purposes of Part IV of the 2000 Act; and

“insurer” means an authorised person who is permitted to carry on a regulated activity of the kind specified in articles 10 (1) or (2) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001<sup>(3)</sup>.

**Prescribed Persons**

2. The following persons and classes of person are prescribed under section 53(3)(b) of the 2003 Act:-

(i) Victim Support Scotland;

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<sup>(1)</sup> 2003 asp 7.

<sup>(2)</sup> 2000 c50.

<sup>(3)</sup> S.I. 2001 No 544

- (ii) Criminal Injuries Compensation Authority; and
- (iii) Insurers

### **Prescribed Conditions**

3. (1) Any information provided to Victim Support Scotland pursuant to section 53(1) of the 2000 Act shall be used solely for the purpose of providing counselling and support services to a person specified in section 53(3)(a) of the 2003 Act and Victim Support Scotland shall not disclose the information other than to such a person.

(2) Any information provided to the Criminal Injuries Compensation Authority pursuant to section 53(1) of the 2003 Act shall be used solely for the purpose of [verifying that the offence in question has been referred to, and is being investigated by, the Principal Reporter] to enable any claim for compensation submitted by a person specified in section 53 (a) of the 2003 Act to be processed and the Authority shall not disclose the information to any other person.

(3) Any information provided to an insurer pursuant to section 53(1) of the 2003 Act shall be used solely for the purpose of verifying that the offence in question has been referred to, and is being investigated by, the Principal Reporter to enable any claim on a policy of insurance made by or on behalf of a person specified in section 53 (a) of the 2003 Act to be processed and the insurer shall not disclose the information to any other person.

A member of the Scottish Executive  
St Andrew's House,  
Edinburgh  
[SEPTEMBER] 2003

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order specifies persons [and classes of person] in relation to whom the Principal Reporter is entitled to provide information in relation to a case where it appears that an offence has been committed by a child.

Article 3 of the Order sets out certain conditions restricting the manner in which the information may be used.

## **Distribution List:**

Aberlour Childcare Trust  
Apex Scotland  
Association of British Insurers  
Association of Directors of Education in Scotland  
Association of Directors of Social Work  
Association of Chief Police Officers Scotland  
Association of Scottish Police Superintendents  
Barnardo's Scotland  
Black and Ethnic Minorities Infrastructure in Scotland  
Chief Executives of Local Authorities  
Children First  
Children in Scotland  
Children's Panel Advisory Group  
Children's Panel Advisory Committee Chairs  
Children's Panel Chairmen's Group  
Children's Panel Training Units  
Commission for Racial Equality  
Convention of Scottish Local Authorities  
Criminal Injuries Compensation Authority  
Criminal Justice Social Work Development Centre  
Crown Office and Procurator Fiscal Service  
Disability Rights Commission  
Equality Network  
Equal Opportunities Commission  
Financial Ombudsman Service  
Financial Services Authority  
General Insurance Standards Council  
Human Rights Centre  
INCLUDEM  
Information Commissioner  
NCH Action for Children Scotland  
Residential Schools  
SACRO  
Save the Children Fund  
Scottish Association of Children's Panels  
Scottish Child Law Centre  
Scottish Children's Reporter Administration  
Scottish Police Federation  
Scottish Safeguarders' Association  
Scottish Youth Parliament  
Secure Units  
Who Cares? Scotland  
Victim Support Scotland  
Young Scot  
Youth Justice Local Authority Co-ordinators  
Youth Justice Steering Group