

State of Children's Rights in Scotland

by Together

together

Scottish Alliance for
Children's Rights

2019



About Together

Together (Scottish Alliance for Children’s Rights) is an alliance of over 370 children’s organisations, academics and interested professionals. Our vision is that all children in Scotland have their human rights respected, protected and fulfilled. To achieve this, we work to inspire and enable everyone in Scotland to put children and young people’s human rights at the heart of everything they do.

Glossary of Terms

- ADHD** – Attention–Deficit Hyperactivity Disorder
ARC – Association for Real Change
ASN – Additional Support Needs
BAME – Black, Asian and Minority Ethnic
BME – Black and Minority Ethnic
BSL – British Sign Language
CAMHS – Child and Adolescent Mental Health Services
CAT – Committee against Torture
CBF – Challenging Behaviour Foundation
CEDAW – Convention on the Elimination of All Forms of Discrimination Against Women
CELCIS – Centre for Excellence for Children’s Care and Protection
CERD – Committee on the Elimination of Racial Discrimination
CESCR – Committee on Economic, Social and Cultural Rights
Child/children – for the purpose of brevity and in line with the UNCRC refers to persons under the age of 18, however we acknowledge that many older children prefer the category ‘young people’ to ‘children’
Children’s organisations – refers to non–governmental organisations in Scotland unless otherwise stated
COSLA – Convention of Scottish Local Authorities
CPED – International Convention for the Protection of All Persons from Enforced Disappearance
CPC – Child Protection Committee
CPIP – Child Protection Improvement Programme
CPOs – Child Protection Orders
CRER – Coalition for Racial Equality Rights
CRIA – Children’s Rights Impact Assessment
CRPD – Committee on the Rights of Persons with Disabilities
CRWIA – Child Rights and Wellbeing Impact Assessment
CSO – Compulsory Supervision Order
CSP – Coordinated Support Plan
CY CJ – Centre for Youth & Criminal Justice
CYP CS – Children and Young People’s Commissioner for Scotland
ECHR – European Convention on Human Rights
EHRC – Equality and Human Rights Commission
EIS – Education Institute of Scotland
ELC – Early Learning and Childcare
EQIA – Equality Impact Assessment
ESOL – English for speakers of other languages
EU – European Union
FGM – Female Genital Mutilation
FMPO – Forced Marriage Protection Order
FMU – Forced Marriage Unit
FOI – Freedom of Information
FAI – Fatal Accident Inquiry
GIRFEC – Getting It Right for Every Child
GRC – Gender Recognition Certificate
GTCS – General Teaching Council for Scotland
HBSC – Health Behaviour in School Aged Children
HBV – Honour–Based Violence
HKD – Hyperkinetic Disorder
HMICS – Her Majesty’s Inspectorate of Constabulary in Scotland
HMP & YOI – Her Majesty’s Prison and Young Offender Institution
HMYOI – Her Majesty’s Young Offender Institution
HRE – Human Rights Education
HSS – Humanist Society Scotland
Human Rights Committee – the Committee that monitors implementation of the International Covenant on Civil and Political Rights
ICCPR – International Covenant on Civil and Political Rights
ICERD – International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR – International Covenant on Economic, Social and Cultural Rights
ICRMW – International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
IGM – Intersex Genital Mutilation
ISD – Information Services Division
JCHR – Joint Committee on Human Rights
LGBTI – Lesbian, Gay, Bisexual, Transgender and Intersex
LGBTQ – Lesbian, Gay, Bisexual, Transgender and Queer
MSYP – Member of the Scottish Youth Parliament
NACWG – First Minister’s National Advisory Council on Women and Girls
NCAIU – National Child Abuse Investigation Unit
NGO – refers to non–governmental organisations in Scotland unless otherwise stated
NHS – National Health Service
NSPCC – National Society for the Prevention of Cruelty to Children
OECD – Organisation for Economic Co–operation and Development
OPAC – UNCRC Optional Protocol on the Involvement of Children in Armed Conflict
PABSS – Positive and Active Behaviour Support Scotland
PACE – Permanence and Care Excellence or Parliamentary Assembly of the Council of Europe depending on context
PAPSC – Scottish Parliament’s Public Audit and Post–legislative Scrutiny Committee
PE – Physical Education
PIRC – Police Investigations & Review Commissioner
PVG – Protection of Vulnerable Groups
RCET – Royal Caledonian Education Trust
RC PCH – Royal College of Paediatrics and Child Health
RRSA – Rights Respecting Schools Award
RSHP E – Relationships, Sexual Health and Parenthood Education
SALSUS – Scottish Schools Adolescent Lifestyle and Substance Use Survey
SCJC – Scottish Civil Justice Council
SCLC – Scottish Care Leavers Covenant
SCQF – Scottish Credit and Qualifications Framework
SCR – Significant case review
SCRA – Scottish Children’s Reporter Administration
SDG – Sustainable Development Goals
SHRC – Scottish Human Rights Commission
SIMD – Scottish Index of Multiple Deprivation
SNAP – Scotland’s National Action Plan on Human Rights
SNP – Scottish National Party
SPS – Scottish Prison Service
Staf – Scottish Throughcare and Aftercare Forum
SYP – Scottish Youth Parliament
UASC – Unaccompanied Asylum Seeking Children
The UN Committee – United Nations Committee on the Rights of the Child
UN – United Nations
UNCAT – United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
UNCRC – United Nations Convention on the Rights of the Child
UNCRPD – United Nations Convention on the Rights of Persons with Disabilities
UNICEF – United Nations Children’s Fund
UPR – Universal Periodic Review
YOI – Young Offenders Institution

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Executive Summary

Background

The *State of Children's Rights* report 2019 looks at the steps being taken to fulfil the human rights of children living in Scotland. Specifically, it provides a non-governmental perspective on the extent to which children in Scotland are able to exercise the human rights enshrined in the United Nations Convention on the Rights of the Child (UNCRC) and other international human rights treaties. It offers a baseline against which progress in implementing recommendations made by the UN Committee on the Rights of the Child ('the UN Committee')¹ and other international treaty bodies can be measured. It also reflects on areas where progress is being made and identifies where further efforts are needed.

The report was compiled and produced by Together following wide consultation with our members. Desk research drew from evidence submitted throughout the year by our membership, published in our online resource library and e-newsletter. Further consultation took place throughout the summer through our annual *State of Children's Rights* survey, and with specific member organisations who helped to draft and edit the final report.

The UN Convention on the Rights of the Child

The UK Government ratified the UNCRC in 1991. The UNCRC is an international treaty that sets out specific human rights for children up to the age of 18 years old. It reflects the particular needs, vulnerabilities and potential of children and includes a broad range of rights from the right to play, the right to be listened to and take part in decisions, through to the right not to be separated from their parents unless it is in a child's best interests. The UNCRC is clear that all children should be able to exercise all of their rights without discrimination on grounds such as disability, sex, ethnicity, age, religion or sexual orientation.

In ratifying the UNCRC, the UK committed all areas of government to do all they can to fulfil children's human rights. This includes UK and Scottish Government through to public bodies including local authorities, health services, justice institutions and schools. The UN Committee has responsibility for overseeing compliance with the UNCRC and takes evidence regarding implementation in the UK approximately every 5 years. Non-governmental organisations (NGOs) such as Together play a role in monitoring implementation of the UNCRC and, as such, the *State of Children's Rights* report plays an essential role in enabling the UN Committee to hold the Scottish and UK Government to account.

UNCRC reporting and the 2016 Concluding Observations

In May 2016, the UN Committee examined the UK Government's progress in implementing the UNCRC. An official from the Scottish Government was included in the delegation and was able to offer a Scottish perspective on many of the Committee's questions. Following this examination, the UN Committee made a series of 150 recommendations (known as Concluding Observations) to set out where the UK – including Scotland – was falling short. Every recommendation is examined in detail in this *State of Children's Rights* report.

The UK's next review will take place in 2021-22. Together will draw from this report, and wider consultation with members, to inform the UN Committee as to the priority issues impacting on children's human rights in Scotland. The UN Committee will draw from Together's evidence to help inform a List of Issues Prior to Reporting (LOIPR) which will be published in February 2021. The LOIPR will request specific information from the UK and devolved governments about their progress in implementing the UNCRC, including an update on progress towards the UN Committee's 2016 recommendations and questions relating to any new issues.

Other treaty bodies, the Universal Periodic Review and the Sustainable Development Goals

The UK is also signatory to six other United Nations human rights treaties, including the International Covenants on Civil and Political Rights (ICCPR)² and Economic, Social and Cultural Rights (ICESCR),³ as well as conventions against torture (UNCAT),⁴ racial discrimination (ICERD),⁵ discrimination against women (CEDAW)⁶ and the rights of persons with disabilities (UNCRPD).⁷

Approximately every six years, the UK Government submits reports to the relevant UN treaty body on its implementation of each treaty. These reports address both reserved and devolved matters and include contributions from Scottish Government. After considering evidence from a range of sources, including a verbal examination of representatives from the UK, the Committees issues sets of recommendations as to how the UK and devolved governments can make progress in implementing the particular treaty.

In addition to reviews from specific treaty bodies, an overarching review of the UK's human rights record takes place every five years through the Universal Periodic Review (UPR). Through this process, UN member states make recommendations relating to the UK's human rights record, many of which concern children's human rights. Recommendations from the last UPR cycle in 2017 are included throughout this report.

This *State of Children's Rights* report also indicates where recommendations from treaty bodies and the UPR process correspond with targets from the UN Sustainable Development Goals (SDGs). The SDGs set out 17 Goals with the aim of encouraging all countries to implement the necessary environmental, economic and social change to achieve peace and prosperity for all.

Report structure

There is no specific list of indicators against which progress in implementing the UNCRC can be measured. However, through its reporting structure, Concluding Observations and General Comments,⁸ the UN Committee has set out what is required by the UNCRC and what human rights mean for different areas of children's lives. As such, this report is grouped according to the cluster areas of the UNCRC which are: general measures of implementation; general principles; civil rights and freedoms; violence against children; family environment and alternative care; disability, basic health and welfare; education, leisure and cultural activities; and special protection measures. Recommendations from other treaty bodies and the UPR have been mapped against these cluster areas and are listed in full in Appendix 1.

Throughout the report, reference is made to Scottish Government's 2018 *Progressing the Human Rights of Children in Scotland* report. This outlines Scottish Government's actions and activities in relation to children's rights between 2015 and 2018. The *State of Children's Rights* report 2019 analyses this information against evidence presented from our members.

Key Findings

General measures of implementation

Scottish Government has committed to incorporate the UNCRC into Scots law "in full and directly – using the language of the Convention in every case possible", with the only limitation being "the limit of the powers of the [Scottish] Parliament".⁹ This commitment is welcomed after more than a decade of campaigning by children and children's organisations, including Together and its members, and longstanding calls for incorporation at international level.¹⁰ Scottish Government plans to present a Bill which directly incorporates those UNCRC provisions which fall within devolved powers, and which would enable the incorporation of provisions relating to reserved matters should the powers of the Scottish Parliament change.¹¹ Together has emphasised the importance of introducing the Bill to the Scottish Parliament without delay to ensure it is passed before the next Scottish Parliament elections in May 2021.

Together has continued to raise concerns about the impact that the UK's withdrawal from the European Union (EU) may have on the overall human rights framework across the UK, including on children's rights.¹² The European Union (Withdrawal) Act 2018 provides that the EU Charter of Fundamental Rights will no longer apply after the UK leaves the EU.¹³ Concerns remain that the Human Rights Act 1998 might be repealed or replaced following the completion of the EU withdrawal process.¹⁴ Scottish Government explicitly opposes the repeal of the Charter¹⁵ and the Human Rights Act.¹⁶

In 2018, a First Minister's Advisory Group on Human Rights Leadership was established to make recommendations on how Scotland can lead by example in human rights.¹⁷ Together welcomed the Advisory Group's recommendation for a new Act of the Scottish Parliament to enshrine economic, social, cultural and environmental rights in domestic law, which would provide an opportunity to enshrine wider protections for children in other international human rights treaties and complement UNCRC incorporation.

The Children and Young People (Scotland) Act 2014 places a duty on Scottish Government to report every three years on its actions to progress children's rights. In December 2018, the first report and action plan were published.¹⁸ ¹⁹ The action plan, which focuses on the General Measures of Implementation, was broadly welcomed by Together's members. A progress report on the action plan was published in December 2019.²⁰

The use of Child Rights and Wellbeing Impact Assessments (CRWIA) at a national level has been strongly welcomed by Together's members, who recognise the role they play in ensuring children's rights are adequately reflected in policy development.²¹ ²² ²³ Scottish Government committed to undertake an evaluation of the impact of CRWIA in 2021 to further support and promote its use.²⁴ Together has called for a provision to be included in the UNCRC Incorporation Bill that would make Child Rights Impact Assessments (CRIA) mandatory.

To date, the Children and Young People's Commissioner for Scotland (CYPCS) has completed one formal investigation on the use of restraint and seclusion in schools.²⁵ There is an ongoing investigation into secure accommodation and local authority compliance with legal duties.

The UN Committee has called on the UK Government to review its declaration on the Optional Protocol on the Involvement of Children in Armed Conflict²⁶ and sign up to the third Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure.²⁷ The UK Government currently has no plans to sign up to the Optional Protocol.²⁸ There are also several other international human rights treaties yet to be ratified by the UK Government which would provide additional tools for protection and realisation of children's rights. These include ICRMW, CPED and the optional protocols to ICCPR and ICESCR.

General principles

The rate of decline of infant mortality has slowed in recent years,²⁹ and it continues to be significantly underlined by socio-economic deprivation.³⁰ A recent report found that significant case reviews of child deaths were of variable quality and consistency, and noted the importance of "keeping the child the focus within the review".³¹

The 'best interests' principle is included in a patchwork of legislation. However, it is still not reflected in all legislative and policy matters and judicial decisions affecting children.³² There is a need to review the current legislation and ensure compliance.

Children still do not have full legal protection from age discrimination, with a number of provisions under the Equality Act 2010 exempting children.³³ There are concerns that the additional equality protections under the EU Charter of Fundamental Rights will be lost upon the UK leaving the EU. Negative attitudes, stigma and discrimination continue to impact on the lives of vulnerable groups of children, including disabled, minority ethnic, Gypsy/Traveller, migrant, asylum-seeking, refugee, care experienced and LGBT children. The UN Committee has highlighted the need for strengthened awareness-raising and other preventive activities against discrimination and stigmatisation.³⁴

The UN Committee noted the extension of the voting age in Scotland to 16 and 17-year-olds in local and Scottish Parliament elections.³⁵ By contrast, 16 and 17-year-olds remain unable to vote in UK elections, European elections and UK-wide referendums. This has resulted in confusion and an 'on-off' relationship with democratic engagement. Children will live with the effects of leaving the EU the longest, yet many felt that their voices were not heard in the run up to the referendum or in the resulting negotiations. There has been some progress in relation to the promotion and implementation of children's participation at the national level through a combination of legislative and policy developments. Areas of good practice have been identified, including Scottish Government involving members of the Scottish Youth Parliament and Children's Parliament in consultations, and supporting the work of the Children and Young People's Panel on Europe. Unfortunately, children's rights organisations and representative youth bodies have reported that some efforts can be tokenistic. More needs to be done to ensure that Scottish Government's strategic approach to participation is grounded in a rights-based approach, challenging the barriers that currently impede children's right to be heard.

Civil rights and freedoms

The UN Committee noted with concern that "children do not have the right to withdraw from collective worship without parental permission".³⁶ While Scottish Government published revised guidance on religious observance in 2017, children still do not have a right to withdraw.³⁷

The UN Committee recommended prohibiting the use of mosquito devices in 2008 and 2016.³⁸ Members of the Scottish Youth Parliament have led an active campaign to end their use. While local authorities no longer use them,³⁹ there is no ban on their use by private individuals and businesses. Scottish Government has said that restricting the sale of mosquito devices is a trade issue reserved to the UK Government.⁴⁰

A number of international treaty bodies have raised concerns about the use of stop and search on children.^{41 42 43} A new Code of Practice was introduced in May 2017 which ended the practice of non-statutory (consensual) stop and search and clarified the rules for other forms of stop and search. Outstanding issues remain in relation to data recording and availability, and the use of strip searches on children.

The UN Committee made no specific recommendations in relation to information sharing in public services, an issue consistently highlighted as a concern to Together's members and children. In 2016, the UK Supreme Court found relevant provisions of the Children and Young People (Scotland) Act 2014 to be outwith Scottish Parliament's legislative competence.⁴⁴ After exploring steps to amend legislation to bring it within competence⁴⁵ and produce a draft Code of Practice,⁴⁶ Scottish Government instead sought repeal of the relevant parts of the 2014 Act.⁴⁷

Violence against children

Many treaty bodies and UPR recommendations have called for children to be given equal protection from assault in law.⁴⁸ In October 2019, MSPs voted overwhelmingly in favour of the Children (Equal Protection from Assault) (Scotland) Bill⁴⁹ which aims to end the physical punishment of children by parents or carers by removing the legal defence of 'justifiable assault'.⁵⁰ This change was widely supported across civil society, including by Together's members and by children.⁵¹ Several resources have been launched to support parents and carers in discovering and practicing positive parenting strategies.^{52 53}

Concerns remain that restraint in residential care and non-residential educational settings can be used excessively, as an inappropriate reaction to challenging behaviour rather than as a last resort.⁵⁴ There are indications that restraint is used disproportionately against children with disabilities or additional support needs.⁵⁵ A 2018 investigative report by CYPSC found that policies and practices on the use of restraint were inconsistent across local authorities and that incidents were largely unmonitored.⁵⁶ In 2019, Scottish Government agreed, after initiation of a Judicial Review, to follow CYPSC's recommendations and establish a working group to create human rights-based national guidance, including for the practices, recording, reporting and monitoring of restraint and seclusion in schools, to ensure a "consistent and uniform approach" by local authorities.⁵⁷ There are continuing concerns about the lack of disaggregated data on the restraint and seclusion of children in all settings.

Whilst some indicators of child abuse have decreased, others have increased including the number of recorded sexual offences against children⁵⁸ and the number of children on the child protection register.⁵⁹ Particular concerns have been raised in relation to systematic child exploitation online.⁶⁰

In 2016, the UN Committee made a number of recommendations relating to tackling violence and abuse including domestic abuse, sexual exploitation including pornography and trafficking, and so-called ‘honour based’ violence, including female genital mutilation (FGM), forced marriages and ‘honour’ crimes.⁶¹ Scottish Government has put a number of policies in place to tackle violence and abuse affecting children and updated existing policies. These include an update of the *Equally Safe* strategy,⁶² the *National Action Plan to Tackle Child Sexual Exploitation*,⁶³ ⁶⁴ the 2017 refreshed *National Action Plan on Internet Safety for Children and Young People*⁶⁵ and *Respect for All: The National Approach to Anti-Bullying for Scotland’s Children and Young People*.⁶⁶ Several important pieces of legislation have now come into force, including the *Abusive Behaviour and Sexual Harm (Scotland) Act 2016*, the *Domestic Abuse (Scotland) Act 2018*⁶⁷ and the *Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019*. In 2019, the *Female Genital Mutilation (Scotland) Bill* was introduced to the Scottish Parliament, which seeks to establish FGM Protection Orders.⁶⁸ In 2018, UK Government ratified the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (‘Lanzarote Convention’) which was widely welcomed by children’s organisations.⁶⁹

Social work services are significantly impacted by financial pressures, demographic changes and legislative changes. Members identified more needs to be done to ensure that children have equitable access to high-quality services to enable them to recover from trauma.⁷⁰

Family environment and alternative care

In 2016, the UN Committee expressed concern at the high cost of childcare.⁷¹ Recommendations relating to its affordability, availability and accessibility have been made by a number of treaty bodies.⁷² ⁷³ ⁷⁴ Scottish Government’s expansion of Early Learning and Childcare (ELC) provision by August 2020 has been welcomed by Together’s members⁷⁵ yet many challenges remain around workforce and infrastructure growth,⁷⁶ ⁷⁷ the need to maintain and enhance the quality of childcare, and the need to support families with older children not covered by the expansion.⁷⁸

Together’s members remain concerned that care experienced children face multiple challenges in having their rights upheld. Issues include placement moves against their wishes,⁷⁹ poor facilitation of sibling contact,⁸⁰ ⁸¹ gaps in the implementation of Aftercare and Continuing Care,⁸² and a lack of consistency in access to advocacy support.⁸³ In 2016, the UN Committee recommended an intensification of efforts to render appropriate assistance to parents and legal guardians, including informal kinship carers.⁸⁴ It is anticipated that the findings and recommendations of the Independent Care Review will address some of these challenges.⁸⁵

In 2016, the UN Committee recommended that the needs of children should be taken into account when sentencing parents in order to avoid separation.⁸⁶ Together’s members have raised concerns including the trauma and stigma these children experience,⁸⁷ the absence of a recording system to determine how many children are affected,⁸⁸ and difficulties in facilitating contact with the imprisoned parent.⁸⁹

Neither children in armed forces families nor young carers were reflected as a group in the UN Committee’s 2016 recommendations. For both groups, a lack of data means it is difficult to assess their exact numbers and outcomes, creating a barrier to evidence-based policymaking and tailoring support services to meet their needs. Positive steps taken by Scottish Government to support young carers include the *Carers (Scotland) Act 2016*, the development of a *Carers’ Charter*, and a new Young Carer Grant.⁹⁰ ⁹¹ However, gaps remain in the implementation of these developments and young carers continue to face multiple barriers in school, when socialising, and in accessing consistently resourced young carers’ groups.⁹² ⁹³

Disability, basic health and welfare

Concerns have been raised that the number of disabled children is significantly underreported, and calls have been made for accurate statistical recording, which is crucial for informing policies and designing services.⁹⁴ Research highlights the difficulties disabled children face in getting their views considered and taken into account in decisions that affect them.⁹⁵ Disabled children are less likely to think that adults take their views into account compared to non-disabled children.⁹⁶

Stark health inequalities persist, with deprivation particularly impacting children’s health outcomes.⁹⁷ Children’s mental health and wellbeing is an emerging concern.⁹⁸ Access to specialist child and adolescent mental health services is significantly compromised by high thresholds for referrals⁹⁹ and long waiting times.¹⁰⁰ Children want to be involved in discussions and decisions that affect their health and are concerned that adults working in children’s health services do not always communicate clearly with them.¹⁰¹ Data shows that there is an overall decrease of children of all ages being admitted to adult wards since 2016.¹⁰² However, adult wards do not generally have policies for the care of children and do not offer children access to education.¹⁰³

Concerns remain that there are inconsistencies in the delivery of Relationships, Sexual Health and Parenthood Education (RSHPE) across different schools and that parents’ views can still override those of children when opting out of RSHPE.

Child poverty, food insecurity, inadequate temporary accommodation and homelessness are central areas of concern. Further efforts are needed to ensure that the child’s right to an adequate standard of living is not negatively impacted as a result of welfare reforms.

Ill health caused by air pollution disproportionately affects children.¹⁰⁴ ¹⁰⁵ The UN Special Rapporteur on human rights and hazardous substances and wastes called on UK Government to take expeditious and effective measures, highlighting that high air pollution levels conflict with children’s right to the highest attainable standard of health.¹⁰⁶

Education, leisure and cultural activities

Numerous UN Committees have raised concerns around the continued impact of social background and additional support needs on educational attainment.^{107 108 109} Children have raised concerns that the current funding does not reach the people who need it and have outlined the need for fairer distribution.¹¹⁰ Audit Scotland has announced it will undertake a review of the arrangements put in place to deliver improved outcomes for children through school education.¹¹¹ In 2016, the UN Committee urged access to quality early childhood development services with a focus on the most vulnerable children as a matter of priority.¹¹²

Disproportionately high exclusion rates of children in vulnerable groups persist.^{113 114} Despite the calls for abolishing informal exclusions altogether, children's organisations report this is still used by schools.¹¹⁵

The lack of consistent monitoring and reporting on the use of seclusion makes it difficult to estimate the scale of this practice.¹¹⁶ The limited data available suggests it is used disproportionately against disabled children and children with other additional support needs.¹¹⁷ A formal investigation carried out by CYCPS found inconsistent policies on use of seclusion across local authorities, with some not having any policy in place.¹¹⁸ Seclusion has a detrimental impact on children's physical and emotional wellbeing, as well as on their families.¹¹⁹ In 2016, the UN Committee called for abolishment of the use of seclusion in educational settings.¹²⁰

A number of treaty bodies^{121 122} have called for mandatory or strengthened rights-based education. Although some progress has been made, there is still much work to be done to avoid an ad-hoc approach,^{123 124} and to ensure all children are able to participate in decisions that affect their learning, both in schools and ELC settings.¹²⁵

The UN Committee has recommended strengthening efforts to ensure children's right to play, leisure, sport and cultural activities, including those with disabilities and children in marginalised and disadvantaged situations.¹²⁶ Although examples of good practice exist, children are not strategically involved in planning, designing and monitoring the implementation of play policies and activities as called for by the UN Committee. An important development was the introduction of a statutory right for children to take part in the formation of Local Development Plans,¹²⁷ which has the potential to increase children's involvement in local planning processes.¹²⁸

Special protection measures

The UN Committee has raised concerns about the regression of asylum seeking and refugee children's rights in several areas.¹²⁹ Concerns raised include those around age assessments, detention of children, access to services and asylum support. These echo issues raised by a number of Together's members.

In 2016, the UN Committee raised concerns that the age of criminal responsibility continued to be 8 years old in Scotland.¹³⁰ Together's members have welcomed the Age of Criminal Responsibility (Scotland) Act 2019, which will raise the minimum age to 12 years old. However, this remains below the internationally acceptable minimum of 14 years old as highlighted by the UN Committee and the Council of Europe.^{131 132 133} Raising the minimum age to 12 years old should be seen as a starting point on a journey to remove all children from the criminal justice system. Members have also raised concerns in relation to the provisions of the 2019 Act which cover police powers and disclosure.

Together's members remain concerned that Scots law does not ensure an internally consistent definition of a child as being under 18 years, particularly in areas of child justice. The Centre for Youth and Criminal Justice has called for a national human rights-based action plan for a youth justice system which protects the rights of all children up to age 18 and young people to the age of 26. Members have raised further concerns around child detention, particularly in relation to children's mental health, and have called on Scottish Government to ensure a child rights-based approach is taken.

The UN Committee welcomed a number of positive steps taken to tackle trafficking, including the introduction of the Human Trafficking (Scotland) Act 2015.¹³⁴ Together's members remain concerned by the system for identifying victims (NRM). Issues include that official decisions often conflict with those of specialists, that the process is not child-centred, the child's consent is not required, and the long time for decisions to be made.¹³⁵

The UN Committee also raised concerns that the minimum age for voluntary recruitment to the armed forces remained at 16 years-old and that child recruits made up 20 per cent of a recent intake. It raised further concerns that children who come from vulnerable groups are disproportionately represented among recruits.¹³⁶ These concerns continue in 2019, with Together members providing evidence highlighting specific issues around recruitment practices, informed consent and length of service.



MY RIGHTS

My Rights

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Introduction

Together (Scottish Alliance for Children's Rights) works to ensure that all children growing up in Scotland have their human rights respected, protected and fulfilled. Our 379 members range from leading national and international non-governmental organisations to local playgroups and individuals. All of our members share a commitment to inspire and enable everyone in Scotland to put children's human rights at the heart of everything they do, across schools and hospitals through to community planning, transport and the environment.

The 2019 *State of Children's Rights* report is the ninth in our series. With such a wide range of members, many of whom work directly with children, Together is well placed to create this report. Over 50 NGOs and professionals working with and for children contributed to the process by submitting evidence and research reports and reviewing chapters.

As such, our annual *State of Children's Rights* reports provide a non-governmental perspective on the extent to which children's human rights are being upheld and progressed in Scotland. The reports are an established monitoring tool for Together and our members, as well as an important information resource for politicians, policy makers, practitioners and academics. Each report scrutinises the legislative, policy and practical steps that the Scottish and UK Government have taken to implement children's human rights, and holds government to account by highlighting where progress is – and isn't – being made.

In June 2016, the UN Committee on the Rights of the Child (UN Committee) examined the extent to which the UK and devolved governments were meeting the obligations to children as enshrined in the UNCRC. It identified many areas where both the UK and Scottish Government need to improve and made 150 recommendations to be taken forward.

We have included recommendations made by other international human rights treaty bodies, through the Universal Periodic Review, and targets from the Sustainable Development Goals which are of particular relevance for children's rights. As a result, this is a landmark report - it establishes a detailed baseline against which Scotland's progress in taking forward international human rights obligations for children can be assessed. Particular effort has been made to draw from research that evidences children's views and experiences. The endnotes contain a vast range of evidence to underpin our commentary, which we encourage our members, policy makers and practitioners to draw from to inform their approach to implementing children's human rights.

Throughout the report, we identify steps that have been taken to implement the UN Committee's 2016 recommendations and where further work is needed ahead of the UK's review by the UN Committee in 2021-22. We recognise the challenges in taking some of the recommendations forward. Although Scottish Government has legislative responsibility over devolved matters such as education health and the justice system, reserved decisions made by the UK Government on issues such as welfare, immigration and employment can have a profound effect. Furthermore, the UK-wide decision to withdraw from the European Union will have significant implications for children in Scotland and across the UK. Children, especially the most vulnerable, are continuing to be affected by the impact of austerity on public services. To overcome these challenges, there needs to be a genuine commitment to children's human rights from the UK and Scottish Government.

As the UN Committee recognised in its examination of the UK, real progress has been made to improve the realisation of children's rights across Scotland. However, much more still needs to be done. This *State of Children's Rights* report sets out what progress has been made since the 2016 UN Committee recommendations and what more needs to be done. It should be used as a roadmap for government, parliament and practitioners as to what must happen next to ensure the human rights of all children in Scotland are protected, respected and fulfilled, all of the time.

February 2020



Chapter

1

General measures of implementation

(Articles 4, 41, 42 and 44(6))

The General Measures of Implementation ensure governments have structures and systems in place to ensure children's rights are respected and realised throughout all their work, including within spending decisions. The UN Committee is clear that responsibility for realising children's rights should be co-ordinated across the whole of government, and not just limited to departments with an obvious impact on children. Training on children's rights should be provided for all those working with and for children.

Article 4: implementation of the UNCRC.

Article 41: respect for higher national standards.

Article 42: knowledge of rights.

Article 44(6): reporting on UNCRC implementation.

1.1 Legislation

UNCRC Concluding Observation

Expedite bringing in line with the Convention its domestic legislation, at the national and devolved levels [...] in order to ensure that the principles and provisions of the Convention are directly applicable and justiciable under domestic law.¹³⁷

Other treaty bodies, UPR recommendations and SDGs

Similar recommendations have been made by the Human Rights Committee in its 2015 Concluding Observations,¹³⁸ and by Slovakia and Chile in the United Kingdom's 2017 Universal Periodic Review.¹³⁹

UK-wide

Human Rights Act 1998

The Human Rights Act 1998 ('the Human Rights Act') provides the only mechanism through which children can seek redress for breaches of their human rights. It only provides protection of civil and political rights enshrined in the European Convention on Human Rights (ECHR) rather than the broader rights protected by the UNCRC. There is ample evidence of its positive effect on children's rights. Through the Human Rights Act, courts use the UNCRC as an aid to interpret the ECHR.¹⁴⁰ The duty on public authorities to comply with the ECHR has led to positive changes to children's rights protection without the need to go to court.¹⁴¹

The UK Parliament's Joint Committee on Human Rights (JCHR) conducted an inquiry to mark 20 years of the Human Rights Act. Responses to the inquiry showed that the Human Rights Act was broadly recognised as having significantly improved the individual rights of children, acting as a vital safety net in a legal context where children's UNCRC rights are not justiciable in domestic law.¹⁴² In considering the evidence received,¹⁴³ the JCHR Chair, Harriet Harman, acknowledged the difference the Human Rights Act had made in mainstreaming the consideration of human rights across public services.¹⁴⁴

The UK Government has wrongly asserted that the Human Rights Act has led to 'abuse'¹⁴⁵ and has previously proposed its repeal and subsequent replacement with a 'British Bill of Rights'. The 2017 Conservative Party manifesto confirmed that the Human Rights Act would not be repealed or replaced until after the completion of the European Union (EU) withdrawal process.¹⁴⁶ The Queen's Speech in December 2019 announced the establishment of a Constitution, Democracy and Rights Commission that will "consider the relationship between Government, Parliament and the courts and to explore whether the checks and balances in [the UK] constitution are working for everyone".¹⁴⁷ Concerns have been raised across civil society and by the Scottish Human Rights Commission (SHRC) as to the purpose of the proposed Commission and the potential consequences for the future of the Human Rights Act.^{148 149}

Scottish Government has consistently opposed plans for the repeal of the Human Rights Act, stating that it would "diminish the UK's reputation overseas, damage relations with devolved governments, and impact negatively on how people, including children and young people, realise their rights".¹⁵⁰ A number of UN treaty bodies have warned that repealing the Human Rights Act could lead to decreased levels of human rights protection¹⁵¹ and that any legislation passed 'in lieu' should strengthen the status of international human rights in domestic law and provide effective protection of those rights across all jurisdictions.¹⁵² This was strongly echoed in a range of recommendations made to the UK through the 2017 Universal Periodic Review.¹⁵³

Recommendations

Any changes to human rights legislation at a UK level must be underpinned by the following principles:

- All protections in the Human Rights Act must be retained;
- Any new British Bill of Rights should build upon, rather than reduce, the protection of the fundamental rights of all children in the jurisdiction without discrimination. It should also provide effective judicial remedies including through the European Court of Human Rights;
- The UK Government should ensure that any new proposals are developed through a consultative and democratic process in which children's human rights are fully respected and the devolved nations are fully involved.

EU Charter of Fundamental Rights

Together and its members have continued to raise concerns about the impact that the UK's withdrawal from the EU may have on the overall human rights framework across the UK.¹⁵⁴ The European Union (Withdrawal) Act 2018 sets out that the EU Charter of Fundamental Rights ('the Charter') will no longer apply after the UK leaves the EU.¹⁵⁵ The Charter enhances rights for children that already exist in the ECHR such as the right to education. It also includes key UNCRC rights such as the right to care and protection, to express views freely in accordance with their age and maturity, the principle of best interests being a primary consideration, and the right

to know both parents.¹⁵⁶ Children's rights enshrined into the Charter have been translated into practice through EU legislation, policy and case law.¹⁵⁷ This has included areas as diverse as legislation on child-friendly justice systems^{158 159} and ensuring the best interests of unaccompanied asylum-seeking children,¹⁶⁰ through to policies designed to tackle high youth unemployment rates¹⁶¹ and child obesity.¹⁶²

The UK Government stated that abandoning the Charter "will not affect the substantive rights from which individuals already benefit in the UK".¹⁶³ This is not the case. A Legal Opinion sought by the Equalities and Human Rights Commission (EHRC), concluded that "a failure to preserve relevant parts of the Charter in domestic law after Brexit will lead to a significant weakening of the current system of human rights protection in the UK".¹⁶⁴ Scottish Government explicitly opposed the repeal of the Charter.¹⁶⁵ The Supreme Court ruled that while the Scottish Parliament previously had the power to retain the Charter in Scots law through the EU Continuity Bill, this power was removed by the UK Government's European Union (Withdrawal) Act 2018.¹⁶⁶

In 2018, Together worked in partnership with Children in Scotland to set up the Children and Young People's Panel on Europe ('the Panel') to ensure that children and young people's views are taken into account by the Scottish and UK Government as the UK leaves the European Union. Funded by Scottish Government, the Panel included 19 children and young people, aged 8-19, from across Scotland including Orkney, Aviemore, Linlithgow, Edinburgh and Glasgow. The Panel did not focus on identifying a preferred outcome for the negotiations or the deal between the UK and the EU. Instead it published a report setting out what is important to children and young people.¹⁶⁷ The report was clear that children and young people should not lose any rights as a result of leaving the EU, and that the Scottish and UK Government should ensure that all rights that are currently protected by EU law should continue to be promoted, protected and respected after Brexit. The Panel also set out that the UK and Scotland should go even further and become world leaders in protecting children and young people's human rights. To achieve this, the Panel recommended that both the UK and Scottish Governments should fully incorporate the UNCRC into domestic law. In the Panel's view, this would help to make sure that children and young people's needs are met, and their rights respected, after the UK leaves the EU.¹⁶⁸

Recommendation

- *UK and Scottish Government should ensure that all existing and proposed EU legislative and policy frameworks for children's human rights are protected after the UK leaves the EU. The views of children should be actively sought and taken into account to inform all decisions made.*

Scotland

Children and Young People (Scotland) Act 2014

Part 1 of the Children and Young People (Scotland) Act 2014 ('the 2014 Act') enshrined the UNCRC into Scots law for the first time, albeit on a non-binding basis. It places a number of duties on Scottish Ministers to strengthen the approach taken to the implementation of the UNCRC, including promoting awareness and understanding. It also includes reporting requirements designed to support increased scrutiny of the approach to implementation taken by Scottish Government and broader public bodies¹⁶⁹ in the form of duties to report on the steps they have taken to better secure, or give further effect to, the 'requirements' under the UNCRC.

In December 2018, Scottish Government published *Progressing the Human Rights of Children in Scotland: A Report 2015-2018*,¹⁷⁰ setting out the progress made in relation to children's rights since June 2015. The report was broadly welcomed by Together's members, although many have called for more assessment as to where children's rights have been realised or progressed, and how this has impacted on children's lives. Furthermore, Together's members have called for more analysis as to where there have been known breaches of children's rights, and for Scottish Government to set out the steps taken to provide remedy and redress for these breaches.

Public bodies are due to publish their first progress reports as required by the 2014 Act in April 2020.

UNCRC incorporation

In partnership with CYPSC, Together established an Incorporation Expert Advisory Group in autumn 2018. This comprised of international and Scottish experts with extensive academic and practical knowledge of UNCRC incorporation. The group drafted a Children's Rights (Scotland) Bill¹⁷¹ to demonstrate the most effective model through which Scotland could incorporate the UNCRC into law. Alongside Mikiko Otani, a member of the UN Committee, the Incorporation Expert Advisory Group presented the Bill to the Deputy First Minister on Universal Children's Day in November 2018.

The draft Children's Rights (Scotland) Bill includes three key elements:

- Drawing down the Preamble, Articles 1-42 of the UNCRC, and the First and Second Optional Protocols to make them part of Scots law;
- A duty to 'act compatibly' which follows the Human Rights Act model. This means the State must comply with the UNCRC and may be held accountable in law for breaches of children's UNCRC rights;
- A duty to have 'due regard' to the UNCRC which follows the Welsh Measure. This means the State must actively think about how to give effect to children's human rights when making policy decisions.

In this way, the Bill provides a model of full and direct incorporation, making it clear that all the substantive articles of the UNCRC and Optional Protocols should be part of Scots law. This is in line with the UN Committee's clear position that:

States Parties are required to implement the CRC as a whole, in recognition of the status of children as rights holders and in light of the indivisible and inter-dependent nature of CRC provisions.¹⁷²

In April 2019, the First Minister committed to pass a law within the next two years that will incorporate the UNCRC into Scots law¹⁷³ and make children's UNCRC rights binding on all levels of government. This commitment has been widely welcomed and celebrated across Together's membership. In May 2019, the Scottish Government launched a consultation to look at how a new Act could take forward this commitment¹⁷⁴ and give "practical effect to the UNCRC in a way that demonstrates international leadership and works for every child and young person in Scotland".¹⁷⁵ The consultation included a specific question that welcomed views on the draft Children's Rights (Scotland) Bill drafted by the Expert Advisory Group.¹⁷⁶

Throughout the consultation, the draft Bill was strongly supported by the majority of attendees at Together's consultation events.¹⁷⁷ In August 2019, with the support of 36 member organisations, Together wrote to the Minister for Children and Young People to set out what a 'gold standard' model of incorporation should include.¹⁷⁸ The letter was clear that, insofar as the powers of the Scottish Parliament allow, a Bill to incorporate the UNCRC into Scots law must:

- Fully and directly incorporate the UNCRC and its Optional Protocols into law;
- Include a duty on public authorities to comply with the UNCRC and its Optional Protocols;
- Ensure the UNCRC is accorded high priority in the domestic legal system, in particular when in conflict with domestic legislation.

It went on to say that the draft Children's Rights (Scotland) Bill "addresses these issues in a way we believe is practical and deliverable."¹⁷⁹ The final consultation analysis showed that the draft Bill enjoyed widespread support from across a range of sectors in the Scottish Government's consultation, with the most popular view on the Bill being that it "sets out children's rights clearly and comprehensively".¹⁸⁰ This view was shared by a clear majority of children who responded to the consultation, including the response that:

... we recognise the importance and impact that a rights-based culture can have on the experiences of and outcomes for children. Incorporating the UNCRC into domestic law is a huge step, but one that needs to be supported by broader measures to spur a larger culture change in Scotland. In addition to legal protections and mechanisms for remedy and redress, there needs to be a holistic approach to incorporating and implementing children's human rights so that children grow up in an atmosphere of happiness, love and understanding.¹⁸¹

The Programme for Government 2019-20 included a strong commitment that "...the Bill to incorporate the United Nations Convention on the Rights of the Child into Scots Law will be the key Bill in the final year of this Parliament and will be passed before the next election".¹⁸² This was followed by a statement by the Deputy First Minister on Universal Children's Day (20th November 2019) that the UNCRC will be incorporated into Scots law "in full and directly – using the language of the Convention in every case possible", with the "only limitation" being "the limit of the powers of the [Scottish] Parliament".¹⁸³ The Deputy First Minister stated that the Bill will enable the incorporation of provisions relating to reserved matters if the powers of the Scottish Parliament change in the future. Whilst this means the Scottish Government bill will not directly reflect the draft Children's Rights (Scotland) Bill drafted by the Expert Advisory Group, it has clearly been strongly informed by the provisions of the draft Bill and is expected to meet the 'gold standard' advocated for by Together and its members.

There is currently a political majority in support of UNCRC incorporation in the Scottish Parliament. After more than 10 years of campaigning by children, young people, Together's members and wider civil society, it is important that a Bill is passed before the next Scottish Parliament elections in May 2021. As such, a Bill should be introduced to the Scottish Parliament without delay.

Incorporation of wider international human rights treaties

Following a commitment in the Programme for Government 2018-19, the First Minister's Advisory Group on Human Rights Leadership was established to make recommendations on how Scotland can lead by example in the field of human rights, including economic, social, cultural and environmental rights.¹⁸⁴ Operating independently from Scottish Government, the Advisory Group included a range of experts in human rights, international and environmental law.¹⁸⁵ The Advisory Group was supported by a Reference Group of around 50 civil society organisations, including Together and a number of its members, such as the Scottish Youth Parliament. In December 2018, the Advisory Group published its final report,¹⁸⁶ which included the following seven recommendations:

1. An Act of the Scottish Parliament which provides human rights leadership;
2. A public participatory process as a vital part of the preparation of the Act and its implementation;
3. Capacity-building to enable effective implementation of the Act to improve people's lives;
4. A Scottish Government National Mechanism for Monitoring, Reporting and Implementation of Human Rights;
5. Development of human rights indicators for Scotland's *National Performance Framework*;
6. Process of implementation of recommendations 1-5 to be led by a Task Force;
7. Integration of any further devolved powers into the framework as proposed in Recommendation 1 and, if independence, a written constitution including a bill of Rights for Scotland.

The creation of a Statutory Human Rights Framework for Scotland will provide a subsequent opportunity to enshrine wider protections for children embedded in other international human rights treaties such as the UN Convention on the Rights of Persons with Disabilities (UNCPRD) and the Convention on the Elimination of Discrimination Against Women (CEDAW). The UNCRC itself emphasises the importance of these broader human rights instruments to children.¹⁸⁷ Together particularly welcomed the recommendation for a new Act of the Scottish Parliament to enshrine economic, social, cultural and environmental rights in Scotland’s domestic laws. Such an Act would complement the incorporation of the UNCRC into Scots law. In the report, the Advisory Group recognised the significant progress made towards UNCRC incorporation and was clear it should be seen as a “separate process”¹⁸⁸ to the development of a Statutory Human Rights Framework and that its recommendations “should not cause any delay to UNCRC incorporation”.¹⁸⁹

The National Taskforce for Human Rights Leadership was set up in October 2019 to consider the recommendations of the Advisory Group.¹⁹⁰ The Taskforce includes members from across the public sector and civil society and is co-chaired by the Cabinet Secretary for Social Security and Older People and Professor Alan Miller, the former chair of the First Minister’s Advisory Group on Human Rights Leadership. The Taskforce will develop the new Statutory Human Rights Framework for Scotland and explore ways in which public participation in the process can be increased.

In 2016, Scottish Government pledged to establish a First Minister’s National Advisory Council on Women and Girls (NACWG), to help drive forward action to tackle gender inequality. NACWG was established in 2017, made up of sixteen women and girls aged 17 and older from a variety of jobs, roles and backgrounds, bringing a wide range of life experiences and voices to the group. NACWG is supported by a wider group of experts and stakeholders referred to as ‘the Circle’, with over 530 members keen to make progress on gender equality. In 2018, NACWG launched its first report and recommendations, which included a recommendation to incorporate CEDAW into Scots law.¹⁹¹ This recommendation was accepted by the First Minister in June 2019,¹⁹² who committed to ask the National Taskforce for Human Rights Leadership to take it forward as part of the broader agenda on the incorporation of international human rights.

Recommendations

- *The Scottish Government should publish the proposed Bill to incorporate the UNCRC into Scots law as soon as possible to ensure it passes through the Scottish Parliament by early 2021;*
- *UK and Scottish Government should take measures to bring legislation in line with the UNCRC, through systematically reviewing existing legislation to determine whether it should be amended to ensure compliance. Furthermore, the UK should follow Scottish Government’s lead and fully incorporate the UNCRC, its protocols and wider international human rights treaties into domestic legislation at the earliest opportunity;*
- *The National Taskforce for Human Rights Leadership should draw from the experience gained from developing a model of incorporation for the UNCRC. It should also ensure that children are actively involved in its work;*
- *Both the UK and Scottish Government should work towards the incorporation of other Conventions, such as the UNCPRD, CEDAW and ICESCR.*

1.2 Ratification of the international human rights instruments

Optional Protocol on a communications procedure

UNCRC Concluding Observation

The Committee recommends that the State party, in order to further strengthen the fulfilment of children’s rights, ratify the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.¹⁹³

Other treaty bodies, UPR recommendations and SDGs

Similar recommendations were made by Portugal, Czechia, Slovakia, Georgia, Liechtenstein, Montenegro and Croatia in the United Kingdom’s 2017 Universal Periodic Review.¹⁹⁴

The third Optional Protocol to the Convention on the Rights of the Child on a communications procedure (‘the Optional Protocol’) sets out an international complaints procedure for child rights violations. It entered into force in April 2014, allowing children from states that have ratified the Optional Protocol to bring complaints about violations of their rights directly to the UN Committee if they have not found a solution at national level. In September 2019, the Maldives became the 46th state to ratify the Optional Protocol,¹⁹⁵ joining other countries including Finland, Ireland, Spain, France and Switzerland.¹⁹⁶ A further 18 states have signed but are yet to ratify the Optional Protocol.

The UK Government currently has no plans to sign up to this Optional Protocol, stating that “the benefits of the communication procedure remain unclear, especially for the applicant” in that “the UN process is not an appeal mechanism, it cannot reverse decisions of the domestic courts, and it cannot result in an enforceable award of compensation for the applicant”.¹⁹⁷ Despite the fact that many UNCRC rights are not justiciable under the European Convention on Human Rights (ECHR), the UK Government goes onto say that “people in the UK already have access to the application process to the European Court of Human Rights after having exhausted the various domestic remedies within the UK”.¹⁹⁸ Whilst ratification of international treaties is a reserved matter, Scottish Government has welcomed the Optional Protocol in principle and has indicated that while it “would be minded to offer [...] measured support for its signature and ratification in the future”, it believes that “before doing so [...] it is important to better understand exactly how the UN Committee on the Rights of the Child intends to apply the new mechanism in practice”.¹⁹⁹

There is now a growing body of jurisprudence from the UN Committee resulting from the Optional Protocol. To date, the UN Committee has adopted 30 decisions, finding eight cases with violations, 14 inadmissible and discontinuing eight. Of these cases, the majority have been in relation to asylum claims and age assessment, with the majority of adopted decisions coming from children in Spain.²⁰⁰ It is clear from the emerging jurisprudence of the Optional Protocol that it provides essential additional scrutiny for ensuring children’s rights are protected. As such, it is time that the UK and Scottish Government reconsider their position.

In September 2019, the UN Committee and the Special Representative of the Secretary General on Violence against Children joined with Child Rights Connect to write to the UK Government to urge it to ratify the Optional Protocol.²⁰¹ The letter highlights that children’s human rights can only be realised if all of the child rights-specific treaties (UNCRC and its three Optional Protocols) are ratified and implemented. To date, no response has been received.

Recommendations

- UK Government should sign and ratify the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.
- Scottish Government should publicly state its support for the UK’s ratification of the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

Reservations

UNCRC Concluding Observation

The Committee, in the light of the 1993 Vienna Declaration and Programme of Action, recommends that the governments of the said overseas territories and Crown dependencies consider the withdrawal of all their reservations to the Convention.²⁰²

Other treaty bodies, UPR recommendations and SDGs

Similar recommendations have also been made by Czechia and Belarus in the United Kingdom’s 2017 Universal Periodic Review.²⁰³

The purpose of the UNCRC Optional Protocol on the Involvement of Children in Armed Conflict (OPAC) is to clarify the obligations on State Parties to the UNCRC in relation to protecting children involved in armed conflict, whether as child soldiers or as children who come into contact with armed groups (including military). This includes provisions about the recruitment age and the deployment of children. On ratifying OPAC,²⁰⁴ the UK Government entered a Declaration setting out circumstances when it might not be possible to prevent deployment of under-18s in hostilities.²⁰⁵ An outstanding recommendation from the UN Committee’s 2008 Concluding Observations was to review the UK’s declaration to ensure that children are not exposed to the risk of taking direct part in hostilities, and that policy and practice are in conformity with Article 1 of OPAC.²⁰⁶ Despite this recommendation, children were deployed to war zones at least 22 times between 2003 and 2010.²⁰⁷ In light of these cases, it is evident that the policy of recruiting children is not practically compatible with the policy not to deploy them to war zones. See Chapter 8.5 for further analysis of the rights of children in the armed forces.

Recommendation

- The UK Government should revise its OPAC Declaration at the earliest opportunity. A revised Declaration should ensure that in no circumstances can children in the armed forces be exposed to hostilities, as required by Article 1 of OPAC.

Ratification of international human rights instruments

UNCRC Concluding Observation

The Committee recommends that the State party, in order to further strengthen the fulfilment of children's rights, ratify the core human rights instruments to which it is not yet a party, namely, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, the International Convention for the Protection of All Persons from Enforced Disappearance, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, and the Optional Protocol to the International Covenant on Civil and Political Rights.²⁰⁸

Other treaty bodies, UPR recommendations and SDGs

Similar recommendations have been made by the Human Rights Committee in its 2015 Concluding Observations,²⁰⁹ by CECSR in its 2016 Concluding observations,²¹⁰ and by a number of countries in the United Kingdom's 2017 Universal Periodic Review, including Uganda, Portugal, Albania, Chile, Pakistan, Guatemala, and Tunisia.²¹¹

All international human rights instruments are relevant to the realisation of children's human rights, reflecting the fact that all human rights are indivisible, interrelated and interdependent. The international human rights treaties that are yet to be ratified by the UK Government would provide additional, important tools to hold the UK and Scottish Governments to account for their respect for, protection of, and realisation of children's rights.

International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW)

In response to UPR recommendations to ratify the ICRMW, the UK Government reported that it remains "unclear about the benefits" of doing so.²¹² It considers the rights of migrant workers to be protected by domestic legislation, including the Human Rights Act 1998 and the Equality Act 2010. The UK Government also noted the low number of countries around the world who are States Parties to the ICRMW, as well as the lack of EU Member signatories.²¹³ The recommendations to ratify ICRMW were made by Chile, Guatemala, Kyrgyzstan, Philippines, Algeria, Egypt, Nigeria, Sri Lanka, the Syrian Arab Republic, Turkey, Uruguay and Bangladesh.²¹⁴

International Convention for the Protection of All Persons from Enforced Disappearance (CPED)

In response to UPR recommendations to ratify CPED, the UK Government reported that it is "unclear of the benefits" of doing so and considers that the current domestic framework "already prevents arbitrary arrests, prohibits torture and degrading treatment, and holds the Security and Intelligence Agencies to account".²¹⁵ The recommendation to ratify CPED was made by Albania, Chile, Germany, Panama, France, Tunisia, Sierra Leone, Iraq, Japan, Sudan, Uruguay and Bosnia and Herzegovina.²¹⁶

Optional Protocol to the International Covenant on Civil and Political Rights ('the first Optional Protocol to ICCPR')

In response to UPR recommendations to ratify the first Optional Protocol to ICCPR to give a right to individual petition, the UK Government stated that "the benefits of the communication procedure remain unclear, especially for the applicant" given UN bodies do not have the power to award damages or make legal rulings.²¹⁷ It went on to argue that, in being a party to the ECHR, "people in the UK already have access to the application process to the European Court of Human Rights after having exhausted the various domestic remedies within the UK".²¹⁸

116 countries throughout the world have ratified the first Optional Protocol to ICCPR, including France, Ireland and Australia.²¹⁹ However, in the absence of the UK ratifying this Protocol, children and adults in the UK do not have the right to raise complaints before the Human Rights Committee.

Optional Protocol to the International Covenant on Economic, Social and Cultural Rights ('the Optional Protocol to ICESCR')

In response to a UPR recommendation from Spain to ratify the Optional Protocol to ICESCR to provide for the right for individual petition, the UK Government gave the same answer as that given to the recommendation to ratify the Optional Protocol to ICCPR.²²⁰ The Committee on Economic, Social and Cultural Rights (CESCR) also recommended that the UK ratify this Protocol in its 2016 Concluding Observations.²²¹

24 countries throughout the world have ratified the Optional Protocol to ICESCR, including France, Spain and Finland. A further 25 countries are signatories to the Protocol.²²² In the absence of the UK ratifying the Protocol, children and adults in the UK do not have the right to raise complaints before the CESCR.

1.3 Comprehensive policy and strategy

Action plan for children's rights

UNCRC Concluding Observation

In Scotland, ensure the full implementation of the action plan *Do the Right Thing* (2009) and the National Action Plan for Human Rights (2013-2017).

In doing so, the Committee recommends that the State party allocate sufficient human, technical and financial resources, set up clear timelines as well as a monitoring and evaluation framework for the implementation of the strategy and the action plans, and pay special attention to children belonging to the most vulnerable groups.²²³

A range of Together's members strongly advocated for an 'action plan' to accompany the reporting requirements of the 2014 Act, produced in collaboration with children and wider civil society. Echoing the UN Committee's recommendation, members called for Scottish Government to outline the distinct steps that would be taken to progress the UNCRC. It was seen that such an Action Plan would drive a collective commitment to bring about the culture change needed to make children's human rights a reality for all children. Scottish Government took this recommendation on board and accompanied the 2018 Progress Report with the publication of an action plan, *Progressing the Human Rights of Children in Scotland: An Action Plan 2018-2021*.²²⁴ The Action Plan sets out how Scottish Government plans to progress children's human rights between 2018-21.

The four strategic actions included in the Action Plan are:

- The development of a Participation Framework for Children and Young People;
- The delivery of a 3-year children's rights awareness programme;
- Progressing the children's rights audit, which is assessing the most effective and practical ways to further embed the principles of the UNCRC in Scotland;
- Evaluation of Child Rights and Wellbeing Impact Assessment (CRWIA).

The Action Plan has been broadly welcomed by Together's members, many of whom are active contributors to several of the work strands included within it. It was recognised that a strong political commitment to children's rights - paired with the allocation of sufficient resources and a broad awareness and understanding of children's rights - is pivotal in ensuring children are recognised and treated as full rights-holders. The focus of the Action Plan on the General Measures of Implementation was broadly supported, being seen as a way of coordinating implementation of the UNCRC whilst mainstreaming specific actions (particularly those resulting from Concluding Observations and General Comments) into wider Scottish Government policymaking. Concerns have been raised by Together members around the scope of the Action Plan and whether the resources allocated are sufficient to deliver its ambition. This has been particularly reflected as a concern in relation to the awareness-raising activities (see later in Chapter 1.3). Further priorities have been identified, particularly around governance and coordination and child rights budgeting as well as the need for further mechanisms to be put in place to monitor, evaluate and review the progress made.

A progress report on the 2018 Action Plan was published in December 2019.²²⁵ The *State of Children's Rights* report scrutinises the progress against each action in the following sections, making specific recommendations where necessary:

- Participation Framework (see Chapter 2.4)
- Rights awareness programme (see later in Chapter 1.3)
- Children's rights audit and incorporation (see Chapter 1.1)
- CRWIA (see later in Chapter 1.3).

Recommendation

- *Scottish Government should work with public bodies and civil society, including children, to develop an effective governance structure to support implementation of the Action Plan. The Action Plan should be revised to include a workstream to support the development of child rights budgeting at a national and local level.*

Child Rights Impact Assessment

UNCRC Concluding Observation

Introduce a statutory obligation at national and devolved levels to systematically conduct a child rights impact assessment when developing laws and policies affecting children, including in international development cooperation.

Publish the results of such assessments and demonstrate how they have been taken into consideration in the proposed laws and policies.²²⁶

The UN Committee is clear that impact assessment processes need to be built into government at all levels and as early as possible in the policy development process.²²⁷ It made a range of recommendations to the UK to systematically conduct Child Rights Impact Assessments when developing laws and policies affecting children, specifically in relation to international development co-operation, budget and economic decision-making processes, reforms on legal aid, and funding for childcare and family support. The UN Committee is clear about the need for transparency and robust scrutiny, and has called for the results of impact assessments to be published and for government to demonstrate how they have influenced the development of legislation and policy.²²⁸

Scottish Government introduced the use of Child Rights and Wellbeing Impact Assessments (CRWIA) in July 2015. Guidance is clear that CRWIA should be used on all legislation and policy that impacts on children, not just children's services. In the 2019 Action Plan Progress Report, Scottish Government committed to undertake an evaluation of the impact of CRWIA in 2021 to further support and promote its use.²²⁹

In partnership with Together, students from the University of Edinburgh School of Law conducted a project to explore the role of CRWIA in improving rights-based decision-making.²³⁰ It was found that in advocating for the use of CRWIA on all national legislation and policy that impacts on children, Scotland is at the forefront of international efforts to mainstream the use of Child Rights Impact Assessment (CRIA) in all decision making. There is still much to do in terms of ensuring that support for the use of CRWIA translates into rights-based decision-making.²³¹ The analysis of Scottish Government CRWIAs prior to February 2019 revealed a lack of consistency in approach, including the misidentification of relevant articles of the UNCRC during the initial stages of the process and a lack of consideration of wider jurisprudence of the UN Committee, alongside insufficient data collection and evidence gathering, and a lack of involvement of children in the later stages of the CRWIA process. However, examples were also found of promising practice, including the CRWIA for the Best Start Grant²³² and from South Ayrshire Council.²³³ The students concluded that Scotland has the tools to produce exemplary CRWIAs and that it is consistency and refinement, as opposed to reform, that is key.

Recommendations from the study included the need to improve:

- A continuous cycle of impact assessments and evaluations;
- Mapping of the different groups of children impacted on by a decision;
- Recognition of the indivisibility of UNCRC rights beyond just the General Principles;
- A focus on participation of children beyond just 'consultation' which requires feedback on how their involvement has influenced the outcome of the decision.

The use of CRWIA at a national level has been strongly welcomed by Together's members, who recognise the role they play in ensuring children's rights are adequately reflected in policy development.^{234 235 236} It is important to ensure that in future years – regardless of the level of political commitment to children's rights – there continues to be adequate consideration of children's rights in policy development. As such, Together has called for a provision to be included in the UNCRC Incorporation Bill that would make CRIA a mandatory part of the Children's Scheme. This call has been echoed across Together's membership and broader public authorities.²³⁷ This should be accompanied by widespread training to ensure that officials across national and local government have the skills, knowledge and understanding needed to undertake CRWIA, for the publication of full CRWIAs to enable civil society scrutiny, and for a quality assurance framework to be put in place to ensure their effectiveness.

Recommendation

- *The Children's Scheme enshrined in the UNCRC Incorporation Bill should include a statutory requirement for a transparent system of CRWIA for all new policy, legislation and budgetary decision-making across local and national government. This should be accompanied by widespread training to ensure that officials have the necessary skills, knowledge and understanding required.*

Raising awareness and understanding

Children feel strongly that they need to learn more about the UNCRC and how it affects their lives.²³⁸ Raising awareness and understanding of children's rights changes how children's rights are perceived and applied in society. It builds the capacity of children as rights-holders to claim their rights and increases the capacity of duty-bearers to fulfil their obligations. This can support children's involvement in their schools and local community where their opinions and decisions can be properly acknowledged and taken into account.²³⁹ This is evidenced through programmes such as the *Rights Respecting Schools Award (RRSA)*, which have impacted on reducing bullying in primary schools in some local authorities²⁴⁰ and supporting positive attitudes towards diversity.²⁴¹ Raising awareness and understanding of children's rights can significantly contribute to existing government efforts to implement the UNCRC and other international human rights treaties. For example, in terms of the Scottish Government commitment to tackle the attainment gap, research shows that schools in areas of deprivation score higher than expected in attainment when there is evidence that the school addresses pupil participation.²⁴²

The Children and Young People (Scotland) Act 2014 places a duty on Ministers to promote public awareness and understanding of the UNCRC.²⁴³ The Scottish Government states this has the effect of incorporating Article 42 of the UNCRC into Scots law.²⁴⁴ Scottish Government's 2018 *Year of Young People* was an international first. Scottish Government also committed to host a Cabinet meeting with children and to make this an annual event to ensure their voices are taken into account in high-level decision-making.²⁴⁵ To date, there have been three Cabinet meetings held from 2017 with discussion covering issues from poverty and bullying through to UNCRC incorporation and public transport. Progress has also been made with the introduction of CRWIA at a national level, and the introduction of the Common Core of Skills, Understanding, Knowledge and Value for the Children's Workforce²⁴⁶.

Despite such progress, Together's members recognised that more needed to be done. Scottish Government responded to calls from children and broader civil society by including a Rights Awareness Programme in the 2018 Action Plan. This commits to "develop and deliver through co-production, an ambitious programme to raise awareness and understanding of children's rights across all sectors of society". To date the commitment has been taken forward through a series of 'Rights Cafés' followed by a Scottish Government-commissioned project to work with a group of children and young people to develop through co-production a range of resources that will help to raise awareness of children's rights across all sectors of Scottish society.²⁴⁷

The specific action to raise awareness and understanding of children's rights has been welcomed by Together's members. Many have highlighted the need to go beyond the UNCRC to include the rights protections included in broader international human rights treaties such as the UNCRPD and CEDAW. They have stressed the importance of ensuring that all awareness-raising work includes empowerment at its heart so that children are left confident to not only know but also defend their rights. Concerns have been raised that the focus is on external-facing work, when there is still a great more needed to ensure that officials within Scottish Government fully understand the principles and provisions of the UNCRC. Members have stressed that, ahead of UNCRC incorporation, it is more important than ever that duty-bearers across all levels of government develop a strong understanding of the UNCRC in order to ensure that all resulting priorities and actions contribute towards respecting, protecting and fulfilling children's human rights.

Recommendation

- *Scottish Government should put in place comprehensive internal training and support for officials to increase awareness and understanding of the UNCRC and the implications of incorporation that draws from the expertise of civil society.*

Co-ordination

UNCRC Concluding Observation

In each of the devolved administrations [...] establish an appropriate statutory body at a high inter-ministerial level with a clear mandate and sufficient authority to coordinate all activities across relevant sectors related to the implementation of the Convention.

Allocate sufficient human, technical and financial resources to the said coordinating bodies for their effective operation.

Strengthen coordination and evaluation of the implementation of the Convention at the national level.²⁴⁸

Other treaty bodies, UPR recommendations and SDGs

A similar recommendation was made by Kazakhstan in the United Kingdom's 2017 Universal Periodic Review.²⁴⁹

Scotland's National Action Plan for Human Rights

Scotland's National Action Plan for Human Rights (SNAP) was first launched in December 2013 with a vision of a 'Scotland where everyone can live with human dignity.' Children's and human rights organisations welcomed SNAP as a key means through which further actions relating to children's human rights could be taken forward. SNAP originally ran for four years until December 2017. An independent evaluation of SNAP identified many areas where SNAP delivered impact in terms of improving rights-based policy, practice and culture. It also identified a number of challenges, including that SNAP was under-resourced by the state compared to other countries, had insufficient support from stakeholders to put commitments into practice, and was too ambitious in scope.²⁵⁰

From July 2018, a Development Working Group comprising of people from across civil society and the public sector worked to develop a proposal for SNAP 2.²⁵¹ This outlines over sixty possible areas for action across twenty-five human rights themes, including a dedicated theme to progress children's human rights and a priority action to ensure children's rights are fully integrated across SNAP 2. The proposal was widely consulted on throughout autumn 2019 with a view to firming up and prioritising actions and developing realistic implementation plans. Learning from the evaluation of SNAP demonstrates that greater investment will be needed from Scottish Government to support the ongoing development, coordination and governance of SNAP 2.

Recommendation

- *Scottish Government should commit sufficient resources to support the ongoing development, coordination and governance of SNAP 2, and identify resources from across existing budgets to support the implementation of priority actions.*

Allocation of resources

UNCRC Concluding Observation

In accordance with article 4 of the Convention and Sustainable Development Goal 10, Targets 10.2 and 10.4, the Committee urges the State party to allocate the maximum extent of available resources for the implementation of children's rights, with a special focus on eradicating child poverty and reducing inequalities within and across all jurisdictions. In this endeavour, the Committee recommends that the State party:

Utilize a child-rights approach in the elaboration of the State budget, by implementing a tracking system for the allocation and use of resources for children throughout the budget;

Ensure transparent and participatory budgeting through public dialogue, including with children;

Define budgetary lines for children in disadvantaged or vulnerable situations that may require affirmative social measures and make sure that those budgetary lines are protected even in situations of economic recessions;

Regularly conduct child rights impact assessments of budget and economic decision-making processes and outcomes, including austerity measures, in areas that are directly or indirectly related to children's rights;

Establish mechanisms to monitor and evaluate the adequacy, efficacy and equitability of the distribution of resources allocated to the implementation of the Convention.²⁵²

In 2016, the UN Committee raised serious concerns at the effect of recent fiscal policies and allocation of resources on inequality in children's enjoyment of their rights, and that their impact was disproportionately affecting children in disadvantaged situations.²⁵³ As Together reported in 2016,²⁵⁴ the way in which budgets are currently constructed in Scotland makes it very difficult to identify what is actually spent on children – at national and local level – and also on particular groups of vulnerable or disadvantaged children.^{255 256} The vast majority of funding for children's services at a local level is provided for by a block grant from national to local government. An agreement between Scottish and local government allows local authorities to allocate financial resources on the basis of local needs and priorities once it has fulfilled statutory obligations, including the set of national and local priorities agreed with Scottish Government.²⁵⁷ From July 2013, local authorities have had to demonstrate how the total resources available have been deployed in support of the agreed outcomes.²⁵⁸ It remains unclear as to what level of resources are specifically allocated to children and children's services which prevents the effective monitoring and any move towards child rights budgeting.

Recommendation

- *UK and Scottish Government should ensure all local and national decisions on resource allocation are carried out so as to prioritise the rights of children. Particular attention must be given to children living in poverty or at risk of social exclusion.*²⁵⁹

1.4 Independent monitoring

UNCRC Concluding Observation

Further strengthen the independence of established Children's Commissioners, in line with the Paris Principles, and enable them, inter alia, to receive and investigate complaints from or on behalf of children concerning violations of their rights.

Allocate to the Commissioners in all jurisdictions the necessary human and financial resources in order to carry out their mandate in an effective and coordinated manner.²⁶⁰

The Children and Young People's Commissioner for Scotland plays an essential role in supporting the implementation of the UNCRC. The Commissioner can carry out an investigation where a particular group of children (such as those attending the same school) or a broader group of children (such as all of those with disabilities) report that their rights aren't being respected. The Commissioner is able to investigate the extent to which a service provider has regard to the rights, interests and views of children. This includes all those in the voluntary, private and public sector who provide a service to children.

Part 2 of the Children and Young People (Scotland) Act 2014 introduced an individual investigations function to the role of the Commissioner. This provides a further mechanism through which children can seek an investigation into violations of their UNCRC rights. Children, their parents and other adults who support them are able to ask the Commissioner to investigate the extent to which an individual child's rights have been upheld. The Commissioner can make recommendations about what should be done to make improvements although does not have the power to order a service provider to take action.

To date, the Commissioner has completed one formal investigation and a second is underway. The first investigated the use of restraint and seclusion in schools and was published in December 2018.²⁶¹ The findings of this investigation are discussed in Chapters 4.2 and 7.1. The second investigation is looking into secure accommodation and local authority compliance with legal duties. This is discussed in Chapter 8.2.

1.5 Children's rights and the business sector

UNCRC Concluding Observation

With reference to its General Comment No. 16 (2013) on State obligations regarding the impact of business on children's rights, the Committee recommends that the State party:

Integrate an explicit focus on children's rights, including the requirement for businesses to undertake child-rights due diligence, in the revised version of its first National Action Plan on Business and Human Rights; Establish and implement regulations to ensure that the business sector, including in the context of public procurement, complies with the rights of the child.²⁶²

The UN Committee recognises that the business sector's impact on children's rights has grown in recent decades as a result of globalisation and market liberalisation. In 2013, the UN Committee published a General Comment on Business and Children's Rights.²⁶³ It outlines the essential role that businesses play in societies and economies to advance the realisation of children's rights, drawing on examples such as technological advances, investment and employment conditions. It is also clear that business can have a negative impact on children's rights.

In response to the increasing recognition of the impact of business on wider human rights, the Scottish Human Rights Commission published a *National Baseline Assessment on Business and Human Rights* in 2017.²⁶⁴ This was followed by a series of stakeholder consultations with civil society, trade unions, the business sector and children. Young people specifically identified how they engage with businesses, how they are affected by businesses and how they think businesses could improve in the future. Key themes of their discussion included working conditions and terms of employment, global impact, the environmental footprint and corporate social responsibility. A National Action Plan on Business and Human Rights is currently being drafted which will be informed by these discussions.

Recommendation

- *Scottish Government should draw from the UN Committee's General Comment No. 16 in the development of the Scottish Business and Human Rights Action Plan. A framework should be put in place to ensure that all businesses are adequately regulated enabling them to respect children's rights by conducting human rights due diligence that considers the specific impact of business on children.*



Chapter

2

General principles

(Articles 2, 3, 6 and 12)

The General Principles are crucial in understanding how to fully implement the UNCRC. They provide the means by which the other articles of the UNCRC are interpreted and achieved. In line with the indivisibility principle of human rights each of the guiding principles must be considered alongside each article.

Article 2: non-discrimination.

Article 3: best interests of the child.

Article 6: life, survival and development.

Article 12: respect for the views of the child.

2.1 Non-discrimination

Discrimination on the grounds of age

UNCRC Concluding Observation

Consider the possibility of expanding legislation to provide protection of all children under 18 years of age against discrimination on the grounds of their age.²⁶⁵

Other treaty bodies, UPR recommendations and SDGs

A similar recommendation was made by CESCR in its 2016 Concluding Observations,²⁶⁶ by CRPD in its 2017 Concluding Observations,²⁶⁷ and by Georgia and Bolivarian Republic of Venezuela in the United Kingdom's 2017 Universal Periodic Review.²⁶⁸ Related issues are also addressed by targets 10.2 and 10.3 of the Sustainable Development Goals.²⁶⁹

Children still do not have full protection from age discrimination. A number of provisions under the Equality Act 2010 exempt children from protection against age discrimination, for example, children are excluded in relation to the provision of services and public functions, as well as recreational and training facilities.²⁷⁰ In addition, the public sector equality duty excludes schools and children's homes,²⁷¹ employers may pay younger workers and apprentices less for the purposes of the National Minimum Wage,²⁷² and children under 16 in Scotland are not considered to have capacity to bring proceedings in relation to contravention of the Equality Act 2010.²⁷³ Discrimination on the basis of age is also possible if it can be shown to be a proportionate means of achieving a legitimate aim.²⁷⁴

The Charter of Fundamental Rights of the European Union ('the Charter') includes a standalone right not to be discriminated against.²⁷⁵ This right is binding on EU institutions and member countries when they are acting within the scope of EU law.²⁷⁶ The European Union (Withdrawal) Act 2018 and European Union (Withdrawal Agreement) Bill 2019-20 will not retain the Charter, and as such, this additional protection will be lost, regressing legislative protections of children's right not to be discriminated against.

Recommendation

- *UK and Scottish Government should ensure children have equal legislative protection from age discrimination and that there is no regression in this protection as a result of the UK leaving the EU.*

Counter-terrorism

UNCRC Concluding Observation

Strengthen the oversight mechanism, including regular independent reviews, to assess and ensure that the implementation of the counter-terrorism and counter-extremism measures, including the Prevent Strategy (2011), will not have a discriminatory or stigmatizing impact on any group of children.²⁷⁷

Other treaty bodies, UPR recommendations, and SDGs

Similar recommendation was made by CERD in its 2016 Concluding Observations,²⁷⁸ and by Botswana and Malaysia in the United Kingdom's 2017 Universal Periodic Review.²⁷⁹

The Counterterrorism and Security Act 2015 places a duty on all schools, registered childcare providers, higher and further education institutions to "have due regard to the need to prevent people from being drawn into terrorism".²⁸⁰ This is known as the 'Prevent' duty. In April 2019, revised guidance to accompany the duty was published for Scottish authorities implementing the duty.²⁸¹

A 2016 report by Rights Watch UK outlined "a catalogue of serious violations of the human rights protections the UK government, and public institutions such as schools, owe to individuals, particularly children" resulting from the Prevent strategy.²⁸² These included violations of rights such as freedom of expression, freedom of thought, conscience, and religion, the right to education, the right to privacy, the freedom from discrimination, and the principle that decisions made with respect to children must afford their best interests primary importance.²⁸³ These concerns have been echoed by many of Together's members. The strategy is widely perceived to be, and evidence suggests is, a 'soft surveillance tool' used against impacted communities including children. As well as being discriminatory against particular groups of children, it impacts on their rights to freedom of speech, education, and privacy, among others. It is seen to alienate communities and lacks any evidential basis.²⁸⁴

In February 2019, the UK Parliament forced UK Government, by way of an amendment to the Counter-Terrorism and Border Security Bill, to establish an independent review of the Prevent strategy.²⁸⁵ Rights Watch UK has called for six key principles to be respected throughout the review: independence; full and effective Government cooperation; consultation and participation; effective resourcing and support; transparency and Parliamentary oversight; and a holistic and comprehensive approach. These principles have been widely endorsed. Together's members have further called for children to be involved throughout the process and their views taken into account. Given that children most affected by the strategy may struggle the most to have their views heard, there is also a need to put in place the necessary resources to enable them to participate meaningfully.

Recommendations

- *The Independent Review of Prevent should ensure that children affected by the Prevent strategy are involved and inform every stage of the review;*
- *Scottish Government should assess measures taken to counter terrorism in terms of their impact on children's rights. Measures should be developed in collaboration with those children most likely to be affected and be monitored, evaluated and reviewed on an ongoing basis.*

Prevention of discrimination and stigmatisation

UNCRC Concluding Observation

Strengthen its awareness-raising and other preventive activities against discrimination and stigmatization and, if necessary, take temporary special measures for the benefit of children in vulnerable situations.²⁸⁶

Other treaty bodies, UPR recommendations and SDGs

Similar recommendations have been made by CESCR in its 2016 Concluding Observations,²⁸⁷ by CERD in its 2016 Concluding Observations,²⁸⁸ by the Human Rights Committee in its 2015 Concluding Observations,²⁸⁹ by CRPD in its 2019 Concluding Observations,²⁹⁰ by the CEDAW Committee in its 2013 Concluding Observations,²⁹¹ and by a number of countries in the United Kingdom's 2017 Universal Periodic Review.²⁹² Related issues are also addressed by targets 5.1, 10.2 and 10.3 of the Sustainable Development Goals.²⁹³

Minority ethnic children

Children from minority ethnic communities in Scotland are at a higher risk of poverty and are more likely to live in overcrowded homes, while some minority ethnic groups are also disproportionately affected by poor health.²⁹⁴ Racist bullying persists in schools, and such incidents can feel very challenging for minority ethnic children.²⁹⁵ Anecdotally, many minority ethnic children find it difficult to report their own experiences of bullying, and might think that adults at school won't understand or might not take it seriously.²⁹⁶ Research conducted with Black, Asian and Minority Ethnic (BAME) secondary school pupils found that many of the pupils think that teachers are not aware of challenges related to racism and discrimination and that they are not knowledgeable about the processes required in case of a racist incident at school.²⁹⁷ The report also noted that many BAME pupils face the challenge of believing their own interpretation of comments, attitudes and judgements as being related to their racial, ethnic or cultural identity, and that it is easier for them to imagine that a racist comment was misheard or not intended 'in that way', rather than raise the issue with the person who made the comment.²⁹⁸

In 2017, Scottish Government published *A Fairer Scotland for All: Race Equality Action Plan 2017-21* which outlines the actions that will be taken to improve the lives and experiences of minority ethnic communities, including advancing race equality, tackling racism and addressing the barriers that prevent them from realising their potential.²⁹⁹

Gypsy/Traveller children

It is often stated that the pervasive discriminatory behaviour directed toward Gypsy/Travellers is "far more accepted and normalised than that directed at other minority ethnic communities".³⁰⁰ Gypsy/Traveller children can often face discrimination and prejudice in areas such as education (see Chapter 7.1), healthcare, access to services,³⁰¹ and housing (see Chapter 6.6).³⁰² Negative experiences of bullying, discrimination and prejudice in school, can have a particularly lasting impact on children.³⁰³ UK-wide research has found that widespread distrust for institutions and authorities within Gypsy/ Traveller communities, as well as a lack of understanding or cultural awareness, can often lead to Gypsy/Travellers withdrawing from the support and services they need.³⁰⁴

Disabled children

Negative attitudes continue to impact on the lives of disabled people, with many having experienced some form of stigma or discrimination, ranging from relatively minor incidents to more serious cases of harassment and bullying.³⁰⁵ There are concerns that disabled children are often bullied at school (see Chapter 4.7), and disproportionately subjected to seclusion (see Chapter 7.1) and restraint (see Chapter 4.2).³⁰⁶ Disabled children are more likely to be excluded from school (see Chapter 7.1).

Care experienced children

Care experienced children face a range of challenges and difficulties in having their rights upheld, including experiences of discrimination.³⁰⁷ Children and young people spoke a lot about how stigma affects them in the Discovery stage of the Independent Care Review and emphasised the importance of more conversations and work to understand what causes stigma and ways of combating it.³⁰⁸

Refer to Chapter 5.2 for more information.

Migrant, asylum-seeking and refugee children

Migrant, asylum-seeking and refugee children and their families face various barriers to exercising their rights and accessing services which meet their needs (see Chapter 8.1). More efforts are needed to prevent racism and discrimination and ensure they feel safe and secure living in Scotland.

Lesbian, gay, bisexual, transgender and intersex children

Scottish Government stated in its 2018 *Progressing the Human Rights of Children* report that one of its major equality priorities is to reform the Gender Recognition Act 2004.³⁰⁹ The analysis of the initial consultation that took place between November 2017 and March 2018, found that 60% were in favour of amending the process of applying for a Gender Recognition Certificate (GRC).³¹⁰ In December 2019, Scottish Government set out a draft Gender Recognition (Scotland) Bill, accompanied by a public consultation.³¹¹ The Bill proposes several changes to the current process for obtaining a GRC, including removal of the requirement to provide medical evidence of a gender dysphoria diagnosis, removal of the need to apply to the UK Gender Recognition Panel and applying to the Registrar General for Scotland instead, and reduction of the time where someone has to live in their acquired gender from 2 years to 3 months.³¹² The consultation, also seeks views on whether the minimum age of applicants should be reduced from 18 to 16 and what support is needed for children who are uncertain of their gender identity.³¹³ Scottish Government will develop guidance on supporting trans pupils in schools, as well guidance for policy makers and service providers to ensure that the rights of women and trans people are collectively realised.³¹⁴

Girls and young women

Girlguiding's 2018 survey found that girls and young women (aged 11 to 21) are increasingly aware of gender and equality issues, and that they are recognising and reporting sexism across all areas of their lives more often.³¹⁵ When asked, "[i]f I could change one thing to improve girls' lives...", stereotyping of girls and women featured prominently among girls' answers.³¹⁶ Girls and young women also drew a clear link between stereotyped and sexist representations in the media, and the unfair treatment of women in society.³¹⁷

Many women and girls face further inequality because of intersecting aspects of their identity or their socio-economic status, including poverty, care needs and disability.³¹⁸ Educational approaches to change gender stereotypes and sexist cultural norms are of central importance in challenging inequality.³¹⁹

Recommendations

Scottish Government should:

- *Take immediate action to increase the protection of vulnerable children with regards to unbalanced, stereotypical reporting;*³²⁰
- *Take further steps to combat gender stereotypes and address discrimination experienced by particular groups of children, including disabled children, minority ethnic, Gypsy/Traveller, migrant, asylum-seeking, refugee, care experienced and LGBT children.*

Hate crime

The term 'hate crime' describes criminal behaviour which is rooted in and motivated by prejudice. There is an understanding that these offences should be treated differently from 'ordinary' crimes.³²¹ Current hate crime legislation includes the offence of racially aggravated harassment,³²² as well as provisions that identify aggravation when offences are motivated by prejudice based on a victim's membership of a racial group,³²³ religion,³²⁴ disability, sexual orientation or transgender identity.³²⁵ It is also an offence to express or stir up hatred against certain groups at football matches, and to send communications which contain threats of serious violence or which contain threats intended to incite hatred on religious grounds.³²⁶

Many of Together's members report concerns around confused definitions of bullying and prejudice-based bullying, and that incidents which are often looked upon as bullying, are in reality, hate or sexual crimes.³²⁷

In 2017, Scottish Government appointed Lord Bracadale to carry out an independent review of Scottish hate crime legislation. The wide-ranging remit of the review was to "consider whether existing hate crime law represents the most effective approach for the justice system to deal with criminal conduct motivated by hatred, malice, ill-will or prejudice". Its findings and recommendations were published in May 2018.³²⁸ As a result, following Lord Bracadale's review, Scottish Government committed to consolidate and modernise hate crime legislation. In 2018, Scottish Government published the consultation paper *One Scotland: Hate has No Home Here*, which sought views on what should be included in new hate crime legislation in Scotland.³²⁹

There continue to be concerns among Together members around the underreporting of hate crime, especially those working with Gypsy/Traveller children, children with disabilities and LGBT children.³³⁰ Underreporting is a particular issue in relation to children for several reasons, and it is only through understanding these factors that the root causes of underreporting can be addressed effectively.

Firstly, children may not always recognise a hate crime for what it is (either as a victim or perpetrator). Many Gypsy/Traveller children have reported that they are so discriminated against that they often do not recognise a hate crime is being committed against them.³³¹ It can also be difficult for children who have been bullied at school to recognise when this has progressed to the level of a hate crime.

Secondly, even if a child does recognise that certain conduct constitutes a hate crime, there may be other problems which frustrate their reporting of it. For example, a child may not know that they have a right to report such conduct. In other cases, there may be practical barriers. For example, the isolation of Gypsy/Traveller children means that even when they do recognise a hate crime, they may not have access to third party reporting. Furthermore, certain groups of children do not always trust public services to take their reports seriously. This problem has been reported both in relation to Gypsy/Traveller children as well as LGBT young people.³³²

Thirdly, there is a risk that those witnessing hate crimes perpetrated by children against other children may dismiss these acts as something else, such as bullying or antisocial behaviour.

The first step to improving reporting rates is to improve education and awareness. This would involve assisting children to identify when conduct constitutes a hate crime. It is also essential that adults and professionals working with children are given related training, particularly on how to differentiate hate crimes from bullying or antisocial behaviour. Whilst Together members report that a lot of good work is taking place in schools on this topic, there are concerns that this may be undone once the child arrives home. Some family environments can reinforce prejudice and prevent children from recognising hate crimes (as victims or perpetrators). Accordingly, there is a need for broader public awareness raising and education.

The second step relates to the reporting procedure. In order to improve reporting rates, it is essential that the reporting mechanism is transparent and accessible, and that victims have trust in the police and justice system.³³³ In relation to child victims, it is vital that child-friendly reporting practices are available and that all professionals involved in the reporting procedure are sensitive to the needs of child victims.

Recommendation

- *Scottish Government should involve children in all steps to tackle hate crime and ensure that law and policy is clear and reflects children's lived experience.*

Intolerance of childhood

UNCRC Concluding Observation

The Committee recalls its previous recommendation that the State party take urgent measures to address the “intolerance of childhood” and general negative public attitude towards children, especially adolescents, within society, including in the media.³³⁴

Subsequent sections of this report highlight some of the ways in which public attitudes towards children continue to include negative stereotypes. For example, the use of mosquito devices to disperse children risks alienating them and heightening inter-generational ill-feeling (see Chapter 3.2). Tabloid media outlets continue to stereotype certain minority groups, including children who belong to these (see Chapter 2.1).

A lack of research on Scottish attitudes to children makes detailed analysis difficult. Including this issue in research, such as the annual *Scottish Social Attitudes Survey*, would help to identify trends in the adult population’s perception of children.

Recommendations

Scottish Government should:

- Avoid reinforcing stereotypes of and suspicion about children;
- Engage in attempts to foster inter-generational communication and relationships;
- Encourage and publish research into attitudes towards children.

2.2 Best interests of the child

Integration, interpretation and application

UNCRC Concluding Observation

Ensure that this right is appropriately integrated and consistently interpreted and applied in all legislative, administrative and judicial proceedings and decisions and in all policies, programmes and projects that are relevant to and have an impact on children.³³⁵

The UN Committee notes that the right of the child to have his or her best interests taken as a primary consideration is still not reflected in all legislative and policy matters and judicial decisions affecting children.³³⁶ In Scotland, the ‘best interests’ principle is included in a patchwork of legislation:

Paramount consideration

The ‘best interests’ principle is sometimes included in the form of the wider ‘welfare’ principle, by which authorities have a duty to regard the welfare of the child as the paramount consideration.³³⁷

For example, the Children (Scotland) Act 1995 states that court orders relating to parental responsibilities must regard the welfare of the child as the paramount consideration.³³⁸ The same Act requires any decision in a children’s hearing or any determination by a court with respect to a child be made with the welfare of that child as a paramount consideration, and that the welfare of looked after children must be safeguarded and promoted as a paramount concern.³³⁹ In 2018, Scottish Government conducted a review of Part 1 of the 1995 Act which covers parental responsibilities and rights, with a view to creating a *Family Justice Modernisation Strategy* (see below).³⁴⁰

The Antisocial Behaviour etc. (Scotland) Act 2004 provides that when making decisions involving parenting orders, the welfare of the child must be the court’s paramount consideration.³⁴¹

The Adoption and Children (Scotland) Act 2007 states that a court or adoption agency is to regard the need to safeguard and promote the welfare of the child throughout the child’s life as the paramount consideration. A court must consider the safeguarding and promotion of the child’s welfare, throughout childhood, when making permanence orders.³⁴²

The Children's Hearings (Scotland) Act 2011 provides that in deciding on a matter relating to a child, a children's hearing, pre-hearing panel or court must regard the need to safeguard and promote the welfare of the child throughout the child's childhood as the paramount consideration.³⁴³

Primary consideration

According to the Criminal Justice (Scotland) Act 2016, a constable must treat the need to safeguard and promote the wellbeing of the child as a primary consideration when deciding to arrest, hold in custody, interview or charge a child. The Act requires the same standard of an officer when taking the decision to search a child who is not in police custody.³⁴⁴

In exercising the functions of Children and Young People's Commissioner for Scotland (CYPCS), the Commissioner must regard, and encourage others to regard, the best interests of children as a primary consideration.³⁴⁵

Other references to best interests

References to the best interests of the child can also be found in other pieces of legislation, without specific reference to paramountcy or primacy of consideration, for example in the Age of Criminal Responsibility (Scotland) Act 2019,³⁴⁶ Mental Health (Care & Treatment) (Scotland) Act 2003,³⁴⁷ the Legal Aid (Scotland) Act 1986,³⁴⁸ the Victims and Witnesses (Scotland) Act 2014,³⁴⁹ the Human Trafficking and Exploitation (Scotland) Act 2015,³⁵⁰ the Housing (Scotland) Act 1987,³⁵¹ the Vulnerable Witnesses (Scotland) Act 2004³⁵² and the Children's Hearings (Scotland) Act 2011.³⁵³

The explanatory notes to the Family Law (Scotland) Act 2006 state that the legislation is designed to ensure that family law protects the best interests of children regardless of the type of family to which they belong.³⁵⁴

Family law reform

Scottish Government has proposed widespread reform of child law, publishing the *Family Law Modernisation Strategy* in September 2019 which sets out a range of improvements to the family justice system.³⁵⁵ This was followed by the introduction of the Children (Scotland) Bill to the Scottish Parliament, which includes a clear policy aim to ensure that the child's best interests are at the centre of any contact and residence case or Children's Hearing. This is discussed in more detail in Chapter 2.4.

Recommendation

- *Scottish Government should conduct a review to ensure the best interests of the child is always a primary consideration in all legislative and judicial decisions concerning children, except where a higher standard already applies. Where legislation is found not to be in compliance, it should be amended as a matter of urgency.*

Guidance for decision-making

UNCRC Concluding Observation

Develop procedures and criteria to provide guidance to all relevant persons in authority for determining the best interests of the child in every area and for giving it due weight as a primary consideration.³⁵⁶

The Child Rights and Wellbeing Impact Assessment (CRWIA) has been introduced at the national level to help Scottish Government officials meet their duties to children under Part 1 of the Children and Young People (Scotland) Act 2014.³⁵⁷ See Chapter 1.3 for more information.

2.3 Right to life, survival and development

Infant and child mortality

UNCRC Concluding Observation

Address underlying determinants of infant and child mortality, including social and economic deprivation and inequality.³⁵⁸

There are roughly between 300 and 350 deaths of children in Scotland each year.^{359 360} Mortality rates are highest for children under the age of one year and the majority of these deaths occur in the first few days after birth.³⁶¹ In 2018, there were 227 deaths considered avoidable amongst 0 to 19-year-olds, with almost half (112) of avoidable deaths occurring before age of one.³⁶²

Between 1990 and 2017, the infant mortality rate³⁶³ has decreased considerably, from 7.7 deaths per 1,000 live births in 1990 to 3.2 in 2018.³⁶⁴ However, the rate of decline of infant mortality has slowed in recent years.³⁶⁵ Conditions relating to premature birth, such as respiratory and cardiovascular disorders, and congenital abnormalities, are common causes of infant deaths.³⁶⁶ Infant mortality rates are more than 50% higher in the most deprived areas than in the least deprived areas.³⁶⁷

Refer to Chapter 6.2 for more information on the impact of socio-economic deprivation on child health outcomes.

Recommendation

- *Scottish Government should address the most common causes of mortality in children and undertake measures to reduce them.*

Independent reviews

UNCRC Concluding Observation

Introduce automatic, independent and public reviews of unexpected death or serious injury involving children, including in custody, care and mental health-care institutions in all the territory of the State party.³⁶⁸

Scottish Government does not require automatic reviews of child deaths or significant incidents. Instead, when an agency asks for a case to be considered by a Child Protection Committee, the Committee will carry out an initial case review (ICR) to determine whether a significant case review (SCR) is appropriate.³⁶⁹ A SCR should take place if a case raises serious concerns about professional or service involvement,³⁷⁰ and should be focused on learning and reflecting on day-to-day practices and systems within which they operate.³⁷¹ Since June 2017, all ICR reports undertaken are required to be shared with the Care Inspectorate for analysis and review.³⁷²

In 2019, the Care Inspectorate published a review of learning from 25 SCRs that were completed between March 2015 and April 2018.³⁷³ The review found that some agencies did not always recognise or respond adequately or quickly enough in some of the most serious child protection cases. Findings highlighted the importance of an increased focus on children's experiences and perspective in considering their wellbeing and safety, as well as supporting children's service staff to become more confident and competent in their assessments.

The review concluded that the SCR processes and reports were of variable quality and consistency, with some reports including "overly descriptive detail and lengthy narrative of agency involvement, too much of a focus on 'what happened' and not keeping the child the focus within the review".³⁷⁴ There have also been notable delays in the completion of SCRs, mainly attributed to court proceedings taking precedence.

In its Programme for Government 2018-19, Scottish Government committed to launch a National Hub for the prevention of child deaths. This will include establishing a new national approach for effective, sensitive child death reviews by 2020.³⁷⁵

Recommendation

- *Scottish Government should progress recommendations made through the Child Protections Systems Review³⁷⁶ to ensure all significant case reviews are timely, proportionate and contribute to an on-going learning culture.*

2.4 Respect for the views of the child

Participation of children

UNCRC Concluding Observation

Establish structures for the active and meaningful participation of children and give due weight to their views in designing laws, policies, programmes and services at the local and national levels, including in relation to discrimination, violence, sexual exploitation and abuse, harmful practices, alternative care, sexual and reproductive education, leisure and play. Particular attention should be paid to involving younger children and children in vulnerable situations, such as children with disabilities.³⁷⁷

The UN Committee is clear that meaningful participation requires consistent and ongoing arrangements and that involvement of children must avoid being tokenistic and aim to ascertain representative views. Unfortunately, children's rights organisations and representative youth bodies have reported that some efforts can be tokenistic. Anecdotal evidence from Members of the Scottish Youth Parliament (MSYPs) suggests that when they have attended policy-related events that are not young person-centred, their participation has sometimes felt tokenistic rather than meaningful.

Children in Scotland has made calls for lowering the voting age, and has worked with children who have told the organisation that they felt poorly informed about the impact Brexit may have, and were frustrated about being unable to be heard in the EU referendum.³⁷⁸ YouthLink Scotland's *Hear.EU* Report echoed this call, stating that youth workers across Scotland "did not feel confident to discuss this issue, and/or did not have trusted or appropriate materials and resources to learn from or use with young people." This resulted in many children experiencing an information deficit on Brexit's main issues.³⁷⁹ The problem of being unable to vote is further compounded for children by an absence of meaningful and empowering democracy and citizenship education.

Children and young people have voiced their frustration at this electoral imbalance. The Scottish Youth Parliament produced a *Brexit Manifesto* calling on the Scottish and UK Government to give "young people [...] a far more official, meaningful voice and representative place in the Brexit negotiations now and throughout the process" and to protect the fundamental freedoms of European citizens living in Scotland.³⁸⁰ A 2016 poll by Young Scot found that two thirds (69%) of young people thought that Brexit will have a big effect on their lives.³⁸¹ A large majority (93%) thought that the decision to leave the EU was a 'bad decision'.³⁸² The Children and Young People's Panel on Europe, led by Together and Children in Scotland, found that children and young people had a wide variety of opinions on the effect of leaving the EU, and that these opinions needed to be heard in the UK-EU withdrawal negotiations.³⁸³

In 2019, the Citizens' Assembly of Scotland was established to address specific questions relating to Scotland's constitutional future.³⁸⁴ The Assembly is being held over six weekends between autumn 2019 and spring 2020. The fact that the Assembly will only invite the views of those aged over 16 years old has left many of Together's members feeling that it is a 'missed opportunity' for children to have their voices heard and inform and influence Scotland's future.

Scotland is currently undergoing a review of local democracy under the Local Governance Review.³⁸⁵ As part of this, over 4,000 people have contributed to the national conversation on Democracy Matters, which explored the ways in which communities can have a greater say in decisions that affect them. In 2019, Children's Parliament facilitated a series of workshops with a group of children to explore issues from the Scottish Government consultation.³⁸⁶ Children expressed an interest in having a say in a range of matters, including leisure and sports facilities, local activities and opportunities for children and older people, planning and development, public transport and budgeting. This further evidences the importance of children having the opportunity to express their views on a wide range of issues and be routinely involved in decision making in their communities as well as at a national level.

Consideration of children's views

UNCRC Concluding Observation

Ensure that children are not only heard but also listened to and their views given due weight by all professionals working with children.³⁸⁷

Children are clear that adults need to listen and understand more. For example, children say that adults in school can sometimes appear to be “too busy to listen”, “too preoccupied with their own lives”, or “impatient”. Children worry about getting into trouble if they are unhappy or want to complain about something.³⁸⁸

In a 2018 Scottish Government survey, over half of older children (aged 11-18) agreed that adults were good at listening (58%) and taking their views into account when making decisions that affect them (53%).³⁸⁹ Around a fifth disagreed that adults were good at listening (20%) and taking their views into account (19%). Boys were more positive than girls (62% of boys compared to 55% of girls). Children with a physical or mental health condition were much less positive, with 30% disagreeing adults were good at taking their views into account when making decisions, compared to 15% of those without a health condition. The most commonly cited reason for why adults don't listen was “it doesn't fit with what they want to hear” (38%), followed by “they don't like their views being challenged” (33%). The most commonly cited reason for why adults don't act on children's views was “they don't like their views being challenged” (30%), followed by “they don't have the power to make any changes” (26%) and “they don't think that my views are important” (26%).

Scottish Government's 2018-21 Action Plan, *Progressing The Human Rights of Children in Scotland*,³⁹⁰ includes a commitment to deliver a “strategic approach to children and young people's participation” as part of the *Year of Young People* legacy. The stated aim is to mainstream the participation of children and young people in decision-making across Scottish society. To date, the work has included convening four short-life working groups³⁹¹ to inform the approach, involving NGOs, local government, health and academia. The expected output will be a participation webpage on the Scottish Government website to provide information, guidance and support on children's participation in decision-making aimed at those who want to engage with children as part of their decision-making. Further work will include exploring how to support and promote wider engagement from children so they can participate in decision-making, including through digital media. Young Scot, in partnership with Children in Scotland, have been commissioned to involve children aged from 3 to 18 years in the working groups. Further consideration will be given by the working groups to funding and capacity.

Together's members report that more needs to be done to ensure that the Scottish Government's strategic approach to participation is grounded in a rights-based approach. Such an approach would go beyond asking children their views, to challenging the legal, political, economic, social and cultural barriers that currently impede children's opportunity to be heard. It would need a sustained commitment to resources and training with a view to developing environments and structures through which children from all backgrounds can build and demonstrate their capacities. To achieve such an ambition, Scottish Government is encouraged to work with child rights experts across the NGO and academic sectors to build on the strong foundations that are already in place at a Scottish and international level.

Recommendation

- *Scottish Government and public bodies should build in consistent funding streams to promote a rights-based approach to the participation of children. Wherever possible this should support ongoing, child led engagement where children are given a space to raise issues that they want to talk about.*

Children's and youth parliaments

UNCRC Concluding Observation

Expedite the establishment of youth parliaments in all devolved administrations and territories as permanent forums for children's effective engagement with national legislative processes on issues that affect them.³⁹²

The Children's Parliament is the centre of excellence for children's participation and engagement in Scotland.³⁹³ Through rights-based, creative practice, Children's Parliament provides younger children, aged 8 to 14 years old, from diverse backgrounds with opportunities to share their experiences, thoughts and feelings so that they can influence positive change in their lives at home, in school and in the community. The work of the Children's Parliament supports the Scottish Government, local authorities and other public bodies to fulfil their legal obligations to promote and protect the human rights of everyone and fulfil their duty of care towards children.

The Scottish Youth Parliament (SYP) is a representative body made up of 14 to 25-year-olds that broadly reflects demographics of Scotland more widely.³⁹⁴ SYP is heavily involved in facilitating engagement between children and young people and decision-makers. Examples of this type of engagement include facilitating meetings between MSYPs and elected representatives, responding to Scottish Government and Scottish Parliament policy consultations, and holding discussion days with children and young people in relation to specific policy proposals. Through these discussion days, SYP uses its expertise in youth engagement and public policy to facilitate a young person-friendly discussion to inform forthcoming policy proposals.

The work of the Children's Parliament and SYP is increasingly recognised at international levels. Both participated in the UN Day of Discussion on Children as Human Rights Defenders in 2018, with two members of the Children's Parliament sitting on the Children's Advisory Panel to plan the event.

Children's views in court proceedings

UNCRC Concluding Observation

Give due weight to the views of children concerned in the responses to violence, including in criminal and family law proceedings.³⁹⁵

There are legislative requirements to ensure that a child's views are accurately represented in court. For example, a Children's Hearing, pre-hearing panel or sheriff must give the child an opportunity to indicate whether they wish to express their views, give the child an opportunity to express them, and have regard to any views expressed by the child.³⁹⁶ Similarly, when making a decision about adoption, a court or adoption agency must have regard to the child's views regarding the decision.³⁹⁷ Furthermore, when a court or children's hearing decides on a matter with respect to a child, there is an obligation to consider the child's views. When making an order about parental responsibilities, a court must take account of the child's views.³⁹⁸

Scottish Women's Aid and CYPSC ran *Power Up/Power Down* - a series of interactive workshops for children to speak about what they thought should change in court proceedings. In these workshops, children aged 6-17 told them it is important that they "have a say" in what is happening around them, although they also said that "sometimes children don't have all the words they need to tell" and sometimes need support to communicate. Children also expressed a need for more information about confidentiality, decision making and the process of going to court.³⁹⁹

Research into children's participation in family court proceedings has highlighted significant gaps in current Scots law, policy and practice, including courts deciding if and how a child participates; participation being largely indirect and mediated by adults; concerns by professionals that increased participation may be detrimental to children; a lack of infrastructure to prepare and support children for participation in family actions; no routine mechanisms to explain decisions and no accountability mechanisms through which children can complain or disagree.⁴⁰⁰

Form F9

Scottish Civil Justice Council (SCJC) Family Law Committee has reviewed 'Form F9' in which children express their views in family cases involving them.⁴⁰¹ The review involved children and has taken on board many of the suggestions they put forward. In June 2019, a new revised form was launched which is colourful, more engaging and accompanied by an age-appropriate letter to advise the child of their right to give their view.⁴⁰² In addition, court rules have been amended to place new provisions to ensure the form is only sent to the child once it is known whether the action will be defended.⁴⁰³ The new rules also seek to encourage greater use of Form F9 with all children and not just those over the age of 12. Whilst recognising the progress made with Form F9, Together members are clear that further law reform is needed to ensure children's views are properly taken into account in court proceedings, including the need for a mechanism through which the child can have their views acknowledged by the court and learn of any decision made about them.

Children (Scotland) Bill

As part of Scottish Government's commitment to improve the family courts, the Children (Scotland) Bill was introduced to the Scottish Parliament in September 2019.⁴⁰⁴ The Bill has the overarching policy objectives of:

- ensuring the views of the child are heard in contact and residence cases;
- further protecting victims of domestic abuse and their children;
- ensuring the best interests of the child are at the centre of contact and residence cases, and Children's Hearings; and
- further compliance with the UNCRC.⁴⁰⁵

The Bill amends the Children (Scotland) Act 1995, in particular concerning parental responsibilities and rights and related court orders, the Matrimonial Proceedings (Children) Act 1958, the Family Law Act 1986, the Vulnerable Witnesses (Scotland) Act 2004, the Adoption and Children (Scotland) Act 2007 and the Children's Hearings (Scotland) Act 2011.

Together's members have highlighted a number of revisions that are needed to ensure the Bill meets its policy objective of ensuring compliance with the UNCRC. Most importantly, in relation to children's views in court proceedings, is the need to create an explicit presumption that all children, regardless of age are presumed to be capable of forming a view.⁴⁰⁶ Furthermore, provisions should be removed that restrict a child's right to express their views based on a child's capability. The Bill should also be amended to put in place systems of child-friendly remedy and redress should a child's right be breached.

Alongside specific revisions to the Bill, Together members have also highlighted wider reforms that are needed to ensure children's participation rights are upheld in the courts. These include better data collection to monitor and evaluate the extent to which children's participation rights are implemented in Scottish courts; the provision of child support/advocacy workers to provide information to children in courts and a broader shift in the conceptualisation of contested child contact as an adult dispute about parental responsibilities and rights, to one based in children's rights.

Refer to Chapter 8.3 for more on the views of child witnesses and victims in court proceedings.

Recommendation

- *Scottish Government should introduce amendments to the Children (Scotland) Bill to ensure full compatibility with the UNCRC, including creating an explicit presumption that all children, regardless of age are presumed to be capable of forming a view and remove all exceptions and exemptions to that effect.*

Legal aid

UNCRC Concluding Observation

Assess the impact and expedite the review of the reforms on legal aid in England, Wales and Scotland and conduct child rights impact assessment of the proposed reforms in Northern Ireland and Jersey, in order to ensure that such reforms do not negatively affect children's access to justice, and guarantee effective participation of children in such assessment and review.⁴⁰⁷

Other treaty bodies, UPR recommendations and SDGs

Similar recommendations have been made by CESCR in its 2016 Concluding Observations,⁴⁰⁸ CRPD in its 2017 Concluding Observations,⁴⁰⁹ CERD in its 2016 Concluding Observations,⁴¹⁰ and by the Netherlands in the United Kingdom's 2017 Universal Periodic Review.⁴¹¹

In 2011 changes were introduced to the way in which a child is assessed for civil and children's legal assistance.⁴¹² Previously, a child would be assessed in the same way as an adult, on the basis of their own personal disposable income and capital. From 31 January 2011, the financial circumstances of anyone who owes a duty of aliment to a child or young person that applies for legal assistance must also be taken into account.⁴¹³ Some children are in contention with – or not safe with – those who have a duty to financially support them. These children may be unlikely to seek legal aid if it means having to disclose to their parent or carer that they have done so. It is discriminatory to expect these children to disclose to their parents or carers that they are seeking legal advice, and to make them reliant on parents or carers to provide information or corroboration in order to get legal assistance.

Together members are clear that any child with capacity to instruct a solicitor who seeks to enforce their rights in law, or is likely to be impacted by any legal decision-making process, should be able to access independent legal advice, assistance and representation, in the same way that an adult can.⁴¹⁴ Together members have supported a conclusion by Amnesty International that steps must be taken to reform legal aid provision “to ensure that children and young people have an entitlement to legal aid, regardless of the legal issue at stake” and “that children and families without sufficient means should be able to obtain legal advice, assistance, and where litigation is contemplated, legal representation free of charge in any case where a child's best interests are engaged.”⁴¹⁵

Together members have highlighted that the current legal aid system expects children to navigate a legal aid system designed for use by adults with complex forms and systems. Such complexities can deter children from contacting solicitors, and those working with children from referring them to legal aid solicitors. As a direct consequence, some children are prevented from accessing legal aid services and do not get access to justice.⁴¹⁶

An independent review of the legal aid system was carried out in 2017, with the aim of ensuring it is simpler, user-focused and more flexible, as well as sustainable and cost-effective. The review published its report *Rethinking Legal Aid: an independent strategic review* in February 2018.⁴¹⁷ Scottish Government consulted on possible actions following from the recommendations in autumn 2019 with a view to introducing a Legal Aid Bill.

Together's members have advocated for a more child-centred approach to providing legal advice to children, identifying that this would give them the best chance to instruct a solicitor and engage them to get a positive outcome. Such an approach has been evidenced by Clan Childlaw as being beneficial:

- In 96% of cases, having a child-centred solicitor gave young people better understanding of their situation;
- In 90% of cases, young people made their opinions known more and were more involved in decision affecting them;
- In 85% of cases, the issue could only have been addressed by the young person having a solicitor;
- In 80% of cases, the case achieved the outcome the child wanted;
- In 75% of cases, young people were less worried about their situation because they had a child-centred solicitor.

Recommendation

- *Scottish Government should ensure all children have access to confidential and independent legal aid and assistance. This should include funding for specialist services for vulnerable children, including migrant and care experienced children.*

Voting age

UNCRC Concluding Observation

The Committee encourages the State party and devolved administrations to conduct consultations with children on the voting age. Should the voting age be lowered, the Committee recommends that the State party ensure that it is supported by active citizenship and human rights education in order to ensure early awareness of children that rights are to be exercised as part of citizenship, with autonomy and responsibility, and that the measure does not lend itself to undue influence.⁴¹⁸

In 2015, Scottish Government lowered the voting age to include all 16 and 17-year-olds in Scottish Parliament and local council elections.⁴¹⁹ This followed the 2014 Independence Referendum which enfranchised 16 and 17-year-olds for the first time. Young referendum voters were highly engaged with approximately 89% registered⁴²⁰ and 75% reporting that they voted.⁴²¹ Sixteen and 17-year-old voters have since voted in the 2016 Scottish Parliament elections and May 2017 Scottish local government elections.

By contrast, 16 and 17-year-olds remain unable to vote in UK elections, European elections and UK-wide referendums. For many 16 and 17-year-olds living in Scotland, this has resulted in confusion and an 'on-off' relationship with democratic engagement. Jack Norquoy MSP said “[to] be locked out of UK elections and [the EU Referendum] feels like a complete injustice”.⁴²² Many children and young people have echoed these calls to lower the UK voting age to 16.⁴²³

The disenfranchisement of 16 and 17-year-olds was particularly felt in the 2016 EU Referendum. Attempts were made to secure the vote for 16 and 17-year-olds through amendments to the European Union Referendum Bill 2015-16 but these failed to pass.⁴²⁴ Children will live with the effects of leaving the EU the longest yet many felt that their voices were not heard in the run up to the referendum nor in the resulting negotiations.⁴²⁵ In the wake of the EU Referendum, the Electoral Reform Society called for the extension of citizenship education in primary and secondary schools, “alongside the extension of votes at 16 to all public elections and referendums, and accompanied by a key role for schools in voter registration”.⁴²⁶ The Electoral Reform Society highlighted evidence that lowering the voting age to 16 improves voter registration rates and engages younger voters, developing better political relationships that are carried through to later life.⁴²⁷

The UK Government has actively resisted moves to lower the voting age for UK elections, including Caroline Lucas MP’s 2016 Electoral Reform Bill,⁴²⁸ two Private members Bills,⁴²⁹ an amendment to Overseas Electors Bill 2017-19,⁴³⁰ calls from organisations - including Together members - and calls from children themselves. The UK Youth Parliament chose Votes at 16 as its national campaign in 2017 and 2018 – reflecting an increased appetite for lowering the voting age amongst the one million young people they consult with to choose their campaign each year.

Ensuring all children have access to high quality citizenship education remains a priority, as provision is often inconsistent between different local authorities and schools. In October 2017, 89% of MSYPs voted in support of ensuring that “every young person should learn about politics in secondary schools across Scotland, including teaching about political systems and voting, to ensure that they have the best start for engaging in politics”.⁴³¹

Recommendations

- *Scottish Government should further harness and encourage the political engagement of children. This should include encouraging democratic engagement in schools and other community learning settings, and ensuring the involvement of more vulnerable and isolated groups of children.*
- *The UK Government should extend the franchise to give 16 and 17-year-olds the right to vote in UK elections.*

Chapter

3

Civil rights and freedoms

(Articles 7, 8 and 13-17)

Civil rights and freedoms enshrine children's rights to freedom of association and to express themselves. They also include the right to have their privacy protected.

Article 7: birth registration, a name and nationality, and care.

Article 8: preservation of identity.

Article 13: freedom of expression.

Article 14: freedom of thought, conscience and religion.

Article 15: freedom of association.

Article 16: right to privacy.

Article 17: access information and mass media.



3.1 Freedom of thought, conscience and religion

Religious observance in schools

UNCRC Concluding Observation

The Committee recommends that the State party repeal legal provisions for compulsory attendance at collective worship in publicly funded schools and ensure that children can independently exercise the right to withdraw from religious worship at school.⁴³²

All state-funded schools have a statutory duty to provide ‘religious observance’ to students under the Education (Scotland) Act 1980 (‘the 1980 Act’).⁴³³ This duty applies unless a resolution is passed by the local education authority which is approved by local electors.⁴³⁴

In response to a legal challenge by the Humanist Society Scotland (HSS) in 2016,^{435 436} Scottish Government committed to review existing guidance on the 1980 Act.^{437 438} Revised guidance was published in March 2017 following a period of consultation.^{439 440} Scottish Government was clear that the revision did not mark a legislative or policy change but rather clarified the existing position.⁴⁴¹ It says that schools should offer religious observance opportunities “several times in a school year, in addition to traditional celebrations central to the life of the school community”.⁴⁴² The revised guidance instructs schools to be mindful of the increasing diversity of beliefs but maintains a focus on Christianity, stating:

*In recognition of Scotland’s Christian heritage, non-denominational schools are [...] encouraged to draw upon the rich resources of this tradition when planning religious observance.*⁴⁴³

Children have expressed concerns with the current system of religious observance, describing it as an “endurance test” that is often “boring” and leaves little room for them to direct their own spiritual development or engagement.⁴⁴⁴ Children have said that religious observance events are things “done for them and to them rather than with them” despite their eagerness to be involved and explore their own questions of faith and spirituality.⁴⁴⁵

While parents have a right to withdraw their child from religious observance,^{446 447} there is no equivalent right afforded to pupils.⁴⁴⁸ Organisations, including HSS and the Children and Young People’s Commissioner Scotland (CYPCS), have expressed concerns that this is inconsistent with the approaches taken in other areas of Scots law,⁴⁴⁹ and that it appears to deny children the right to have their views taken into account in decisions that affect them.^{450 451} Further, if a child has a view concerning withdrawal from religious observance at variance with that of their parents, the lack of an exercisable right of withdrawal by the child may mean their right to freedom of religion and belief is also breached.⁴⁵²

While the revised guidance recommends that schools should “include children and young people in any discussions about aspects of their school experience, ensuring their views are taken into account”,⁴⁵³ HSS has noted this only offers pupils a ‘voice’ but not a ‘choice’ in relation to religious observance.⁴⁵⁴ Public opinion appears to be moving in favour of supporting pupils’ right to choose. Fifty-five percent (55%) of participants in a 2016 poll either did not think that any religious observance should take place in Scottish schools or supported a right for children to opt out, even without parental consent.⁴⁵⁵ Sixty-seven percent (67%) of responses to a 2017 poll supported children’s right to opt-out.⁴⁵⁶

CYPCS has suggested that an ‘opt in’, rather than ‘opt out’ approach may be more conducive to inclusion because of the diversity of religious belief in Scotland.⁴⁵⁷ Educational Institute of Scotland (EIS) has commented that legislation that mandates religious services itself “limits inclusiveness”.⁴⁵⁸

The revised guidance is seen as a step in the right direction⁴⁵⁹ but does not fully address the UN Committee’s 2016 recommendation that legislation requiring compulsory religious worship be repealed, and that children be given a right to withdraw. CYPCS has stated that the 1980 Act now requires review.⁴⁶⁰

Recommendation

- *Scottish Government should conduct a review of religious observance which results in updated legislation and guidance that ensures full compliance with the UNCRC and other human rights treaties. Children should play a central role in this review.*

3.2 Freedom of association and peaceful assembly

Mosquito devices

UNCRC Concluding Observation

Prohibit the use in public spaces of acoustic devices used to disperse gatherings of young people (so-called “mosquito devices”).⁴⁶¹

Electronic anti-loitering devices, referred to as “mosquito devices”, emit a high-pitched buzzing sound at frequencies that can generally only be heard by children and which is designed to be uncomfortable and unpleasant. They are indiscriminate and can be disturbing for all ages of children and young people, from babies in prams through to teenagers.⁴⁶² Devices have been deployed by homeowners, retail businesses, schools, community groups and other organisations to prevent children congregating.⁴⁶³ Concerns have been raised that these devices are a form of discrimination that risks alienating children from the community.⁴⁶⁴ In 2010, the Parliamentary Assembly of the Council of Europe called for a prohibition on the sale and use of the devices in public places, stating they constituted a disproportionate interference with children’s right to private life.^{465 466}

The long-term physical health implications of exposure to mosquito devices are not clear.⁴⁶⁷ A 2017 survey conducted by Young Scot and the Scottish Youth Parliament (SYP) raised concerns, highlighting that 41% of children and young people (aged 11-25) who had encountered a device experienced health effects or discomfort.⁴⁶⁸ Reported effects included headaches, migraines, earache, tinnitus, dizziness, nausea, anxiety and panic attacks.⁴⁶⁹ In 2007, a German report highlighted the potential risks to very young children who may not be able to move themselves from the vicinity of the noise.⁴⁷⁰ It is not yet known whether the devices can be heard by, or affect, babies in the womb.

The immediate impact of the devices on children’s wellbeing is evident and well documented. Children speak of being woken up at night by the devices and teenagers describe the noise as “screeching” and “going right through you”.⁴⁷¹ The manufacturers market the devices as being “UNBELIEVABLY annoying to the point where the kids CANNOT stay in the area”.⁴⁷² This clearly presents significant concerns for babies, younger children and disabled children who are unable to remove themselves from the presence of a device. The National Autistic Society in Scotland has noted that the sudden, high-pitched noise can be very painful for autistic children, and can further increase their social isolation by making them feel unable to access public spaces.⁴⁷³ In July 2018, the Irish Department of Justice considered that the use of mosquito devices may constitute an assault.⁴⁷⁴

SYP and Young Scot’s 2017 survey highlighted that mosquito devices had been found across a wide range of areas.⁴⁷⁵ Children and young people (aged 11-25) reported encountering them in over three quarters of Scotland’s 32 local authorities.⁴⁷⁶

According to Freedom of Information (FOI) requests made by Together:

- 29 out of 32 local authorities confirmed no mosquito devices had been installed by or on behalf of the local authority during 2017-19. Two councils did not hold this information. One council did not respond. Little information was available from local authorities about the number and locations of devices known to be in regular operation within their areas, regardless of who installed them.
- All 14 NHS boards confirmed they did not use mosquito devices on their premises.
- 10 out of 17 sports and leisure bodies confirmed they did not use mosquito devices on their premises. One did not hold the requested information. One claimed an exemption. Five did not respond.
- Five out of seven transport partnerships confirmed they did not have any mosquito devices installed on their properties. Two replied that they were unable to answer the request as did not hold the relevant responsibilities.

Separately, Police Scotland and the British Transport Police have confirmed they do not use mosquito devices as a way of tackling antisocial behaviour.⁴⁷⁷

In 2017, the Minister for Community Safety wrote a letter to local authorities,⁴⁷⁸ private sector and public bodies to clarify Scottish Government’s opposition to the use of such devices.⁴⁷⁹ In August 2019, Scottish Government noted that all local authorities had confirmed they either did not use or no longer used these mosquito devices.⁴⁸⁰ However, there is no legislation to prevent public bodies from using mosquito devices in the future. Further, mosquito devices continue to be used on private property in the absence of an outright ban on their use. As such, mosquito devices continue to be installed. In May 2019, a device was installed in an Edinburgh shopping mall with a stated aim of deterring pigeons. This raises questions about the unintended consequences for children’s freedom to access public spaces.⁴⁸¹

Children and young people have been closely involved in campaigning to end the use of mosquito devices. In July 2017, a Member of the Scottish Youth Parliament (MSYP) reported several new devices at ScotRail stations.⁴⁸² ScotRail had installed these at stations in Hamilton, Aberdeen and Helensburgh as part of “measures to tackle anti-social behaviour”.^{483 484 485} After broad media coverage, ScotRail announced a ban on the use of these devices within its train stations in November 2017.⁴⁸⁶

In March 2018, concerned MSYPs raised the issue of mosquito devices at the second annual Cabinet meeting with children and young people.⁴⁸⁷ Scottish Government responded that restricting the sale of mosquito devices was a trade issue and therefore reserved to the UK Government.⁴⁸⁸ SYP later challenged this, stating that it believed Scottish Government had the power to introduce a ban on the sale of the devices but was “choosing not to do so”.⁴⁸⁹ The issue was raised again at the third annual Cabinet meeting with children and young people in March 2019.⁴⁹⁰ MSYPs called on Scottish Government to consider a ban on the use, not sale, of mosquito devices under its justice, health or human rights powers. The Scottish Cabinet agreed to “give further consideration to the legislative competence of banning the use of mosquito devices, keeping in mind the comments made by Members of the Scottish Youth Parliament.”⁴⁹¹

Meanwhile in December 2018, Kit McCarthy MSYP and Amy Lee Fraioli MSYP lodged a public petition to the Scottish Parliament’s Public Petitions Committee, calling for a ban on the use of the devices.⁴⁹² This followed ten years of campaigning by SYP.⁴⁹³ The petition is still being considered. In September 2019, the Public Petitions Committee agreed to write to Scottish Government asking it to consider the possibility of banning the use of mosquito devices under its health competency.⁴⁹⁴

Recommendation

- *Scottish Government should regulate the use of mosquito devices to ensure compliance with the UNCRC and other human rights treaties.*⁴⁹⁵

Climate strikes

UNCRC Concluding Observation

Fully guarantee children’s right to freedom of movement and peaceful assembly.⁴⁹⁶

An estimated 5,000 children took part in the Glasgow and Edinburgh strikes on 15th March 2019 with further walkouts taking place across Scotland.⁴⁹⁷ Youth Strike 4 Climate estimated that 20,000 children across the UK participated in the first global protest in February 2019, rising to 50,000 in March 2019.⁴⁹⁸

Some politicians questioned whether children should leave school to participate in the strikes. First Minister Nicola Sturgeon said that children were right to challenge politicians on their response to climate change but she could not condone repeated absences during term time.⁴⁹⁹ Then Prime Minister Theresa May said that while she respected the ethos of the strikes, the disruption increased teachers’ workloads and wasted lesson time.⁵⁰⁰

Many pupils faced threats of punishment or disciplinary action for missing school. Some defended their position, stating that environmental activism was an educational experience in itself.^{501 502} Anecdotally, children have reported that schools across Scotland have taken very varied approaches to the strikes. The lack of clear national or local authority policy led schools to handle cases in a piecemeal way. After the February 2019 protest, four local authorities changed their absence policies to allow students to take part in the strikes without disciplinary action as long as they had parental permission. This included City of Glasgow Council⁵⁰³ and City of Edinburgh Council.⁵⁰⁴ City of Edinburgh Council later revised its policy to allow children only one strike absence per year without parental consent.⁵⁰⁵ EIS, the largest trade union of teachers in Scotland, has backed pupils’ calls and written to Scottish local authorities asking them not to sanction pupils for their climate strike action.⁵⁰⁶

Children have been vocal that their right to freedom of assembly takes precedence over any perceived loss in education. Members of CYPSC’s Young Human Rights Defenders Action Group reacted strongly to news that some children had been threatened with detention and objected to then Prime Minister Theresa May’s public criticism of striking children.⁵⁰⁷ The Action Group said such reactions were an example of the power imbalance between adults and children when it comes to fully realising their right to be heard in decisions that affect them.⁵⁰⁸ A nine-year-old human rights defender said:

*It is important to show everyone that we have to be listened to as it is our future and missing one hour every week is worth it [...] we need to stand up and let the people in charge know that the planet is worth saving for future generations and wildlife.*⁵⁰⁹

The UNCRC states that the aim of education is in part “the development of respect for the natural environment”.⁵¹⁰ The 2016 UN Day of General Discussion on the Environment also noted that “without a healthy environment a child cannot live or develop [...] the status of children’s environmental health is also closely linked to other rights”.⁵¹¹ It was noted that “despite the rhetoric from world leaders, children’s concern for the environment is not reflected in the degree to which they are able to participate meaningfully in decision-making on a wide range of global environmental issues that matter to them now and the future”.⁵¹²

Recommendation

- *Scottish Government and public bodies, including education leaders, should actively support children to exercise their right to freedom of expression and peaceful assembly.*

3.3 Right to privacy

Stop and search

UNCRC Concluding Observation

Prohibit the use of non-statutory stop-and-search checks against children.

Ensure that the statutory use of the stop-and-search checks is proportionate, taking into consideration the age and maturity of the child, and non-discriminatory.

Regularly collect, analyse and publish data relating to the use of stop-and-search checks on children, disaggregated by age, sex, disability, geographic location, ethnic origin and socioeconomic background.⁵¹³

Other treaty bodies, UPR recommendations and SDGs

Similar recommendations have been made by the Human Rights Committee in its 2015 Concluding Observations⁵¹⁴ and by CERD in its 2016 Concluding Observations.⁵¹⁵

Non-statutory stop and search

The practice of non-statutory (consensual) stop and search has come to an end in Scotland, following the entry into force of a new Code of Practice in May 2017.⁵¹⁶ The Code of Practice states:

*Constables must not search a person, even if they are prepared to submit to a search voluntarily, where no statutory power to search is applicable, and they have no warrant to do so.*⁵¹⁷

Prior to this, police officers could ask children for verbal consent to perform a search. Children and young people (age 15-22) said they felt the rules were unclear and that consensual stop and search was often misused as a result.⁵¹⁸ Together’s members also raised concerns that children may not understand their rights in relation to consensual stop and searches, and that certain children were being disproportionately searched.⁵¹⁹ Ending the practice of non-statutory stop and search is a welcome change.

Statutory stop and search

Statutory stop and search powers remain widely used by Police Scotland, although the number of searches is in decline. This decline has been traced back to a critical 2015 report by Her Majesty’s Inspectorate of Constabulary in Scotland (HMICS).^{520 521} Between May 2016 and November 2017, there was a 51% reduction in the use of search and seizure.⁵²² In early 2018, Scottish Government said that the decline in searches “coincided with a significant increase in positive outcomes” following the introduction of the 2017 Code of Practice, suggesting that searches were “now based on a higher threshold of reasonable suspicion and, therefore, used more effectively”.⁵²³

Table 1: Stop and searches and seizures on children in Scotland⁵²⁴

Year	No. of searches on children	No. of positive searches	% of searches that were positive	No. of strip searches (inside & outside police station)	No. of intimate searches
April- June 2018	1,295	309	23.9%	4	0
Apri -June 2019	1,814	404	22.3%	17	0

The number of negative searches (i.e. nothing found) remains consistently high. From April-June 2019 just 22.3% of stop and searches on children were positive, despite the introduction of the new Code of Practice.⁵²⁵

A six-month review of the Code of Practice showed that young people continue to be the most likely group to experience stop and search. However, the degree of disproportionality declined in the period following the introduction of the Code.⁵²⁶ A 12-month review noted that children in their “mid to late teens continue to be most likely to be searched and positive detection rates are still lower for this age group, which suggests that the threshold of reasonable suspicion may be applied more stringently amongst adults than young people”.⁵²⁷

Some academics have suggested that, given the limited evidence on the effectiveness of stop and search as a policing tool and the great amount of work done on the harms caused to children, it would be better to see an end to the practice altogether.⁵²⁸

Data on stop and search

The 2017 Code of Practice outlined the need for more robust data collection policies around stop and search.⁵²⁹ Since its entry into force, Police Scotland has published all incidents of stop and search, noting the date and time of the incident, as well as the age, sex, geographic location and ethnic origin of the person being searched. This information is readily available on Police Scotland’s website and includes data on stop and searches carried out by police officers before detention in police custody. Despite a recommendation by the UN Committee in 2016, the data does not include information on disability or socio-economic background of those stopped and searched.⁵³⁰ Whilst this is an excellent data resource for monitoring practice, Together’s members have raised concerns that it creates the possibility of identifying individual children in its current form.

Searches in police custody, secure care and Young Offenders Institutions

It is standard practice to search children detained in police custody,⁵³¹ although public data on the practice is not readily available. An FOI request revealed that 6,982 searches were conducted on children in police custody between 1st August 2017 and 31st August 2018.⁵³² Of these, 788 were strip searches (753 negative, 35 positive).⁵³³ Together’s members have expressed concern at the high number of strip searches being conducted on children, with few finding anything. Others have highlighted that the FOI information is limited in that it gives no indication of what was found, the level of risk that might have been posed had the child not been searched, nor information on children’s experiences of the process.

In 2018, HMICS raised concerns that police officers were not taking a consistent approach to strip searching of children.⁵³⁴ In particular, staff were unclear on whether a parent, guardian or other appropriate adult had to be present when a child was being strip searched. HMICS recommended that “Police Scotland should ensure there are appropriate safeguards in place when strip searching children under the age of 16, and 16 and 17-year-olds, in police custody”.⁵³⁵

Data on the use of searches, including strip searches, on children in secure care or Young Offenders Institutions (YOIs) is not routinely published. The Centre for Youth and Criminal Justice (CYCJ) has raised concerns relating to the inappropriate and over-use of strip searching in these settings, noting the lack of official data.⁵³⁶ Following an independent review of mental health services at HMYOI Polmont, the Chief Inspector made the following recommendation to Scottish Government and Scottish Prison Service:

*There should be a change in the legislation and organisational practice which seeks to minimise retraumatisation and stigma e.g. body searching should be intelligence led only.*⁵³⁷

Table 2: Number of searches in police custody, by age (1st August 2017 – 31st August 2018).⁵³⁸

Age	No. of children	Location
9	1	Police Station
10	2	Police Station
11	11	Police Station
12	69	Police Station
13	273	Police Station
14	585	Police Station
15	940	Police Station
16	2145	2144 within a Police Station, 1 within a Hospital.
17	2956	2954 within a Police Station, 2 within a Hospital.
Total	6982	

Stop and search to check for alcohol

Police officers have a statutory power that allows them to ask children to surrender alcohol where they are known or suspected to have it in a public place.⁵³⁹ Police officers have no specific statutory power to search children for alcohol.⁵⁴⁰

Prior to the 2017 Code of Practice, police officers often used non-statutory (consensual) stop and search to identify and remove alcohol from children.⁵⁴¹ Some commentators believed that the end of non-statutory stop and search could create a ‘gap’ in police powers and called for the introduction of a new, specific power. In 2016, Scottish Government consulted on the possibility of introducing police powers to stop and search children for alcohol. Almost two-thirds of respondents (64%) thought a power to stop and search children for alcohol could have negative effects, while children’s organisations were unanimously opposed.⁵⁴² SYP consulted children and young people (aged 15-22) with varied experience of the criminal justice system. Most participants (77%) were opposed to a new power as they felt it had the potential for abuse, would be ineffective and could worsen the relationship between children and the police.⁵⁴³ Following the consultation, Scottish Government concluded there was not enough evidence to support a new power to stop and search children for alcohol.⁵⁴⁴

In the six-month review of the Code of Practice, alcohol seizures had declined for all age groups including children.⁵⁴⁵ A 12-month review led by the Independent Advisory Group on Stop and Search noted concerns from some police officers about what to do in cases where a child refused to surrender alcohol. However, the Advisory Group concluded that a general power to stop and search children for alcohol should not be introduced.⁵⁴⁶

Strip-searches of children

It is now possible to get partial data on police use of strip searches on children. This data relates only to those cases where no arrest has been made, and the strip search is made on the grounds of “reasonable suspicion”. The definition of strip searching does not include the removal of outer layers of clothing (i.e. jacket, gloves, hat and shoes).⁵⁴⁷

Thirty-three strip searches were carried out on children during the first six months following the introduction of the Code of Practice (June-November 2017).⁵⁴⁸ Between April 2018-March 2019, 46 strip searches were carried out on children. Of these, 23 searches were carried out in police stations (13 positive), and 23 were conducted outwith police stations (6 positive).⁵⁴⁹ The latter category raises questions around privacy and the suitability of the location. Of the 46 total strip searches carried out during this period, 85% were on boys and the remaining 15% on girls. The majority (89%) were on children who identified as “White Scottish” or “White English”.⁵⁵⁰

In response to an FOI request, Police Scotland stated that 788 strip searches were conducted on children in police custody between 1st August 2017 and 31st August 2018. Of these, 753 were negative and 35 were positive.⁵⁵¹ Three of these searches were intimate searches, of which all three were negative.⁵⁵² CYPCS has recommended that “strip searches should only be undertaken in exceptional circumstances, when it is necessary and a proportionate response to a real risk”.⁵⁵³

Recommendations

- Scottish Government should ensure that searching of a child is always conducted in line with the UNCRC and other human rights treaties.
- Scottish Government and public bodies should collect, analyse and publish data relating to the use of stop-and-search, and strip searching of children in all settings, disaggregated by age, sex, disability, geographic location, ethnic origin and socioeconomic background.⁵⁵⁴ This should be used to assess and evaluate its impact on children's rights and improve practice and outcomes.

Right to privacy and information sharing in public services

No specific Concluding Observations were made by the UN Committee in relation to information sharing. It has consistently been highlighted by Together's members and children as an area of concern. In July 2016, the UK Supreme Court found that the information sharing provisions in relation to the Named Person scheme in the Children and Young People (Scotland) Act 2014 ('the 2014 Act')⁵⁵⁵ were outwith the legislative competence of the Scottish Parliament.⁵⁵⁶ Although the Court was clear that the policy aim behind the 2014 Act was "unquestionably legitimate and benign", it ruled that information sharing provisions included in the Named Person scheme were not in accordance with the law, and may result in a disproportionate interference with the rights of children and their parents, under Article 8 of the European Convention on Human Rights (ECHR). The information sharing provisions were due to commence on 31st August 2016.

The Court drew from an intervention submitted by the Community Law Advice Network (Clan Childlaw) outlining concerns about children's right to privacy, and an attempt to create statutory duties to share information about a child in order to "promote, support or safeguard the wellbeing" of a child or young person.⁵⁵⁷ Clan Childlaw argued that the concept of 'wellbeing' was inappropriate and unlawful as a threshold for sharing confidential information, in that such a threshold was incompatible with the rights protected by Article 8 of the ECHR.

The Supreme Court agreed that the information sharing provisions violated the privacy protections of Article 8 of the ECHR, and were therefore not within the legislative competence of the Scottish Parliament. The Court considered the importance of the right to privacy of children, specifically referring to Article 16 of the UNCRC. The judgment concluded that the lack of safeguards meant that it was possible:

...that information, including confidential information concerning a child or young person's state of health (for example, as to contraception, pregnancy or sexually transmitted disease), could be disclosed [...] to a wide range of public authorities without either the child or young person or her parents being aware of the interference with their Article 8 rights, and in circumstances in which there was no objectively compelling reason for the failure to ascertain and have regard to their views.⁵⁵⁸

The Court noted that without stronger safeguards, the interference with rights of confidentiality was often likely to be disproportionate. These safeguards must include requirements that children and their parents provide informed consent to the sharing of confidential information and are informed of the possibility that information will be shared.

After the judgment, Scottish Government introduced the Children and Young People (Information Sharing) (Scotland) Bill,⁵⁵⁹ with the aim of amending the information sharing provisions in Parts 4 and 5 of the 2014 Act, to make them legally compliant. However, after the Bill failed to pass Stage 1 in the Scottish Parliament, the Deputy First Minister established the GIRFEC Practice Development Panel,⁵⁶⁰ which was tasked with producing a draft Code of Practice for information sharing, by consensus. This was to be presented to the Deputy First Minister in Autumn 2018, to inform an authoritative draft of the code to the Education and Skills Committee enabling them to resume Stage 1 of the Children and Young People (Information Sharing) (Scotland) Bill. The Panel's report was published in September 2019,⁵⁶¹ concluding "Ministers should not pursue a binding Code for Information Sharing in relation to information sharing under Part 4 (Provision of Named Persons) of the Children and Young People (Scotland) Act 2014". As a result, Scottish Government withdrew the Bill and sought repeal of parts 4 and 5 of the 2014 Act.⁵⁶²

The GIRFEC assessment and planning policy and the National Practice Model are being implemented on a non-statutory basis. Children's Services must comply with existing law and protect privacy and participation rights by seeking the informed consent of any child or parent for the sharing of their personal information. Only in the most exceptional circumstances should consent not be sought, or confidentiality breached, such as where there is a Court Order, or a likely risk of significant harm. Children must be consulted and have their views taken into account in all matters that affect them which includes situations where professionals are considering sharing information about them.

Recommendations

Scottish Government and public bodies should:

- Consult with children and families in preparation of any proposed policies, or guidance, on information sharing and ensure they provide adequate, human rights safeguards;
- Conduct full Child Rights Impact Assessments on any proposed policies, guidance or agreements on information sharing to ensure they are compliant with the UNCRRC and other human rights treaties;
- Ensure children can exercise their right to participate in and have their views taken into account in all decision-making and information sharing that affects them;
- Ensure children and their parents provide informed consent to the sharing of confidential information and are informed if – and when – information is shared.



Chapter

4

Violence against children

(Articles 19, 24(3), 28(2),
34, 37(a) and 39)

This cluster area of the UNCRC protects children from being hurt and mistreated, physically or mentally. Governments should ensure that children are properly cared for and should protect them from violence, abuse and neglect. The articles outline the right to a safe and dignified environment; to protection from all forms of sexual exploitation and abuse; to protection from cruelty; and to special help for children who have been neglected, abused or exploited in order to help their physical and psychological recovery and reintegration into society.

Article 19: protection from violence, abuse and neglect.

Article 24(3): abolishing traditional practices prejudicial to the health of children.

Article 28(2): school discipline.

Article 34: protection from all forms of sexual exploitation.

Article 37(a): protection from inhuman or degrading treatment.

Article 39: recovery from trauma and reintegration.

4.1 Torture and other cruel or degrading treatment or punishment

Use of harmful devices

UNCRC Concluding Observation

Prohibit the use on children of electrical discharge weapons, such as Tasers and any other harmful devices and systematically collect and publish age-disaggregated data on their use in order to monitor the implementation of such prohibition.⁵⁶³

Other treaty bodies, UPR recommendations and SDGs

Similar recommendations were made by CAT in its 2019 Concluding Observations.⁵⁶⁴

Tasers

A Taser is a single shot device designed to incapacitate a subject through use of an electrical current that temporarily interferes with the body's neuromuscular system.⁵⁶⁵ It is a tactical option available to specially trained officers at Police Scotland.⁵⁶⁶ The number of officers trained to carry Tasers has increased, with 500 additional officers trained in May 2018.⁵⁶⁷

Police Scotland does not routinely publish data on Taser use on children. Police Scotland must notify the Police Investigations & Review Commissioner (PIRC) every time a Taser is discharged against a person.⁵⁶⁸ PIRC reviews the incident and considers if an investigation is required.⁵⁶⁹ Investigation reports may be published on PIRC's website. In response to a Freedom of Information (FOI) request by Together, PIRC said it has a "general policy of not publishing reports that may impact on children (persons under 18), unless there is a clear need to do so" and that it does not disaggregate data on Taser use.⁵⁷⁰ This means that data on Taser use against children is not publicly available.

In September 2016, powers were given to the British Transport Police in Scotland to carry Tasers, a practice allowed in the rest of the UK since 2011.⁵⁷¹ British Transport Police publishes quarterly 'use of force' data including Taser use and method (i.e. drawn, aimed, red-dotted or fired). The latest release indicates there were no incidents of Taser use against a child by the Scottish division in the first quarter of 2018-19.⁵⁷²

Recommendations

Scottish Government should:

- *Ban the use of Tasers on children. In the meantime, regulations, guidance and transparency around the use of Tasers on children should be improved;*
- *Ensure Police Scotland regularly publishes fully disaggregated data on the use of Tasers and other harmful devices against children.*

Spit hoods

Spit hoods are mesh fabric restraining devices, placed over suspects' heads.⁵⁷³ The hoods can be a cruel and dangerous form of restraint, which restrict breathing and can cause extreme distress.⁵⁷⁴

There are no official figures on how many children have been hooded across the UK, although FOI requests suggest they are used by a significant number of forces. FOI requests show that spit hoods were used on at least 68 children in England during the first nine months of 2017, up from 12 children in 2015.⁵⁷⁵

Spit hoods are permitted as a method of restraint by Police Scotland^{576 577} and are used on adults. Available data shows increased use of spit hoods between 2014-17.^{578 579} It is not known if they have been used on children, as this data is not disaggregated by age. The Scottish division of the British Transport Police used 'spit guards' on children on three occasions in the first quarter of 2018-19.⁵⁸⁰

The Centre for Youth and Criminal Justice (CYCJ) and Amnesty International have raised concerns over the traumatising affects spit hoods can have, and the continued lack of available data on their use.^{581 582}

Recommendations

Scottish Government should:

- Ensure Police Scotland regularly publishes fully disaggregated data on the use of spit hoods and other harmful devices against children;
- Launch a full consultation on the use of spit hoods in Scotland.

4.2 Restraint

UNCRC Concluding Observation

Abolish all methods of restraint against children for disciplinary purposes in all institutional settings, both residential and non-residential, and ban the use of any technique designed to inflict pain on children.

Ensure that restraint is used against children exclusively to prevent harm to the child or others and only as a last resort.

Systematically and regularly collect and publish disaggregated data on the use of restraint and other restrictive interventions on children in order to monitor the appropriateness of discipline and behaviour management for children in all settings, including in education, custody, mental health, welfare and immigration settings.⁵⁸³

Other treaty bodies, UPR recommendations and SDGs

A similar recommendation was made by CRPD in its 2017 Concluding Observations.⁵⁸⁴

Residential settings

The terms 'restraint' and 'seclusion' are not clearly defined in Scots law or policy. National *Holding Safely* guidance was updated in 2013 to provide more detailed information about the use and minimisation of physical restraint in residential care establishments and extended to include disabled children.⁵⁸⁵ Who Cares? Scotland has noted that the "practical application of [the guidance] varies widely and care experienced people have raised concerns about inappropriate use of restraint over a number of years".⁵⁸⁶

Concerns remain that restraint in residential care can be used excessively, and that it is used as an inappropriate reaction to challenging behaviour, rather than a last resort.⁵⁸⁷ Who Cares? Scotland noted that restraint is routinely used as a behaviour management tool despite regulations saying that it should be used only as a last resort where necessary to secure the safety of the child or those around them.⁵⁸⁸ The Care (Requirements as to Care Services) (Scotland) Regulations 2002 make it an offence for a care provider to "administer, or permit any person employed in the provision of the service to administer, physical chastisement or punishment to any child who is looked after or cared for by the service".⁵⁸⁹

The lack of publicly available data on the use of pain compliance techniques in Young Offenders Institutions (YOIs) remains a concern. It is unclear how such techniques are being measured and monitored outwith the Scottish Prison Service.⁵⁹⁰ Pain compliance techniques have the potential to be traumatic and harmful to children in YOIs, who are likely to be vulnerable.⁵⁹¹

Non-residential settings

The restraint and seclusion of children in schools remains a major concern to Together's members.

In 2017, Scottish Government issued revised guidance on restraint and seclusion in response to families' concerns and pressure from children's charities.^{592 593 594} The guidance sets out national policy on preventing and managing school exclusions. It states "any incident where a decision is made to physically intervene must be recorded and monitored. Details on how this should be undertaken should be included in an education authority's policy on de-escalation, physical intervention".⁵⁹⁵

A 2018 investigative report by the Children and Young People's Commissioner Scotland (CYPCS) found that policies and practices on the use of restraint and seclusion were inconsistent across local authorities and that incidents were largely unmonitored. Across the 18 out of 32 local authorities that recorded and provided their data, 2674 incidents took place in the school year 2017-18.⁵⁹⁶ Some have suggested that restraint and seclusion are used disproportionately against children with disabilities or additional support needs.⁵⁹⁷ For example, in March 2019 an incident of severe restraint of an autistic child was filmed at a school for children with additional support needs in North Lanarkshire, resulting in a formal investigation. This led to increased media and public attention on the issue of restraint in schools.⁵⁹⁸

Children have raised concerns that their views are not being taken into account on issues of restraint and seclusion. CYPSC's 2018 report highlighted that only 12 local authorities said children's rights, views and interests were taken into account when reviewing policies on physical intervention. Stirling and Inverclyde were the only local authorities able to clearly articulate how children had been directly involved in the development of their policies.⁵⁹⁹

CYPSC remains concerned that Scottish Government's 2017 guidance is focused and framed around behaviour management. This risks giving the impression that the problem is necessarily a result of the child's behaviour rather than an unmet or unrecognised need, particularly for those with autism. Despite agreement nationally that restraint and seclusion should only be used as a last resort, only 18 local authorities' policies state this with regard to restraint, and only nine with regard to seclusion.⁶⁰⁰

After the publication of CYPSC's 2018 report and consultation with all local authorities, Scottish Government agreed to refresh existing guidance on restraint and seclusion in order to ensure a "consistent and uniform approach" by local authorities.⁶⁰¹ CYPSC considered this commitment was insufficient to safeguard children's rights. The Equalities and Human Rights Commission (EHRC) and CYPSC warned Scottish Government that without new guidance it was in breach of its human rights obligations to children, as laid out in the UNCRC and the European Convention on Human Rights. In August 2019, EHRC Scotland used its power to support a Judicial Review raised in the Scottish courts. The court intervention settled when Scottish Government agreed to:

- Produce human rights-based guidance on restraint and seclusion and review the effectiveness of that guidance;
- Involve children and their families in the drafting and review of the guidance;
- Consider statutory action should the guidance prove to be ineffective; and
- Develop and introduce a standard dataset to be implemented across Scotland to ensure consistent recording and monitoring of incidents.

An independent working group will be set up and it is expected that the refreshed guidance will be available by early 2020.⁶⁰²

Refer to Chapter 7.1 for more information on seclusion in educational settings.

Recommendations

Scottish Government should:

- Ensure restraint and seclusion are used against children exclusively to prevent harm to the child or others and only as a last resort across all settings and services for children;
- Produce, implement and monitor national, human rights-based guidance on restraint and seclusion in educational settings;
- Collect and publish disaggregated data on the use of restraint and seclusion across all settings and services for children.

4.3 Equal protection

UNCRC Concluding Observation

Prohibit as a matter of priority all corporal punishment in the family, including through the repeal of all legal defences, such as "reasonable chastisement".

Ensure that corporal punishment is explicitly prohibited in all schools and educational institutions and all other institutions and forms of alternative care.

Strengthen its efforts to promote positive and non-violent forms of discipline and respect for children's equal right to human dignity and physical integrity, with a view to eliminating the general acceptance of the use of corporal punishment in child-rearing.⁶⁰³

Other treaty bodies, UPR recommendations and SDGs

Similar recommendations have been made by the Human Rights Committee in its 2015 Concluding Observations⁶⁰⁴ and by Liechtenstein, Ireland, Mongolia, Sweden, Croatia and Estonia in the United Kingdom's 2017 Universal Periodic Review.⁶⁰⁵ Related issues are also addressed by targets 16.1 and 16.2 of the Sustainable Development Goals.⁶⁰⁶

Studies show that physical punishment of children can increase the likelihood of aggressive behaviours, antisocial behaviour, low self-esteem, depression, anxiety and other mental health issues.⁶⁰⁷ It also places children at increased risk of more severe abuse and maltreatment.⁶⁰⁸

Physical punishment by parents and carers is in decline across the UK. Over 80% of parents surveyed in Scotland agreed that physical punishment is not effective and that they look to alternative strategies.⁶⁰⁹ In a Scottish Youth Parliament survey of almost 73,000 children and young people, 82% said that all physical assault against children should be illegal.⁶¹⁰ Other children have highlighted inequality in the law:

*...If you get hit as an adult, you can charge for assault, but not with a parent hitting a kid. That's not fair.*⁶¹¹

In October 2019, MSPs voted overwhelmingly in favour of legislation to remove the legal defence of 'justifiable assault' which allowed parents to physically punish their children provided they do not hit them around the head, use an implement or shake them.⁶¹²

⁶¹³ The Children (Equal Protection from Assault) (Scotland) Act 2019 ('the 2019 Act') brings Scots Law in line with stated Scottish Government policy, that physical punishment is not effective,^{614 615} making Scotland the first country in the UK to give children equal protection in law against assault.⁶¹⁶ The 2019 Act aims to drive behaviour change, prompting parents and carers who use or consider physical punishment to seek support to find alternative methods of parenting, and help begin conversations about what is acceptable and what works in terms of supporting children exhibiting challenging or distressed behaviour.⁶¹⁷ The move has been widely supported across civil society,⁶¹⁸ including by Together's members^{619 620} and children.⁶²¹ The change faced opposition from those who believed it interfered with the right to private and family life.⁶²²

The 2019 Act will enter into force incrementally. The duty on Scottish Ministers to promote public awareness and understanding about its effect⁶²³ commenced on 8th November 2019 - the day after the act received Royal Assent. The core provision abolishing the defence of justifiable assault will become operational on 6th November 2020.⁶²⁴

A number of Together's members have stated that legal reform must be accompanied by support for parents about alternative, positive and more effective parenting techniques, and have highlighted the importance of investment in early intervention and prevention as recommended by the Christie Commission in 2011.⁶²⁵ Scottish Government has created a group that will advise on the implementation of the 2019 Act, including on raising awareness of the legislative change, services' responses, monitoring impact, considering the need for guidance and best ways to support parents.⁶²⁶

Scottish Government has created the *Parent Club* website, which offers a range of resources to support parents in making positive parenting choices.⁶²⁷ NHS Health Scotland, alongside Scottish Government and other key stakeholders have relaunched *Ready, Steady Baby* - a universal health guide for new parents and carers, with the latest evidence-based guidance.⁶²⁸

Together's members believe that a preventative approach, whereby families are supported at times of particular stress, is an essential part of the ongoing conversation around positive parenting. Promoting family learning is one way to encourage positive parenting and engagement.⁶²⁹

Recommendations

Scottish Government should:

- *Ensure implementation of the Children (Equal Protection from Assault) (Scotland) Act 2019 is fully assessed and its impact monitored;*
- *Ensure parents and carers have access to well-resourced positive parenting support.*

4.4 Violence, abuse and neglect

Child protection

UNCRC Concluding Observation

Revise the Children and Young Persons Act (1933) in order to protect all children under 18 years from child abuse and neglect.⁶³⁰

Other treaty bodies, UPR recommendations and SDGs

A similar recommendation was made by Timor-Leste in the United Kingdom's 2017 Universal Periodic Review.⁶³¹ Related issues are also addressed by targets 16.1 and 16.2 of the Sustainable Development Goals.⁶³²

Several indicators of child abuse have decreased in Scotland in recent years. Child homicides have decreased over the past decade, deaths by assault and undetermined intent have been in decline since the 1980s, and recorded offences of cruelty and neglect have been in decline since 2009-10.⁶³³ Other indicators of child abuse have increased, including the number of recorded sexual offences against children, and the number of children on the child protection register.⁶³⁴

Child protection policy and legislation is the responsibility of the Scottish Government. Scottish Government launched the Child Protection Improvement Programme (CPIP) in 2016.⁶³⁵ The ongoing programme aims to undertake a comprehensive review of the child protection system. Actions to date have included reviewing existing policy, legislation and data on neglect,^{636 637 638} updating the 2012 national survey on neglect,⁶³⁹ a pilot around multi-agency approaches to neglect in three local areas,⁶⁴⁰ and a review of criminal offences under Section 12 of the Children and Young Persons (Scotland) Act 1937. A report on this work was published in March 2017.⁶⁴¹

Care Inspectorate's report *Learning from Significant Case Reviews: March 2015 to April 2018*, highlighted that policies around neglect remained inadequate to protect children from serious harm. A recurring theme was that children remained unnoticed in neglectful situations until behaviour escalated and the threshold for child protection was reached. This was a factor in just over half of the cases reviewed.⁶⁴² The report cited that a lack of understanding of child neglect, and lack of clarity over child protection thresholds were major concerns.

The Children and Young Persons (Scotland) Act 1937⁶⁴³ ('the 1937 Act') provides children under the age of 16 with protection from neglect and ill-treatment in the family, health and social care settings. A 2015 consultation considered introducing a new offence of wilful neglect or ill-treatment for children receiving health care or social care services.^{644 645 646} The proposals were met with concerns from civil society and Police Scotland, and were not implemented.⁶⁴⁷ A 2018 consultation sought views on reforming Section 12 of the 1937 Act.⁶⁴⁸ These proposals aimed to reflect modern understandings of neglect and child abuse, including making it explicit that the offence includes 'emotional harm'. The majority of responses supported reform, but there was debate about what this reform should be. At the time of publication, Scottish Government was in the process of planning next steps.⁶⁴⁹

As part of CPIP, a child protection systems review was commissioned, which looked at the operation of the formal child protection system.⁶⁵⁰ The final report made 12 recommendations, including the creation of a National Child Protection Leadership Group to strengthen and improve activity on child protection across Scotland.⁶⁵¹ This group was established and met for the first time in June 2017.⁶⁵²

Local authority policy and procedure are the responsibility of Child Protection Committees (CPCs), which coordinate the various agencies involved in child protection. Scottish Government's *National Guidance for Child Protection in Scotland* is the primary reference for those working in child protection.⁶⁵³ In 2019, it was supplemented with updated guidance outlining the responsibilities of CPCs and Chief Officers.⁶⁵⁴ The *National Guidance for Child Protection in Scotland* is being reviewed and an updated version is expected by summer 2020.⁶⁵⁵

Recommendation

- *The Child Protection Improvement Programme should be underpinned by a human rights approach that specifically progresses recommendations made by the UN Committee and other international treaty bodies in relation to violence, abuse and neglect of children.*

Data collection and referral

UNCRC Concluding Observation

Strengthen the systematic collection of data and recording of information on violence against children, including domestic violence, gender-based violence, abuse and neglect, in all settings, and the sharing of information and referral of cases among relevant sectors.⁶⁵⁶

Child protection register

The Child Protection Register is a confidential list of all children in the local area who have been identified as being at risk of significant harm. It allows authorised individuals to check if a child they are working with is known to be at risk.⁶⁵⁷

It is not known exactly how many children in Scotland experience violence, abuse and neglect, as official figures are likely to be an underestimate. In 2017-18, there were 2,668 children on the Child Protection Register.⁶⁵⁸ This is a 3% increase on 2016-17, but remains lower than the peak recorded in 2014. Statistics for 2017-18 showed that half of the children on the register were aged under 5, 49% were boys, 47% were girls and the remaining 4% were unborn. Around half of children were on the register for less

than six months, and emotional abuse and neglect were the most prevalent causes for concern. The statistics showed significant geographical variation across Scotland.

NSPCC reported that the percentage of children who had been on the Child Protection Register for two years or longer reached a low of 1.4% in 2012 and has been increasing since 2014.⁶⁵⁹ Seventeen percent (17%) of children were on the register for a second or subsequent time.

Child Protection Orders (CPOs) are emergency measures that aim to protect children at risk of significant harm. In 2017-18, 619 CPOs were issued, a decrease from 687 in 2016-17 (see table 3).

Table 3: Child Protection Orders Issued (2015-18)⁶⁶⁰

Year	2015-6	2016-17	2017-18
Number of Child Protection Orders Issued	595	687	619

Table 4: Other reports of physical abuse and neglect

Number of child homicides (Scotland)	Five in 2017 ⁶⁶¹ - in decline over the past decade. ⁶⁶²
Child deaths by assault and undetermined intent (Scotland)	Two deaths of children aged 0-14 years recorded in 2016. ⁶⁶³ In long-term decline since 1981.
Number of children accessing NSPCC helpline because of neglect, physical or emotional abuse (UK Wide)	Neglect was the most common concern in 2016-17 with 19,448 contacts about this issue. ⁶⁶⁴ Around 11,500 contacts were made relating to physical abuse, and 10,000 for emotional abuse.
Number of cruelty and neglect offences (Scotland)	792 offences against children under 16 in 2016-17. This is a 3.6 per cent decrease in the number of offences compared with 2015/16 and the lowest figure recorded since 2002. ⁶⁶⁵

Recommendation

- *Scottish Government should ensure robust data collection and monitoring of all forms of violence, abuse and neglect against children across all settings.*

Violence against women and girls

Other treaty bodies, UPR recommendations and SDGs

Recommendations have been made by the CEDAW Committee in its 2019 Concluding Observations,⁶⁶⁶ CESCR in its 2016 Concluding Observations,⁶⁶⁷ by the Human Rights Committee in its 2015 Concluding Observations.⁶⁶⁸ Recommendations were also made by Libya, Maldives, Slovenia, Paraguay, Sudan, Bosnia and Herzegovina, Indonesia and Czechia the United Kingdom's 2017 Universal Periodic Review.⁶⁶⁹

Violence against women and girls includes a range of actions that harm or cause suffering and indignity to women and children. These are discussed throughout this report and include physical, sexual and psychological violence, including domestic abuse (Chapter 4.4), sexual exploitation including pornography and trafficking (Chapter 4.5) and so called 'honour based' violence, including female genital mutilation and forced marriages (Chapter 4.6). Violence against women and girls can have significant consequences on children's lives, including children who are directly and indirectly harmed through violence and abuse perpetrated by adults in their lives.⁶⁷⁰

Gender inequalities are a root cause and a consequence of gender-based violence.⁶⁷¹ Despite the many advances being made, inequalities persist. Many women and children who experience violence specifically because of their gender, also face multiple discriminations across other protected characteristics.⁶⁷² As a result, they might face additional barriers to accessing services.⁶⁷³ For example, women and girls from black and minority ethnic backgrounds can face additional barriers in accessing support should they experience violence.⁶⁷⁵ Children (particularly girls and those identifying as LGBT) are also directly affected by violence within their

own relationships and by other forms of gender-based violence.^{676 677} Girlguiding Scotland's *Girls Attitudes Survey 2019* found that 64% of girls and young women (aged 13-21) had experienced sexual harassment at school, including sexual taunts and unwanted touching (up from 59% in 2014).⁶⁷⁸

Equally Safe is Scottish Government's strategy for preventing and eradicating violence against women and girls. It was developed in 2014 and subsequently updated.⁶⁷⁹ *Equally Safe*'s explicit acknowledgement that preventing gender-based violence is dependent on reducing gender inequality broadly across all sectors has been welcomed.⁶⁸⁰ Scottish Government supported the *Everyday Heroes* programme, which sought to ensure children and young people – particularly young survivors of gender-based violence – were involved in the development and implementation of the *Equally Safe: Delivery Plan 2017-21*.^{681 682} Participants made a variety of recommendations to improve services, justice, and education responses. They felt children needed more support and that schools and public bodies had a role to play in tackling negative attitudes that underpin gender-based violence. Update reports on *Equally Safe* for 2018 and 2019 provide an overview of Scottish Government's progress and future priorities.^{683 684}

Dedicated funding has been put in place to tackle violence against women. Scottish Government invested £11.8 million (2016-17) from the Equality Unit and £20 million (2015-18) from the Justice Unit to provide services for women and girls.⁶⁸⁵ Despite this, frontline services report they are struggling to meet demand. A 2017-18 Scottish Women's Aid funding survey found that 89% of women's aid groups in their membership were working with a reduced or standstill budget from the previous year.⁶⁸⁶ Meanwhile, the demand for services for women and children had risen consistently year on year, with 56% of the groups operating waiting lists for refuge. Many women's aid groups reported having to access precarious funding from diverse sources to meet increased demand.

In its 2019-20 Programme for Government, Scottish Government made a commitment to develop national guidance for schools setting out the range of support, practical prevention and intervention measures available as part of implementing *Equally Safe*.⁶⁸⁷

Recommendation

Scottish Government should:

- *Ensure that ongoing implementation of Equally Safe is informed by the views and experiences of children affected by violence against women and girls;*
- *Ensure that organisations and support services are sufficiently resourced in recognition of the increasing demand.*

Domestic abuse

Around 60,000 incidents of domestic abuse are reported to Police Scotland each year.⁶⁸⁸ Although there is no national estimate on the number of children living with domestic abuse, they have been over-represented in social work referrals, child protection conferences, and those referred to the Children's Hearings system.⁶⁸⁹ Children may also face domestic abuse in their own relationships. Thirty-three percent (33%) of girls and young women (aged 13-21) responding to Girlguiding Scotland's 2018 survey reported knowing a girl their age who had experienced violence from a partner.⁶⁹⁰

The Abusive Behaviour and Sexual Harm (Scotland) Act 2016 ('the 2016 Act') introduced a statutory domestic abuse aggravator to ensure courts take this into account when sentencing offenders.⁶⁹¹ This and other changes in the Act were welcomed by charities, including Rape Crisis Scotland.⁶⁹²

The Domestic Abuse (Scotland) Act 2018 ('the 2018 Act') introduced an offence of "abusive behaviour towards a partner or ex-partner", including emotional abuse and coercive control. The 2018 Act includes a statutory aggravation if a child was involved, affected or witnessed the abusive behaviour.⁶⁹³ Court powers to impose non-harassment orders in favour of a child and other victims have been strengthened. Data on the effectiveness of the 2018 Act is limited given the short amount of time it has been in force, although convictions have been made.⁶⁹⁴

Recommendation

- *Scottish Government should ensure the Domestic Abuse (Scotland) Act 2018 is implemented in compliance with the UNCRC and other human rights treaties, and its impact assessed and monitored.*

Services to address violence against children

UNCRC Concluding Observation

Increase the number of social workers and strengthen their capacity to address violence against children.⁶⁹⁵

A 2016 Audit Scotland report highlighted that extreme financial pressures, demographic changes and legislative changes were impacting the social work sector. It stated “current approaches to delivering social work services will not be sustainable in the long term” and that an increase in investment of between £510-667 million was needed by 2020.⁶⁹⁶

The number of social workers increased 5.5% between 2008-17,⁶⁹⁷ yet in 2019 Scottish Government noted lower numbers of qualifications and admissions into training programmes.⁶⁹⁸ Children and family social work has been identified as an occupation of labour shortage across the UK.⁶⁹⁹ Concerns have been raised around how leaving the European Union might impact on social services staffing,⁷⁰⁰ including from children and young people.⁷⁰¹ The Scottish Association of Social Workers said that “the cessation of free movement is likely to make it more difficult to engage such workers to fill the existing recruitment gap”.⁷⁰²

Together’s members have also highlighted the need for sustainable funding for trauma-informed support services for children who have experienced or witnessed abuse.⁷⁰³ Several reports have identified a lack of support for children and families, including a lack of sexual abuse recovery services, and a complex and fragmented system of mental health services which can make it difficult for children to get the support they need (refer to Chapter 6.3 for more information on mental health).^{704 705}

A national training framework – *Transforming Psychological Trauma* - was launched in 2017 following its commission by Scottish Government.⁷⁰⁶ This was supplemented by the *Scottish Psychological Trauma Training Plan*.⁷⁰⁷ These documents aim to support the development of a trauma-informed workforce across all sectors, including social work. In its Programme for Government 2019-20, Scottish Government said it had invested £1.35 million in the National Trauma Training Programme, with 3,000 public service staff trained. Scottish Government committed to expand the programme over the next two years.⁷⁰⁸

Recommendation

- Scottish Government should ensure sufficient investment to train and recruit additional social workers, which ensures high quality, trauma-informed support.

Children’s views in court proceedings

UNCRC Concluding Observation

Give due weight to the views of children concerned in the responses to violence, including in criminal and family law proceedings.⁷⁰⁹

Refer to Chapters 2.4 and 8.3 for more information on children’s views in court proceedings.

Istanbul Convention

Other treaty bodies, UPR recommendations and SDGs

Recommendations were made by Italy, Montenegro, Spain, Finland and Bosnia and Herzegovina in the UK's 2017 Universal Periodic Review.⁷¹⁰

UK Government has signed but not ratified the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the 'Istanbul Convention').⁷¹¹ In 2018, UK Government stated this was because it believed that "in most respects the UK already complies with or goes further than the Convention requires".⁷¹² Children's charities contested this claim saying more could be done to protect women and girls. Scottish Government supported calls for UK Government to set a clear timetable for ratifying the Istanbul Convention.⁷¹³

Legislation passed in 2017 requires UK Government to report annually on progress towards ratifying the Istanbul Convention.⁷¹⁴ In its 2018 progress report, UK Government said a key barrier to ratification was compliance with Article 44 on extraterritorial jurisdiction.⁷¹⁵ This requires UK and devolved legislation allowing for the prosecution of UK nationals and residents for offences committed abroad. The Domestic Abuse (Scotland) Act 2018 provides for extraterritorial jurisdiction over domestic abuse offences,⁷¹⁶ bringing Scotland in line with the requirements of the Istanbul Convention.⁷¹⁷

The Domestic Abuse Bill 2017-19 before the UK Parliament sought to allow for extraterritorial jurisdiction. This was welcomed by campaigners as a first step towards ratification of the Istanbul Convention.^{718 719} However, the Bill failed to complete its passage before the 2019 General Election.⁷²⁰

Recommendation

- UK Government should ratify the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the 'Istanbul Convention').⁷²¹

4.5 Sexual exploitation and abuse

Reporting and awareness

UNCRC Concluding Observation

Systematically collect and publish comprehensive and disaggregated data on child exploitation and abuse, including through mandatory reporting, in all settings.⁷²²

Other treaty bodies, UPR recommendations and SDGs

Related recommendations have been made by CAT in its 2019 Concluding Observations,⁷²³ by the CEDAW Committee in its 2019 Concluding Observations,⁷²⁴ and by Slovenia, Andorra, Bulgaria, China, Timor-Leste, Russian Federation and Algeria in the UK's 2017 Universal Periodic Review.⁷²⁵

There are widespread concerns about child sexual exploitation and abuse. Reports of sexual offences against children have increased sharply, up 6.5% from 4,082 offences recorded by Police Scotland in 2014-15 to 4,347 in 2017-18.^{726 727} In 2017-18, ChildLine provided 480 counselling sessions to children in Scotland worried about sexual abuse.⁷²⁸ Between 2016-17 and 2017-18, the number of recorded sexual assaults against children aged 13-15 rose 48%. At least 40% of the 12,487 sexual crimes recorded in 2017-18 related to a victim under the age of 18.⁷²⁹

Table 5: recorded sexual assaults against children under 16 (2012-2018)⁷³⁰

	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	Percentage change from 2016-17 to 2017-18
Sexual assault against a child 13-15	312	372	457	462	423	626	48%
Sexual assault against a child under 13	389	396	475	489	538	632	17%

Scottish Government and children’s charities have expressed concern that official figures are likely to underrepresent the extent of the issue, due to the perceived stigma and barriers to justice around reporting child sexual abuse.⁷³¹

Several groups of children are at increased risk of child sexual abuse, including disabled children^{732 733} and children with care experience.⁷³⁴ A 2018 Care Inspectorate report noted that only 77% of services for care experienced children had effective systems in place to identify children at risk of child sexual exploitation. It noted that staff training on child sexual exploitation was “often well-established in care services (82%) but their prevalence was lower in mainstream (70%) and special school care accommodation (57%) than other types of residential settings”.⁷³⁵ The Care Inspectorate remarked on the need for care services to further build staff confidence and competence in identifying risk indicators for child sexual exploitation.

The *National Action Plan to Prevent and Tackle Child Sexual Abuse and Exploitation* was updated by Scottish Government in 2016.⁷³⁶ ⁷³⁷ Actions taken include the establishment of a National Child Exploitation Group to oversee implementation of the action plan, guidance for practitioners, and a national awareness-raising campaign for parents, carers and children. At the time of writing, Scottish Government stated it was currently working to improve its understanding of the scale and nature of child sexual exploitation in Scotland through more consistent data collection, and was developing indicators to monitor progress.⁷³⁸

Recommendations

Scottish Government should:

- Ensure disaggregated data on child exploitation and abuse is published;
- Develop robust, child rights-based indicators to monitor progress in implementing the *National Action Plan to Prevent and Tackle Child Sexual Abuse and Exploitation*.

Online technologies

UNCRC Concluding Observation

Develop and implement comprehensive multi-sectoral strategies on child exploitation and abuse, including online, to ensure effective prevention, early detection and intervention.⁷³⁹

There are widespread concerns around online exploitation of children in Scotland, as elsewhere in the UK and internationally.⁷⁴⁰ Online technology has impacted on the scale and nature of sexual crime.⁷⁴¹ It is estimated that online offences were responsible for around half of all growth in sexual crimes recorded by the police between 2013-14 and 2016-17, and now account for 20% of all recorded sexual crimes. Three-quarters of victims of cyber-enabled offences are under the age of 16.⁷⁴² In 2017-18, Police Scotland recorded 429 offences of communicating indecently with a child, a 74% increase since 2012-13.⁷⁴³

The rise in the number of online sexual crimes correlates with the increased use of technology by children.⁷⁴⁴ Increased availability and use of technology does not necessarily present an issue for children in itself. Digital technologies are an integral part of how children conduct their lives and provide a valuable opportunity for them to raise their voice on issues that affect their rights.⁷⁴⁵ It is important, however, to pay close attention to how technology interacts with criminal behaviours such as grooming and child sexual exploitation.⁷⁴⁶ In a UK-wide NSPCC survey, 41% of 11 -18-year-olds said they thought websites, apps and games weren’t doing enough to keep them safe online. Ninety-two percent (92%) of children thought that social media platforms should be required to protect children from inappropriate content and behaviour.⁷⁴⁷

Awareness of the risks associated with the digital environment for children is increasing amongst both children and their parents. In the *Growing Up in Scotland* Study, 70% of 12-year-old participants said they knew “a great deal” about protecting themselves online and 56% of parents said they knew “quite a lot” about their child’s online activity.⁷⁴⁸ However, a 2019 NSPCC report found that less than half (44%) of children aged 12-15 knew how to change their social media settings to control who could view their profile. The same report highlighted that just 37% of parents/carers used all four strategies suggested by Ofcom, the UK’s Communications Regulator to keep children safe online.⁷⁴⁹ This suggests that public awareness of the risks is high, yet there is a knowledge gap in how to address these.

In March 2017, Scottish Government amended the outcomes in the National Curriculum to develop a stronger focus on digital literacy, including internet safety and cyber resilience. In April 2017, Scottish Government published a refreshed *National Action Plan on Internet Safety for Children and Young People*, aimed at ensuring appropriate training, support and information is in place.⁷⁵⁰

The Abusive Behaviour and Sexual Harm (Scotland) Act 2016 (‘the 2016 Act’) criminalised disclosing or threatening to disclose an intimate image. Scottish Government supported a parallel awareness raising campaign *Not Yours to Share*⁷⁵¹ which sought to raise awareness of the issue and the legislation. During the first year of the 2016 Act’s operation, 421 of offences were recorded.⁷⁵² It is worth noting that the act of disclosing intimate images is one in which both victims and perpetrators are more likely to be children. An NSPCC survey of girls aged 11-18 found that up to 21% had received a request for a sexual image or message. The study found that 10% of boys of had received such requests.⁷⁵³

A 2017 review found that 24% of ‘communicating indecently’ and ‘cause to view sexual activity or images’ offences were committed by a child under 16 against another child under-16. Twenty-eight percent (28%) were committed by a 16-19-year-old against a child under 16.⁷⁵⁴ Following this review and concerns raised by the Solicitor General,⁷⁵⁵ Scottish Government established an Expert Group on Preventing Sexual Offending Involving Young People.⁷⁵⁶ The Expert Group’s 2020 report included recommendations that Scottish Government commission regular surveys to ascertain children’s views and experiences around harmful sexual behaviours occurring among children; commission research into the causes of harmful sexual behaviours among children; ascertain required data; and develop a “Scottish Positive Sexual Behaviours Training Plan” for practitioners.⁷⁵⁷

Recommendations

Scottish Government should:

- Ensure all children and their parents are better informed about online safety and privacy.
- Implement the proposals of the Expert Group on Preventing Sexual Offending Involving Young People, in a manner which ensures compliance with the UNCRC and other human rights treaties.

Support services, detection and prosecution

UNCRC Concluding Observation

Further develop comprehensive services to support children who are victims or at risk of sexual exploitation and abuse.

Strengthen the capacity of law enforcement authorities and the judiciary to detect and prosecute child sexual exploitation and abuse, and grant effective remedies to the child victims.⁷⁵⁸

The updated *National Action Plan to Prevent and Tackle Child Sexual Abuse and Exploitation* recommitted Scottish Government to work with parents, practitioners, children and communities in tackling child sexual exploitation, and to provide services for victims. The Action Plan includes educational programmes, funding for Rape Crisis Scotland’s National Prevention Programme, a youth work led early intervention and diversion programme, and a national peer education program.⁷⁵⁹ A key contributory outcome of the strategy is that an appropriate range of high quality services are available for children.

Police Scotland launched the National Child Abuse Investigation Unit in April 2015 to support the investigation of complex child abuse and neglect across Scotland. The Unit supports local police forces in addition to leading on major investigations with other specialist investigatory teams. To date, it has assisted in a number of cases including establishing a major investigation into claims of child sexual abuse within football clubs.^{760 761}

In June-July 2016, Police Scotland conducted Operation Latisse. This was the first national operation to tackle online child sexual abuse and resulted in the identification of more than 500 children who were either victims or at risk, as well as the recovery of 30 million images of abuse and over 100,000 online chat logs. It resulted in 77 people being charged.⁷⁶²

In 2017, NSPCC Scotland published a review of therapeutic recovery services in the West of Scotland for children who have experienced sexual abuse.⁷⁶³ The research found there was no clear pathway for children following sexual abuse and that service provision had not improved in a decade. NSPCC noted that services to support victims were mostly in the third sector and, as a result, had insecure funding.

Provision of adequate forensic medical services for victims of sexual violence remains an issue. A 2017 HMICS report that highlighted major deficiencies in provision of services, led to increased discussion of the issue.⁷⁶⁴ Scottish Government established a Taskforce to drive service improvements.⁷⁶⁵ The Taskforce has a remit over adult and child victim services and has established a children and young people subgroup. As part of this work, a 2019 consultation was undertaken on a clinical pathway for children who have disclosed sexual abuse.⁷⁶⁶

Scottish Government commissioned a national training framework – *Transforming Psychological Trauma* – which was launched in 2017.⁷⁶⁷ This was supplemented by the *Scottish Psychological Trauma Training Plan*.⁷⁶⁸ These documents aim to support the development of a trauma-informed workforce across all sectors. In its Programme for Government 2019-20, Scottish Government said it had invested £1.35 million in the National Trauma Training Programme, with 3,000 public service staff trained. Scottish Government committed to expand the programme over the next two years.⁷⁶⁹

The Scottish Child Abuse Inquiry⁷⁷⁰ into historic abuse of children in residential settings is ongoing. The Inquiry was established in October 2015 to consider allegations of physical and sexual abuse at a range of institutions, including children’s homes and boarding schools. The first phase of hearings began in May 2017 and the sixth phase is expected to commence in summer 2020, focusing on boarding schools. A further phase is expected later in 2020, focusing on foster care.

Recommendations

Scottish Government should:

- *Ensure effective information sharing and multi-agency working practices are in place that protect children from sexual exploitation. These should include rights-based practices that identify and tackle abuse; ensure children’s views and experiences are taken into account; minimise the impact of the process on the child; ensure all professionals are trained to recognise abuse and exploitation and respond appropriately; and record the numbers of children who are at risk of sexual exploitation;*
- *Ensure that children who have experienced abuse have access to sustainably-funded, high-quality therapeutic abuse and trauma support services.*

Lanzarote Convention

UNCRC Concluding Observation

Consider ratifying the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.⁷⁷¹

Other treaty bodies, UPR recommendations and SDGs

Similar recommendation was made by Slovenia in the UK’s 2017 Universal Periodic Review.⁷⁷²

UK Government ratified the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (‘Lanzarote Convention’) on the 21st June 2018.⁷⁷³ This is a significant and welcome step to protect children in Scotland from sexual exploitation.

4.6 Harmful practices

Honour-based violence (HBV)

UNCRC Concluding Observation

Take effective measures to ensure that marriage of children aged 16 and 17 years takes place only in exceptional circumstances and is based on the full, free and informed consent of the concerned children.

Continue and strengthen preventive and protection measures to address the issue of harmful practices, including the collection of data, the training of relevant professionals, awareness-raising programmes, the provision of protection and care to the child victims and the prosecution of those found guilty of perpetrating such acts.

Ensure that no one is subjected to unnecessary medical or surgical treatment during infancy or childhood, guarantee bodily integrity, autonomy and self-determination to children concerned and provide families with intersex children with adequate counselling and support.

Provide redress to the victims of such treatment.

Educate medical and psychological professionals on the range of sexual, and related biological and physical diversity and on the consequences of unnecessary interventions for intersex children.⁷⁷⁴

Other treaty bodies, UPR recommendations and SDGs

Similar recommendations were made by the CEDAW Committee in its 2019 Concluding Observations,⁷⁷⁵ by CAT in its 2019 Concluding Observations,⁷⁷⁶ and by Gabon in the UK's 2017 Universal Periodic Review.⁷⁷⁷ Related issues are addressed by target 5.3 of the Sustainable Development Goals.⁷⁷⁸

Violence against women, gender-based violence and 'honour-based' violence are strongly linked. So-called honour-based violence (HBV) can refer to harassment, physical, emotional, domestic and sexual abuse and manifest in the harmful practices of female genital mutilation (FGM), forced marriage and child marriage. Although communities who exercise harmful practices through HBV are small in Scotland, as compared with the rest of the UK, there can be significant barriers for children affected by HBV to realise their rights.⁷⁷⁹ Evidence shows that migrating communities are likely to retain cultural and social norms from their home country,⁷⁸⁰ particularly when integration policies are neglected as in the UK more widely.^{781 782} Specialist organizations in Scotland, such as Hemat Gryffe Women's Aid, Shakti Women's Aid, Saheliya and Amina Muslim Women's Resource Centre offer support and services for those facing HBV.

Forced and child marriage

A common manifestation of HBV is early, forced or child marriage. In 2018, the UK-wide Forced Marriage Unit (FMU) gave advice or support related to a possible forced marriage in 1,764 cases.⁷⁸³ Thirty-three percent (33%) of these reports involved victims under 18. These figures are likely to underrepresent the scale of the issue, as many instances of forced marriage go unreported. In 2017, NSPCC reported that UK-wide counselling sessions for forced marriage had quadrupled over 5 years.⁷⁸⁴ In 2017-18, Scotland's domestic abuse and forced marriage helpline, run by Scottish Women's Aid, had 27 contacts in relation to forced marriage.⁷⁸⁵

Together's members highlight the link between children missing from school and child marriage.⁷⁸⁶ Often, if a child does not return to the UK, no alarm is raised and no effort is made to locate and return them. An FOI request submitted to all local authorities in October 2017 indicated that around 390 children aged between four and 16 had been recorded as 'missing in education' in the past three years.^{787 788}

The Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 ('2011 Act') introduced specific remedies for those threatened with or already in forced marriages.⁷⁸⁹ Forced Marriage Protection Orders (FMPOs) are civil orders, the breach of which constitutes a criminal offence. Only 12 FMPOs were granted between 2011-2017.⁷⁹⁰ In addition to significant psychological and emotional barriers, many victims face challenges including lack of legal aid, a high threshold of proof, and issues around confidentiality. From September 2014, forced marriage became a criminal offence in Scotland under the UK-wide Anti-Social Behaviour, Crime and Policing Act 2014.⁷⁹¹ Evidence from survivors shows some do not see criminalisation as an option as they worry about the impact this may have on the perpetrators, who are often their parents or family members.⁷⁹² Together's members have also expressed concern that there is a lack of preventative work being done to support this legislation.

In response to an FOI request by Together, Police Scotland confirmed it recorded 53 'concern markers' for forced marriage on the Scottish Interim Vulnerable Persons Database in 2018.⁷⁹³ This data was not disaggregated by age. In response to a second FOI request, the Crown Office and Procurator Fiscal Service confirmed that no charges were brought for a breach of an FMPO under the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 during 2018.⁷⁹⁴

In 2017, Scottish Government published a study on forced marriage in Scotland, focusing on six regions. Child marriage represented a quarter of the 191 cases in 2011-14, with 1 in 10 cases involving the marriage of a child under the age of 16. The report identified a number of barriers to victims reporting forced marriage, including fears of so-called 'race-anxiety' on the part of public bodies, lack of training and public awareness. The study highlighted that no local policy or practice documentation had been produced in two of the regions studied, despite a statutory obligation in the 2011 Act, and that guidance in the remaining four areas was in draft form. In general, there was a lack of ownership of the issue of forced marriage within departments of local authorities and a lack of understanding about its scale and nature. Where strong local authority policies were in place, however, there was a strong commitment to multi-agency working.⁷⁹⁵

Female genital mutilation (FGM)

There is a lack of accurate Scotland-specific data on the prevalence of FGM.⁷⁹⁶ In response to an FOI request from Together, Police Scotland confirmed it recorded 28 'concern markers' for FGM on the Scottish Interim Vulnerable Persons Database in 2018.⁷⁹⁷ This data was not disaggregated by age. NHS Greater Glasgow and Clyde identified women with FGM on at least 138 occasions in 2017 and 2018, whilst NHS Lothian identified 93 women.⁷⁹⁸ These figures are likely to underestimate the scale of FGM in Scotland, as cases often go unreported.

The Female Genital Mutilation (Scotland) Bill was introduced to the Scottish Parliament in May 2019.⁷⁹⁹ It seeks to establish FGM Protection Orders and require Scottish Government to issue statutory guidance. The Bill is partially in response to the fact that no FGM prosecutions have been brought in Scotland, despite legislation having been in place to prohibit it since 1985.^{800 801 802} At the time of writing, the Bill was at Stage 3 before the Scottish Parliament.

Between 1 April 2013 to September 2016, 52 referrals or child welfare concerns were made to the police from partner agencies about FGM. In each of these cases, no criminality was found as the act had not taken place.⁸⁰³

In February 2016, Scottish Government published its *National Action Plan to Prevent and Eradicate Female Genital Mutilation 2016-2020*.⁸⁰⁴ The plan sets out a range of actions to be taken forward by Scottish Government and its partners in communities, third sector and public sector to prevent and ultimately eradicate FGM. Scottish Government created a Multi-Agency FGM National Action Plan Implementation Group. Progress reports were published in 2017 and 2019 covering the range of actions taken by Scottish Government, including the development of a new Standard Operating Procedure for Police Scotland in cases of FGM.^{805 806}

Intersex genital mutilation (IGM)

Intersex Genital Mutilation (IGM) involves carrying out unnecessary surgical alterations on children with intersex variations.⁸⁰⁷ IGM survivors criticise the practice as physically and psychologically harmful and abusive and call for legislation to end the practice as well as access to redress for survivors.⁸⁰⁸ All forms of IGM are practised in the UK.⁸⁰⁹ There are no figures on the number of intersex children operated on within the UK.⁸¹⁰ Research is needed to ascertain the extent and uses of IGM in Scotland in order to ensure appropriate policy, legislation and practice.

Breast ironing

Anecdotal evidence suggests an increase in the practice of breast ironing across the UK.⁸¹¹ There is no data on how widespread the practice is in Scotland. In 2016, the BBC reported that as many as 1,000 girls across the UK had been subject to breast ironing, but no verified figures exist.⁸¹²

Recommendation

- *Scottish Government should ensure that Equally Safe is effective in preventing and eliminating harmful practices against children in line with UNCRC General Comment 18.*

4.7 Freedom of the child from all forms of violence

Bullying and violence

UNCRC Concluding Observation

Intensify its efforts to tackle bullying and violence in schools, including by teaching human rights, building the capacities of students and staff members to respect diversity at school, improving students' conflict-resolution skills, monitoring regularly the incidences of bullying at school and involving children in the initiatives and monitoring aimed at eliminating bullying.⁸¹³

Other treaty bodies, UPR recommendations and SDGs

Similar recommendations have been made by CERD in its 2016 Concluding Observations⁸¹⁴ and by CRPD in its 2017 Concluding Observations.⁸¹⁵

Children value the right to an education that meets their needs, where they are understood, valued and listened to.^{816 817} However, many experience bullying and discrimination, which can make their educational experiences negative, challenging or short-lived. In 2016-17, over 24,000 counselling sessions were held with children across the UK about bullying.⁸¹⁸ In Scotland, it is estimated that around 30% of children directly experience bullying,⁸¹⁹ with many more facing its indirect effects. A 2019 global study of 15-year-old pupils found that those living in the UK were more likely to experience bullying compared to those living in other countries.⁸²⁰ Of the pupils surveyed, 27% reported being bullied at least a few times a month compared to an average of 23% in the other countries studied. This was found to be one of the factors explaining lower levels of life satisfaction among UK pupils, with 53% satisfied with their lives compared to an average of 67% in other countries.

Some children are disproportionately affected by bullying. A 2015 study found that two in five secondary pupils had experienced prejudice-based bullying, with teachers reporting the most prevalent form being that based on race or ethnicity.⁸²¹ Concerns have been raised over increases in racism following the vote to leave the EU.^{822 823} In other cases, organisations have highlighted a spike in racist incidents following terrorist attacks, particularly against Muslim pupils.⁸²⁴ A 2018 report by the Coalition for Racial Equality Rights (CRR) highlighted inconsistent policies, reporting processes and recording of racially motivated incidents across Scottish schools.⁸²⁵ As a result, exact details of the number of children affected is not entirely clear, making it difficult to monitor progress.

Children with a disability or additional support need continue to face social stigmas and experience bullying and harassment. Seventy-six percent (76%) of children with a learning disability have been bullied at school,⁸²⁶ and some children with additional support are missing school due to bullying.⁸²⁷ Young carers are hiding their caring responsibility from peers due to bullying and a lack of understanding.⁸²⁸ Gypsy/Traveller children often face bullying, harassment and stereotyping because of their ethnicity and way of life, and often do not complete mainstream education as a consequence.^{829 830 831} Children with care experience are particularly vulnerable to bullying as they are seen as 'different'.^{832 833 834} LGBTI children and young people report educational settings as where they face the most discrimination. Responding to an LGBT Youth Scotland survey, seventy-one percent (71%) of LGBT and 82% of transgender children and young people aged 13-25 said they had experienced bullying in schools, showing an increase on 2012 figures and impacting significantly on mental health.⁸³⁵ Developing trusting and supporting relationships between children and practitioners is required to tackle bullying of all forms and in all settings.

Children are concerned by the nature of targeting and prejudice, as well as the management of bullying incidents and the impact of these on their mental health. A recent Stakeholder Consultation found that children want to see more effective management of bullying incidents in schools as well as recognition of, and support for, its mental health impacts. Bullying was a key issue raised by Members of the Children's Parliament ('MCPs') at the third annual Cabinet meeting with children and young people in 2019.⁸³⁶ MCPs emphasised the importance of prevention, underpinned by a school ethos where bullying behaviours have little chance to grow. MCPs thought adults should spend less time on investigating and punishing behaviour, and more time on fixing relationships. It was important to MCPs that schools create a safe place where children can go early to seek help:

Bullying makes children feel horrible, abandoned and left alone. You feel like no-one ever cares about you.

When I tell an adult something, I want them to try and fix the problem and make things easier for me.

In 2017, Scottish Parliament's Equalities and Human Rights Committee conducted an inquiry into bullying and harassment in schools.⁸³⁷ The inquiry report recommended a focus on prevention, and called for improved data collection and monitoring of bullying incidents to assist with creating effective and responsive future policies.

The 2017 Inquiry helped inform Scottish Government's subsequent refreshed national approach to anti-bullying – *Respect for All* – which contains an explicit commitment to addressing all types of bullying, including prejudice-based bullying.⁸³⁸ The guidance sets out the context and ambitions for anti-bullying approaches. Despite calls from some organisations to introduce mandatory reporting of prejudice-based bullying,^{839 840} this was not included in *Respect for All*. Local authorities agreed to advance progress on this aspect and supplementary guidance around improving consistency in recording and monitoring was published in 2018.⁸⁴¹

The education system is important in fostering a culture of non-discrimination and mandatory child rights education has been recommended by the UN Committee.⁸⁴² Programmes such as the *Rights Respecting Schools Award (RRSA)* have impacted on reducing the occurrences of bullying in primary schools in some local authorities and staff involved have observed an impact on children's attitudes towards diversity in RRSA schools.⁸⁴³

Online bullying and abuse

UNCRC Concluding Observation

In the light of the recommendations resulting from the day of general discussion on digital media and children's rights, train children, teachers and families on the safe use of information and communication technologies, raise awareness among children on the severe effects that online bullying can have on their peers and increase the involvement of social media outlets in the efforts to combat cyberbullying.⁸⁴⁴

In 2017-18, more than 3,000 Childline counselling sessions across the UK were about bullying online and online safety.⁸⁴⁵ A report from the Young Scot 5Rights Youth Commission highlighted that 59% of children in Scotland have experienced or know someone affected by online bullying.⁸⁴⁶ Face-to-face bullying is still more prevalent than online bullying.⁸⁴⁷ A recent English study suggested that technology offers a new avenue to victimise those already bullied in 'traditional' ways, rather than a way to target 'new' individuals.⁸⁴⁸ The study found that nine out of 10 teenagers bullied online also faced regular offline bullying. The increasing prevalence of online bullying for children^{849 850} means it is essential they are equipped with the skills and capacity to be able to make responsible use of information and communication technologies (ICT) whilst avoiding risks and protecting themselves from harm. Online bullying is often an extension of face-to-face bullying in which perpetrators are known to the victim.⁸⁵¹ Consequently, children state that the two should be addressed collectively⁸⁵² and that the location of bullying matters less than the skills and confidence of both children and adults to respond.⁸⁵³ Children also want social media companies to do more to tackle cyberbullying on their platforms.⁸⁵⁴

In January 2017, Police Scotland launched *Be Smart*, an online safety training programme supported by Scottish Government and designed to address the risks of cyberbullying and digital misuse.⁸⁵⁵ The programme trains teams of children, youth workers and teachers giving them the tools to "start a conversation" with children about online safety. In April 2017, Scottish Government launched a refreshed *National Action Plan on Internet Safety for Children and Young People*.⁸⁵⁶ This builds upon *Scotland's Child Internet Safety Action Plan 2010* and the *2011-12 Scottish Action Plan on Child Internet Safety and Responsible Use*. Children and young people's views were sought during development of the 2017 Action Plan, with consultation work facilitated by YouthLink Scotland and Young Scot.⁸⁵⁷ The 2017 Action Plan includes commitments that Scottish Government will work to ensure that children are supported to build online resilience, and that Education Scotland will support local authorities in implementing the new Technologies Curriculum guidance.⁸⁵⁸

Scottish Government's 2017 National Approach to Anti-bullying – *Respect for All* – is clear that online bullying should be treated as part of an over-arching anti-bullying approach rather than as a separate area of work or policy to increase effectiveness.⁸⁵⁹

In early 2019, the UN Committee announced it would draft a new General Comment on children's rights in relation to the digital environment.⁸⁶⁰ A Concept Note was produced and a call for views ran from March-May 2019. Together's joint response with Child Rights Connect and other organisations highlighted the extraordinary opportunities that the digital environment offers to children including in terms of their education, leisure and participation, while noting the challenges and risks, and how Child Human Rights Defenders (CHRDs) have suggested these might be addressed.⁸⁶¹

Recommendations

Scottish Government should:

- Ensure there is integration of preventative and response strategies to tackle and prevent prejudice-based bullying and online bullying behaviours, supported by adequate resources;
- Ensure consistent and robust recording and monitoring of bullying behaviour across all local authorities;
- Undertake national research with children on prejudice-based bullying to provide insight into how prejudice functions.



Chapter

5

Family environment and alternative care

(Articles 5, 9-11, 18(1-3),
20-21, 25 and 27(4))

These articles give every child the right to enjoy a supportive, nurturing home environment regardless of their circumstances. They outline how governments should support parents and carers in providing that home environment. When it is not in the best interests of a child to remain with their family, governments should provide equal support and allow children to maintain contact with their family and friends consistent with their welfare.

Article 5: parental guidance and a child's evolving capacities.

Article 9: separation from parents.

Article 10: family reunification.

Article 11: abduction and non-return of children.

Article 18: parental responsibilities and state assistance.

Article 20: children unable to live with their families.

Article 21: adoption.

Article 25: social security.

Article 27: adequate standard of living.

5.1 Childcare and family support

Affordability, availability and accessibility of childcare

UNCRC Concluding Observation

Conduct a rigorous child rights impact assessment of the recent reduction of funding for childcare and family support and adjust the family support policy in order to make childcare services available to all those who need it.⁸⁶²

Other treaty bodies, UPR recommendations and SDGs

Similar recommendations were made by the CEDAW Committee in its 2019 Concluding Observations⁸⁶³ and by CESCR in its 2016 Concluding Observations.⁸⁶⁴ Recommendations relating to disability-sensitive childcare were made by CRPD in its 2017 Concluding Observations.⁸⁶⁵

There is substantial evidence that access to high quality early childhood care and education has a positive impact on children's cognitive and socio-emotional outcomes and can reduce the impact of socio-economic inequalities.^{866 867} Children with access to high quality settings develop stronger literacy and numeracy skills, gain higher qualifications and access better paid jobs later on in life, regardless of their family background.^{868 869 870 871}

Entitlement and expansion

All three and four-year olds, and eligible two-year olds, are currently entitled to 600 hours of funded Early Learning and Childcare (ELC) per year.⁸⁷² A two-year old is eligible if their parents or carers are in receipt of certain benefits, if the child is looked after by their local authority, or if they are subject to a Kinship Care Order. Funded childcare is usually taken as 16 hours per week over 38 weeks of the year. Over 70% of parents and carers use paid or informal childcare by friends and family in addition to their funded entitlement, leading to a total of around 29 hours of childcare per week. Lower income households, single earners and those living in the most deprived areas use less childcare on average, but rely more heavily on funded hours and less on private childcare.⁸⁷³

Scottish Government has committed to extend the entitlement for three, four and eligible two-year olds from 600 to 1140 hours per year by August 2020.^{874 875} Local authorities are gradually phasing in the expansion, with some children already accessing more than 600 hours of funded childcare.⁸⁷⁶ Scottish Government has stated the expansion is underpinned by four principles: affordability, accessibility, quality and flexibility.^{877 878} The primary aim of the expansion is to deliver the best outcomes for children, with a secondary aim to support parents and carers, particularly mothers, into employment.⁸⁷⁹ Audit Scotland has noted a potential conflict between these two priorities - as improving outcomes for parents and carers puts focus on flexible ways of providing ELC, whereas improving outcomes for children focuses on quality.⁸⁸⁰ Audit Scotland also noted that Scottish Government had not considered different options for improving outcomes for children, parents and carers prior to deciding to increase the number of funded hours.

Scottish Government states it is working with key stakeholders, including local authorities, to raise awareness about the expansion.⁸⁸¹ Members of Together have emphasised the importance of listening to the voices of children and their families throughout planning and implementation of the expansion, particularly harder to reach families, to ensure their needs are understood and addressed.

Affordability

Outwith the funded entitlement, childcare costs in Scotland are among the highest in Europe.⁸⁸² A 2018 Scottish Government survey highlighted that over two-thirds of parents and carers who pay for childcare have experienced affordability problems in the last 12 months.⁸⁸³ For low income families in particular, these costs can be a barrier to accessing the labour market and being able to increase family income. Children in Scotland's *CHANGE* project highlighted that some parents of early years, primary and secondary age children living in the East End of Glasgow had to turn down jobs as childcare costs were too high, while others were working simply to cover costs.⁸⁸⁴

Twenty-six percent (26%) of parents and carers responding to Scottish Government's 2018 survey reported difficulties paying childcare fees upfront.⁸⁸⁵ In 2018, Scottish Government announced a pilot deposit guarantee scheme⁸⁸⁶ to cover childcare deposit costs for parents and carers in receipt of certain benefits when a child, aged 0-2, was taking up childcare for the first time.⁸⁸⁷ The pilot ran across Edinburgh, Glasgow and Dumfries and Galloway until December 2019.⁸⁸⁸

Following the expansion, parents and carers may still need or want to use additional childcare including paid childcare. Scottish Government's 2018 survey indicated that this was the case for 42% of parents and carers with children under six years old.⁸⁸⁹ Together's members have raised concerns that while the planned expansion may reduce costs for families with young children, it will do little to support those whose children are school-aged. In August 2019, Scottish Government launched a consultation on a draft framework on out of school care as part of a wider commitment to develop a strategic framework for after-school and holiday childcare within the current parliamentary term.⁸⁹⁰ The consultation acknowledges that families need to be supported in accessing high quality, flexible and affordable services for primary age and older children, in addition to early years.

Accessibility and uptake

Scottish Government's 2018 study⁸⁹¹ considered the accessibility of current childcare provision, including:

- awareness of funded entitlement and how to access it;
- sufficiency of local provision, without the need for lengthy or expensive travel; and
- provision for children with additional support needs.

Results indicated that 12% of parents and carers with eligible children did not use any funded childcare.⁸⁹² Central factors included lack of parental awareness and understanding of the entitlement. Uptake for two-year olds has been particularly low with only one-third of those eligible registered, compared with 99% of three and four-year olds.⁸⁹³ Uptake for two-year olds has shown limited signs of increase⁸⁹⁴ yet Scottish Government has acknowledged that this remains lower than anticipated.⁸⁹⁵

Save the Children and Audit Scotland have raised concerns that local authorities are unable to identify eligible low-income families as they do not have access to relevant social security data.^{896 897} Audit Scotland has recommended that Scottish Government work with the relevant UK Government departments to allow access to data for this purpose. Save the Children has further recommended that Scottish Government work with partners to increase parental awareness of the funded entitlement, and develop national guidance and training for professionals, such as health visitors, to enable them to support families to access it.⁸⁹⁸

Freedom of Information data acquired by Coram in 2019 highlighted sufficiency issues. Fifty-five percent (55%) of Scottish local authorities reported sufficient childcare across "all areas" for eligible two-year olds, compared to 74% for three and four-year olds (see table 6).⁸⁹⁹ Meanwhile, only 16% of local authorities said they had sufficient childcare provision for parents and carers working full time across "all areas", and only 23% said they had sufficient childcare for disabled children across "all areas".⁹⁰⁰ Childcare for disabled children becomes more limited during school holidays – only 7% of local authorities reported that they had sufficient holiday childcare for disabled children in all areas, an increase from 4% in 2018.⁹⁰¹

Table 6: Childcare sufficiency in Scotland in 2018-19 (% of local authorities)⁹⁰²

	Yes: in all local areas	Yes: in some areas	No	Data not held or cannot tell
Children under two	23%	29%	6%	42%
Two year old (600 hours entitlement)	55%	39%	0%	6%
Three and four-year olds (600 hour entitlement)	74%	19%	0%	6%
Five to 11-year olds after school	10%	35%	10%	45%
12 to 14-year olds after school	3%	16%	6%	74%
Parents/carers working full time	16%	32%	3%	48%
Parents/carers working atypical hours	6%	19%	10%	65%
Disabled children	23%	16%	10%	52%
Families living in rural areas	26%	30%	9%	35%

Parents and carers have highlighted a lack of flexibility around hours and providers. This is particularly challenging for those unable to pay for childcare, single working parents/carers and those without access to informal childcare.⁹⁰³ From August 2019, legislative changes removed minimum session length for funded childcare and increased the maximum session from 8 to 10 hours.⁹⁰⁴ The expansion by August 2020 will be coupled with a change in how funding is distributed – Scottish Government notes a ‘Funding Follows the Child’ model is hoped to allow for more flexibility for parents and carers, by allowing them to access the funded entitlement in any setting – public, private or third sector, including childminders – provided these meet the National Standard,⁹⁰⁵ have a place available and are willing to enter into a contract with the local authority.⁹⁰⁶ Audit Scotland has been critical of the lack of information on how local authorities are spending expansion funding, on the grounds that it is difficult to assess the cost and impact of the increase in funded ELC.⁹⁰⁷

Some of Together’s members are concerned that rollout of the expansion could compound existing sufficiency issues if the necessary infrastructure and staff are not in place timeously.⁹⁰⁸ This echoes reports from Audit Scotland and UNISON, which raised concerns that workforce and infrastructure growth were not on track to meet the levels required.^{909 910} In June 2019, Scottish Government reported that recruitment of additional ELC staff had been 18% lower than forecast between May and September 2018.⁹¹¹

Quality

Higher quality ELC provision is linked to improved outcomes for children’s social, emotional and cognitive development.^{912 913} The benefits of high quality ELC are particularly strong for children experiencing poverty.⁹¹⁴ By contrast, evidence shows that low quality provision can have a detrimental effect on child development.⁹¹⁵

While Scotland can point to many examples of high-quality provision, recent reports have highlighted inconsistencies.^{916 917} Parents and carers of children with additional support needs are less satisfied with the quality of provision.⁹¹⁸ Across all settings, there continue to be gaps in access to highly qualified, well supported staff.⁹¹⁹ Together’s members report significant variation in staff skills and confidence in supporting children to progress in their early literacy, and key gaps in children’s early language development on starting school. Members have consistently stressed the need for staff qualified to degree level to ensure that ELC provision is of high quality and meets the needs of children.⁹²⁰ In 2017, Scottish Government pledged to provide additional early years teachers and graduates in nurseries in the most deprived areas.⁹²¹ Some local authorities have sought to remove teachers from nurseries, replacing them with early years practitioners, to reduce spending and relieve primary teacher shortages.^{922 923 924 925} Proposals by Edinburgh City Council in early 2019 were later reversed following parent and union pressure.^{926 927}

Together’s members are concerned that the rapid expansion in ELC by August 2020 may compound existing issues around quality and consistency. Scottish Government has stated that “[q]uality is at the heart of the ELC expansion” and that the National Standard⁹²⁸ “will ensure that all settings which are offering the funded entitlement are delivering the *highest* quality ELC experience for children” (emphasis added).⁹²⁹ Scottish Government’s *Quality Action Plan* commits to invest in, improve and support staff through their initial training and continuous professional development.⁹³⁰ This must be supported by sufficient investment, resourcing and workforce development to ensure that the expansion of ELC does not result in a reduction in quality.

Evaluating the impact of ELC expansion

Scottish Government’s *Scottish Study of Early Learning and Childcare* will evaluate the impact of the ELC expansion.⁹³¹ An initial report was published in August 2019, providing baseline data for the current 600-hour entitlement against which impacts of the expansion will be assessed using data for 2022-23.⁹³² The study’s stated aims are to consider any correlation between developmental outcomes, session length and frequency, identify evidence gaps and improve understanding of families not currently taking their child’s funded entitlement. Scottish Government has stated that if results of ongoing evaluation support a different course of action, then it can respond with additional necessary legislation.⁹³³

In parallel, Scottish Government has proposed changes to the ELC census. This currently records data on the number of registrations for funded ELC. By 2022, Scottish Government has stated that the census will be based on an individual child level collection, and will collect data including sex, ethnicity, disability status, additional support needs and home postcode of the child (to enable SIMD analysis). Scottish Government states this should allow for more substantive analysis on how different families use funded ELC, help identify where new or different policy interventions are required to improve awareness and uptake, and allow for better understanding of children’s experiences and use of ELC.⁹³⁴

Recommendation

Scottish Government should:

- *Ensure that affordable, flexible and high-quality childcare is available to all children and their parents/carers, and that the expansion in ELC is supported by sufficient investment, resourcing, workforce development, monitoring and evaluation to ensure consistent, high quality provision.*

Shared parental leave and responsibility

Other treaty bodies, UPR recommendations and SDGs

CESCR's 2016 Concluding Observations recommended reviewing and modifying the system of shared parental leave.⁹³⁵ Similar recommendations were made by the CEDAW Committee in its 2019 Concluding Observations to provide incentives to encourage men to take parental leave and participate equally in childcare responsibilities.⁹³⁶ Related issues are addressed by target 5.4 of the Sustainable Development Goals.⁹³⁷

A 2018 UK Government study found that women in the UK were doing on average twice as much childcare as men.⁹³⁸

Employment legislation and policy, including parental leave, are reserved to Westminster.⁹³⁹ In April 2015, new shared parental leave regulations came into force across the UK which enable parents to share leave over the course of a year following the birth or adoption of a child.⁹⁴⁰ Parents can share up to 50 weeks of parental leave, by either taking time off together or separately.⁹⁴¹ This is paid at the lesser of 90% of earnings or a flat rate of £148.68/week during the first 37 weeks, with the remaining 13 weeks unpaid.⁹⁴² Shared parental leave is a progressive step towards redressing the imbalance of childcare responsibilities.

Data on the use of shared parental leave by fathers is not routinely collected by Scottish Government or UK Government.⁹⁴³ A 2018 inquiry by the House of Commons Women and Equalities Committee suggested that uptake is under 10%.⁹⁴⁴ UK Government has estimated that only half of the population is aware of the possibility of shared parental leave, leading to the launch of a publicity campaign in February 2018.⁹⁴⁵ The Women and Equalities Committee's report suggested that one reason for low uptake is the process for applying.⁹⁴⁶ It also found widespread criticism of the maternal transfer design of the system, which can discourage fathers from taking parental leave due to its direct impact on the length of maternal leave.

Leave uptake by fathers has been linked to socioeconomic differences, with fathers in the highest income quintile significantly more likely to take some form of leave than fathers in the lowest quintile.⁹⁴⁷ Qualitative research suggests that fathers in Scotland are unlikely to use the full range of leave benefits available to them for a number of reasons including low statutory parental leave pay, workplace cultural factors, and that parental leave entitlement is not individualised.⁹⁴⁸

UK Government stated in May 2018 that it had started an evaluation of shared parental leave and pay.⁹⁴⁹ Scottish Government's *Progressing the Human Rights of Children* report states that it is committed to working with employers to promote and support flexible working, being a member of Family Friendly Working Scotland which it has funded with £0.5 million since 2014.⁹⁵⁰ In November 2019, the Scottish National Party's (SNP) General Election Manifesto included a commitment to create 12 weeks of 'use-it-or-lose-it' leave for fathers. The 12 weeks would be additional to the existing entitlement under UK regulations.⁹⁵¹ This followed related recommendations made by the First Minister's National Advisory Council on Women and Girls in 2018.⁹⁵² As parental leave is an area reserved to Westminster,⁹⁵³ the SNP would need to win the support of other parties to pass legislation in the UK Parliament.

Recommendation

- *Scottish Government should monitor the uptake of shared parental leave and assess the impact of the 2015 regulations in terms of their impact on children's rights and gender equality.*

5.2 Children deprived of a family environment

Care experienced children

UNCRC Concluding Observation

Intensify its efforts to render appropriate assistance to parents and legal guardians, including informal kinship carers, in the performance of their childrearing responsibilities.

Ensure that the removal of children from their families is always subject to thorough investigation, is in accordance with the best interests of the child and is only used as a measure of last resort.⁹⁵⁴

Table 7: Children looked after by type of accommodation (2013-2018)⁹⁵⁵

Type of accommodation	2013	2014	2015	2016	2017	2018 (% of total)
At home with parents	4,762	4,142	3,927	3,870	3,766	3,818 (26%)
Friends/relatives	4,183	4,217	4,158	4,279	4,138	4,103 (28%)
Foster carers provided by local authority	3,906	4,002	3,891	3,826	3,509	3,529 (24%)
Foster carers purchased by local authority	1,427	1,520	1,587	1,566	1,743	1,529 (10%)
Prospective adopters	243	201	264	251	197	190 (1%)
Other community setting	45	51	48	48	35	50 (<1%)
Local authority home	575	579	564	581	619	585 (4%)
Voluntary home	112	117	133	136	127	122 (1%)
Residential school	439	392	402	376	375	395 (3%)
Secure accommodation	65	82	79	60	56	52 (<1%)
Crisis care	12	15	18	7	0	0 (0%)
Other residential setting	263	282	333	317	332	365 (2%)
Total	16,032	15,600	15,404	15,317	14,897	14,738

Note that data was not collected from Glasgow City for the period 1 August 2017 to 31 July 2018. Figures for 2016-17 were therefore used for Glasgow City in 2018, meaning that the 2018 figures are only estimates.

On 31 July 2018, there were 14,738 'looked after' children in Scotland⁹⁵⁶ – a decrease of 159 (or 1%) from 2017 (see table 7).⁹⁵⁷ This included children looked after at home with one or both biological parents, those living with friends or relatives in formal kinship care, with foster carers, and those living in residential houses, schools or other accommodation away from home. The total number has decreased for six consecutive years, following a peak of 16,248 in 2012.⁹⁵⁸ More children are living in community settings, particularly with foster carers (34%). The number of children in residential settings has remained relatively steady at around 10% of the overall total, while the number of children in secure care has been in gradual decline since 2015 (see table 7).

Care experienced children face a range of challenges and difficulties in having their rights upheld.⁹⁵⁹ For example, they may experience stigma and discrimination, issues around respect of privacy, and are more likely to leave school at an earlier age with fewer qualifications than their non-care experienced peers.^{960 961 962} Who Cares? Scotland has called for action to mitigate the most persistent rights infringements. It has identified six thematic areas which need to be considered - accountability, love, health, home, education and employment.⁹⁶³ Some of the actions called for include:

- an independent body for care experienced people, which should be given a legitimate role to scrutinise policy impact and accountability of Scottish Government;
- an end to physical restraint of children in care settings (see Chapter 4.2);
- schools should be accountable for ensuring they identify care experienced pupils and properly support them to attain positive outcomes.

Care experienced children have reported a need to make corporate parenting practices more rights-based and focused on the child's views. Children's Parliament's *Seen + Heard Fife* project demonstrates good practice in linking corporate parents with younger children whereby they can express their views and ideas that will impact on the development and delivery of services for care experienced children across Fife.⁹⁶⁴ The Children and Young People's Commissioner Scotland (CYPCS) has called for local authorities to ensure that all children entitled to a Coordinated Support Plan receive one, and for Scottish Government to review the law to make sure that barriers to children exercising their rights are removed.⁹⁶⁵

In 2017, Action for Children gathered views from nearly 500 care experienced children, leading to the identification of four overarching principles for improvement:⁹⁶⁶

1. Scotland's care system needs to provide a setting where children can have positive relationships with others;
2. Ensure that children are treated with respect and have others to turn to at times of change;
3. Care experienced children should be empowered to make their own decisions whilst learning from their experiences; and
4. Provide equal opportunities to financial and other forms of support.

Care experienced children gave the following comments during the study:

I feel that I was never listened to. At times, it was like my opinion was never heard by the social work or the children's panel when I tried to express my feeling about moving back in with my mum. They always made decisions regardless of how I felt about it.

Children and young people should not be moved around as much. I had several accommodations and found it hard to settle.⁹⁶⁷

In October 2016, Scottish Government announced an independent review of the care system for children in Scotland.⁹⁶⁸ The Independent Care Review commenced in February 2017, with the purpose of identifying and co-designing improvements to support the quality of life and outcomes of those in care.⁹⁶⁹ The review has sought to ensure the voices of care experienced people are at its heart. A Participation Hub has been developed, co-delivered with the *1000 Voices* project,⁹⁷⁰ to ensure the involvement of care experienced people. The Participation Hub has used creative methods designed to engage with underrepresented groups and people who choose to be involved in different ways. To date, the review has been informed by the views of around 2500 care experienced people, the majority of whom are children and young people.^{971 972} Their views have contributed to the development of twelve Care Review Intentions, revised and approved by the Go-to group consisting 62 children and young people. These intentions guide the work of the Care Review and reflect that infants, children and young people will be cared for in ways that meet their unique needs; that they get to thrive in supportive and stable learning and work environments; improved collaboration across care services; removal of stigma for those in care; and that those working in the care system are equipped to deliver the best care system.⁹⁷³ The Care Review is due to conclude in spring 2020.

In the Programme for Government 2019-20, Scottish Government acknowledged calls from care experienced children and young people that improvements should not be delayed while awaiting the outcome of the Independent Care Review.⁹⁷⁴ Scottish Government committed to further supporting care experienced people, including helping to secure tenancies, greater access to dental care, wider eligibility for support for further and higher education and expanded entitlement to funded ELC. The First Minister has noted that these changes are a "down payment on the part of society to care experienced people – a symbol of our seriousness and intent".⁹⁷⁵

In July 2019, it was announced that Scotland's universities will offer guaranteed undergraduate places to all applicants with care experience who meet the minimum entry requirements.⁹⁷⁶ This is to address underrepresentation of care experienced students in the university population. In 2018, 4% of 'looked after leavers' (looked after at the point of leaving school) went straight to university compared to 41% of school leavers across Scotland.⁹⁷⁷ Analysis of this data highlights that care experienced children leave school much earlier than their peers, meaning they are unlikely to meet higher education entry requirements immediately upon leaving school.⁹⁷⁸ Figures show that care experienced young people are more likely to take an indirect route to higher education, with larger percentages of looked after leavers initially going into further education or training compared to their non care experienced peers.⁹⁷⁹

Family support

Supporting families on the edge of care

One of the Independent Care Review Intentions is that families on the edge of care will get the support they need to stay and live together where it is safe for them to do so.⁹⁸⁰

A 2017 study found that children living in the most deprived 10% of small neighbourhoods in Scotland are nearly 20 times more likely to be looked after or on the Child Protection Register than children in the least deprived neighbourhoods.⁹⁸¹ The link between poverty and child welfare interventions is complex, and measures to support families on the edge of care should be sensitive to issues of child poverty as a means of helping to identify what support families may need, without being stigmatising⁹⁸² (see Chapter 6.6 for further information on child poverty). The Centre for Excellence for Children's Care and Protection (CELCIS), Children 1st and Social Work Scotland have noted the powerful nature of state welfare interventions - such as becoming looked after - and emphasised the importance of early help and community-based supports as essential for improving outcomes for children. These approaches should be focused on prevention and recognise the strengths of the family.⁹⁸³ Part 12 of the Children and Young People (Scotland) Act 2014 ('the 2014 Act') provides that a range of services must be available to children (and their families) who are at risk of becoming looked after by a local authority.⁹⁸⁴ The aim is to ensure that families have access to the early support they need to stay together, where it is safe for them to do so. The relevant services are set out in accompanying regulations and include parenting support and family group decision making services.⁹⁸⁵ Scottish Government published national guidance on implementing Part 12 in December 2016.⁹⁸⁶

A 2019 review by CELCIS, commissioned by Scottish Government, assessed the implementation of Part 12. The report highlighted the importance of working with families using a strengths-based approach, and that while family group decision making was flourishing in certain areas of Scotland, it required further embedding.⁹⁸⁷

Supporting kinship, adoption and foster families

Kinship, adoption and foster families frequently highlight the need for increased financial and other support to enable them to fulfil their role. In its 2018 report - *Progressing the Human Rights of Children* - Scottish Government stated it had convened a working group to evaluate a national care allowance scheme for kinship, adoption and foster care.⁹⁸⁸ The working group published twelve recommendations in September 2018, stating that Scottish Government should consider introducing a Scottish Recommended Allowance to achieve consistency for children in foster and kinship care.⁹⁸⁹ It also recommended that Scottish Government carry out a mapping exercise of policy objectives linked to foster, kinship and adopted children to make sure that their needs are represented in policy-making. Scottish Government and COSLA are working together to put these recommendations into practice.⁹⁹⁰

Looked after children at home

A child is looked after at home when they have been made subject to a Compulsory Supervision Order with no condition of residence through the Children's Hearing process. Children looked after at home still live with one or both of their parents but are officially 'looked after' by the local authority. They continue to live at home because it is hoped that by providing support to the child and family, the problems affecting the family can be resolved without the need to accommodate the child away from home.⁹⁹¹

The proportion of children looked after at home has decreased over the last decade. An estimated 26% of looked after children in 2018 were looked after at home, compared to 43% in 2008.⁹⁹² However, these children still represent a significant proportion of care experienced children in Scotland, making up over a quarter of Scotland's looked after child population.

Children looked after at home have consistently been identified as a group in need of extra support. Their needs and circumstances can be complex and as pressing as the needs of children looked after away from home. The families of children looked after at home are often affected by multiple, chronic and concurrent challenges such as parental drug and alcohol use, mental health issues and poverty.⁹⁹³

Recent research from the Scottish Children's Reporter Administration (SCRA), commissioned by Scottish Government, indicated that outcomes for children looked after at home improved over the time they were on a home Compulsory Supervision Order. SCRA's report considered that home Compulsory Supervision Orders allow for legal safeguards to be put in place, whilst following the 'minimum intervention' principle of the Children's Hearings System.⁹⁹⁴

In November 2016, a mentoring programme for 8-14 year olds looked after at home was launched. The intandem programme is delivered on behalf of Scottish Government and Inspiring Scotland by a number of charities.⁹⁹⁵ The purpose of the scheme is to provide these children with trusting and supportive relationships as well as a positive adult role model. The programme is currently embedded in 20 local authorities, and an external evaluation has recommended it should be extended to further areas.⁹⁹⁶ A majority of children included in the evaluation reported that taking part in intandem had helped them make more friends, improve their confidence, self-esteem and community engagement. Scottish Government has extended funding for intandem until March 2020.

Kinship carers

In 2018, there were 4,103 children living in formal kinship care, accounting for 28% of the looked after population.⁹⁹⁷ This represents the second consecutive year in which the number of children living in formal kinship care arrangements has decreased (2016: 4,279; 2017: 4,138). Formal kinship care statistics only provide one part of the picture. There are an estimated 12,630 children in kinship care across Scotland according to the 2011 census. The majority of these children are in informal, private family arrangements with no or little involvement from social work services.^{998 999}

Studies have highlighted that children in kinship care families are disproportionately living in the poorest households across Scotland.^{1000 1001} Further research suggests that kinship carers receive lower levels of both formal and informal support than other caregivers.¹⁰⁰² The National Review of Care Allowances Working Group recommended that kinship carers should receive a 'Carer's letter' to give them clear information on what they are entitled to, and that local authority support for this group should focus on the identified needs of carers and children.¹⁰⁰³ Together's members have also reported a lack of sufficient advocacy provision for children in kinship care.¹⁰⁰⁴

Scottish Government commissioned a National Kinship Advice Service in 2017 to replace services previously commissioned from Children 1st.^{1005 1006 1007} The National Kinship Advice Service aims to improve support for children in kinship care to establish peer group support as well as to develop suitable advice and information packs.¹⁰⁰⁸

Fostering

In 2018, there were 5,058 children living with foster carers in Scotland, making up 34% of the total number of looked after children.

In 2017, 33% of the total number of children in foster care were in an interim placement provided by a local authority service, while 27% were in a permanent placement.¹⁰⁰⁹ Eighty-six children were in an emergency placement (2%), while 224 (6%) of those using fostering services were identified as needing a permanent placement but were either not in or not moving towards such a placement. Twenty-three children were waiting on a foster care placement to become available.¹⁰¹⁰

There are concerns around the number of available foster households in Scotland. In 2017, 403 households de-registered. Meanwhile only 365 new foster care households were approved – a 13% decline from 2016. The number of children who came into foster care in 2017 exceeded the number of new foster carer households in 29 of the 32 local authority services.¹⁰¹¹ Shortages in local placements can result in children being placed with foster carers in a different local authority area. This impacts on the consistency of relationships with family, school and community.

Recruiting households ready to foster sibling groups can be a particular challenge. The Care Inspectorate reported that there were difficulties recruiting such households in 45% of fostering services in 2017, the main reason being accommodation constraints.¹⁰¹² It is recognised good practice to place siblings together unless it is not in their best interest to do so (refer to Chapter 5.2 for more information on sibling contact).

Foster families have raised concerns around the level of foster care allowance, which varies significantly depending on where the family lives.¹⁰¹³ In a survey of 500 foster carers across Scotland, 60% said that their allowance and expenses do not cover the full costs of looking after their foster children.¹⁰¹⁴ The Fostering Network has repeatedly recommended that Scottish Government introduce a minimum recommended allowance, as already exists in all other UK nations.¹⁰¹⁵ The National Review of Care Allowances Working Group stated that payments beyond the child allowance should be linked to the identified needs of children in foster care and that information about such payments should be shared with foster carers as early as possible.¹⁰¹⁶

Foster carers have also highlighted a need for information and clarity around their role. Only 29% of foster carers surveyed considered there was clarity around what decisions they had authority to make in relation to the child or young person they cared for.¹⁰¹⁷

In 2017, five notifications of private fostering were made to local authorities. Private fostering arises when a parent agrees that a person other than a close relative is to care for the child for more than 28 days. These arrangements are not facilitated by the local authority or a registered service, but parents or carers involved must inform local authorities of their existence. The Care Inspectorate believes the true number of private fostering arrangements is higher than official figures suggest.¹⁰¹⁸

Together's members have also raised concerns around the bureaucratic barriers to young people staying in foster care as a Continuing Care placement up to age 21 (refer to Chapter 5.2 for more information on Continuing Care).¹⁰¹⁹

Recommendations

Scottish Government should:

- *Ensure that the reform of the care system is shaped by the views of children, evidenced outcomes, and guided by the recommendations of the Independent Care Review;*
- *Ensure that family support services are in place to enable families to stay together where it is safe for them to do so;*
- *Ensure that kinship and foster carers, and adoptive families are provided with appropriate support (including financial) to meet children's needs.*

Changes in placements

UNCRC Concluding Observation

Take all measures necessary to provide stability for children in care, including efforts to retain social workers and to avoid unnecessary changes in placement.¹⁰²⁰

Care experienced children emphasise the importance of trusting, long-lasting relationships and frequently express a desire that changes in placement are minimised.¹⁰²¹ Despite this, children report that they experience multiple moves during care which can disrupt their relationships.¹⁰²²

Children and young people should not be moved around as much. I had several accommodations and found it hard to settle.¹⁰²³

Placement instability is a major influencing factor on poor outcomes for care experienced children.¹⁰²⁴ ¹⁰²⁵ Who Cares? Scotland reports that changes in placement are one of the top ten reasons children seek the organisation's support. The charity has called for the number of new carers coming into children's lives to be limited:¹⁰²⁶

During her care journey, Eilidh moved seven times. In some circumstances, she wanted to stay in touch with her carers and people she trusted. She was told this wasn't allowed, which made her feel isolated. When she left care, she struggled to maintain intimate or meaningful relationships.¹⁰²⁷

Scottish Government data shows the number of placements children have experienced over the course of the preceding year. In 2017-18, 2270 children experienced two placements (15% of looked after children), while 758 (5%) experienced three or more placements within the year.¹⁰²⁸ A 2015 SCRA study of 200 children found that 26% had had five moves or more since first becoming looked after.¹⁰²⁹ In England, the Children's Commissioner produces an annual *Stability Index* which uses data from most local authorities to measure the stability of the lives of children in care.¹⁰³⁰ Some Together members have called for a similar stability index to be introduced in Scotland.

Research indicates that significantly more children who became looked after in 2013 had a permanence plan before age three, compared to children who became looked after in 2003.¹⁰³¹ Scottish Government established the Permanence and Care Excellence (PACE) programme in 2014. This is delivered by CELCIS and the Permanence and Care Team (PaCT) to enable more looked after children to experience permanence as early as possible. In its Programme for Government 2019-20, Scottish Government states that all local authorities have been given the opportunity to participate in the programme. Twenty-two out of 32 local authorities are currently involved in the programme and CELCIS states that a further five areas want to use the programme in the next year.¹⁰³² CELCIS reports that PACE has resulted in the time taken to make permanence recommendations being halved to 28 weeks in two local authorities. Additionally, PACE has introduced a looked after review within two weeks of a child becoming looked after in four local authorities.¹⁰³³

Recommendation

- Scottish Government should minimise placement changes and provide support to ensure trusting, long-lasting relationships thrive.

Sibling contact

UNCRC Concluding Observation

Wherever possible, find a placement for the child that will facilitate contact with his or her biological parents and siblings.¹⁰³⁴

When brothers and sisters are separated through their care experience, the impact of this separation, and limited or poor-quality contact, can be devastating. This has been articulated clearly by many care experienced children, and is noted by Who Cares? Scotland as consistently one of their most common advocacy requests.¹⁰³⁵ ¹⁰³⁶

Research shows that positive sibling relationships can provide a source of resilience for children facing adversity and provide continuity at a time of change and uncertainty.¹⁰³⁷ Placing siblings together has been associated with increased wellbeing and stable,

enduring placements.¹⁰³⁸ Whilst there is a clear policy intention that siblings should be placed together,¹⁰³⁹ sibling separation and estrangement are common experiences when children become looked after.¹⁰⁴⁰

The Independent Care Review has, in engaging with care experienced children, identified that siblings must be kept together, or should be supported to maintain relationships where appropriate, safe and possible, to ensure the best outcomes for children.¹⁰⁴¹

The exact number of care experienced children affected by sibling separation is not known. At 31 December 2018, there were 1,042 sibling groups in foster care; 23% were separated upon placement with the most common reason cited by local authorities being a lack of resources.¹⁰⁴² Twenty-eight percent (28%) of new adoptive households in 2018-19 were approved to adopt two siblings while only 2% were approved to adopt sibling groups of three children. No households were approved to adopt more than three siblings.

A 2017 study by SCRA and the University of Strathclyde mapped the sibling relationships of 50 children in permanent fostering or adoptive families.¹⁰⁴³ The research found that almost 70% were living apart from at least one sibling, whilst around 40% were living apart from all of their siblings. Around 80% had direct contact with at least one sibling. For around 40% of the children, the plan was for no contact (direct or indirect) with any siblings when in their permanent placement. The study found that children's views on sibling contact arrangements were often not recorded during the Children's Hearing process and recommended the need for increased transparency within written records regarding the rationale for either sibling separation or reductions in contact.^{1044 1045} This is further complicated by the range of perceptions about what constitutes a sibling relationship, which is not clearly defined in law.¹⁰⁴⁶ Families have complex structures, and there is a need to recognise the importance of children's lived experiences and their own perceptions of who their siblings are (including step-siblings, foster-siblings and other children with whom they have shared family life), rather than relying on rigid biological definitions.

When asked about sibling contact, care experienced children say that separation is the norm and that contact with siblings often takes place sporadically and that in some cases there can be long periods with no contact at all.¹⁰⁴⁷ Many care experienced children say sibling relationships are especially important due to their shared experiences, and the difficulty of replacing such relationships. They also highlight the negative impact separation can have not only on their relationships, but also on their wellbeing:

When you're brought into care, all your family has been ripped away. Your relationship with your siblings is your last shred of stability.

I don't want to live with my brother – I parented him a lot and he needs to live his own life. But not seeing him has given me a lot of problems like depression.¹⁰⁴⁸

Care experienced children report some professionals do not take sibling relationships seriously and often blame other professionals or lack of resources for the lack of support. Many say attitudes around sibling separation and contact need to be changed and that a legal obligation to support sibling contact would be useful.¹⁰⁴⁹

Currently, there is no duty on local authorities to ensure that siblings are placed together – only a duty in making their assessment to “take into account” the need to ensure children in the same family are placed together where practical and appropriate.^{1050 1051} Although local authorities are required to promote contact between a child and any person with parental responsibilities,¹⁰⁵² the same level of duty does not currently exist to promote sibling contact.¹⁰⁵³ Together's members highlight the importance of valuing sibling relationships in their own right, as opposed to contingent on other family relationships, and note the work of Siblings Reunited (STAR) in Fife as an example of good practice in facilitating high quality sibling contact and support.¹⁰⁵⁴ The UK Supreme Court heard two Scottish appeals involving the rights of siblings in the Children's Hearings System in November 2019.¹⁰⁵⁵ The case considers the right of brothers and sisters to participate in a Children's Hearing where decisions are being made in relation to their sibling. The Supreme Court's decision is expected in 2020.¹⁰⁵⁶

The *Stand Up For Siblings* campaign,¹⁰⁵⁷ which includes many Together members, has called for action in a number of areas, including developing bespoke recruitment and support for carers of sibling groups; systematic and comprehensive recording of children's sibling relationships; transparent documenting of children's views and the influence of their views on decision making regarding placement and contact with siblings; improving consistency and approach to lifelong assessment of sibling relationships; and introducing measures to improve and monitor the quality of sibling contact. It has also called for the introduction of a duty on local authorities to place siblings together and a further duty to promote sibling contact if separated.¹⁰⁵⁸ The campaign also provides information for children affected by sibling separation on its website.¹⁰⁵⁹

In March 2019, Scottish Government announced plans to strengthen the law in relation to placing siblings together and to introduce a duty on local authorities to promote sibling contact. The *Family Justice Modernisation Strategy*, published in September 2019, commits to introduce a duty on local authorities to place siblings together where it is in their best interests to do so.¹⁰⁶⁰ The Children (Scotland) Bill, introduced in September 2019, includes a duty to promote sibling contact where practicable and appropriate.¹⁰⁶¹ This duty includes adopted, step, full and half siblings, as well as any other person with whom the child shares a sibling-like relationship. The Bill further requires local authorities to ascertain the views of siblings insofar as reasonably practicable before making a decision relating to a looked after child (including decisions relating to contact), or before deciding to look after a child. The Bill is currently at Stage 1 before the Scottish Parliament.

Recommendations

Scottish Government should:

- Support local authorities to ensure that siblings are placed together where this is in their best interests and taking account of their views;
- Ensure sufficient numbers of foster carers are recruited, including those able to accommodate disabled children and larger sibling groups of children;
- Ensure local authorities promote and support sibling contact.

Care leavers

UNCRC Concluding Observation

Inform and consult with children from an early stage on plans for their care and transition and provide sufficient support for care leavers, including for accommodation, employment or further education.¹⁰⁶²

Care leavers often struggle on the journey out of care and into independence. For many, there is a lack of support and guidance. Support and service provision is variable. As a result, care leavers in Scotland continue to have poor outcomes and unmet needs.¹⁰⁶³ Challenges include how to best engage, plan for and support young people into adulthood, how to meet the needs of different groups of care leavers and how to ensure local authorities have the information they need to plan services and monitor young people's outcomes.¹⁰⁶⁴

New provisions for care leavers included in the 2014 Act have been welcomed by children's organisations. These enable young people to remain in stable care placements up to the age of 21 ('Continuing Care'), and raises the entitlement age to request support from 21 to 26 years-old ('Aftercare').¹⁰⁶⁵ These changes, and their implementation, are discussed in more detail below. Clan Childlaw has launched a Care Leavers Law Service to support young people in realising their rights to Continuing Care and Aftercare.¹⁰⁶⁶

Corporate parents can demonstrate their commitment to positive outcomes for care leavers by endorsing and signing up to the *Scottish Care Leavers Covenant* (SCLC).¹⁰⁶⁷ The Covenant supports implementation of the 2014 Act in supporting the Aftercare of care leavers transitioning into adulthood, recognising the primary of graduated and extended transitions and relationship-based practice. Over half of local authorities have corporately endorsed the SCLC with further individual or team engagement across all local authority areas.¹⁰⁶⁸ In addition, 18 colleges and universities, NHS Scotland along with national regulatory and inspection agencies and a range of national and local providers have corporately endorsed the Covenant.

Aftercare

Local authorities are required to give advice, guidance and assistance to care leavers who are at least 16 but younger than 19.¹⁰⁶⁹ Of those who left care in 2017-18, an estimated 70% had a pathway coordinator (who assesses the young person's needs) and 72% had a pathway plan (which outlines how the local authority plans to meet the young person's needs).¹⁰⁷⁰ This is a slight decrease from 75% and 73% respectively in 2016-17. The proportion of young people with a pathway coordinator or pathway plan was significantly lower amongst those whose last placement had been at home, 53% and 52%, compared with 77% and 79% of those whose last placement type was away from home. This suggests that more could be done to support young people who leave care who have been looked after at home.

Aftercare eligibility was extended in March 2015 to include all care leavers until they turn 26.¹⁰⁷¹ In July 2018, 62% of eligible young people were known to be receiving Aftercare.¹⁰⁷² The Independent Care Review Intentions include that Aftercare should be designed around the needs of the person leaving care and that they will be supported for as long as they need it.¹⁰⁷³ Scottish Government issued guidance on the extension of Aftercare in November 2016.¹⁰⁷⁴

Table 8: Care leavers eligible for Aftercare services and percentage uptake (July 2018)¹⁰⁷⁵

Age	16	17	18	19-21	22+	Total
Total eligible for Aftercare	299	625	1,112	2,452	1,671	6,109
In receipt of Aftercare	215 (72%)	438 (70%)	753 (68%)	1,720 (70%)	691 (43%)	3,817 (62%)
Not in receipt of Aftercare	84 (28%)	187 (30%)	359 (32%)	732 (30%)	930 (57%)	2,292 (38%)

Continuing care

The 2014 Act introduced the right to Continuing Care for eligible children and young people.¹⁰⁷⁶ This gives those who leave care aged 16 or older and who were looked after away from home the right to stay in the same accommodation with the same support until they turn 21. This reflects the experience of children and young people who are not care experienced, who typically remain living in the family home until early adulthood.¹⁰⁷⁷ The new provision has been in force since April 2015. The commencement of the Continuing Care (Scotland) Amendment Order 2019 in April 2019 fully extended the duty to provide Continuing Care to all eligible 16-21 year olds.

In 2017-18, 208 over-16s were recorded as being in Continuing Care, representing less than 5% of children and young people who ceased to be looked after in that year.¹⁰⁷⁸ Scottish Government notes that this is an underestimate as some local authorities were unable to return data in this first year of collection.¹⁰⁷⁹ Scottish Government has committed to working with local authorities to improve the completeness of the next return.

In 2018, a consortium of Scottish children's organisations, coordinated by Scottish Throughcare and Aftercare Forum (Staf), considered the implementation of Continuing Care across Scotland. The group identified examples of good practice taking place across Scotland together with key challenges to effective implementation of the policy. Challenges included financing and expansion of provision, training and staff development.¹⁰⁸⁰ Research also highlights the challenges which have affected the full and consistent implementation of this policy, namely cultural, leadership, learning and development issues, financial and funding challenges.¹⁰⁸¹ Staf's Focus Group recommended that government-led ring-fenced funding should be put in place to ensure that Parts 10 and 11 of the Children and Young People (Scotland) Act 2014 are fully implemented and practice is embedded. In particular, it recommended adequate funding should be provided to ensure:

- Foster carers and kinship carers continue to be paid at the same level as they would have if the young person was not in a Continuing Care placement;
- Young people living away from their placement during college or university term time are supported;
- Young people who are now included in the justice system can return to their carer; and
- Young people have access to specialist services such as CAMHS and independent advocacy.

Scottish Government published Continuing Care guidance in November 2016.¹⁰⁸² This explains the change in the law, eligibility requirements and assessments. There remain some concerns that more training is needed to ensure local authorities understand the eligibility requirements and are communicating the relevant information to children and young people.¹⁰⁸³ A small qualitative study has reported that not all residential practitioners are aware of what Continuing Care entails.¹⁰⁸⁴

Together's members have raised concerns that some eligible children have been encouraged or told by professionals that they have to leave care before turning 16. This has resulted in the child losing all rights they otherwise would have had to Aftercare and Continuing Care. In some cases, children have not been made aware of what impact leaving care before 16 would have on their rights, have not fully understood the implications, or have left then changed their minds and it was too late. Who Cares? Scotland has many examples of care experienced children and young people who have not been informed about their right to stay in care until age 21:

A young person aged under 18 and living in residential care had been told that they needed to move on to supported accommodation. Their workers said the young person was ready to make this move as they showed they were capable of independent living – they were able to cook and wash their own clothes. The young person didn't feel ready to leave care. They told their Advocacy Worker that they would struggle emotionally and financially to live independently and still needed the support of residential care.¹⁰⁸⁵

Who Cares? Scotland has called for an increase in independent scrutiny of the implementation of Continuing Care rights and further that young people should be allowed to return to care until age 26.¹⁰⁸⁶

Poverty and financial precariousness

Research highlights poverty and the disproportionate impact of financial hardship faced by care leavers.^{1087 1088} Leaving home at a much earlier age than the general population, care leavers are more likely to encounter the effects of debt and poverty, and often lack the safety net of the financial support from parents that other children and young people can turn to in times of crisis.

In recognition of the multiple barriers and disadvantage faced by care leavers in Scotland, the *Scottish Care Leavers Covenant* sets out the rationale for an 'assumption of entitlement' to all forms of discretionary support from corporate parents and associated agencies. This principle is reflected in policy across a range of areas affecting care leaver's finances, such as:

- The introduction of an exemption for care leavers under the age of 26 from paying council tax, which came into force in April 2018;¹⁰⁸⁹
- The implementation in 2017 of a non-repayable bursary for care experienced students undertaking higher and further education.¹⁰⁹⁰ Care experienced students under 26 are currently eligible for this bursary, and the Scottish Government's 2019-20 Programme for Government announced that this age cap will be removed from academic year 2020-21;¹⁰⁹¹
- Care leavers will have additional entitlements to the new Job Start Payment when it is launched in spring 2020.¹⁰⁹²

Homelessness

Young people with care experience are disproportionately over-represented in homelessness figures, although there is currently a significant gap in the official data which indicates that not enough is known to ascertain the full picture of homelessness experienced by people with care experience (refer to Chapter 6.6).¹⁰⁹³

At least 21 care leavers immediately became homeless in 2017-18.¹⁰⁹⁴ The exact figure is not known given that specific destinations are not recorded for all care leavers in Scottish Government's social work statistics.¹⁰⁹⁵ In July 2018, 146 children and young people eligible for Aftercare were recorded as homeless, while the destinations of 525 were not known.¹⁰⁹⁶ At least 7% of those eligible for Aftercare on 31 July 2018 had been homeless at some point since becoming eligible, while homelessness prevalence was unknown for 41% of care leavers, either because they were not receiving Aftercare or because their local authority did not provide homelessness figures. Who Cares? Scotland states that care experienced people should not be put in temporary, insecure or hard-to-let housing, but that they should instead be provided with a Scottish Secure Tenancy for life.¹⁰⁹⁷

A 2019 report drawing on the voices of care experienced people, many of whom had current or previous experience of homelessness, highlighted that more can and must be done to prevent homelessness in care experienced people.¹⁰⁹⁸ Continuing Care is regarded as a primary preventative measure in preventing or reducing homelessness amongst care leavers. As part of the Homelessness and Rough Sleeping Action Group (HARSAG),¹⁰⁹⁹ a multi-agency group has been working over the summer 2019 to review and improve Care Leavers Housing Pathways. This group was coordinated by the A Way Home Scotland coalition, and chaired by CELCIS, with a report and recommendations due for publication in late 2019. The recommendations with identified actions and additional measures will be to reinforce already existing duties and expectations on local authorities and corporate parents, with respect to the full and meaningful implementation of Continuing Care (Part 11 of the 2014 Act), the *Housing Options Protocols for Care Leavers*¹¹⁰⁰ and the *Staying Put Scotland* guidance.¹¹⁰¹ In addition further recommendations will be made to improve the implementation of the required range and support of post-care housing options.¹¹⁰²

Recommendation

Scottish Government should:

- *Ensure full implementation of the rights to Aftercare and Continuing Care under the 2014 Act, including through sufficient funding and resources, awareness-raising and training. Young care leavers should be actively involved in all stages of preparing for, planning and evaluating their throughcare, Aftercare and Continuing Care support.*

Advocacy

One of the Independent Care Review Intentions is that infants, children and young people will have a visible and meaningful impact on decision making and care planning.¹¹⁰³ Care leavers face particular challenges of participation, particularly in expressing their views in complex situations which may arise where different family members or professionals hold competing views; this can lead to the child's voice not being heard, particularly for young children, disabled children and children for whom English is not their first language.

A survey of care experienced children and young people by Who Cares? Scotland found that the majority knew what advocacy was but only 30% said they had experience of it.¹¹⁰⁴ Of those who had an advocacy worker, 92% said this had helped them. Many participants expressed that formal meetings often felt designed to suit the needs of professionals and that this made it difficult or intimidating for them to participate. Seventy-six (76%) of participants who had never had advocacy said that they would have liked to have heard more about it.

[my advocacy worker] helps to make people listen to me and helps me in meetings. She goes to meeting and says my

views when I don't want to go or they are too upsetting. She explains what is happening so I understand.

Who Cares? Scotland reports that the most persistent advocacy issues in 2018 related to feeling heard in formal meetings about the future, seeing parents and siblings and having a say in day-to-day care. The average age of a person receiving advocacy support was 15. Who Cares? Scotland calls for demand-led and relationship based independent advocacy to be available to all care experienced people who need it.¹¹⁰⁵

The current availability of independent advocacy for children and young people remains inconsistent, with varied provision depending on where they live, their age and placement type. Together members report that local authority contracts can often focus on children aged 12 and over living in residential and foster care, resulting in large advocacy gaps for younger children, children in kinship care, looked after at home, and disabled children. Currently, 29 out of 32 local authorities offer independent advocacy.¹¹⁰⁶

The Children's Hearings (Scotland) Act 2011 requires that a child is informed of the availability of advocacy services.¹¹⁰⁷ The Act also enables Scottish Government to make regulations in relation to the provision of advocacy services, and to enter contracts for the provision of these services. In September 2019, Scottish Government issued a contract for independent advocacy for all children in the Children's Hearing system.¹¹⁰⁸

Recommendations

Scottish Government should:

- *Ensure care experienced children have consistent access to high quality independent advocacy;*
- *Ensure full implementation of Section 122 of the Children's Hearings (Scotland) Act 2011 on the provision of advocacy services within the Children's Hearing System.*

Adoption

There were 328 adoptions across local authority services in Scotland in 2017-18, showing a slight increase on the two preceding years. In the same year, 16 adoptions broke down (disrupted) across 10 local authority services before the adoption order was granted.¹¹⁰⁹ Four adoptions were disrupted in local authority adoptive households after the adoption order was granted. This shows that a relatively small number of adoptions disrupt in comparison to matches made. However, any placement disruption is hugely damaging to those involved, particularly when the move was designed to be a final and permanent one.¹¹¹⁰

Scottish Government data shows that the majority of adoptions in 2017-18 (67%) were of children aged under five.¹¹¹¹ On 31 December 2017, 217 children had been approved for adoption and were waiting to be matched with approved adopters.¹¹¹² A quarter of these children had been waiting for over one year.

The level of support available for families following an adoption varies across local authorities and there are few specialist adoption services in Scotland.¹¹¹³ In a survey of 74 adoptive parents, a majority said that support would have been helpful but was unavailable, particularly in areas including behaviour management, support with education needs and to improve family life.¹¹¹⁴ The *Permanently Progressing? Building secure futures for children in Scotland* study, coordinated by the University of Stirling, has highlighted that while professionals sometimes focus largely on legal processes, children, carers and adoptive parents need them to also engage with the practical and emotional impact of change.¹¹¹⁵ Children participating in the study spoke of their familiarity with family practices and routines, suggesting that these were important in helping them develop a sense of security and belonging in their new home.

The Adoption Task Force is a collective of organisations across Scotland who are striving to improve best practice in adoption nationally. The project has been working to gather input from adopted children and young people across Scotland through its Share Your Story phase.¹¹¹⁶ The aim is to learn from these children and young people's experiences as part of helping to improve experiences for others.

Refer to Chapter 5.2 for recommendations relating to adoptive families.

5.3 Children affected by parental imprisonment

UNCRC Concluding Observation

Ensure that child protection authorities are always informed when a person who has a child or children is imprisoned, in order to avoid situations where children are left unattended.

Take into account the best interests of the child as a primary consideration when sentencing parents, avoiding, as far as possible, sentences for parents that lead to their being separated from their children.¹¹¹⁷

Other treaty bodies, UPR recommendations and SDGs

Similar recommendations concerning the welfare of children of incarcerated parents were made by Slovakia in the United Kingdom's 2012 Universal Periodic Review.¹¹¹⁸

Scotland has one of the largest prison rates (per 100,000) in western Europe.¹¹¹⁹ Almost two-thirds of people in prison (62%) have children,¹¹²⁰ meaning that a large number of children are affected by parental imprisonment. Despite this, there is no recording system of how many children are affected. Estimates are placed at between 20,000-27,000 children affected each year.¹¹²¹ The lack of information on the number and characteristics of children affected makes it difficult to tailor support services to meet their needs.

Imprisonment of a family member is in itself traumatic, especially if a child witnesses the arrest.¹¹²² Children with a family member in prison experience stigma,¹¹²³ keep the issue hidden and often do not seek support even when it is available.^{1124 1125} Children may begin to show regressive behaviour, such as withdrawal or bed-wetting, or conversely become more aggressive.^{1126 1127 1128} Families often try to keep imprisonment a secret, which can limit who the child can speak to about their situation. This can mean children are punished for their behaviour at school without any understanding of, or support for, their circumstances. Research suggests that children of parents in prison are more likely to suffer from mental health problems than their peers¹¹²⁹ and that they experience the separation as bereavement.¹¹³⁰ These difficulties are exacerbated by the economic circumstances which many families experience before and after the period of imprisonment.^{1131 1132} It is, however, important to recognise that child-parent relationships are not always positive and healthy. Therefore, some children may benefit and experience relief when a parent is imprisoned if they have been abused or neglected by them, or have been living with domestic abuse.¹¹³³

Children and their families are often exposed to stigma and abuse when the media publishes their address in reports on their parent's prison sentence. Children and their families have suffered hate mail, death threats, arson, graffiti and other antisocial acts.¹¹³⁴ In 2019, Families Outside launched a #NoAddressInThePress campaign and petition calling for a change in legislation.¹¹³⁵

Family contact

Prison visits are an important way for families to stay in contact while a parent is in prison. All Scottish prisons offer regular visiting opportunities for families, and most offer special events and family days around holiday periods and throughout the year.¹¹³⁶ In 2013, the Scottish Prison Service announced its aim that every prison in Scotland should have a Visitor's Centre.¹¹³⁷ The majority of Scotland's 15 prisons now have a Visitor's Centre, but three still do not offer this service.¹¹³⁸ Every prison should have at least one Family Contact Officer who is responsible for encouraging and maintaining links between prisoners and their families.¹¹³⁹ However, the HM Chief Inspector of Prisons for Scotland has noted that the quality of this service varies across prisons, as some Officers are not employed exclusively for the purpose of improving family contact.¹¹⁴⁰

There are many examples of good practice from Prison Visitor Centres across Scotland. In HMP Perth, hot meals are provided for visiting families and they have reported enjoying having dinner as a family unit, and at HMP Grampian, prisoners whose children are celebrating their birthday have the opportunity to bake them a birthday cake in the kitchen.¹¹⁴¹ The 2017 Prisoner Survey found that 82% of respondents were happy with the facilities for visiting children, showing a clear improvement over the past decade.¹¹⁴²

The *National Performance Framework for Prison Visitors' Centres in Scotland*¹¹⁴³ was published in 2017 and updated in 2018. It states that all Prison Visitor Centres work towards children having increased quality contact with their imprisoned parent and to enhance their emotional wellbeing. The *National Performance Framework* states that a designated space for children's play with toys and books is essential, but provision of books for young people and play areas appropriate for different age groups is only listed desirable. This suggests that children's visits are tailored primarily for younger children,¹¹⁴⁴ which may impact on the quality of visits by older children. Anecdotal evidence from members supports this, with Families Outside reporting a significant drop-off in visits from older children and teenagers.¹¹⁴⁵

Scottish Government has provided funding to improve and increase the provision of Prison Visitor Centres.¹¹⁴⁶ However, there are concerns around sustainable resourcing of Visitor's Centres. Each centre is run independently by charities and varies in terms of resources and capacity. In 2019, HMICS highlighted that financial issues were affecting Visitor's Centre hours and services at HMP & YOI Grampian.¹¹⁴⁷

For some families, visiting an imprisoned parent in person can be timely and expensive, particularly if they live far away.¹¹⁴⁸ Families receiving certain benefits may be eligible to get help with the cost of prison visits.¹¹⁴⁹ The 2017 Prisoner Survey revealed that the most common reasons for visit difficulties included the distance of the prison from their home, the cost for family getting to the prison, and lack of transport.¹¹⁵⁰ The cost of calls from prison phones has also been highlighted as a barrier.¹¹⁵¹ Digital or virtual visits can be key in helping families maintain contact. Virtual visit availability is inconsistent across Scotland. Video-link facilities are available (or being trialled) for some families but only those living in certain areas, and sometimes only to a limited range of Scottish prisons.¹¹⁵² Research suggests that lack of access to digital technology and restrictions around telephone contact make it difficult for older children to balance contact with their parent with their own day-to-day lives, as they increasingly spend more time outside the home.¹¹⁵³

The Scottish Prison Service (SPS) *Family Strategy 2017-2022*¹¹⁵⁴ recognises that prisons need to support families to sustain and improve positive relationships. Through the strategy, SPS intends to actively promote wellbeing and positive life outcomes of children affected by parental imprisonment. This includes actively supporting and encouraging family contact and rolling out a training package covering family policies for all staff. An evaluation will be needed to assess if the strategy has had the intended impact.

In its 2019-20 Programme for Government, Scottish Government highlighted that it continues to support the 12 existing Visitor's Centres.¹¹⁵⁵

Assessing the impact of parental imprisonment on a child

Communication between child and adult services at the stage of parental or family arrest and imprisonment is essential in supporting children. This helps avoid situations where children are left unattended, unsupported, and even unknown.

Unlike sentencing guidelines in England and Wales,¹¹⁵⁶ there is no requirement for the judiciary in Scotland to take a child's best interests into account when deciding whether to place an adult in prison.¹¹⁵⁷ The routine use of Child and Family Impact Assessments at key stages in the criminal justice system is needed to assess the impact of parental imprisonment on a child. The voices of affected children are rarely heard within the justice system.¹¹⁵⁸ Impact Assessments have the potential to inform a Judge or Sheriff's decision and ensure that children's views are taken into account. They also make sure that the rights of children are upheld and that appropriate support is put in place.¹¹⁵⁹ Some research suggests that particular attention should be paid to the sentencing of women with caring responsibilities, as children with an imprisoned mother are more likely to suffer a range of negative impacts of parental imprisonment than those with a father in prison.^{1160 1161}

To date, there are no separate guidelines addressing the sentencing of parents.¹¹⁶² In 2017, the Scottish Sentencing Council agreed to consider how caring responsibilities should be taken into account during the sentencing process when developing future guidelines.¹¹⁶³ In 2019, the Scottish Sentencing Council held a consultation on draft guidelines for the sentencing process. This specified caring responsibilities as a mitigating factor, especially if it meant a child might end up in care. Responses from the children's sector indicated that these guidelines should explicitly and clearly reference the best interests of the child, and that children's rights be taken into account when sentencing a parent, as distinct from a tool for mitigation.¹¹⁶⁴ The consultation closed in September 2019 and the guidelines were being finalised at the time of writing.¹¹⁶⁵

Some progress has been made through the Criminal Justice (Scotland) 2016 Act which places a duty on Scottish Ministers to ensure that a newly admitted prisoner is asked whether he or she is a parent, as well as for details of any children.¹¹⁶⁶ While welcome, this duty only applies once the parent has already been sent to prison – it does not apply at the point of sentencing – meaning children's interests are only highlighted once the decision to imprison has already been made. This duty has not yet been brought into force, meaning there is no statutory requirement in place to ensure that children of prisoners are identified and provided for.

More needs to be done within the court system to ensure children are put at the centre of sentencing decisions, as has been done in other areas of the justice system.¹¹⁶⁷ Training of judges is essential, and has been used in England and Wales to raise awareness of children's needs when sentencing mothers.¹¹⁶⁸ Preparing children for prison visits and talking to them about the situation should be an important part of the support to ensure that the impact of the sentence on the child is reduced. Taking account of the age and stage of child's development is key to methods of support when affected by parental or carer imprisonment.

Babies looked after in prison

Babies whose parents are in the criminal justice system often experience risks that can affect their care and development. This occurs for a variety of reasons. Firstly, the criminal justice system can disrupt relationships, particularly when parents and infants are separated. Secondly, the physical imprisonment of pregnant women and babies in Mother and Baby units can impact on the health and wellbeing of infants. Moreover, parents involved in the criminal justice system often have additional needs, for example poor mental health, which can impact on the care a baby receives.¹¹⁶⁹

Research suggests that current custodial arrangements in Scotland do not adequately manage the complex needs of imprisoned mothers.¹¹⁷⁰ Where it is in the best interest of babies to stay in their mother's care, they could be better supported through improved prison environments, staff support and custodial alternatives.

Recommendations

Scottish Government should:

- Ensure the full implementation of the Council of Europe Recommendation on Children with Imprisoned Parents;¹¹⁷¹
- Ensure sufficient and sustainable funding for Prison Visitors' Centres, and additional facilities that support contact between children and their parents.

5.4 Children with parents or siblings in the armed forces

Children with parents or siblings in the armed forces ('Armed Forces children') are not reflected as a group in the 2016 Concluding Observations. Little attention has been given to these children yet they face a variety of challenges and difficulties, including high levels of mobility, interrupted learning, anxiety and worry when a member of their family is deployed and, once the serving parent(s) leaves the armed forces, issues associated with the transition to civilian life.^{1172 1173 1174 1175}

It is estimated that there are more than 100,000 children in Armed Forces families living in Scotland.¹¹⁷⁶ Royal Caledonian Education Trust (RCET) engagement work with Armed Forces children has highlighted a range of potential challenges they face in terms of their education and wider wellbeing:

When your parents go overseas and you can't sleep at night.

I got to a point of moving where I didn't see the point in making friends anymore. This really put me down.¹¹⁷⁷

Further issues include the lack of data on Armed Forces children and challenges they face in terms of wider participation and engagement.

Data collection

There are no statistics published by Scottish Government on the number of children in Armed Forces families. Since 2015, local authorities have been asked to encourage schools to capture data on the number of Armed Forces pupils through the pupil database system (SEEMiS).^{1178 1179} There is evidence that many pupils have now been identified as members of Armed Forces families through this process, yet several shortcomings remain. Firstly, the system relies on parents and pupils self-identifying which does not always happen.¹¹⁸⁰ Secondly, there is no compulsory duty to collect the data, so not all local authorities record it. Finally, even when such information is recorded, it is not published.

No information on Armed Forces children is required as part of the annual pupil census data submitted to Scottish Government, and there is no data collected specifically on Armed Forces children in terms of their educational outcomes such as attainment levels, exclusions, provision of additional support, or wider health and wellbeing measures.

The lack of data means the exact number of children with a parent in the armed forces is not known, nor can their outcomes be identified. This is a barrier to evidence-based policymaking, and tailoring support services to meet the needs of these children.

Participation and engagement

Research on Armed Forces children in England and Wales has highlighted that their voices are often overlooked.¹¹⁸¹ In Scotland, RCET has raised concerns that Armed Forces children face challenges in terms of their participation and engagement.

RCET's *Teen Talks* events held in 2017 highlighted that Armed Forces young people want more opportunities to have their voices heard within their community.¹¹⁸²

Listen to us and don't assume what we are going through.

In 2017, Scottish Government recognised Armed Forces children as a group who may face particular difficulties.¹¹⁸³ RCET notes, however, that Armed Forces children were absent from the wide range of vulnerable groups consulted by Scottish Government when developing *Progressing Children's Rights in Scotland: Action Plan 2018-21*.¹¹⁸⁴

Scottish Government stated in its 2018 Report - *Progressing the Human Rights of Children* - that the Scottish Service Children Strategy Group works with stakeholders to raise awareness of service children to support schools and local authorities to meet their needs.¹¹⁸⁵ In its 2019-20 Programme for Government, Scottish Government recognised the value that members of the armed forces and their families bring to communities.¹¹⁸⁶

Recommendation

- *UK and Scottish Government should ensure data is collected on the number of children with a parent in the armed forces and that their views are gathered to ensure their needs are met.*

5.5 Young carers

An estimated 44,000 people under the age of 18 are caring for a relative, friend or neighbour in Scotland.¹¹⁸⁷ However, the rights of young carers are not reflected in the 2016 Concluding Observations. The hidden nature of this group makes it difficult to give a definitive number - existing figures are likely to be underestimates as many young carers do not identify as a 'carer' or are wary about disclosing their caring responsibilities.¹¹⁸⁸ A 2017 survey of 1,341 young carers in Glasgow found that almost one-third concealed their status.¹¹⁸⁹

An estimated 29,000 young carers are aged between four and 15 years old. Data shows that children become more involved in caring as they get older. There is a slight difference between the prevalence of caring between boys and girls - 55% of young carers are female and 45% male.¹¹⁹⁰ Data and research also indicates that young carers are more likely to live in areas within the lowest 20% of the Scottish Index of Multiple Deprivation, with children in these areas providing the most hours of care.¹¹⁹¹

A consistent method of identifying young carers would provide early identification and the provision of sufficient support. Young carers face multiple challenges; considerable evidence shows they are more likely to suffer from anxiety, stress and depression, with young carers twice as likely to report a mental health condition than their peers.^{1192 1193} Tiredness and feeling run-down can impact their education.¹¹⁹⁴ Financial pressure cause young carers stress and can affect their ability to study.¹¹⁹⁵ Caring responsibilities can impact on socialising and friendships - research shows that 40% of young carers in Scotland have hidden their responsibilities from friends due to bullying and a lack of understanding.¹¹⁹⁶

We need peer training for teachers and other professionals delivered by young people, in order to help them identify the young people that may not come forward themselves.¹¹⁹⁷

A 2017 study by CYPCS highlighted the diverse experiences that young carers have.¹¹⁹⁸ The study showed that young carers often experience a mixture of positive and negative feelings around their experiences. In general, the young carers surveyed felt more positively about their caring responsibilities than negatively - indicating that caring can provide some with a sense of worth and resilience:

Coping with being a young carer is difficult yes, but I feel proud that I'm making sure my family are okay.¹¹⁹⁹

The results indicated that those with higher caring responsibility were more likely to perceive the negative aspects of caring, including feelings of stress and loneliness.¹²⁰⁰ Higher levels of caring responsibilities were also associated with lower levels of life satisfaction.

The stress of caring has led to other problems for me which can make life difficult.¹²⁰¹

Young carers value face-to-face support and in particular local young carers' groups.¹²⁰² Ninety-seven percent (97%) of young carers responding to a 2019 Carers Trust Scotland survey said support services were important, with 41% saying that more support needs to be available.¹²⁰³ The 2017 CYPCS survey found that 66% of participants had used a young carers service in the last year.¹²⁰⁴ Young carers emphasise that it is important they are listened to and that professionals, including those in school, support them, understand their unique circumstances and respect their privacy.¹²⁰⁵ The provision of young carers' groups varies markedly across Scotland, with many only having short-term funding and thus being vulnerable to closure.¹²⁰⁶ When asked what would help young carers with everyday life, responses highlighted included having someone they can talk to who doesn't judge them, more respite activities so they can take a break, have fun and relax, and workshops to help them understand their feelings.¹²⁰⁷

The Carers (Scotland) Act 2016 ('the 2016 Act') came into force in April 2018. It aims to support both adult and young carers' health and wellbeing. Under the 2016 Act, if a local authority¹²⁰⁸ identifies a person as a young carer (under 18), the local authority must offer them a Young Carer Statement.¹²⁰⁹ The statement focuses on how the caring role is affecting the young carer and any support needs they have.¹²¹⁰ It must identify the support the local authority provides or intends to provide, including if a break from caring is required. Local authorities must also have an information and advice service for carers.

In summer 2017, Scottish Government ran two phases of activity in partnership with Young Scot to raise awareness of the 2016 Act and to promote uptake of the Carer's Allowance among young adult carers aged 16-24.¹²¹¹ In 2018, Scottish Government published a *Carers' Charter*¹²¹² which sets out the rights of young carers under the 2016 Act. Scottish Government and the Carers Trust produced a resource for young carers to help them understand the 2016 Act and the language it uses.¹²¹³ A post-commencement implementation plan for 2018-20 was agreed with the Implementation Steering Group, with the aim of maximising the benefits of the 2016 Act. Scottish Government has stated it will undertake data collection on those accessing support under the 2016 Act, including young carers, to help forecast demand and required resources.¹²¹⁴

Whilst the 2016 Act is a welcome development, results of a 2019 Carers Trust Scotland survey¹²¹⁵ have shown not all young carers are yet aware of the support they are entitled to. Of the 114 young carers surveyed, 58% had not heard about the 2016 Act and 54% had not heard about the Young Carers Statement before. 85% of those surveyed did not have a Young Carers Statement. Carers Trust Scotland concluded that more needs to be done to ensure that all young carers know how to access the support available to them.

A new Young Carer Grant was introduced in October 2019.¹²¹⁶ The annual grant of £300 will be paid to 16-18-year olds who provide care for at least 16 hours each week to someone in receipt of disability benefits¹²¹⁷ and who are not eligible for the Carers Allowance. A Young Carers Panel¹²¹⁸ informed the development of the new grant which seeks to address a gap in financial support for young carers. Recipients of the grant will also be eligible for free bus travel from 2020-21 if piloting is successful.¹²¹⁹ The Scottish Commission on Social Security made several recommendations to Scottish Government in order to avoid potential engagement and eligibility gaps once the grant was introduced.¹²²⁰ These included that eligibility for the grant should not be dependent on the cared-for-person receiving disability benefits, that the proposed definition of care is broadened, and that rules relating to the qualifying period are made more flexible. Scottish Government later changed the definition in the draft regulations to be more inclusive and reduced the number of weeks during which the young person must provide care to qualify for the grant from 13 to 10 weeks.¹²²¹

Recommendations

Scottish Government should:

- *Ensure that all young carers are identified as early as possible, and receive appropriate support throughout school and in the community;*
- *Ensure that all young carers are aware of the support that they are entitled to and know how to access it.*

Chapter

6

Disability, basic health and welfare

(Articles. 6, 18(3),
23, 24, 26, 27(1-3) and 33)

These articles give every child the right to health and health services, benefits and an adequate standard of living. They also ensure that special consideration is given to disabled children.

Article 6: survival and development.

Article 18(3): childcare services.

Article 23: disabled children.

Article 24: health and health services.

Article 26: social security.

Article 27(1-3): adequate standard of living.

Article 33: drug and substance abuse.

6.1 Disabled children

UNCRC Concluding Observation

Adopt a human rights-based approach to disability, set up a comprehensive strategy for the inclusion of children with disabilities.¹²²²

Other treaty bodies, UPR recommendations and SDGs

Similar recommendations were made by the CRPD in its 2017 Concluding Observations.¹²²³

Related issues are also addressed by target 10.2 of the Sustainable Development Goals.¹²²⁴

The *Scottish Health Survey 2017* estimated that 10% of children had a disability.^{1225 1226} Despite this, the 2018 school pupil census recorded that only 2.5% of pupils had been assessed as having a disability or had self-declared.¹²²⁷ Together's members have raised serious concerns that the number of disabled pupils is significantly underreported. There are major differences in the percentage of disabled pupils across local authorities¹²²⁸ which suggest discrepancies in identification and recording.¹²²⁹ Together's members have also raised concerns that local areas do not collect data regarding children with learning disabilities and this is not routinely monitored as part of Learning Disabilities Statistics for Scotland.¹²³⁰ Robust data is crucial for informing and shaping policy, as well as in services design and provision.¹²³¹

In December 2016, Scottish Government published *A Fairer Scotland for Disabled People: Delivery Plan*.¹²³² This sets out commitments to progress implementation of the UN Convention on the Rights of Persons with Disabilities (UNCPRD). It contains five long-term ambitions and 93 actions to be completed by 2021. Thirteen actions directly refer to children, primarily in relation to improving support for families with disabled children and employment for young disabled people.

Scottish Government stated in its 2018 *Progressing the Human Rights of Children* report¹²³³ that it aims to address the inequalities faced by autistic people and those with learning disabilities in accessing health, education, work and active participation in society. The report refers to updated strategies for autism¹²³⁴ and learning disabilities.¹²³⁵

A plan for involving deaf and deafblind British Sign Language (BSL) users in daily and public life was published in 2017.¹²³⁶ Scottish Government has also introduced legislation which requires all people who cannot or who have difficulties speaking to be provided with communication equipment and support to use it.¹²³⁷

In 2019, Scottish Government published guidance to inform disabled children and their families about national policies, entitlements, rights and different options for available support.¹²³⁸

Recommendation

- *Scottish Government should ensure accurate statistical recording of the number of disabled children in a manner which is compatible with the Equalities Act and in line with the UNCPRD requirements.*

The views of disabled children

UNCRC Concluding Observation

Ensure full respect of the rights of children with disabilities to express their views and to have their views given due weight in all decision-making that affects them, including on access to and choice of personal support and education.¹²³⁹

Research highlights the difficulties disabled children face in having their views taken into account in decisions that affect them.¹²⁴⁰ Of particular concern are significant barriers faced by children with nonverbal communication, including being viewed by adults as unable to take part in decision making, organisational structures that exclude participation, and a lack of practitioner training on accessible communication.¹²⁴¹

Disabled children are less likely to think that adults take their views into account when making decisions that affect them compared to non-disabled children (45% compared to 58%).¹²⁴² This can prevent them from taking a central role in decisions about their life and can result in poorer outcomes.¹²⁴³ Together's members have stressed the particular importance of decision-makers actively taking

steps to involve children with learning disabilities who rarely have the opportunity to have their voices heard.

Scottish Government stated in its 2018 *Progressing the Human Rights of Children* report that a Young Disabled People's Forum, made up of 25 disabled young people, meets up to four times per year to support Scottish Government officials to understand the challenges they face, and in turn help shape policy.¹²⁴⁴ No information is available on whether under 18-year olds are involved, or how the Forum's work impacts on policy in practice.

Recommendations

Scottish Government should:

- Develop accessible and child-friendly resources to support disabled children to learn about their rights. These should be made widely available across educational and out-of-school settings;
- Ensure training and guidance to support the effective participation of disabled children is widely available and includes the development of skills and competencies in line with the Common Core.¹²⁴⁵

Inclusive education

UNCRC Concluding Observation

Set up comprehensive measures to further develop inclusive education, ensure that inclusive education is given priority over the placement of children in specialized institutions and classes and make mainstream schools fully accessible to children with disabilities.¹²⁴⁶

Other treaty bodies, UPR recommendations and SDGs

Similar recommendations were made by the CRPD in its 2017 Concluding Observation.¹²⁴⁷

Refer to Chapter 7.1.

Transitions

UNCRC Concluding Observation

Provide children with disabilities with a comprehensive and integrated package of services for transition to adulthood, from a sufficiently early stage, by coordinating legislation, policy and programmes across relevant sectors, and ensure fully informed decisions by children with disabilities on their personal choice in the transition, by involving them in the design of services and by providing advice and information on available options.¹²⁴⁸

Other treaty bodies, UPR recommendations and SDGs

A similar recommendation was made by the CRPD in its 2017 Concluding Observations.¹²⁴⁹

In *A Fairer Scotland for Disabled People: Delivery Plan*, Scottish Government commits to work with schools, local authorities, health and social care partnerships, employers, further and higher education institutions to improve the lives of young disabled people, including at points of transition into education and employment.¹²⁵⁰

In 2017, Association for Real Change (ARC) Scotland conducted a survey of 270 children and young people with additional support needs (aged 14-25) about transition from school to adult life.¹²⁵¹ Forty percent (40%) said their biggest worry was lack of support and predictable routines, and having to cope on their own. When asked what would help them, 43% said more person-centred support, while others said more time to prepare and a flexible approach to exploring available options. This was echoed in responses from parents, who made additional calls to start the planning process early, ensure effective coordination of child and adult services, and to have one consistent professional contact with whom their child could work, improving their confidence and skills. Sixty-three percent (63%) of parents said they had not received any support during the transition. The survey further highlighted disparities between children and young people's ambitions and actual outcomes in the years after leaving school:

*Someone to help me and show me what to do and how to learn all I need to go from a child to an independent adult, not just once but when I need it over the years, and people that understand and accept me, can see my talents, let me do a good job but understand the things I find difficult.*¹²⁵²

ARC Scotland identified seven principles of good transitions for children and young people with additional support needs including early, person-centred planning and decision making, coordinated support across services, and ensuring children and their parents/ carers have access to the information they need.¹²⁵³

A 2017 report on disabled young people's experiences found that effective support for those with complex needs should start from at least age 14 and should involve continuity from service providers.¹²⁵⁴ It highlighted that families can struggle when high levels of respite care that have been available during childhood are significantly reduced upon transition to adulthood, sometimes by up to 50%. Parents expressed concern as these reductions were unrelated to any change in needs. Families called for a key contact on processes, pathways and resources, and for access to guidance on practical issues including benefits applications.

In December 2017, Scottish Government established a £5 million Independent Living Fund Transitions Grant to support disabled children and young people aged 16-21 to live independently, stating that disabled young people were involved in its development.¹²⁵⁵ With Scottish Government funding, Contact developed the *Talking about Tomorrow* website to help parents in supporting their disabled child into adulthood.¹²⁵⁶

In a 2018 report, the Education and Skills Committee expressed concern that key performance indicators on disabled young people's employment were not being met, despite a focus on targeted support.¹²⁵⁷ The Committee recommended that Scottish Government commissions an independent research into why the targeted work was not resulting in an increase in positive destination and employment rates. The Committee said the research should focus on qualitative evidence gathered from young people to gain their perspectives on the support received and what further support would have been beneficial.

In October 2019, Johann Lamont MSP launched a consultation on a proposed Bill to improve outcomes for disabled children in their transition to adulthood.¹²⁵⁸ The Disabled Children and Young People (Transitions) (Scotland) Bill would provide a right to a Transitions Plan with support remaining in place until no longer needed, or the young person's 26th birthday. The Bill would also enable Scottish Government to produce a national transitions strategy and appoint a Minister with special responsibility for transitions.

Recommendations

Scottish Government should:

- Support legislative and practical steps to give the right to a Transitions Plan to every disabled child or child with a long-term health condition. Planning should involve children at all stages, be coordinated across all services and continues up to age 26;¹²⁵⁹
- Introduce a national transitions strategy to improve outcomes for children with a disability in the transition to adulthood.

6.2 Health and health services

Health inequalities

UNCRC Concluding Observation

Develop comprehensive and multisectoral strategies on child health, with the allocation to the maximum extent of available resources and a robust monitoring mechanism, a strong focus on eliminating inequalities in health outcome and in access to health services and addressing underlying social determinants of health.¹²⁶⁰

Other treaty bodies, UPR recommendations and SDGs

Similar recommendations were made by the CEDAW Committee in its 2019 Concluding Observations,¹²⁶¹ by CRPD in its 2017 Concluding Observations, and by Côte d'Ivoire, Sri Lanka and Australia in the United Kingdom's 2017 Universal Periodic Review.¹²⁶² Related issues are also addressed by targets 3.2 and 3.8 of the Sustainable Development Goals.¹²⁶³

Health outcomes and access to health services

Children's health has improved across most indicators over the last 20 years.¹²⁶⁴ At the same time, child health in Scotland remains among the poorest in Western Europe.¹²⁶⁵

Health inequalities persist, resulting in stark differences in health outcomes. Deprivation remains one of the key determinants of health inequalities, significantly impacting children's health from an early age.¹²⁶⁶ Infant mortality rates are more than 50% higher in the most deprived areas than in the least deprived areas.¹²⁶⁷ In 2018, there were 227 avoidable deaths amongst 0-19 year olds (out of 355 total deaths), with almost half (112) occurring before age one.¹²⁶⁸ While there is no combined data on age and SIMD quintile, the proportion of avoidable deaths is significantly higher for those living in the most deprived areas than those living in the least deprived areas. In 2017-18, children living in the most deprived areas were more likely to have at least one health concern (22% had at least one health concern, compared to 9% in the least deprived areas),¹²⁶⁹ less likely to have a healthy weight in Primary 1 (72.8% had a healthy weight, compared to 81.8% in the least deprived areas),¹²⁷⁰ and more likely to experience tooth decay by Primary 1 (55.8% had no signs of obvious tooth decay, compared to 85.9% in the least deprived areas).¹²⁷¹

There are a number of other factors that can have a significant impact on children's health outcomes and access to healthcare. Together's members have expressed concerns that the lack of disaggregated data across the protected characteristics in the Equality Act 2010 prevents robust measurement of access to health services and health outcomes for all children. Evidence indicates that refugee and migrant children may be at higher risk of negative health outcomes.¹²⁷² The displacement and migratory process may result in extended periods of poor nutrition and lack of routine care, leading to an array of health issues. UK-wide research found that asylum seekers face a number of barriers to accessing healthcare both at policy level and in practice.¹²⁷³ Issues included lack of money, language barriers, and a lack of information about rights, entitlements and the healthcare system itself. Some pregnant women were afraid of possible costs, resulting in them not accessing antenatal or other maternity care early or often enough.

Refer to Chapter 8.1 for more information on refugee and asylum-seeking children.

Strategies, monitoring mechanisms and resources

In 2017, Scottish Government published a five-year maternal and neonatal care plan¹²⁷⁴ and introduced the Baby Box, which contains essential items for a child's first weeks and is accredited for use as a crib.¹²⁷⁵ The Baby Box is offered to all new-borns, and 85% of expectant parents opted to receive it in the first year. Scottish Government has established a £1.5 million fund to enable parents of premature babies in NHS care to get extra support with financial costs such as travel to and from hospital.¹²⁷⁶

In 2018, Scottish Government published *A Healthier Future: Scotland's Diet and Healthy Weight Delivery Plan*.¹²⁷⁷ The plan set out an ambition to halve child obesity by 2030 and significantly reduce diet-related health inequalities. Scottish Government published a new *Oral Health Improvement Plan* in 2018 which states that funding of NHS General Dental Services needs to better reflect the different challenges in oral health outcomes between areas of social deprivation and relative affluence.¹²⁷⁸

Scottish Government committed in its Programme for Government 2017-18 to develop a ten-year Child and Adolescent Health and Wellbeing Action Plan.¹²⁷⁹ The plan was intended to focus on deliverable actions and on linking together different areas and sectors to achieve change. The plan was due to be published in 2018 but no information is currently available on when it will be published.¹²⁸⁰

Child Health Commissioners have an important role in identifying children's health needs, developing and monitoring local and regional child health strategies, and ensuring equity of access to services in order to reduce health and social inequalities.¹²⁸¹ A Child Health Commissioner is appointed in every NHS Board.¹²⁸² The broad role of the Child Health Commissioner was set out in a letter to NHS Chief Executives in 2019. Together endorsed the letter's call that the UNCRC is "recognised, promoted and acted on in the development and implementation of policies, strategies and services."¹²⁸³ Variation exists across NHS Boards in relation to the role, function and description of Child Health Commissioners. Together's members have raised concerns that this leads to inconsistent data and advocacy for children's health services.

Scottish Government has ensured an additional 509 health visitors, to identify and address needs early and improve outcomes for children and families.¹²⁸⁴ While this expansion has been broadly welcomed, there are concerns some health boards are unable to offer 11 home visits early in a child's life due to staff leaving the profession,¹²⁸⁵ or shortages in full-time personnel.¹²⁸⁶ Scottish Government has committed to create 250 new school nurse posts by 2022.¹²⁸⁷ In 2018, Scottish Government refocused the role of school nurses.¹²⁸⁸ The role is now concentrated on ten priority areas, including emotional health and wellbeing, substance misuse, child protection, domestic abuse, care experienced children, homelessness, youth justice, young carers, sexual health, and transitions. Together's members have raised concerns that this does not include children with complex health needs, who might not be able to attend school without additional support. Concerns also remain around the lack of children's community nurses and the absence of postgraduate training opportunities for this role, which presents a major gap in the child health workforce.¹²⁸⁹

Children's participation

Children want to be involved in discussions and decisions that affect their health and are concerned that adults working in children's health services do not always communicate clearly with them.¹²⁹⁰ Children think they should be involved when their health services are being planned because it is their right as main stakeholders and because it would lead to better outcomes. Currently, however, children do not feel they are being involved in the planning and provision of their health services, and feel ignored when they express opinions.¹²⁹¹ Scottish Government does not include children in its patient experience surveys at GP services, as they do not consider the current format to be appropriate for children. The Royal College of Paediatrics and Child Health (RCPCH) has called on Scottish Government to include children's views in patient surveys, and to extend surveys to cover outpatient and community settings.¹²⁹² These must be designed in a manner that is child-friendly. Together's members have highlighted that surveys should allow analysis across a wide range of socio-economic, cultural and other factors which may affect children's healthcare experiences.

Recommendations

Scottish Government should:

- Take a multi-agency approach to addressing health inequalities. This approach should reduce income inequality and poverty, be focused on the early years and include targeted measures to tackle the barriers to accessing healthcare, with a particular focus on vulnerable groups of children of all ages;
- Ensure information about health services is offered to children in an appropriate format and that they are involved in service planning and provision. Patient surveys should be extended to cover outpatient and community settings and include children's views throughout.¹²⁹³
- Ensure monitoring mechanisms across all levels of government take into account underlying social determinants of children's health outcomes and access to healthcare services. Include disaggregated data across the protected characteristics.

Children admitted to adult wards

Whilst not addressed in the UN Committee's Concluding Observations, the number of children admitted to adult wards continues to be of concern to Together's members. Freedom of Information requests (FOIs) submitted by Together show this practice increases with age.¹²⁹⁴ For example, NHS Lanarkshire admitted 12 twelve-year-olds, 176 fourteen-year-olds and 286 fifteen-year-olds to adult wards in 2016-19. Positively, FOI data shows there was an overall decrease in the number of children admitted to adult wards between 2016-19. However, some NHS Boards stated they do not have designated children's wards and accordingly all children are admitted to adult wards. This was more common in rural areas, including NHS Orkney, NHS Western Isles and NHS Shetland.

Since 1985, Children's Health Scotland has carried out periodic surveys of NHS hospitals admitting children. It commissioned its eighth survey in 2018 to assess parental access and provision of family facilities, highlight good practice and progress, and identify where improvements were needed. The 2018 survey¹²⁹⁵ found that 16 general hospitals admitted children to adult wards, while 37% of paediatric wards reported that children under 16 years of age had, in the past, been accommodated on an adult ward.

Other findings included that adult wards generally did not have policies for the care of children; 44% did not provide children with information on confidentiality, consent, complaints, information about the ward itself or access to health records (a decrease from its 2012-13 survey); 75% did not offer access to education despite 44% being aware of Scottish Government guidance specifying that special arrangements must be put in place without undue delay for children unable to attend school due to ill health; 63% asked the *What Matters to Me?* questions when a child was admitted in order to find out their likes, dislikes, needs and preferences; 100% allowed children to use their mobile phones; 100% could accommodate parents overnight, while only 44% reported providing access to a family liaison or support worker. The 2018 survey indicated that only 9% of 14-16-year-olds were offered a choice between an adult or children's ward (down from 14% in the 2012-13 survey).

Refer to Chapter 6.3 for more information on children admitted to adult wards for treatment of mental health issues.

Recommendations

Scottish Government should:

- Ensure that children under the age of 16 are not be admitted to adult wards, and that those aged 16-18 are given the choice of which type of ward they are admitted to. Where admission to an adult ward is unavoidable, there must written guidelines for the care of children and access to paediatric medical/nursing advice and support. Information Services Division Scotland should report the admission rates of 14-15-year-olds and 16-17-year-olds at the ward level;
- Ensure that all children in hospital have access to education provision no longer than five days after admission, irrespective of the location of the hospital relative to the local authority area where the child normally resides (medical assessment permitting), or provision of education immediately if it is known on admission that the child will be in hospital for longer than five days.

6.3 Mental health

Mental health data

UNCRC Concluding Observation

Regularly collect comprehensive data on child mental health, disaggregated across the life course of the child, with due attention to children in vulnerable situations and covering key underlying determinants.¹²⁹⁶

Regular national studies provide information and analysis of trends across children's mental health. These include the *Health Behaviour in School-Aged Children (HBSC)* study,¹²⁹⁷ *Scottish Schools Adolescent Lifestyle and Substance Use Survey (SALSUS)*,¹²⁹⁸ and *Scottish Health Survey*.¹²⁹⁹ *HBSC* is conducted among children in Primary 7, and in the second and fourth years of secondary education (average ages 11.5, 13.5 and 15.5 respectively). *SALSUS* covers secondary pupils aged 13-15. *Scottish Health Survey* includes data on the mental health of children aged 16-18.

Scottish Government launched a *Children and Young People's Mental Health Indicator Set* in 2011, which was strongly endorsed by children's organisations. The first report of these indicators was published in 2013, but bespoke reports on the set are no longer produced.¹³⁰⁰ Members have expressed concern that there is lack of monitoring of younger children's mental health, while anecdotal evidence from school staff suggests an increase in mental health issues among primary school children.

The number of referrals to specialist mental health services for children rose 22% between 2013-14 and 2017-18.¹³⁰¹ Scottish Government has highlighted that children's mental wellbeing is an emerging concern. The 2018 *Child and Adolescent Health and Wellbeing - Evidence Review* indicated a decline in positive mental health, an increase in emotional and behavioural problems, and poorer mental health in areas of higher deprivation.¹³⁰² Mental health deteriorates with age, and girls have worse mental health than boys.

National Records of Scotland data indicates a higher number of probable suicides among older children, with a significantly higher rate in males than females aged 15-19.¹³⁰³ In 2017-18, Childline provided 1,273 counselling sessions in Scotland which were primarily about suicidal thoughts (10% of total calls).¹³⁰⁴

Recommendation

- *Scottish Government should regularly collect and publish comprehensive data on child mental health for all ages of children based on the Children and Young People's Mental Health Indicator Set.*

Child and adolescent mental health services (CAMHS)

UNCRC Concluding Observation

Rigorously invest in child and adolescent mental health services and develop strategies at the national and devolved levels, with clear time frames, targets, measurable indicators, effective monitoring mechanisms and sufficient human, technical and financial resources. Such strategy should include measures to ensure availability, accessibility, acceptability, quality and stability of such services, with particular attention to children at greater risk, including children living in poverty, children in care and children in contact with the criminal justice system.

Expedite the prohibition of placing children with mental health needs in adult psychiatric wards or police stations, while ensuring the provision of age-appropriate mental health services and facilities.

Support and develop therapeutic community-based services for children with mental health conditions.

Review current legislation on mental health to ensure that the best interests and the views of the child are taken duly into account in cases of mental health treatment of children below the age of 16 years, in particular with regard to hospitalization and treatment without consent.¹³⁰⁵

Other treaty bodies, UPR recommendations and SDGs

Similar recommendations have been made by CESCR in its 2016 Concluding Observations¹³⁰⁶ and by CRPD in its 2017 Concluding Observations.¹³⁰⁷

Mental Health Strategy for Scotland

There is no separate strategy for children's mental health in Scotland.¹³⁰⁸ Rather, 15 of 40 actions in Scottish Government's *Mental Health Strategy 2017-2027*¹³⁰⁹ relate to children. The strategy focuses on prevention and early intervention, improving access to mental health services and improving physical health. Scottish Government reported it has worked with organisations to gather children's views in policy and service development.¹³¹⁰ Audit Scotland has noted that the actions relating to children lack detail, meaning it is unclear how and when they are to be completed.¹³¹¹ Children's organisations have said the strategy lacks detail on how necessary transformational change is to be achieved.¹³¹²

Scottish Government and the Convention of Scottish Local Authorities (COSLA) commissioned a Children and Young People's Mental Health Taskforce in June 2018. Thirteen recommendations were published in July 2019, based on consultations with children, families, services, agencies and practitioners.¹³¹³ These included that Scottish Government should involve third sector representatives in strategic partnerships, investigate early intervention and prevention approaches, improve digital information sharing, ensure actions are co-designed with children, and ensure that staff are well-trained.

In 2018, Scottish Government published its action plan for suicide prevention - *Every Life Matters*.¹³¹⁴ This recognised that specific support for children is needed and committed to ensure that every local authority is offered training for teachers in mental health first aid by the end of the 2019-20 academic year.

Accessibility, availability and resources

Children and adolescent mental health services (CAMHS) are generally delivered through a four-tiered model of care, from early intervention and prevention through to more specialist support.¹³¹⁵ Services are delivered by NHS Boards, local authorities, the voluntary and private sector.¹³¹⁶ Specialist NHS services are provided by teams of clinicians including psychiatrists, mental health nurses and clinical psychologists. Some areas provide services for all those under 18, while others offer services to those over 16 only if they are in full time education. CAMHS services are based mainly in outpatient clinics and in the community.¹³¹⁷ Additionally, there are three regional inpatient units for 12-18-year olds and one national unit for under 12s.¹³¹⁸

Audit Scotland has stated current CAMHS data is inadequate and that there is a lack of evidence on the impact of existing services.¹³¹⁹ Scottish Parliament's Public Audit and Post-legislative Scrutiny Committee (PAPSC) echoed this, expressing concern at the lack of available data on total spend, reasons for rejected referrals and outcomes of CAMHS.¹³²⁰

Child and adolescent mental health represents a small proportion of overall mental health spending - 6% in 2016-17.¹³²¹ In 2017-18, NHS investment in mental health exceeded £1 billion¹³²² yet it is not clear how much of this was invested in CAMHS.¹³²³ In 2018, Scottish Government reported it was investing £15 million to improve access to CAMHS, and committed £250 million for mental health services, including £60 million for school counselling, £65 million to develop a community mental wellbeing service for 5-24-year-olds, and around £20 million for additional school nurses and mental health first aid training for teachers.¹³²⁴

The Perinatal Mental Health Managed Clinical Network reported a lack of early years mental health services as CAMHS teams rarely, if ever, have the capacity to assess and manage children under one year old.¹³²⁵ A small number of NHS Boards have developed parent-infant mental health services. However, the Network noted that these remain vulnerable and, in some cases, unsustainable.

Audit Scotland stated that more mental health training is needed for those working directly with children.¹³²⁶ A 2017 survey of 3000 school staff found that two thirds of teachers felt they did not have enough mental health training to carry out their role properly.¹³²⁷ Children say additional training is needed,¹³²⁸ including evidence-based training for parents, carers and professionals so they know how to speak openly about mental health and how to respond to children's needs. Scottish Youth Parliament has suggested that mental health training should be a mandatory component of teacher training.¹³²⁹

The Youth Commission on Mental Health Services stated that limited funding was making it difficult for services to adequately support children.¹³³⁰ The Commission's recommendations included that crisis support should be available outwith normal working hours, a basic standard of care should be developed and monitored continuously across Scotland, a full-time mental health professional should be available in every health centre or surgery, and that rural services should be mobile to allow access for all children. Scottish Youth Parliament suggested that optional video-link services should be considered for GP appointments to make services more accessible to children in rural areas.¹³³¹

Scottish Government states it has offered funding to support development of a forensic CAMHS inpatient unit, to reduce the number of vulnerable children who currently travel abroad to receive care.¹³³²

Children admitted to adult wards

Scottish Government has reported there are occasions where it “may be clinically judged to be more appropriate to admit young people to adult wards or the young person and their family have a preference for an admission to a local adult ward”¹³³³ and that most of these admissions are of 16 and 17-year-olds. Scottish Government’s 2018 *Inpatient Census* indicated that 51 children were occupying the 54 available CAMHS inpatient beds and that six children were staying in other wards.¹³³⁴ It is useful to combine this data with 2017-18 figures from the Mental Welfare Commission,¹³³⁵ which showed 103 admissions to non-specialist wards (designed for the needs of other age groups or different patient population), of which 98 were to adult wards. This is an overall decrease from 2014-15 when the Commission was notified of 207 admissions to non-specialist wards, but a significant increase on 2016-17 when it was notified of 71 admissions.

Rejected referrals to specialist CAMHS

Table 9: Referrals received, accepted and proportion of rejected referrals¹³³⁶

	Referrals received	Referrals accepted	% of referrals rejected
Jan-Mar 2019	9,748	7,682	21.2
Oct-Dec 2018	9,604	7,639	20.5
Jul-Sep 2018	7,509	5,808	22.7
Apr-Jun 2018	8,802	6,892	21.7
Jan-Mar 2018	8,751	6,967	20.4

Referrals to CAMHS can be made by a variety of professionals including GPs and teachers. According to Audit Scotland, an increase in referrals has coincided with an increase in rejections. CAMHS referral criteria vary across Scotland, and access thresholds are high.¹³³⁷ Audit Scotland also highlighted that it is difficult for children and their supporters to understand how the referral process works, and that a lack of monitoring makes it difficult to know whether the child has received any support following a rejected referral. The Youth Commission on Mental Health Services recommended a follow-up process should be in place for children who are directed elsewhere, to ensure they receive the support they need.¹³³⁸

In line with its *Mental Health Strategy 2017-27*, Scottish Government published an audit of rejected referrals to CAMHS in 2018.¹³³⁹ The most common reason for rejection was that the case was “not serious enough”. More than half of children took no further action following rejection, suggesting they received no support. While some children and families were signposted to other services, this was often unhelpful with only a few saying they had been directly referred or helped to access another service. The audit also highlighted cases where referrals for autistic children were rejected with the given reason being that their poor mental health resulted from autism and that CAMHS were therefore unable to support them. Another issue was young people becoming ineligible due to turning 18 during the long waiting time.

I basically had to spill all my deepest thoughts and feelings to a referral person who did nothing except take note of all of this for my file. I had self-harmed the night before the visit, as well as had been trying to kill myself at this point but could not bring myself to it. I told this to the person, as well as the fact I had a day in my head to try again. At the end of the session, they told me they could not help me for the THIRD time.

When I was then told I was rejected I was like well, it made me feel rejected because it made me feel am I not worthy of help, am I not deserving, am I not ill enough?¹³⁴⁰

Barnardo’s Scotland identified five key reasons for rejection: lack of stability (e.g. placement instability for care experienced children, or drug or alcohol misuse); lack of engagement (e.g. missing appointments – there is an expectation that children will be able to attend rather than appointments being designed to meet individual needs); symptoms not severe enough (specialist CAMHS sets a subjective test of “severe or enduring problems” which can be interpreted differently across NHS Boards); lack of clarity around referral criteria; or that a service was already being provided by another organisation.¹³⁴¹ Barnardo’s Scotland’s recommendations included the creation of clear, consistent, national referral criteria and assessment processes; clarification of specialist CAMHS remit for professionals and families; and consideration around developing an alternative service to CAMHS for children experiencing distress.

Waiting times for specialist CAMHS

In 2018, Scottish Government stated it was investing £54.1 million over five years to reduce waiting times, with the aim of treating an additional 10,000 patients in 2017-18, and 20,000 in 2019-20. Scottish Government set a target that 90% of those referred for specialist CAMHS would start treatment within 18 weeks.¹³⁴² Latest figures show this target is not being met, with only around 70% of patients being seen within 18 weeks between January 2018-March 2019 (see table 10). The number of children accessing CAMHS has increased, rising from 3,995 in January-March 2018 to 4,237 in January-March 2019.

Table 10: CAMHS waiting times¹³⁴³

Quarter	Patients seen	Adjusted		Unadjusted	
		Seen within 18 weeks (%)	Median wait in weeks	Seen within 18 weeks (%)	Median wait in weeks
Jan-Mar 2019	4,237	73.6	12	68.8	14
Oct-Dec 2018	4,523	72.8	11	67.6	13
Jul-Sep 2018	4,239	69	12	62.1	14
Apr-Jun 2018	4,694	67.5	13	62.5	15
Jan-Mar 2018	3,995	71.1	11	67.1	13

The latest Scottish Government statistics highlight differences in CAMHS provision across the 14 NHS Boards.¹³⁴⁴ In January-March 2019, only four NHS Boards met the 90% 'seen in 18-weeks' target. At the end of March 2019, the number of children waiting for CAMHS was 10,609, almost double what it was in September 2017. Audit Scotland reported that more than 25% of children are waiting over 18 weeks for treatment, compared to 15% in 2013-14.¹³⁴⁵

PAPSC's 2019 *Report on Children and Young People's Mental Health* stressed that children's mental health may deteriorate during lengthy waiting periods and that health boards should ensure children are assessed and treated as quickly as possible.¹³⁴⁶ The Youth Commission on Mental Health Services identified long waiting times as a key barrier to accessing mental health services, making children feel like no one cared or that their struggles were unimportant.¹³⁴⁷ The Commission highlighted that education, prevention, access to early intervention and support, a variety of care options and local specialist support would be useful measures for reducing waiting times. Moreover, the Commission recommended that children should be referred to other mental health support services, such as local community support, while they are waiting.

PAPSC's 2019 *Report on Children and Young People's Mental Health* highlighted that waiting time targets should not be the only measure of progress in meeting children's mental health needs.¹³⁴⁸ Audit Scotland echoed this, noting it is not currently possible to assess outcomes for children accessing mental health services at national level.¹³⁴⁹ Audit Scotland highlighted localised good practice, such as by NHS Greater Glasgow and Clyde which has reported quarterly on outcomes for children using CAMHS since 2014. Scottish Government is developing quality indicators for mental health services, yet Audit Scotland has noted there are no confirmed timescales for the work and that it is likely NHS Boards will be able to choose which indicators to report on, making national benchmarking difficult.

Together's members, such as Children 1st, have highlighted the importance of ensuring that access to early help and support is available, including whole family support. Medicalised support might not be always appropriate, and members have welcomed consideration of alternative approaches such as the Children 1st Family Wellbeing Service in East Renfrewshire.

Care experienced children

Care experienced children are at heightened risk of poor mental health¹³⁵⁰ yet face difficulties when trying to access CAMHS.¹³⁵¹ Scottish Government's *Mental Health Strategy 2017-2027* notes particular issues for children on the edges of, and in, secure care and a need to ensure that systems work well together.¹³⁵² It also highlights that consideration should be given to the additional stresses a young person may experience when they leave care.

Audit Scotland has noted a lack of data on the numbers of care experienced children accessing CAMHS,¹³⁵³ while Scottish Youth Parliament has emphasised the need for strengthened cooperation between the relevant institutions to ensure care experienced children's needs are met with accessible, sustainable and high quality mental health services.¹³⁵⁴

Children with additional support needs

In 2018, around 2% of pupils with additional support needs were recorded as receiving support due to poor mental health.¹³⁵⁵ This figure is likely to be significantly higher in practice, as official figures may be disguised by children recorded as having a different additional support need (often only the primary need or diagnosis is recorded). Between 1st April 2018 – 31st March 2019, the Enquire Helpline received 289 contacts where mental health was recorded as the factor giving rise to the child's additional support needs.¹³⁵⁶ This accounted for 19% of all enquiries and was the second most frequently mentioned factor. There are currently no specialist mental health inpatient services for children with additional support needs, raising significant concerns around access.¹³⁵⁷

LGBTI children

A 2018 survey of 684 LGBT children and young people (age 13-25), found that 84% of LGBT and 96% of transgender participants had experienced poor mental health.¹³⁵⁸ Scottish Government's *Suicide Prevention Action Plan: Every Life Matters* notes that members of the LGBT community are at higher risk of suicidal thoughts and attempts.¹³⁵⁹

A 2016 scoping activity by LGBT Youth Scotland found that most LGBT children and young people (aged 13-25) expressed disappointment with the mental health services they have received. Forty-one percent (41%) of the participants described services as "not OK", 35% as "terrible", 24% as "okay" and only 8% as "great". Key issues included staff not being confident to talk about trans identities, children and young people not feeling comfortable enough to 'come out' and a lack of suitable communication.¹³⁶⁰ The Youth Commission on Mental Health Services suggested that training is needed to make mental health services more inclusive of LGBTI and other minority groups.¹³⁶¹ In 2018, the Mental Welfare Commission for Scotland published guidance to support health practitioners in providing LGBT-inclusive mental health services.¹³⁶²

Children's participation

Children have said they sometimes feel they are treated as a statistic by CAMHS, rather than as an individual.¹³⁶³ The Youth Commission on Mental Health Services said CAMHS do not pay enough attention to children's individual needs, with only limited treatment options and session lengths available.¹³⁶⁴ Children want improved access to information, advice and sources of support, which meets a wide range of needs and is not compromised by local variation. Children have also been clear that they want to be involved in shaping mental health initiatives, and that mental health should be a core part of the Curriculum for Excellence and GIRFEC.¹³⁶⁵

Transitioning to adult mental health services

Scottish Government has stated it is working to improve transitions for young people moving from CAMHS to adult services, and that this may include flexibility for those aged 18-25 to continue treatment with CAMHS.¹³⁶⁶ Transition Care Plans were launched in 2018, after their co-design with young people.¹³⁶⁷ These plans allow young people to set out preferences for their care. Refer to Chapter 6.1 for more on transitions.

Recommendations

Scottish Government and public bodies should:

- *Direct funding towards early intervention and prevention while also meeting the need for specialist and acute services;*
- *Ensure all children have access to appropriate mental health services at the point of need, paying particular attention to those children most likely to experience poor mental health. This includes developing out-of-hours CAMHS crisis support and considering an alternative service to CAMHS for children experiencing distress;*
- *Establish a national CAMHS referral criteria and assessment process and meet the 18-week referral target as a minimum.*¹³⁶⁸

Medication

UNCRC Concluding Observation

Regularly collect data on the amount and regularity of psychotropic drugs (Ritalin, Concerta, etc.) being prescribed to children, and make the data transparent.

Ensure that the prescription of drugs is used as a measure of last resort and only after an individualized assessment of the best interests of that child, and that children and their parents are properly informed about the possible side effects of such medical treatment and about non-medical alternatives.

Establish a system of independent expert monitoring of diagnoses of or related to attention deficit and hyperactivity disorders, and undertake a study on the root causes of their increase, also aimed at improving the accuracy of diagnoses.¹³⁶⁹

Attention-deficit hyperactivity disorder (ADHD) and hyperkinetic disorder (HKD, a form of severe ADHD) are amongst the most commonly diagnosed behavioural disorders in children.¹³⁷⁰ Psychotropic medicines, including Ritalin and Concerta, are used in the treatment of ADHD.¹³⁷¹ Children with ADHD can have significant difficulties with things like poor attention, over-activity and impulsiveness.¹³⁷²

The Information Services Division Scotland (ISD) publishes annual data on the prescription of ADHD medications.¹³⁷³ In 2017-18, 9,362 under-19s were prescribed ADHD treatments - a 5.9% increase on 2016-17 (see table 11). The number of school-aged children treated for ADHD remains lower than the worldwide prevalence rate of 5%, although Scottish ADHD Coalition has said the condition is underdiagnosed in schoolchildren.¹³⁷⁴ More than two thirds of children receiving ADHD medicine are male.

Table 11: Medicines for ADHD (aged 19 and under) 2015-16 – 2017-18¹³⁷⁵

Age group	2015-16		2016-17		2017-18	
	No of paid items	No of patients	No of paid items	No of patients	No of paid items	No of patients
0-4	37	13	29	8	12	8
5-9	21,129	2,153	22,471	2,338	23,562	2,394
10-14	40,507	3,543	44,917	3,971	48,074	4,425
15-19	23,376	2,380	24,211	2,524	24,614	2,535
Total	85,049	8,089	91,628	8,841	96,262	9,362

Children being prescribed medication for treatment of ADHD are significantly more likely to be living in areas of socioeconomic deprivation, with almost 30% living in the most deprived areas, and the proportion of patients decreasing as socioeconomic level increases (see table 12).

Table 12: Number of patients by SIMD quintile 2017-18

SIMD Quintile	Number of patients (all ages)	% of total patients
1 (Most deprived)	3,959	29.7
2	3,020	22.7
3	2,468	18.5
4	2,079	15.6
5	1,737	13
Unknown	48	0.3
Total	13,311	99.8

*This includes patients of all age groups as SIMD data is not disaggregated by age

A 2018 survey of over 200 parents of children with ADHD found that systems for prescribing and monitoring ADHD medication were working well but high-quality support was inconsistent.¹³⁷⁶ A significant proportion of parents said they had not been offered written information about ADHD and the potential risks and benefits of interventions, either aimed at them (41%) or aimed at their children (65%):

*[We need] more information for my son as all the information is written for adults and it's him that is living and trying to understand ADHD.*¹³⁷⁷

According to BBC investigation, there was a 27% increase in the number of children aged 12 or younger who were prescribed anti-depressants between 2015-16 and 2017-18 (from 221 to 280).¹³⁷⁸ In total, 5,572 children (under 18) were prescribed anti-depressants in 2017-18 - a 9.5% increase on 2014-15.

Recommendations

Scottish Government should:

- Ensure children and their parents are properly informed about treatment options for ADHD, including possible side effects and non-medical alternatives;
- Establish a system of independent expert monitoring of diagnoses of or related to ADHD, and undertake a study on the root causes of their increase, also aimed at improving the accuracy of diagnoses.

6.4 Adolescent health

UNCRC Concluding Observation

Develop and adopt a comprehensive sexual and reproductive health policy for adolescents, with particular attention to reducing inequalities and with participation of adolescents.

Ensure that meaningful sexual and reproductive health education is part of the mandatory school curriculum for all schools, including academies, special schools and youth detention centres, in all areas of the State party. Such education should provide age-appropriate information on: confidential sexual and reproductive health-care services; contraceptives; the prevention of sexual abuse or exploitation, including sexual bullying; the support available in cases of such abuse and exploitation; and sexuality, including that of lesbian, gay, bisexual, transgender and intersex children.¹³⁷⁹

Other treaty bodies, UPR recommendations and SDGs

Similar recommendations were made by the CEDAW Committee in its 2019 Concluding Observations,¹³⁸⁰ by CRPD in its 2017 Concluding Observations¹³⁸¹ and by Myanmar in the United Kingdom's 2017 Universal Periodic Review.¹³⁸² Related issues are also addressed by target 3.7 of the Sustainable Development Goals.¹³⁸³

Teenage pregnancy

Teenage pregnancy rates are at their lowest level since reporting began in 1994.¹³⁸⁴ Socioeconomic differences have narrowed but remain, with significantly higher rates of teenage pregnancy and fewer terminations in the most deprived areas.

Table 13: Pregnancies among under 18s by age of mother at conception¹³⁸⁵

	2015	2016	2017
<14	8	16	*
14	64	49	*
15	172	178	140
16	554	487	411
17	915	846	717

*values not available due to potential risk of disclosure

Table 14: Pregnancies among under 18s by SIMD quintile and outcome of pregnancy¹³⁸⁶

	Quintile 1	Quintile 2	Quintile 3	Quintile 4	Quintile 5	Total
2017 – Delivery	338	182	97	42	29	688
2017 – Termination	194	149	116	108	64	631
2016 – Delivery	395	227	110	75	24	831
2016 – Termination	245	183	122	103	91	745
2015 – Delivery	447	248	141	72	20	928
2015 – Termination	268	198	133	105	80	785

The Family Nurse Partnership is a home visiting programme for first time teenage mothers and their children from early pregnancy until the child turns two. Scottish Government committed to extend the programme to support all eligible girls and young women in mainland Scotland by the end of 2018.¹³⁸⁷ It is now available across every mainland NHS Board area.¹³⁸⁸

Relationships, sexual health and parenthood education in schools

Relationships, Sexual Health and Parenthood Education (RSHPE) is a key part of Health and Wellbeing within the Curriculum for Excellence,¹³⁸⁹ but is non-mandatory.¹³⁹⁰ Revised RSHPE guidance was published in 2014,¹³⁹¹ but it is up to local authorities and schools to decide how to deliver the curriculum.¹³⁹² The 2014 guidance allows denominational schools to make decisions regarding RSHPE in order to ensure faith aspects of the curriculum.¹³⁹³ Roman Catholic schools are required to follow the resources for primary and secondary school pupils developed by the Scottish Catholic Education Service.¹³⁹⁴ Concerns have been raised that pupils attending these schools may not be receiving comprehensive RSHPE. The Royal College of Paediatrics and Child Health has recommended that Scottish Government introduce a statutory requirement for all primary and secondary schools to deliver comprehensive, evidence-based RSHPE.¹³⁹⁵

In schools where a RSHPE is delivered, parents or carers can withdraw their children from all or part of the programme. In such circumstances, children should receive “alternative positive educational provision”.¹³⁹⁶ Together’s members have raised concerns that the parents’ views override those of children. There is no official data available on the extent to which children are opted out of RSHPE.

Education Scotland has noted that the delivery and time allocated to Health and Wellbeing varies widely between schools.¹³⁹⁷ This is deeply concerning for some of Together's members, as some children may not be receiving adequate information on topics which are fundamental to their safety and wellbeing. Education Scotland also reported that a sizeable minority of secondary pupils find Health and Wellbeing overly repetitive, without progression between years:

*If we were given more choice on what and how we learn, the programme might be more relevant and meet our needs.*¹³⁹⁸

In 2018, Scottish Government said it was working with NHS Boards and local authorities to ensure appropriate RSHPE is taught in all schools.¹³⁹⁹ In 2019, Scottish Government published its review of Personal and Social Education (PSE).¹⁴⁰⁰ Recommendations from third sector organisations included standardising elements of RSHPE provision to ensure consistency across schools, together with specialist, evidence-based intervention programmes.¹⁴⁰¹ The review recommended that Scottish Government and Education Scotland should update RSHPE resources available in schools. Together's members are clear that these resources should cover issues including gender equality, violence against women and girls, and consent.

The impact of information technologies

RSHPE is particularly important as research shows children face various barriers to accessing reliable sexual health information online.¹⁴⁰² In 2019, a web-based RSHPE resource for 3-18-year-olds was launched, managed by NHS Boards, local authorities, Education Scotland, Scottish Government and third sector organisations.¹⁴⁰³ Although it is non-mandatory, the resource can be accessed online and used outwith formal education settings. The web-resource includes specific programmes and resources to support RSHPE delivery to pupils with additional support needs.¹⁴⁰⁴ The majority of resources currently available are tailored to pupils with a learning disability or autism. Evaluation will be needed to assess the resource's impact.

Engender has identified that RSHPE teaching aids are not adequately tailored to the needs of disabled women and girls, and that inconsistent provision and implementation particularly impacts disabled pupils.¹⁴⁰⁵

LGBTI children

A 2017 survey of 402 LGBT children and young people (aged 11-19) found that only 22% said they had learned about safe sex in relation to same-sex relationships.¹⁴⁰⁶ Seventy-eight percent (78%) said they had never been taught about or discussed gender identity and the meaning of 'trans' at school.

Scottish Government committed to embed LGBTI inclusive education in the curriculum following recommendations made by the LGBTI Inclusive Education Working Group.¹⁴⁰⁷ These recommendations are being taken forward by the LGBT Inclusive Education Implementation Group, with an aim for delivery by the end of March 2021.¹⁴⁰⁸ Scottish Government and COSLA have stated that a separate working group will be established to consider intersex/variations of sex characteristics inclusion within education.¹⁴⁰⁹ Scottish Government announced plans for updating the *Supporting Transgender Young People: Guidance for Schools in Scotland*¹⁴¹⁰ produced by LGBT Youth Scotland and the Scottish Trans Alliance.

Recommendations

Scottish Government should:

- *Ensure that RSHPE is implemented consistently and effectively by improving content and establishing monitoring systems to ensure schools carry this work out to a high standard, and children who are not in school have access through youth work and other networks;*
- *Ensure RSHPE strategies and resources are culturally sensitive and inclusive of a range of identities including sexual orientation, gender identity, and minority ethnic and disabled children.*

6.5 Nutrition

UNCRC Concluding Observation

Systematically collect data on food security and nutrition for children, including those relevant to breastfeeding, overweight and obesity, in order to identify the root causes of child food insecurity and malnutrition.

Regularly monitor and assess the effectiveness of policies and programmes on child food security and nutrition, including school meal programmes and food banks, and programmes addressing infants and young children.

Promote, protect and support breastfeeding in all policy areas where breastfeeding has an impact on child health, including obesity, certain non-communicable diseases and mental health, and fully implement the International Code of Marketing of Breast-milk Substitutes.¹⁴¹¹

Other treaty bodies, UPR recommendations and SDGs

Similar recommendations were made by CESCR in its 2016 Concluding Observations, and several other recommendations indirectly relate to food security and associated rights.¹⁴¹² Related issues are also addressed by targets 2.1 and 2.2 of the Sustainable Development Goals.¹⁴¹³

Data collection on child nutrition

Scottish Government collects and publishes data on child nutrition annually.¹⁴¹⁴ This includes the results of annual health checks for Primary 1 children, covering the proportion at risk of being underweight, overweight and obese, and number of children who are clinically underweight, overweight or severely obese. These statistics are disaggregated by gender, SIMD quintile, local authority and NHS Board. Moreover, the *Scottish Health Survey* includes information on overweight and obesity prevalence amongst children aged 2-15, allowing for insight into how weight may change and vary across age groups.¹⁴¹⁵

The *Scottish Health Survey 2018* found that 70% of children (aged 2-15) were of healthy weight, while 16% were at risk of obesity. The proportion of children in the healthy weight range decreased with age, with a more pronounced pattern in girls. Two percent of children were at risk of being underweight. The survey reported that only 15% of children met the 5-a-day fruit and vegetable target. On average, children consumed 2.8 portions of fruit and vegetables per day (fairly steady since 2008). However, 10% of children consumed no fruit or vegetables on a typical day. Non-diet soft drink consumption has fallen considerably: in 2017-18, 16% of children consumed non-diet soft drinks daily, down from 35% in 2015-16.¹⁴¹⁶

National programmes

The *Food for Thought* programme has run for several years and provides funding to support schools and early learning and childcare (ELC) settings in teaching children about growing and cooking healthy food.¹⁴¹⁷ In 2019, Scottish Government announced the *Good Food Futures* programme, backed by £1 million investment, which aims to give children a greater understanding of where food comes from, support more farm visits, healthy cooking lessons and put more locally produced healthy food on school menus.¹⁴¹⁸

Early childhood

The first years of children's lives, characterised by rapid growth and development, are essential for setting a strong nutritional foundation.¹⁴¹⁹ There is a wealth of evidence that a healthy diet from an early age can provide considerable health benefits throughout life.¹⁴²⁰ Children's early experiences of food also play an important part in shaping later eating habits.¹⁴²¹ Low household income has been shown to adversely impact children's nutritional patterns, generating inequalities in early childhood health.¹⁴²² Food insecurity in childhood has long-term effects on mental and physical health.¹⁴²³

Scottish Government introduced the Best Start Foods benefit in August 2019, recognising the impact of nutritional inequality on young children.¹⁴²⁴ The benefit is provided to pregnant women and families on low income who have children aged up to three years.¹⁴²⁵

Under the Nursery Milk Scheme, all under-5s spending two or more hours a day in an early years or day-care setting are eligible to receive a free daily drink of milk ($\frac{1}{3}$ pint).¹⁴²⁶ For the most part, food is not included in the free ELC provision.¹⁴²⁷ Currently, only children who meet the free school meal criteria are entitled to free meals, funded from within the school meals budget.^{1428 1429} Scottish Government has committed to provide a free meal to every child attending a funded ELC session from August 2020.¹⁴³⁰

In April 2018, NHS Scotland revised the guidance and standards for food and drink provision in childcare settings from birth to age 5.¹⁴³¹ The guidance applies to a range of providers, including nurseries, childminders and family centres. There has been no independent evaluation of the use of the guidance.¹⁴³² The Care Inspectorate is guided by the *National Care Standards: Early Education and Childcare up to the Age of 16 (Standard 3)* when monitoring food and drink provision in ELC settings.¹⁴³³

School meals

Children receive free school meals during the first three years of primary school regardless of household income. Beyond this, children qualify for free school lunches if their parents or carers receive certain benefits, if older children are themselves receiving such benefits, or if the local authority has broadened entitlement.¹⁴³⁴ The Education (Scotland) Act 2016¹⁴³⁵ gives education authorities discretion to provide children with free schools meals who would otherwise not be eligible where they consider it appropriate to do so. Schools are required by law to promote free school lunches.

Figures show that registration and uptake for free school meals increased for primary pupils between 2014-2018, reflecting a change in eligibility criteria. The proportion of secondary pupils registered for and receiving free school meals has declined slightly since 2014.¹⁴³⁶

In 2018, the Scottish Parliament Education and Skills Committee reported that teachers highlight hunger as considerably impacting pupils' ability to learn.¹⁴³⁷ It reported that stigma may prevent some children from registering for free school meals and that those receiving free meals can feel segregated from their peers who often leave the school grounds at lunch time. These findings were echoed by the *Children's Future Food Inquiry*, which looked into children's experiences of food across the UK. Children reported that coming to school without having had breakfast impacted on their ability to concentrate, that money received for free school meals was often insufficient to cover breakfast or snacks,¹⁴³⁸ and that a lot of stigma was attached to free school meals. Children's suggestions included changing the name 'free school meals' to something more positive, including more about food insecurity in the curriculum, involving children in deciding what food they are offered, and more sensitivity to cultural food preferences and dietary requirements.

People don't always even apply for free school meals even though they'd be entitled to them. It's about people's pride.

Fatty, unhealthy foods are way cheaper – burgers and paninis. People think that it's just the rich kids who go for salads.

*We have half an hour for lunch and by the time we've finished queueing only chips are left.*¹⁴³⁹

Secondary pupils participating in a Children's Parliament study expressed concerns about the high cost of school food and drink.¹⁴⁴⁰ They said this means they are sometimes still hungry after lunch. High prices were highlighted as a reason why some children leave school to buy their lunch elsewhere, with participants saying they can get more food for the same price. Often, these cheaper options are less healthy.

*For free school meals, I only get £2.55 on my card so I can't afford very much. Sometimes I can only get a juice or a drink and a snack.*¹⁴⁴¹

Children's Parliament's survey found that a majority of children (71.4%) think that changes need to be made to school food, such as increasing portion size, making meals tastier, more varied, including more fresh foods and having longer breaks.

Reducing school meal costs was included in the actions to be undertaken by Scottish Government, following the third annual Cabinet meeting with children and young people in 2019.¹⁴⁴²

'Holiday hunger'

Pupils spend a quarter of the year outwith school. School holidays can place increased financial pressure on low income families due to a lack of sufficient and affordable childcare and unavailability of free school meals.¹⁴⁴³ This is likely to have particularly detrimental effects for children from some families - such as those with a disabled child or adult, and lone parents - for whom higher costs and lack of support pose additional barriers. The Inequality and Poverty Commission acknowledged services and projects offering meals during school holidays, but identified that these are not available consistently throughout Scotland.¹⁴⁴⁴

Scottish Government supports local authority provision of free meals during school holidays through its Attainment Scotland Fund as well as community initiatives.¹⁴⁴⁵ Scottish Government has committed to investing £2 million in 2019-20 to tackle food insecurity during school holidays and announced in April 2019 that it would fund six charities that offer breakfast, lunch, healthy snacks and activities during school holidays, with the aim of supporting over 46,500 children.¹⁴⁴⁶

Food banks

The *Scottish Health Survey 2017* suggested that more than 20% of single parents had worried about running out of food due to lack of money or resources during the preceding year.¹⁴⁴⁷ Ten percent of single parent households reported running out of food during the same period. A UK-wide Trussell Trust survey of 413 people found that parents and children in lone parent households made up the largest proportion of food bank users.¹⁴⁴⁸ Children from households with three or more children were overrepresented among children using food banks, and over one third of participants were waiting on a benefit decision or payment.¹⁴⁴⁹ Academic research supports the view that food bank use is largely intertwined with the welfare system, including benefit sanctions, delays in receiving the first benefit payment and interrupted payments.¹⁴⁵⁰ The number of emergency food parcels distributed showed a steady increase between 2014-15 and 2018-19 (see table 15).

Table 15: Emergency food parcels distributed in Scotland¹⁴⁵¹

	2014-15	2015-16	2016-17	2017-18	2018-19
Children	36,114	43,962	47,955	55,038	69,410
Adults	81,575	133,726	97,910	115,587	141,195
Total	117,689	133,726	145,865	170,625	210,605

Data has also been collected for 84 out of 94 identified independent food banks across Scotland.¹⁴⁵² Between April 2018 and March 2019, at least 159,849 emergency food parcels were given out by independent food banks¹⁴⁵³ in addition to Trussell Trust's distribution of 210,605. This means that a total of at least 370,454 emergency food parcels were distributed to people in crisis in the last year. Although these figures do not include parcels distributed by all independent food banks, they indicate that many more emergency food parcels are distributed than what any current single estimate accounts for.

Children recognise the importance of food banks in supporting families unable to afford enough healthy food.¹⁴⁵⁴ However, they express concerns that these services may not be used by some families, due to the stigma and embarrassment associated with them:

*People in poverty might be scared to ask for help or go to a food bank because they don't want to look weak. They want to be seen as strong.*¹⁴⁵⁵

Recommendation

- Scottish Government should respond to and progress the recommendations set in the *Children's Future Food Inquiry* report.¹⁴⁵⁶

Breastfeeding

UNCRC Concluding Observation

Promote, protect and support breastfeeding in all policy areas where breastfeeding has an impact on child health, including obesity, certain non-communicable diseases and mental health, and fully implement the International Code of Marketing of Breast-milk Substitutes.¹⁴⁵⁷

Research shows the significant health benefits of breastfeeding for both infant and mother, including reduced risk of obesity and certain diseases.¹⁴⁵⁸ Breastfeeding rates have risen steadily since records began via the UK-wide *Infant Feeding Surveys*.¹⁴⁵⁹ However, UK breastfeeding rates remain low compared to global levels.¹⁴⁶⁰ A 2017 Scottish Government survey found that 76% of respondents with an 8-12 month old baby said they breastfed them at some stage, while 43% of infants were receiving breastmilk at six months old.¹⁴⁶¹

Table 16: Percentage of total number of babies being breastfed at First Visit and 6-8 week review¹⁴⁶²

	2015-16	2016-17	2017-18
% babies exclusively breast fed at First Visit from health worker	35.6	36.5	36.4
% babies on mixed feeding (breast and formula) at First Visit	13.7	14.0	14.9
Total	49.3	50.5	51.3
% babies exclusively breastfed at 6-8 week review	28.2	30.3	30.7
% babies on mixed feeding (breast and formula) at 6-8 week review	10.7	10.5	11.0
Total	38.9	40.8	41.7

Table 16 shows that the proportion of babies who are breastfed by their first health visit has increased by 4% between 2011-12 and 2017-18. The proportion of children who are breastfed at 6-8 weeks increased by 5% during the same period. However, 34% of babies who had been breastfed were no longer being so by their 6-8 week review.¹⁴⁶³ The proportion of infants being breastfed varies notably with the mother's age, with over 40% more babies being breastfed by mothers aged over 40 than mothers under 20. Inequalities in breastfeeding rates between socioeconomic groups remain, with the percentage of breastfed babies increasing significantly as socioeconomic status increases. This gap may be narrowing, as the increase in breastfeeding rates has been greater for women from more deprived areas than other groups. Breastfeeding rates are low for care experienced children, with only 21% being breastfed at their 6-8 week review.

In 2018, Scottish Government stated it was committed to promoting, supporting and maintaining breastfeeding.¹⁴⁶⁴ It provides funding to voluntary organisations and peer support programmes, including the National Breastfeeding Helpline. Scottish Government made a commitment to develop services that meet women's needs in order to reduce breastfeeding drop off at the 6-8-week point by 10% by 2025.¹⁴⁶⁵ In addition, Scottish Government is committed to supporting all neonatal units to fully achieve UNICEF UK's Baby Friendly neonatal standards.¹⁴⁶⁶

Scottish Government co-chairs the Becoming Breastfeeding Friendly Scotland Committee. The committee has set out eight themes with related recommendations and actions to support an increase in breastfeeding rates.¹⁴⁶⁷ These include developing and implementing a breastfeeding advocacy and promotion strategy, underpinned by sufficient funding, promoting a supportive return to work for breastfeeding women and ensuring equitable access to evidence-based infant feeding support.

The UK has one of the biggest formula milk markets in the world,¹⁴⁶⁸ but there has been little progress at UK-level regarding legal implementation of the International Code of Marketing Breast-Milk Substitutes.¹⁴⁶⁹ The Becoming Breastfeeding Friendly Scotland Committee noted that the Code is implemented more fully at a maternity and community level through Scotland's 100% accreditation with the UNICEF UK Baby Friendly Initiative.¹⁴⁷⁰ The Committee nevertheless recommended that Scotland strengthens, enforces and monitors legislation that supports the Code.

Recommendation

- *Scottish Government should implement evidence-based initiatives known to support breastfeeding including sustainability of the UNICEF UK Baby Friendly Initiative standards, and fully implement the International Code of Marketing of Breast-milk Substitutes.*

6.6 Standard of living

Child poverty

UNCRC Concluding Observation

Set up clear accountability mechanisms for the eradication of child poverty, including by re-establishing concrete targets with a set time frame and measurable indicators, and continue regular monitoring and reporting on child poverty reduction in all parts of the State party.

Ensure clear focus on the child in the State party's poverty reduction strategies and action plans, including in the new "Life Chances Strategy", and support the production and implementation of child poverty reduction strategies in the devolved administrations.¹⁴⁷¹

Other treaty bodies, UPR recommendations and SDGs

Similar recommendations were made by CRPD in its 2017 Concluding Observations,¹⁴⁷² by CESCR in its 2016 Concluding Observations,¹⁴⁷³ and by Singapore, Syrian Arab Republic, Hungary and Kazakhstan in the United Kingdom's 2017 Universal Periodic Review.¹⁴⁷⁴ Related issues are also addressed by targets 1.1, 1.2, and 1.B of the Sustainable Development Goals.¹⁴⁷⁵

Children in Scotland are more likely to experience poverty than adults. Between 2015-18, 24% of children (approximately 240,000 each year) were living in relative poverty after housing costs. Around 65% of these children (160,000 children each year) were living in working households.¹⁴⁷⁶ The proportion of children living in persistent poverty (defined as living in relative poverty for at least three of the preceding four years) increased from 14% to 17% between 2016-17.¹⁴⁷⁷ The longer a child lives in poverty, the greater the impact on their health, wellbeing, and life chances.^{1478 1479}

Living in poverty impacts on almost all areas of a child's life. Families living in poverty have less money to spend on food, heating and housing. Children living in low income households are much more likely to have a standard of living below that which most people deem an acceptable level, and 14% are materially deprived.¹⁴⁸⁰ Poverty also affects children's social and emotional wellbeing. Those living in the poorest fifth of households are seven times more likely to experience adverse childhood experiences than children in the most affluent quintile.¹⁴⁸¹ Relationships with friends and family members are affected as children who have experienced poverty are more likely to be solitary and play alone, twice as likely to report being bullied frequently, and less likely to talk to someone at home about their worries.¹⁴⁸² Poverty is the cause of inequalities in children's early development as well as their educational attainment.¹⁴⁸³

Research suggests that children are aware of the impact poverty has on all parts of their lives and highlight its detrimental impact on maintaining and developing friendships:¹⁴⁸⁴

People who do not have heating means they will get cold and ill. They will not focus in school because they are cold and unwell when they are doing work.

If your parents are stressed about money and argue a lot, it'll impact you and you feel like you can't do anything about it.

Poverty rates are higher for families affected by disability. Families with a disabled member have a poverty rate of 30% (550,000 people each year), compared to 16% (570,000 people) for those without a disabled family member.¹⁴⁸⁵

Scottish Government has stated its intention is to end child poverty.¹⁴⁸⁶ The Child Poverty (Scotland) Act 2017¹⁴⁸⁷ ('the 2017 Act') places a duty on Scottish Government to ensure that four child poverty targets are met by 2030-31, with interim targets met by 2023-24. The 2030 targets are that fewer than 10% of children will be living in relative poverty and that fewer than 5% will be living in absolute poverty, persistent poverty or combined low income and material deprivation. The 2017 Act requires Scottish Government to prepare a child poverty delivery plan every four years setting out proposed measures to meet child poverty targets, and to report annually on progress towards the targets.¹⁴⁸⁸ Pursuant to the 2017 Act, Scottish Government established an independent Poverty and Inequality Commission, which became a statutory body in July 2019.¹⁴⁸⁹

At its third annual Cabinet meeting with children and young people, Scottish Government committed to working together with children to ensure that their views are considered in its work to reduce child poverty.¹⁴⁹⁰

Scottish Government's first child poverty delivery plan, *Every Child, Every Chance – The Tackling Child Poverty Delivery Plan 2018-2022*,¹⁴⁹¹ was published in March 2018. In developing actions to tackle child poverty, Scottish Government intends to pay particular attention to six groups at particular risk. These include lone parent families, families with three or more children, households in which a family member is disabled, minority ethnic households, households with a child under one, and households where the mother is under 25.

The Fairer Scotland Duty¹⁴⁹² came into force in April 2018 and places a duty on public bodies to consider how they can reduce inequalities of outcome caused by socioeconomic disadvantage, when making decisions.

Investments by Scottish Government have included introduction of the Best Start Grant, increased school clothing grant, extended early years childcare support, and the Fuel Poverty (Target, Definition and Strategy) (Scotland) Act. The independent Poverty and Inequality Commission has stated that Scottish Government's current level of spending is inadequate to meet its own poverty targets and that considerable investment will be necessary to change this.¹⁴⁹³ Child poverty rates are projected to rise sharply between 2020-21 unless further policy action is taken. This projected increase is largely attributed to UK Government reforms to the social security system. Projections show particularly large increases in child poverty for lone parents, families with three or more children, and families with no adults in paid work.¹⁴⁹⁴

The 2018-2022 Child Poverty Delivery Plan¹⁴⁹⁵ included a commitment to introduce an income supplement for low-income families before 2022. It has been suggested that this supplement could come to play a significant role in reducing poverty rates, depending on its generosity, design and funding.¹⁴⁹⁶ In June 2019, following a strong campaign from many of Together's members,¹⁴⁹⁷ Scottish Government announced that the new Scottish Child Payment of £10 per week will be rolled out for eligible children aged under 6 in 2021 (with a subsequent Programme for Government announcement that applications will be open from Autumn 2020 and first payments made by Christmas 2020)¹⁴⁹⁸ and to all eligible families by the end of 2022.¹⁴⁹⁹

Welfare reform

UNCRC Concluding Observation

Conduct a comprehensive assessment of the cumulative impact of the full range of social security and tax credit reforms introduced between 2010 and 2016 on children, including children with disabilities and children belonging to ethnic minority groups.

Where necessary, revise the mentioned reforms in order to fully respect the right of the child to have his or her best interests taken as a primary consideration, taking into account the different impacts of the reform on different groups of children, particularly those in vulnerable situations.¹⁵⁰⁰

Other treaty bodies, UPR recommendations and SDGs

Similar recommendations were made by the CEDAW Committee in its 2019 Concluding Observations,¹⁵⁰¹ by CRPD in its 2017 Concluding Observations,¹⁵⁰² by CESCR in its 2016 Concluding Observations¹⁵⁰³ as well as by Singapore and Kazakhstan in the United Kingdom's 2017 Universal Periodic Review.¹⁵⁰⁴ Related issues are also addressed by targets 1.3, 10.1, and 10.4 of the Sustainable Development Goals.¹⁵⁰⁵

Changes in welfare provision, introduced by the UK Government through the Welfare Reform Act 2012 ('2012 Act'),¹⁵⁰⁶ continued to be implemented across the country. Universal Credit was introduced to replace six legacy benefits with a single monthly payment. The roll out of Universal Credit for new claimants in Scotland was completed in December 2018 and it is expected that all claimants will be switched to Universal Credit by the end of 2023.¹⁵⁰⁷ The number of children in out-of-work poverty is expected to increase as a result of the switch, while the number of children experiencing poverty in working families is expected to be reduced. Although more people in working families are expected to gain economically than lose as a result of the switch, 5.1 million people in working families across the UK are expected to see a loss in income.¹⁵⁰⁸ This shows that the switch to Universal Credit also has a negative impact on a large proportion of people in working families, despite the apparent reduction in numbers.

The five-week delay built into the Universal Credit system between when people file a claim and when they receive benefits has been criticised by the UN Special Rapporteur on Extreme Poverty and Human Rights.¹⁵⁰⁹ The UN Special Rapporteur expressed concern regarding the "draconian sanctions" and the "digital by default" nature of the system. Universal Credit is primarily a digital service which expects claimants to apply for the benefit and maintain their claim online. Barriers such as no access to internet or poor digital literacy can obstruct access to benefits, particularly for some groups such as Gypsy/Travellers, disabled people or those who do not speak English. Only 54% of Universal Credit claimants have been able to apply online independently.¹⁵¹⁰ The UN Committee on the Rights of Persons with Disabilities has reported systematic violations of disabled people's rights, partially resulting from Universal Credit sanctions.¹⁵¹¹

From April 2017, the child elements of Universal Credit and Child Tax Credits have been restricted to two children.¹⁵¹² A few exemptions exist for third and subsequent children, including for children adopted from local authority care and children living in informal caring arrangements long-term who would otherwise be looked after by a local authority.¹⁵¹³

The Benefit Cap, introduced in 2013, limits the amount of benefits and tax credits that working-age households can receive. The cap is implemented through a reduction in either Housing Benefit or Universal Credit. Households that qualify for Working Tax Credits, or are on Universal Credit and earn more than £542 per month, are exempt from the cap.¹⁵¹⁴ In 2016, the cap was reduced from a maximum of £26,000 to £20,000 for lone parents and couples with children, regardless of the number of children in the household.¹⁵¹⁵ It is estimated that 11,000 households in Scotland have had their benefit payments capped at some point since the introduction of the Benefit Cap, of which 89% of households include children.¹⁵¹⁶ The Benefit Cap disproportionately affects lone parents and families with three or more children, with 64% of capped households being headed by a lone parent and 77% including three or more children.¹⁵¹⁷ Although the UK Supreme Court has ruled that the benefit cap is lawful,^{1518 1519} it has stated that the original cap breached the UK obligation under the UNCRC to treat the best interests of the child as a primary consideration.¹⁵²⁰ UK Government has also removed the family element for new Universal Credit and Child Tax Credit claimants.

Several social security powers were devolved through the Scotland Act 2016 ('2016 Act'), including disability and carer benefits.¹⁵²¹ All newly devolved benefits are to be in place by 2024. The 2016 Act also allows Scottish Ministers to alter the housing costs element of Universal Credit, to top-up benefits which remain reserved to UK Government, and to create new benefits. Scottish Ministers will have full legal and financial responsibility for the new social security powers by April 2020. Scottish Government has increased the Carer's Allowance for those looking after more than one disabled child, introduced a Young Carer Grant from autumn 2019 to help carers aged 16, 17, and 18 if still in school, and has committed to launch the Scottish Carer's Allowance in early 2022.¹⁵²²

The Social Security (Scotland) Act 2018 ('2018 Act') sets out eight principles in the Scottish social security system. These principles state that social security is a human right and that it is necessary to realise other human rights. Scottish Government developed a Charter,¹⁵²³ published in January 2019, outlining what the principles are to mean in practice and what people can expect from Scottish Government and Social Security Scotland. This Charter was co-designed with people in receipt of social security benefits. The UN Special Rapporteur on Extreme Poverty identified an accountability gap under the 2018 Act, as it does not provide for redress where violations of social security rights have taken place.¹⁵²⁴ However, he stated that future incorporation of human rights treaties could address this gap.

Together's members have highlighted the importance of ensuring the right level of detail is included in the regulations being developed to underpin Scottish social security payments to ensure protection of rights to social security. Concerns have been raised that individuals will have fewer rights than claimants currently enjoy if conditions of entitlement, definitions of terms, and processes for determining entitlement are only included in guidance.¹⁵²⁵

In May 2019, Audit Scotland published a report on implementing devolved social security powers. The report stated that Scottish Government does not yet have a clear understanding of how to deliver all remaining benefits in the way it intends.¹⁵²⁶ Issues highlighted included a lack of monitoring and reporting on what implementation of the new benefits will cost. While Scottish Government is currently developing implementation plans, Audit Scotland urged it to ensure that these correspond to the intended outcomes for service users.

A Scottish Commission on Social Security has been set up to monitor, report and advise on new social security policy and legislation. In preparing its reports, the Commission is required to have regard to the Scottish social security principles outlined in the 2018 Act as well as international human rights instruments ratified by the UK, including the UNCRC.¹⁵²⁷ For this purpose, it may also consult any persons it considers appropriate. While this does not impose an obligation on the Commission to consult children when reporting on issues which affect them, it does provide opportunity for them to do so.

Recommendations

- UK Government should consider and respond to the recommendations of the Poverty and Inequality Commission report 'What Would Make a Difference for Scotland'¹⁵²⁸ including putting in place legislation and policy commitments that reverse 2015 cuts in Universal Credit and raise personal allowances, increase work allowances in Universal Credit and reduce the taper;
- Scottish Government should consider and respond to the same report, including putting in place legislation and policy commitments that improve benefit uptake.

Temporary accommodation and homelessness

UNCRC Concluding Observation

Strictly implement the legal prohibition of prolonged placement of children in temporary accommodation by public authorities in England, Wales and Scotland, and enact similar legislation in Northern Ireland.

Take necessary measures to reduce homelessness and to progressively guarantee all children stable access to adequate housing that provides physical safety, adequate space, protection against the threats to health and structural hazards, including cold, damp, heat and pollution, and accessibility for children with disabilities.¹⁵²⁹

Other treaty bodies, UPR recommendations and SDGs

A similar recommendation was made by CESCR in its 2016 Concluding Observations.¹⁵³⁰ Related issues are also addressed by target 11.1 of the Sustainable Development Goals.¹⁵³¹

There were 36,465 homeless applications in 2018-19, of which 28% included children.¹⁵³² In 2017-18, 14,075 children were in households assessed as homeless, representing a small increase from the previous two years.¹⁵³³ While this figure includes children (under 18) listed as dependents as part of a homeless application, it excludes young people aged 16-24 who are making homeless applications independently.

The Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2014 ('2014 Order') was amended in 2017.¹⁵³⁴ This shortened how long local authorities can use unsuitable accommodation (e.g. bed and breakfasts) for families with children or pregnant women from 14 to 7 days. Between April 2018 and March 2019 there were 620 reported breaches of the 2014 Order.¹⁵³⁵

In March 2019, 6,795 children were living in temporary accommodation,¹⁵³⁶ a figure which has increased consistently since 2014. Official figures are likely to be underestimates as many families try to make alternative arrangements, such as staying with friends or family.¹⁵³⁷ Households with children spend longer in temporary accommodation on average (219 days) than those without children (166 days).¹⁵³⁸

Children are very concerned about homelessness, emphasising that all children should have the home they need.¹⁵³⁹ Interviews with children experiencing homelessness in England showed that it makes them feel unsafe, stressed and impacts on the health of both themselves and their families.¹⁵⁴⁰ Research is needed to gain insight into the views and experiences of children experiencing homelessness in Scotland.

Scottish Government states that it takes a person-centred approach to homelessness, with focus on early intervention and exploration of all available housing options. In 2017, it set up a Homelessness and Rough Sleeping Action Group to recommend further action to tackle homelessness. The Action Group sought the views of people with lived experience as part of their work, including 16-18-year olds.¹⁵⁴¹ The Action Group's recommendations informed Scottish Government's five-year *Ending Homelessness Together: High Level Action Plan*¹⁵⁴² published in November 2018. This plan includes carrying out a wellbeing assessment in relation to all children who are homeless to ensure any necessary additional learning or social support is put in place. Scottish Government commits to working with those with lived experience to establish how best to deliver those wellbeing assessments. The plan includes a focus on preventing and responding to child homelessness, including the particular needs of children who are fleeing domestic violence.

Recommendations

Scottish Government should:

- Prioritise and adequately resource prevention of homelessness;
- Keep pace with demand and continue to invest in and build high levels of safe, decent and affordable homes;
- End the use of Bed and Breakfast as temporary accommodation;
- Implement minimum enforceable temporary accommodation standards;
- Support these changes by strong statutory guidance for local authorities.¹⁵⁴³

Housing for Gypsy/Traveller communities

UNCRC Concluding Observation

In Scotland, introduce a statutory duty for local authorities to provide safe and adequate sites for travellers, while ensuring meaningful participation of Roma, gypsy and traveller communities, including children, in planning and decision-making processes.¹⁵⁴⁴

Other treaty bodies, UPR recommendations and SDGs

Similar recommendations were made by the CEDAW Committee in its 2013 Concluding Observations.¹⁵⁴⁵

There is a continued lack of suitable, safe and culturally sensitive housing for Gypsy/Traveller children and their families, exacerbating their overall quality of life and making long-term access to services such as education and healthcare difficult.¹⁵⁴⁶ A report by the Scottish Housing Regulator found that over half of existing Gypsy/Traveller sites failed to comply with required minimum standards by June 2018 – a deadline set by Scottish Government.¹⁵⁴⁷ In August 2019, five sites run by four social landlords still did not meet these standards.¹⁵⁴⁸ Reasons for failure included energy efficiency issues, safety, security, and occupancy agreements. In addition, the community expressed concerns about the overall condition and cleanliness of sites, stressing the lack of investment, and families with young children raised concerns about the proximity to major roads, unsuitable playparks, and limited access to facilities, such as baths for young children.¹⁵⁴⁹

Children reported a range of problems including lack of hot water, rat infestations, exposure to dangerous materials (e.g. asbestos), unsafe playparks, lack of access to computers through Wi-Fi, and poor transport links to schools, shops and places for socialising.¹⁵⁵⁰ They also highlighted the need for meaningful participation in planning and decision-making processes regarding their accommodation needs:

We should be consulted about where sites should be.

*We should be part of the planning process to allow us to say what type of sites and facilities we want.*¹⁵⁵¹

Despite problems related to residential sites, there is currently only one official 'transit' site in Scotland where Gypsies/Travellers can stop over while travelling.¹⁵⁵² Due to the lack of transit sites, they are often forced to stop in unauthorised areas, which can lead to problems and confrontations with local communities.¹⁵⁵³

Gypsy/Travellers living in 'bricks and mortar housing' share the same issues facing the community as a whole, while also having their own particular concerns. Specific issues include difficulty in settling into mainstream accommodation, stress and isolation.¹⁵⁵⁴

Scottish Government's action plan - *Improving the Lives of Scotland's Gypsy/Travellers: 2019-2021* - published jointly with COSLA, includes a commitment to invest £2 million in public sector Gypsy/ Traveller sites, designed to improve quality of life.¹⁵⁵⁵ Although Together's members welcome the new investment, concerns have been raised that this will not be sufficient to meet the required standards at all sites.

In September 2019, Scottish Government published updated *Local Housing Strategy Guidance* which requires local authorities to increase engagement with the Gypsy/Traveller community to ensure their voices are heard so that standards can be improved and current and future accommodation needs are met.¹⁵⁵⁶

Recommendation

- *Scottish Government should allocate adequate resources to successfully implement and evaluate progress in taking forward the Action Plan and respond to concerns around the lack of transit sites for Gypsy/Travellers.*

6.7 Environmental health

Air pollution

UNCRC Concluding Observation

Set out a clear legal commitment, with appropriate technical, human and financial resources, to scale up and expedite the implementation of plans to reduce air pollution levels, especially in areas near schools and residential areas.¹⁵⁵⁷

Other treaty bodies, UPR recommendations and SDGs

No other treaty bodies have made recommendations that address the impact of environmental health on children in recent years, but there has been a growing interest in this issue, as illustrated by the Day of General Discussion being devoted to ‘Children’s Rights and the Environment’.¹⁵⁵⁸ Related issues are addressed by target 11.6 of the Sustainable Development Goals.¹⁵⁵⁹

Ill health caused by air pollution disproportionately affects children.¹⁵⁶⁰ Toxic air can damage children’s growth and leave them with lasting health problems. It poses a particularly severe risk to those already suffering from heart conditions or respiratory problems, such as asthma and cystic fibrosis. Research shows this vulnerability begins in utero and heightens during early childhood.¹⁵⁶¹ Air pollution particles have been found on the foetal side of placentas, indicating that unborn babies are directly exposed to black carbon produced by traffic and burning fuel.¹⁵⁶² One study suggested that children are exposed to 30% more pollution than adults when walking along busy roads as they are closer to exhaust fumes.¹⁵⁶³ Children from deprived areas are more likely to experience adverse health effects from poor air quality due to proximity to major roads¹⁵⁶⁴ and lack of well-maintained green spaces which are associated with lower levels of air pollution, increased physical activity, and improved mental wellbeing.¹⁵⁶⁵

Air pollution was one of the main issues raised by the UN Special Rapporteur on human rights and hazardous substances and wastes, following his UK visit in January 2017.¹⁵⁶⁶ The Special Rapporteur called on UK Government to take expeditious and effective measures,¹⁵⁶⁷ highlighting that high air pollution levels conflict with children’s right to the highest attainable standard of health.

A new UK-wide *Clear Air Strategy* was published in 2019,¹⁵⁶⁸ given the need for close partnership between UK nations to address the transboundary issue of air pollution. A recent UNICEF UK study found that children are disproportionately exposed to higher doses of pollution during the school run and whilst at school, suggesting that policies targeting pollution reduction around schools and nurseries can significantly benefit children’s health.¹⁵⁶⁹ The 2019 *Clear Air Strategy* does not address air pollution levels around schools and other public spaces that children use regularly.¹⁵⁷⁰ UNICEF UK has called on UK Government to set legally binding targets for particulate matter in line with WHO limits, commit to a national action plan to reduce children’s exposure to toxic air, and provide ring-fenced funding to implement this.¹⁵⁷¹

Despite UK-wide policies, air quality remains a substantially devolved area.¹⁵⁷² In its Programme for Government 2018-19, Scottish Government committed to conduct a comprehensive review of its 2015 strategy - *Cleaner Air for Scotland: The Road to a Healthier Future* - to identify priorities for further action.¹⁵⁷³ According to its 2018 report, *Progressing the Human Rights of Children*, Scottish Government works to hear children’s views and raise awareness of air pollution.¹⁵⁷⁴ For example, the *National Clean Air Day* has involved engagement with schools since its inception in 2017. The Scottish Environment Protection Agency continues to support the national air quality teaching package for primary and secondary schools. Moreover, a proposal is being taken forward to increase the scope of this teaching material and replace the current free air quality sensors loaned to schools.¹⁵⁷⁵

Some actions have been advanced at local level. Glasgow City Council introduced the *School Car Free Zone* pilot project outside six primary schools in 2019.¹⁵⁷⁶ The restrictions applied to most vehicles at the start and finish of the school day, aiming to reduce acute pollution and congestion at the school gates. Other schools have campaigned for road closures in their vicinity.¹⁵⁷⁷ However, the impact of air pollution on children’s health is still largely absent in national plans.

Recommendations

Scottish Government should:

- Ring-fence funding to protect children from toxic air, specifically allowing for local authorities to bid for funding;¹⁵⁷⁸
- Prioritise child-friendly guidance on preventative measures, as well as tailored information and actionable advice aimed at reducing exposure of vulnerable children to air pollution hotspots;¹⁵⁷⁹
- Prioritise air quality monitoring networks in child-centric locations such as schools, nurseries, hospitals and GP surgeries.¹⁵⁸⁰

Environmental policy

UNCRC Concluding Observation

Place children's rights at the centre of national and international climate change adaptation and mitigation strategies, including through its new domestic climate strategy, and in the framework of its international climate change programmes and financial support.¹⁵⁸¹

Other treaty bodies, UPR recommendations and SDGs

Similar recommendations were made by the CEDAW Committee in its 2019 Concluding Observations,¹⁵⁸² by CRPD in its 2017 Concluding Observations,¹⁵⁸³ and by the Maldives in the United Kingdom's 2017 Universal Periodic Review.¹⁵⁸⁴ Related issues are addressed by targets 13.1-13.3 of the Sustainable Development Goals.¹⁵⁸⁵

The UN Human Rights Council has recognised that children are among the most vulnerable to climate change and that it may have a "serious impact" on a number of their rights.¹⁵⁸⁶

Emissions data for Scotland is only available up to 2017. In 2017, actual greenhouse gas emissions fell by 3% across Scotland, driven largely by a move away from fossil-fuelled electricity generation. This fell short of Scottish Government's 2017 legislative target.¹⁵⁸⁷

The Climate Change (Emissions Reduction Targets) (Scotland) Bill was passed by MSPs in September 2019 and received Royal Assent in October 2019.¹⁵⁸⁸ Once enacted, it will amend existing legislation,¹⁵⁸⁹ setting targets for the reduction of greenhouse gas emissions and making provision for advice, plans and reports in relation to those targets.¹⁵⁹⁰ Following advice from the UK's Committee on Climate Change in May 2019,¹⁵⁹¹ the target date for reaching net-zero emissions has been set to 2045, with interim targets of 70% emissions reductions to be met by 2030 and 90% by 2040.¹⁵⁹² These targets are based on 1990 baseline emission levels. In December 2018, Scottish Government reported that emissions were 49% below 1990 levels.¹⁵⁹³

As stated in its 2018 *Progressing the Human Rights of Children* report, Scottish Government has established a Low Emission Zone in Glasgow and is committed to establishing further zones by 2020 in Aberdeen, Dundee and Edinburgh, and in other areas by 2023.¹⁵⁹⁴ Low Emission Zones are areas where high-emitting vehicles may not be driven. At present, 20% of buses in Glasgow must meet emissions standards that comply with EU standards, while further restrictions affecting all vehicles will come into effect in December 2022.¹⁵⁹⁵ The phased introduction of the Low Emission Zones has been criticised and caused two environment advisers representing Scottish Environment LINK to resign from Scottish Government's Cleaner Air for Scotland Governance Group.¹⁵⁹⁶

As part of the Big Climate Conversation, Scottish Government ran a series of public engagement events during summer 2019.¹⁵⁹⁷ Environmental issues were also addressed during the 50th Travelling Cabinet, with a new package of measures to tackle the global climate emergency being announced at the Cabinet meeting in Stirling in August 2019.¹⁵⁹⁸ The measures include expansion of the Climate Ready Classrooms initiative, aimed at helping children aged 14-17 understand the causes and potential impact of climate change.¹⁵⁹⁹ In its 2019-20 Programme for Government, Scottish Government confirmed that it will publish an updated Climate Change Plan and announced a "package of additional measures" in response to the climate emergency.¹⁶⁰⁰

Member organisations have highlighted that many children are passionate about environmental issues and are concerned about national and international responses.¹⁶⁰¹ During the 2019 First Minister's Question Time Next Generation event, children posed a range of environment-related questions, including questions on climate change, use of plastics and littering.¹⁶⁰² Children and young people have emphasised the need for further education on environmental issues, including climate change, and measures for ensuring that children and young people are fully consulted in environmental policy discussions.¹⁶⁰³

Recommendation

- *Scottish Government should ensure children's rights are at the centre of all decisions made in relation to air pollution and climate change, and that children are involved and listened to in local and national discussions and decision-making as a matter of routine.*

Chapter

7

Education, leisure and cultural activities

(Articles 28, 29, 30 and 31)

These articles give every child the right to an education that meets their needs and improves their attainment, and the right to leisure, cultural and play activities.

Article 28: right to education.

Article 29: goals of education.

Article 30: children from minority or indigenous groups.

Article 31: right to leisure, play and culture.

7.1 Education, including vocational training and guidance

Educational attainment

UNCRC Concluding Observation

Enhance its efforts to reduce the effects of the social background or disabilities of children on their achievement in school and to guarantee the right of all children to a truly inclusive education in all parts of the State party, including for newcomer children without experiences of formal education.

Taking note of target 4.2 of the Sustainable Development Goals, on access to quality early childhood development services, allocate sufficient human, technical and financial resources for the development and expansion of early childhood care and education, based on a comprehensive and holistic policy of early childhood development, with special attention to the children in the most vulnerable situations.¹⁶⁰⁴

Other treaty bodies, UPR recommendations and SDGs

Similar recommendations have been made by the CEDAW Committee in its 2019 Concluding Observations,¹⁶⁰⁵ CESCR in its 2016 Concluding Observations¹⁶⁰⁶ and by CERD in its 2016 Concluding Observations.¹⁶⁰⁷ Related issues are also addressed by targets 4(1-C) of the Sustainable Development Goals.¹⁶⁰⁸

Girls outperform boys in reading, writing, listening and talking, and numeracy across all stages.¹⁶⁰⁹ They continue to leave schools with more passes than boys at Scottish Credit and Qualifications Framework (SCQF) level 4 to 6.¹⁶¹⁰

Table 17: Percentage of school leavers by highest SCQF level achieved (2015-18)¹⁶¹¹

SCQF Level	2015-16	2016-17	2017-18
No passes at SCQF 3 or better	2.0	2.0	2.2
SCQF Level 3	1.7	1.7	1.6
SCQF Level 4	10.7	10.2	10.3
SCQF Level 5	23.9	24.9	23.8
SCQF Level 6	42.6	41.9	42.0
SCQF Level 7	19.1	19.3	20.2

In 2017-18, 62.2% of school leavers left with one pass or more at SCQF level 6 or better, while 2.2% left with no passes at SCQF level 3. These figures have remained relatively constant during 2015-18.

Socioeconomic background continues to have a significant impact on attainment. Attainment levels are measured in Primary 1, 4, 7 and Secondary 3.¹⁶¹² At each stage, children living in the least deprived areas outperform those living in the most deprived across literacy and numeracy attainment indicators, with the gap generally widening throughout primary school.

Table 18: Percentage of school leavers by attainment at SCQF level 4 to 6 by SIMD quintile¹⁶¹³

	2015-16		2016-17		2017-18	
	SIMD 1	SIMD 5	SIMD 1	SIMD 5	SIMD 1	SIMD 5
% of school leavers with 1 pass or more at:						
SCQF level 4 or better	92.8	98.8	92.8	98.7	92.6	98.7
Percentage point difference	6.1		5.9		6.1	
SCQF level 5 or better	74.4	94.7	75.5	94.8	75.0	95.4
Percentage point difference	20.3		19.3		20.3	
SCQF level 6 or better	42.7	81.2	43.0	80.6	44.4	81.8
Percentage point difference	38.5		37.6		37.4	

The gap between children living in the most deprived and least deprived areas increased at SCQF levels 4 and 5 between 2016-17 and 2017-18. The gap at SCQF level 6 has reduced slightly, due to improving performance of those living in the most deprived areas.

Qualitative research suggests that children find their wider development and support needs are disregarded in schools due to a strong focus on attainment and qualifications. This has a negative impact on their wellbeing.¹⁶¹⁴ Children have also reported that poor performance often stems from personal and social issues such as mental and physical health problems, family breakdown and caring responsibilities. A lack of adequate support in schools can prevent children from doing as well as they otherwise could.

The Education (Scotland) Act 2016 places responsibilities on Scottish Government and local authorities to have regard to the need to reduce inequalities of outcomes arising out of socioeconomic disadvantage when exercising their functions relating to school education.¹⁶¹⁵

Scottish Government stated in its 2018 *Progressing the Human Rights of Children* report that it introduced Pupil Equity Funding in 2017-18. This extended the existing Scottish Attainment Challenge (£750 million over the current parliamentary term) to every local authority, with £120 million allocated across 95% of schools in Scotland.¹⁶¹⁶ This was additional to the £50 million Attainment Scotland Fund which had been distributed to local authorities with the highest concentration of primary-aged children living in SIMD 1 and 2, and 57 other primary schools. Pupil Equity Funding allocations are based on the number of pupils from Primary 1 to Secondary 3 who are eligible for free school meals, with £1,200 allocated per pupil. The funding is provided directly to head teachers. Both the Attainment Scotland Fund and Pupil Equity Funding were provided again in 2018-19.

Qualitative research that included teachers, local authority officers, and a limited number of attainment advisors, national strategic stakeholders and parents suggested that the financial support provided by the Attainment Scotland Fund had improved teaching skills.¹⁶¹⁷ Many participants considered there to be positive indications of its impact on long term attainment outcomes, although cautious to comment conclusively due to the early stage of the process. In a case study of 12 schools across Scotland, it was highlighted that providing funding on an annual basis limited the possibility for long term planning and that the impact of targeted interventions was offset by an overall reduction in school funding.¹⁶¹⁸

At the third annual Cabinet meeting with children and young people, Scottish Government committed to making the school day free or 'affordable' for children through initiatives such as the Pupil Equity Fund, Cost of the School Day Project, free school meals, Best Start Grant and the minimum School Clothing Grant.¹⁶¹⁹ It is not clear from the action plan what Scottish Government defines as 'affordable'.

Children have raised concerns that current funding does not reach the people who need it and have outlined the need for fairer distribution.¹⁶²⁰ Audit Scotland announced it will undertake an audit considering the arrangements put in place to deliver improved outcomes for school aged children.¹⁶²¹ The report is to be published in spring 2020.

Early learning and childcare

National statistics continue to show significant differences between children's early outcomes.¹⁶²² Of all children attending their 27-30 month health review in 2017-18, 15% had a concern recorded in relation to at least one area of development, the most common being speech, language and communication. Children living in the most deprived areas were more than twice as likely to have a concern recorded than those living in the least deprived areas (22% compared to 9%). Development concerns were particularly high for children in the care of their local authority at the time of their 27-30-month review (29%), reflecting the particular vulnerability of these children.

In a recent review of Early Learning and Childcare (ELC) services, the Care Inspectorate reported that children generally get high quality care and support.¹⁶²³ Concerns were raised over a decline in the number of fully qualified managers in ELC settings. Related concerns have been raised in relation to the expansion of ELC by August 2020 (refer to Chapter 5.1). Since 2013, the number of ELC settings has decreased from 9,968 to 9,402, while the number of ELC places has increased by 10,150. The number of ELC options is particularly low in areas classed as SIMD 1 and 2, and available settings in these areas tend to provide services to a larger number of children.

Additional support for learning

A wide range of factors may lead to a child having additional support needs (ASN). These fall broadly into four overlapping themes: learning environment, family circumstances, disability or health need, and social and emotional factors.¹⁶²⁴ In 2018, almost 200,000 pupils (28.7%) had a recorded ASN, an increase of 2.1% since 2017.¹⁶²⁵

Ninety-five percent (95%) of children with ASN go to mainstream schools.¹⁶²⁶ Scottish Government published guidance for education authorities on the presumption of providing education in mainstream settings in 2019.¹⁶²⁷

Although attendance and qualifications rates have improved since 2011,¹⁶²⁸ pupils with ASN in mainstream schools still have a lower attendance rate than pupils without ASN, a gap which widens in secondary school.¹⁶²⁹ Data shows that pupils with ASN achieve significantly lower levels of qualifications and are less likely to leave school with SCQF qualifications at levels 4 to 6 than children without ASN.¹⁶³⁰

In September 2018, the *Not included, Not Engaged, Not Involved* report was published, containing results of a survey of 1,417 parents and carers of children with autism with a main focus on experiences related to school absence.¹⁶³¹ Seventy-one percent of surveyed parents said that their child had missed school for reasons other than common childhood illness in the last two years. A majority reported that their child had been unable to attend due to anxiety, 47% reported that their child had refused to go to school, and 30% said that they had kept their child at home because they did not consider there to be adequate support available. While most absences lasted for less than two weeks, 9% lasted for over six months and 8% for more than a year. Eighty-two percent of parents said that their child did not receive support to keep up with school work during absences, despite a statutory duty on educational authorities to make special educational arrangements for pupils who are unable to attend school, or for whom it would be unreasonable to expect them to attend.¹⁶³²

Parents of primary pupils were concerned about the isolation and negative impact on their children's confidence and friendships caused by absences. Parents of secondary pupils were particularly concerned that their child was falling behind or missing out on school work. Parents identified factors which would help their child attend school, including school staff having better understanding of how their child's autism affects them, and having adequate support in place.¹⁶³³ A majority said that adjustments would be needed for their child's sensory needs. Challenges met in secondary schools included the class size, noise levels, sensory stimulation, numerous transitions across the school day and increased social pressure.

Qualitative research commissioned by Scottish Government, involving 100 children with ASN, found that some attending mainstream schools had missed school due to bullying.¹⁶³⁴ Half of all girls interviewed had experienced bullying. Some secondary school pupils said they did not feel that teachers were trained to deal with additional needs, in some cases leading to exclusion.

I don't feel that safe because of everyone that bullies me. Even pupils in higher years bully me. People try to beat me up.

I didn't know I had ADD or ADHD until S2. All the symptoms of it were what I had been getting into trouble for. I think that teachers aren't really taught how to deal with people like this... I had been getting kicked out of school for being distracted and I had really bad anger. The teachers were shouting and getting angry with me for things that I couldn't help.¹⁶³⁵

An investigative report by the Children and Young People's Commissioner Scotland (CYPCS) found that children with ASN were disproportionately subjected to unlawful and/or excessive use of restraint and seclusion, restricting children's access to education and impacting on their attainment.¹⁶³⁶ Separately, children with ASN are more likely to be excluded from school than children without.¹⁶³⁷ Refer to Chapter 4.2 for more information on restraint and Chapter 7.1 on seclusion.

Education staff have highlighted they require more resources to enable them to better meet the needs of children with ASN.¹⁶³⁸ Similar concerns have been raised by parents and carers.¹⁶³⁹ Insufficient resources, reductions in numbers of specialist staff and support services, and the reduction in special school places have been identified by Scottish Parliament's Education and Skills Committee as the most notable factors having a detrimental impact on children's education.¹⁶⁴⁰ The findings suggest that where support is in place it is often viewed positively by parents, but that children with ASN in mainstream schools often feel excluded due to lack of adequate support. Scottish Government has committed to invest £15 million in existing support assistants for pupils with ASN, and recruit approximately 1,000 extra support assistants in 2019.¹⁶⁴¹

Changes to the Additional Support for Learning (Scotland) Act 2004¹⁶⁴² allowed 12 to 15-year-olds to ask for their additional support needs to be identified and planned for, get advice and information, be part of decisions about their support, and access dispute resolution procedures.¹⁶⁴³ Scottish Government set up the My Rights, My Say service which offers advice, information, advocacy and legal representation to children with ASN aged 12 – 15.¹⁶⁴⁴ During 2018-19, 222 children accessed this service.¹⁶⁴⁵

Concerns remain that the legislation and guidance contain a number of barriers preventing children from exercising their rights.¹⁶⁴⁶ Barriers include the 'capacity assessment' and 'adverse effect on wellbeing' assessment carried out by local authorities. CYPSC raised particular concerns around the use of curricular achievement as a primary measure of capacity and wellbeing.¹⁶⁴⁷ It outlined that curricular achievement in specific areas, such as literacy and numeracy, is not an appropriate way of assessing a child's capacity to form a view and express it in relation to their ASN. Moreover, CYPSC noted that the current assessment of capacity can potentially lead to indirect discrimination against children with certain ASN, such as dyslexia or dyscalculia.

Official statistics suggest that local authorities do not always comply with legislation that provides children with a statutory right to Coordinated Support Plans (CSPs), and that the use of these plans is decreasing.¹⁶⁴⁸ At the same time, the use of other non-statutory plans such as Child's Plans is increasing. CSPs are considered crucial to ensure children's educational needs are met, guarantee that regular reviews take place, and allow children to make references to the ASN tribunal (or request independent adjudication) in order to resolve disagreements about provision.¹⁶⁴⁹ Child's Plans (recommended under the GIRFEC policy approach) aim to address the wellbeing needs of children, are not specifically educational documents and do not carry any legal force.¹⁶⁵⁰

Given the importance of qualifications for progressing into higher education, apprenticeships and other employment, the future options available to children with ASN are seemingly compromised by their time at school.¹⁶⁵¹ Children with ASN are less likely to go on to positive destinations than their peers.¹⁶⁵² Scottish Government's Programme for Government 2018-19 included commitments to improve consistency of support and career pathways for children with ASN.¹⁶⁵³

Care experienced children

Education outcomes for care experienced children have improved over the last 5 years, yet large gaps remain. Care experienced children tend to leave school much earlier than their non-care experienced peers. In 2017-18, 44% of children in care for the full year, and 40% of children in care for part of the year left school in Secondary 4 or earlier, compared to 11% of all school leavers.¹⁶⁵⁴

Care experienced children continue to have lower attainment than other school leavers. In 2017-18, 96% of all school leavers had at least one qualification at SCQF 4 or higher but this figure dropped to 76% of children in care for the full year, and 67% of children in care for part of the year. Since 2012-13, the proportion of care experienced leavers with no qualifications at SCQF 3 or higher has risen for those in care for the full year (12% to 14%), and fallen for those in care part of the year (19% to 18%). Care experienced leavers in 'other residential settings' (e.g. residential schools and secure accommodation) had the lowest overall levels of attainment in 2017-18, with 35% leaving with no qualification at SCQF 3 or higher. Care experienced children are also less likely to be in positive destinations nine months after leaving school.¹⁶⁵⁵

Who Cares? Scotland has reported ongoing issues around limited access to information. As a result, care experienced children often do not know their educational rights and are unaware of the choices they have:

*You'd be alone if they didn't explain what is going on.*¹⁶⁵⁶

CSPs are significant for care experienced children, as they are legally presumed to have ASN and the majority of them would meet the other legal criteria. Local authorities must ensure they provide CSPs to children who are entitled to them.¹⁶⁵⁷ There are still concerns that this is not always happening and that local authorities regard CSPs as cumbersome and time consuming.¹⁶⁵⁸ In 2018, only 2.9% of care experienced children had a CSP, despite the statutory duty to assess.¹⁶⁵⁹ This might suggest that care experienced children are not receiving the additional support for learning that they are entitled to by law, and which they require in order to fully engage with the curriculum.

Minority ethnic children

Scotland is becoming more diverse. The 2011 census showed that 8.4% of the population come from ethnic and cultural minority backgrounds.¹⁶⁶⁰ Minority ethnic groups have been underrepresented in the teaching workforce for many years.¹⁶⁶¹

English is an additional language for 6% (44,311) of pupils.¹⁶⁶² The 2018 pupil census showed that Polish is the second most commonly spoken additional language (16,425 pupils), followed by Urdu (6,312 pupils).¹⁶⁶³ Pupils who have English as an additional language tend to perform lower than pupils for whom English is their first language. The percentage of pupils achieving the expected Curriculum for Excellence level in 2018 was higher for native English speakers across both numeracy and literacy indicators. The largest performance gap between pupils with English as a first language and pupils with English as an additional language was in listening and talking. The performance gap tended to be lowest in numeracy.¹⁶⁶⁴

Gypsy/Traveller children's educational outcomes are a particular concern. Scottish Government collects data for the group 'White Gypsy/Traveller' but does not distinguish between separate groups within this category.¹⁶⁶⁵ While many Gypsy/Traveller children attend school, others do not and there are no statistics that capture the extent of this 'non-attendance'. Gypsy/Traveller pupils have the lowest school attendance (79%) and the highest exclusion rate (53 per 1,000) of all ethnic groups. A two year average of 2014-15 and 2015-16 leavers' data showed that almost 25% of White Gypsy/Travellers left school with no qualifications at SCQF level 3 or higher compared to 2% of all school leavers. Only 43% of Gypsy/Traveller pupils left school with at least one qualification at SCQF level 5, compared to 85% of all pupils. Transition data suggests that many Gypsy/Traveller children may be withdrawn from school between finishing primary and starting secondary. There was a 35% drop in the number of White Gypsy/Travellers recorded in Primary 7 in 2016 and Secondary 1 in 2017.¹⁶⁶⁶

In 2018, Scottish Government published guidance aimed at improving education outcomes for Gypsy/Traveller children and overcoming existing barriers.¹⁶⁶⁷ The guidance outlines practices including supporting interrupted learning by providing work which can be completed outwith school, enquiring about access to digital devices at home, identifying appropriate methods for communication to send and receive course work, as well as providing timely support for transitions and course choices. Scottish Government has also provided £275,000 to the *Scottish Traveller Education Project* to support and share best practice in delivering education to Gypsy/Traveller children.¹⁶⁶⁸

Qualitative research indicates that Gypsy/Traveller children express more positive views toward formal learning when it is clearly linked to their futures, but that awareness of being perceived as different can alienate them from formal education settings.¹⁶⁶⁹ Many Gypsy/Traveller children come from settings with a strong oral culture coupled with low levels of literacy, and it is possible that multimodal content and experiential learning opportunities may be useful to improve their attainment.

LGBT children

A 2017 survey by LGBT Youth Scotland, found that significantly more LGBT children and young people (aged 13-25) rated school as 'okay', and significantly less rated school as 'bad', as compared to their 2012 survey.¹⁶⁷⁰ However, the survey indicated that there were still a number of attainment issues affecting LGBT children and young people as a group, including experiences of bullying and discrimination in educational environments. LGBT children and young people said that school or educational settings is where they experience the most discrimination. Other research found that a significant number of LGBT (48%) and trans (71%) children and young people, aged 11-19, have been bullied.¹⁶⁷¹ Forty-five percent (45%) of participants said they did not have an adult at their school who they could talk with about being LGBT. Not being able to use the toilets they felt comfortable in at school remained a problem for the majority (65%) of trans children, while 36% said they are not able to be known by their preferred name. LGBT Youth Scotland has published a guide to embedding LGBT voices and identities across all areas of the Curriculum for Excellence.¹⁶⁷²

Recommendations

Scottish Government should:

- Reduce the effects of children's socioeconomic background on their achievement at school, focusing on the early years, parental support and ensuring the entitlement to early childcare and education is taken up among underrepresented groups;
- Improve data collection, research and evaluation to enable schools and local authorities to better inform their approaches to tackling the attainment gap, and to inform workforce development. This should include national mapping and scrutiny of specific services including speech and language therapy, classroom assistants and educational psychologists;
- Ensure that education authorities and services provide qualitative data on their compliance with statutory duties of assessment and planning for care experienced children's education and ASN, specifically with the establishment of CSPs;
- Ensure all children have the right to participate in decision-making, seek redress through mediation, adjudication, make a reference or claim in the ASN Tribunal, with free legal advice and representation, irrespective of age.

Exclusions

UNCRC Concluding Observation

Use the disciplinary measure of permanent or temporary exclusion as a means of last resort only, forbid and abolish the practice of "informal" exclusions and further reduce the number of exclusions by working closely with social workers and educational psychologists in school and using mediation and restorative justice.

Ensure that children have the right to appeal against their exclusion and are provided with legal advice, assistance and, where appropriate, representation for those without means.¹⁶⁷³

Other treaty bodies, UPR recommendations and SDGs

A similar recommendation is made by CERD in its 2016 Concluding Observations.¹⁶⁷⁴

Schools have the power to exclude children where it is considered that allowing their attendance to continue would be seriously detrimental to the order and discipline of the school, or to the educational wellbeing of other learners. Scottish Government publishes data biennially on the number of school exclusions. The number of exclusions has been steadily decreasing (see table 19).

Permanent or temporary exclusions

Table 19: School exclusions (temporary and permanent) (2010-17)¹⁶⁷⁵

	2010-11	2012-13	2014-15	2016-17
Exclusions in total	26,844	21,955	18,430	18,381
Temporary exclusions	26,784	21,934	18,425	18,376
Removed from register	60	21	5	5

Although the overall number of exclusions is decreasing, vulnerable groups continue to be disproportionately represented. Deprivation plays an important factor in the likelihood of exclusion. Rates of exclusions per 1,000 pupils are more than five times greater for pupils living in the most deprived areas, compared to pupils living in the least deprived areas. The exclusion rate for pupils who have an additional support need is more than four times higher (per 1000 pupils) than those who have no additional support needs.

Table 20: Cases of exclusion and rate per 1,000 pupils by additional support needs and SIMD quintile (2016-17)¹⁶⁷⁶

	Cases of exclusions	Rate per 1,000 pupils
Pupils with Additional Support Need	11,352	66.6
Pupils with no Additional Support Need	6,879	13.4
Lowest 20% SIMD (most deprived)	7,436	48.5
Highest 20% of SIMD (least deprived)	1,226	9.2
Scotland total	18,430	26.8

In a survey of 1,434 parents of autistic children aged 3-19 years old, 13% (185) reported that their child had at some point been formally excluded from school.¹⁶⁷⁷ Of these, 91% said that their child had not received any support to catch up with school work during the exclusion period. Almost half said that the school had not discussed their child's support needs with them before returning to school.

In the last 2 years my child has had 5 schools. He was excluded or asked to leave from 3 of them. [...] He got no support either when excluded or returning to schools it was left to us to fight for places or find suggestions. And left to us to support him. All whilst trying to maintain full time employment to support our family and try and establish some sort of normality for our children. It affected my son's mental health as he felt the rejections and sense of giving up and exclusion from every one of the schools.¹⁶⁷⁸

The report included nine recommendations to Scottish Government, including ending inappropriate use of part-time timetables, reducing the number of formal exclusions of children with ASN, improving availability of specialist teachers, reinstating a minimum number of hours of education for children out of school, and reviewing availability of appropriate placements for autistic children.

The rate of exclusions of care experienced children is also much higher than in the general school population (see table 21), and is especially high in secondary and special schools. However, the exclusion rate of care experienced children for all stages has fallen steadily since 2010-11. This decrease is happening faster than the decline in the exclusion rate for all pupils, meaning that the gap between these groups is narrowing.

Table 21: Exclusion rate per 1,000 pupils by all pupils, care experienced children and stage (2010-17)¹⁶⁷⁹

Stage	Care experienced full year (in comparison to all pupils shown in brackets)			
	2010-11	2012-13	2014-15	2016-17
Primary	95 (11)	83 (10)	79 (9)	55 (11)
Secondary	584 (72)	476 (58)	322 (50)	259 (48)
Special	455 (148)	576 (148)	569 (126)	344 (94)
Scotland total	321 (40)	279 (33)	218 (27)	169 (27)

In 2017, Scottish Government updated the national policy on school exclusions, by publishing *Included, Engaged and Involved Part 2: A Positive Approach to Preventing and Managing School Exclusions* ('the national guidance').^{1680 1681} The guiding principles outline that exclusion should only be used as a last resort, as a proportionate response, where there is no alternative, and where the views of children and parents have been taken into account.

Informal exclusions

The national guidance requires all exclusions to be formally recorded and that children "must not be sent home on an 'informal exclusion' or sent home to 'cool-off'".¹⁶⁸²

Children's organisations report that informal exclusions are still being used by schools, with children with ASN disproportionately affected. The *Not Included, Not Engaged, Not Involved* survey found that 37% (478) of respondents' autistic children had been unlawfully excluded from school.¹⁶⁸³ The vast majority (78%) of these exclusions occurred in mainstream schools. Almost a quarter (22%, 105 parents) reported that this had happened multiple times per week:

*This happens regularly. If they don't have sufficient staffing levels, they can't support him, so we are asked that he stays at home.*¹⁶⁸⁴

Thirty-one per cent (31%) said that their child had been placed on a part-time timetable in the past two years. Although use of a part-time timetable can be in the best interest of some children, these are sometimes used to manage a pupil's support needs. In more than two thirds of cases, placing the child on a part-time timetable had been suggested to parents by school staff:

*She cannot cope with the stress of attending more than part time at present because the environment of the mainstream school is just not suitable however as she is intelligent, she does not qualify for any different learning environment - it has been turned down. And there currently seems to be a complete lack of any adequate schooling provision for children like my daughter who has high functioning autism spectrum disorder but cannot cope with the busyness and noise and confusion of mainstream high school.*¹⁶⁸⁵

In its *No Safe Place* report, CYPSC expressed concern that use of seclusion in schools was having the effect of unlawfully excluding some children from education without the legal protections provided by appeal rights.¹⁶⁸⁶

Recommendations

Scottish Government should:

- Ensure that the number of exclusions is reduced, informal exclusions are never used, and permanent or temporary exclusions are only used as a last resort. The over-representation of particular groups of children should be addressed and the quality of alternative provision monitored and improved;
- Ensure that children have a statutory right to appeal against school exclusions with legal advice, assistance and representation. This should include the right to mediation and to make claim to ASN tribunals;
- Ensure that schools provide evidence of what steps they have taken to ensure care experienced children have inclusive rights-based education.

Use of isolation rooms

UNCRC Concluding Observation

Abolish the use of isolation rooms.¹⁶⁸⁷

Use of seclusion in educational settings

Scottish Government stated in its 2018 *Progressing the Human Rights of Children* report that seclusion of a child within a separate space should only be used as a last resort to ensure the safety of the child or others.¹⁶⁸⁸ This was also included in the 2017 national guidance on managing school exclusions.¹⁶⁸⁹ CYPSC has expressed concern regarding this guidance for several reasons, including the framing of it around behaviour management and exclusions, which suggests that the need for physical intervention including seclusion results from the child's behaviour rather than their unmet needs or unrecognised trauma.¹⁶⁹⁰ This framing is mirrored in the language used by many local authorities who frequently describe children's behaviour as aggressive or violent when discussing use of seclusion. This choice of language is problematic given that children with disabilities or other ASN may show anxiety or distress through behaviour which appears as challenging to some adults.¹⁶⁹¹

The CYPCS investigation found inconsistent policies on the use of seclusion across local authorities and that some did not have policies on seclusion at all, despite reporting use of various physical intervention techniques. CYPCS expressed concern over the wide variety and inconsistency of documents that were submitted. There was lack of clarity around the definition of seclusion. Various terms were used at times seemingly interchangeably with seclusion, including 'chill-out room', 'quiet room' and 'calming room'. In its report, CYPCS noted that there was a significant difference between using a quiet space away from other children where there is an agreed need recognised in the child's plan or in an emergency situation for the prevention of harm, and when a child is locked into a room by themselves, unable to leave. Of particular concern to parents was that very few authorities recognised that seclusion may constitute a deprivation of liberty and did not provide sufficient guidance to ensure staff were acting lawfully.¹⁶⁹²

...The staff had even put him in a room on his own in a totally unregulated state and held the door handle from the other side and wouldn't let him out. [He] was distraught.¹⁶⁹³

As highlighted by CYPCS, seclusion of a child may be a deprivation of their right to liberty and breach their Article 5 ECHR rights. There are three criteria used by courts to determine whether a deprivation of liberty has taken place. One of those is lack of valid consent from the child or a parent with parental rights. The UK Supreme Court has ruled that compliance is not consent, meaning that consent cannot be inferred by a child's failure to object to seclusion.¹⁶⁹⁴

The lack of consistent monitoring and reporting on the use of seclusion makes it difficult to estimate the scale of the practice.¹⁶⁹⁵ There is no way to know with any certainty how many children are being secluded in schools, how frequently this is happening, or whether children are being injured or distressed as a result. CYPCS noted that the limited data available suggests that seclusion is used disproportionately with disabled children or those with other ASN.¹⁶⁹⁶ Anecdotal evidence seems to support this suggestion. In January 2019, two family-led charities - Challenging Behaviour Foundation (CBF) and Positive and Active Behaviour Support Scotland (PABSS) - published a report on their small-scale research with parents whose children (aged 0-25) have experienced restrictive intervention. The data was collected from a survey with 204 families and 566 case studies from across the UK. All of the case studies and survey responses referred to experiences of disabled children or children with other ASN. The analysis of the data found that the highest number of restrictive interventions, including seclusion, were being experienced by very young children, with most aged 11 or under. The physical and emotional impacts on children were significant. Restrictive intervention also had a detrimental impact on families, with parents reporting mental health problems, family breakdown and financial strain.¹⁶⁹⁷

During the period she was secluded she self-harmed by headbutting kicking and hitting the walls, she had broken toenails, sore hands and bruising soreness to her head. As we were not advised of the severity at the time, she did not get checked out by a medical professional for head injury. She gained 24kg during the 15 months she was on anti-psychotics and this weight hasn't all been lost yet.¹⁶⁹⁸

Parents expressed concerns that seclusion was not being used as a measure of last resort.¹⁶⁹⁹ They also outlined that restrictive interventions had worsened their child's behaviour, casting doubt on the claim that they can be used as a behaviour management tool. Families called for more accountability for the harm caused, stronger safeguarding arrangements and better training for teachers and school staff in learning about disability, autism, challenging behaviour and positive behaviour support.

In 2019, ENABLE Scotland launched the *In Safe Hands?* campaign, advocating for new guidance, stricter protocols on the use of restraint and seclusion in schools and strengthening the workforce's capacity.¹⁷⁰⁰

Refer to Chapter 4.2, addressing restraint in educational settings.

Recommendation

- *Scottish Government should ensure a programme of reform in line with the recommendations in the CYPCS's report No Safe Place¹⁷⁰¹ and Enable's report In Safe Hands?.¹⁷⁰²*

Mandatory child rights education

UNCRC Concluding Observation

Make children's rights education mandatory.¹⁷⁰³

Other treaty bodies, UPR recommendations and SDGs

The General Assembly adopted a designated UN Declaration on Human Rights Education and Training in December 2011, which calls for governments to strengthen their attempts in promoting respect for human rights, acknowledging "...the fundamental importance of human rights education and training in contributing to the promotion, protection and effective realization of all human rights." The Declaration, with its 14 Articles, presents a significant legal framework on which to base advocacy for human rights education and explicitly directs states to take account of the World Programme for HRE in Article 8.¹⁷⁰⁴

Similar recommendations have been made by the CEDAW Committee in its 2019 Concluding Observations.¹⁷⁰⁵

Rights-based education

Child rights education plays a key role in developing children as active, engaged local and global citizens.¹⁷⁰⁶ The Curriculum for Excellence explicitly addresses human rights and active citizenship but within only a few of the subjects.¹⁷⁰⁷ Whilst the framework provides a context in which children's rights education can be developed, it is not an explicit requirement.¹⁷⁰⁸

Certain routes for promoting children's rights in schools are established within the teacher education system. The standards for qualifying to teach in Scotland include the requirement for teachers to: "respect the rights of all learners as outlined in the United Nations Convention on the Rights of the Child (UNCRC) and their entitlement to be included in decisions regarding their learning experiences and have all aspects of their well-being developed and supported".¹⁷⁰⁹ In 2019, Education Scotland published an updated version of *Recognising and Realizing Children's Rights*, aimed at raising teachers' awareness and knowledge about children's rights.¹⁷¹⁰

Children recognise the importance of learning about their rights and want to be informed in fun, accessible ways with the support of adults.¹⁷¹¹

Children's rights are important because you are a child! They affect you every day. It's one of your rights to know your rights!¹⁷¹²

Children think that a pupil booklet about children's human rights should be given to every child in school.¹⁷¹³

UNICEF UK has been running the *Rights Respecting Schools Award (RRSA)* programme in Scotland since 2006.¹⁷¹⁴ The programme requires schools to demonstrate they have achieved a range of criteria established by UNICEF UK, based on educating children about, through and for their rights. In a Rights Respecting School, a child rights-based approach underpins school culture, ethos and relationships as well as the more tangible changes to practice, policy and environment.¹⁷¹⁵ Currently, there are 1,400 schools across Scotland registered to the programme, which represents more than half of all schools in the country and reaches over 350,000 children.¹⁷¹⁶ According to the RRSA's Programme Director, "Scotland now boasts the highest proportion globally of children and young people accessing a whole school rights-based education".¹⁷¹⁷ A qualitative and quantitative evaluation of the programme, published in 2018, indicated that the programme was associated with pupils' improved knowledge of children's rights, being motivated to take action for others rights, being engaged in their education, feeling happier and safer in school.¹⁷¹⁸

Together's members have noted the lack of resources and knowledge around children's rights for children in the early years and have called for urgent investment to develop conversations, research and resources on children's rights for children under 5, and under 3 in particular. Children under the age of 5 experience their rights primarily through experiences and their relationships with the adults who care for them. Thus, members have emphasised the need to prioritise projects and training for the ELC workforce that share approaches aimed at developing a sense of agency and empowerment in children, particularly approaches that give a voice to pre and non-verbal children.¹⁷¹⁹

Scottish Government has committed to raise awareness and understanding of children's rights across all age groups and sectors of society through a three-year children's rights awareness programme.¹⁷²⁰ This programme was due to commence during the 2018 *Year of Young People* but Scottish Government subsequently stated that it was still being designed.¹⁷²¹

Child participation in schools and early learning and childcare settings

Research has suggested there is scope to further integrate pupil participation in decision-making in schools, for example in how school rules are developed and staff recruited.¹⁷²² The same study identified that schools could do more to engage pupils in democratic processes such as voting and committee membership, and that pupils at the beginning of secondary school currently were particularly disengaged. Related to this, Scottish Government committed to looking into how children can be more involved in teacher training at its third annual Cabinet meeting with children and young people.¹⁷²³

The General Teaching Council for Scotland (GTCS) is currently reviewing the Professional Standards for teachers and full implementation of these is expected for August/September 2020.¹⁷²⁴ When children are asked what they want their teachers to be like, they say encouraging and supportive, rights-respecting and ensuring of individual needs and preferences being met, skilled and knowledgeable, and enthusiastic and engaging.¹⁷²⁵ This was reported in a review of the Professional Standards, based on input from almost 600 children aged 5-18. The review included recommendations to ensure children's views are reflected in the refreshed Professional Standards, that children should be involved in reviewing and implementing the Professional Standards, that children should be involved in the review process for teachers, that the standards should be written in simple language which can be understood by children, and that children should be able to use the standards to challenge and hold teachers to account.

Nearly all schools have a pupil council and offer a range of opportunities to get involved in having their say.¹⁷²⁶ Children have suggested making meetings “fun and playful” so that children of all ages and abilities are able to participate.¹⁷²⁷ They also recommend establishing links between schools and wider community councils so children can discuss community matters and feed their ideas into community meetings. They highlight the importance of their ideas being recognised and valued:

They should have some adults to listen and take some ideas for another meeting with just adults but they mention their name and how they got the idea.¹⁷²⁸

Children's participation in educational matters should start as early as their involvement in educational settings, yet there is little research available on child participation in ELC. Education Scotland has published guidance to help both ELC settings and schools understand and implement learner participation.¹⁷²⁹ The Scottish Childminding Association has published a guide for childminders on children's participation in the early years.¹⁷³⁰ The guide provides useful theoretical information, while the accompanying Activity Leaflet offers practical tips and suggestions with a focus on respecting children's opinions and choices.

Recommendation

- *Scottish Government should ensure there is a systematic and embedded approach to rights-based education that enhances dialogue, power sharing, and decision-making with all children.*

7.2 Play, rest, recreation, cultural and artistic activities

UNCRC Concluding Observation

Strengthen its efforts to guarantee the right of the child to rest and leisure and to engage in play and recreational activities appropriate to the age of the child, including by adopting and implementing play and leisure policies with sufficient and sustainable resource.¹⁷³¹

Play, recreation, cultural and artistic opportunities

Play, leisure, cultural and artistic opportunities are essential for children's wellbeing and healthy development. Children benefit from play and socialisation in many ways, including improved physical and emotional wellbeing, ability to form friendships and language development.¹⁷³² The expressive arts are a particularly effective way of developing children's agency and sense of voice.¹⁷³³

If you don't play with other people you can become antisocial and sad and you won't learn how to make friends.¹⁷³⁴

Children have said that they need more opportunities to play and join clubs at school.¹⁷³⁵ Children would also like to see more leisure and socialising opportunities in their communities, such as community markets, fairs and events, spaces for people to spend time, creative clubs, activities and “more fun stuff”.¹⁷³⁶

A number of national policy documents have been produced relating to play¹⁷³⁷ and children's participation in art¹⁷³⁸ and sport.¹⁷³⁹ In March 2019, Scottish Government commissioned a progress review of the 2013 *Play Strategy for Scotland* and the corresponding Action Plan.¹⁷⁴⁰ Play Scotland's *Getting it Right for Play* programme, which began in mid-2016, has significantly contributed to taking the *Play Strategy for Scotland* forward in local authority areas. The programme has provided support to several local authorities in developing and implementing local play strategies and policies, including Dundee,¹⁷⁴¹ East Lothian,¹⁷⁴² Aberdeenshire¹⁷⁴³ and Perth and Kinross.¹⁷⁴⁴ Play Scotland has reported that improvements include support for play at home and in families, removal of 'no ball games' signs, more play at school, improving access to play in school grounds out of hours and term time, more street play, and more play in communities.

Adequate outdoor space to play is in decline throughout the UK¹⁷⁴⁵ including Scotland.¹⁷⁴⁶ Free play in outdoor environments is essential for the wellbeing of children and for their healthy development.¹⁷⁴⁷ Children have highlighted the importance of more outdoor play spaces in their communities, alongside "more trees", "lots of green space", "protected wildlife", "less traffic", "low noise levels" and "safe crossing points".¹⁷⁴⁸ In October 2018, Scotland's Outdoor Play and Learning Coalition published a national Position Statement which committed the signatories to embed play and outdoor learning as an everyday activity for all children.¹⁷⁴⁹ The statement includes commitments to widen access to high-quality greenspaces throughout all communities, open up publicly-managed spaces for playing and learning outdoors, and make urban greenspace and built environments more play-friendly.¹⁷⁵⁰ Scottish Government published guidance for creating outdoor play experiences in early learning and childcare in 2018¹⁷⁵¹ and funded *Away and Play*, a year-long campaign which sought to highlight the benefits of free and unstructured play.¹⁷⁵²

There are currently just over 1,000 out-of-school provision settings in Scotland, providing services for around 50,000 children.¹⁷⁵³ In addition, there are many activity-based services and programmes, such as sport, art, drama, and music clubs, as well as other types of activities.¹⁷⁵⁴ There is evidence that out-of-school provision can have a positive impact on children, especially younger children and those from disadvantaged backgrounds, including on relationships, self-confidence and, particularly, the opportunity for play in a safe environment.¹⁷⁵⁵ Children view out of school provision as an opportunity to play with friends, have fun, participate in activities that they may not be able to take part in otherwise, and to spend time outdoors:

It's amazing: I can speak to staff about my worries. I like how we are involved with new changes at a club. I love making new friends I enjoy going on trips. I like how Brenda teaches us new games.¹⁷⁵⁶

The Programme for Government 2017-18 committed to developing a strategic framework on after school activities and services within the parliamentary term.¹⁷⁵⁷ In August 2019, Scottish Government launched a consultation on the *Out of School Care - Draft Framework* which aims to improve children's play opportunities and access to other life-enhancing experiences.¹⁷⁵⁸ Among the other issues addressed, the consultation asked stakeholders to suggest "a better term than 'Out of School Care'" that would describe the full range of out-of-school services and activities. Together's members have suggested that the focus should be on 'provision' as a whole with 'care' being a category within that holistic approach, and that the role of youth work provision should be recognised.¹⁷⁵⁹

Scottish Government has also committed to developing a Culture Strategy for Scotland which, according to its 2018 *Progressing the Human Rights of Children* report, will recognise the fundamental value of culture and that everyone should have equal opportunity to access it.¹⁷⁶⁰ Scottish Government stated in its 2018 *Progressing the Human Rights of Children* report that it had committed to establishing a Cultural Youth Experience Fund to create opportunities for school aged children to enjoy culture. No further information is available on the existence of this fund.

Scottish Government funds the Youth Music Initiative which helps children and young people access music making opportunities. Around 244,000 children and young people (aged 0-25) took part in a Youth Music Initiative activity in 2016-17.¹⁷⁶¹ One of the agreed actions at the third annual Cabinet meeting with children and young people was that Scottish Government would continue to support the preservation of instrumental music tuition in Scotland.¹⁷⁶²

Youth work

More than 80,000 adults are working with children and young people through youth work across Scotland. The sector reaches in excess of 380,000 children and young people each week, focusing mainly on 11 to 18-year olds.¹⁷⁶³

Through engaging in youth work, children and young people become resilient, participate effectively in groups and learn to make reasoned decisions.¹⁷⁶⁴ It can also improve their confidence, friendships and feelings of inclusion, as well as support their personal and social development.

I have so much new friends in [project] and it has allowed me to make friends better within school as I was not as shy¹⁷⁶⁵

Youth work is facing challenges including significant reductions in resources and an increasing focus on demonstrating outcomes.¹⁷⁶⁶ There are concerns that Brexit might lead to further funding reductions.¹⁷⁶⁷ Children and young people have said that more funding is needed, alongside raising awareness of youth work opportunities and improving accessibility and training for youth workers.¹⁷⁶⁸ During *Youth Work Week 2019*, YouthLink Scotland launched a national campaign calling for a return to pre-austerity levels of investment in the sector and for strengthening the statutory basis for youth work services.¹⁷⁶⁹

The youth work sector's common goals and practice priorities are set out in the *National Youth Work Strategy 2014-19*.¹⁷⁷⁰ A Stakeholder Reference Group reviewed the strategy and published an interim report in July 2017.¹⁷⁷¹ In September 2019, YouthLink Scotland started working on a headline review for 2017-19, assessed against eight priority actions¹⁷⁷² agreed in the interim report.¹⁷⁷³ This review had not yet been published at the time of writing.

Scottish Government has announced it will develop a new National Youth Work Strategy by 2020¹⁷⁷⁴ alongside strategic partners YouthLink Scotland and Education Scotland. There is a commitment to co-produce the strategy with children and young people,¹⁷⁷⁵ and a group of children and young people has been convened for this purpose. The group was involved in the headline review of the previous strategy and has designed and conducted surveys of other children and young people to highlight areas of focus in the new strategy.¹⁷⁷⁶

Safety, accessibility and quality of play, socialising and sports facilities

UNCRC Concluding Observation

Provide children, including those with disabilities and children in marginalized and disadvantaged situations, with safe, accessible, inclusive and smoking-free spaces for play and socialization and public transport to access such spaces.¹⁷⁷⁷

Quality of play space

All children should be able to play, learn and socialise in places that are free from tobacco. However, they are often unable to remove themselves from smoky environments that are harmful to their health.¹⁷⁷⁸ As advocated by *Scotland's Charter for a Tobacco-Free Generation*,¹⁷⁷⁹ there is a need to make spaces where children play, socialise and take part in sport and recreational activities entirely smoke-free.¹⁷⁸⁰ There is no statutory duty to prohibit smoking in outdoor spaces where children play. However, some local authorities uphold smoke-free policies in outdoor areas likely to be accessed by children. Examples of good practice include Inverclyde,¹⁷⁸¹ Clackmannanshire,¹⁷⁸² Edinburgh¹⁷⁸³ and Dundee City Council¹⁷⁸⁴ which have declared their parks smoke-free zones.¹⁷⁸⁵ Scottish Government stated in its 2018 *Tobacco Control Action Plan* that it intends to run a campaign to make smoking less acceptable in school grounds, near school gates and in play parks before 2023.¹⁷⁸⁶ The action plan also states that Scottish Government will monitor the implementation of a smoking ban around children in Wales, to assess whether such legislation could be warranted in Scotland. Moreover, NHS Health Scotland and COSLA have produced guidance for local authorities on creating smoke-free areas which includes outdoor school grounds and play parks.¹⁷⁸⁷

Children have said that fear of violence discourages them from playing in public places,¹⁷⁸⁸ and that this is exacerbated by people drinking alcohol in and around parks:

*Children have a right to play... [but] when adults or teenagers are drunk [in the park], children will feel unsafe or scared or children will just run away.*¹⁷⁸⁹

Children have also said that parental worries about traffic can mean they are not allowed to play in the street. Parking is also a problem, with cars parked on the pavements or blocking places where children could play or cross the road. Children have said they are disgusted by dog mess on pavements and in parks and playgrounds and that this stops them from playing in spaces that are supposed to be for them.¹⁷⁹⁰

Equality in access to play and leisure

The 2016 *Scottish Household Survey*¹⁷⁹¹ ¹⁷⁹² showed that most children had access to play areas in their neighbourhood, but that availability differed according to levels of deprivation within urban areas. Households within the 20% of most deprived urban areas said they had less access to a natural environment or wooded area in their neighbourhood, compared to the rest of urban areas. Parents living in the 20% most deprived urban areas were also much less likely to think that it was safe for children to travel alone to most play areas. Previous research found that the quality of play areas was poorer in more deprived neighbourhoods, as compared to those in the least deprived areas.¹⁷⁹³

Several programmes have been launched to support the development and expansion of play in disadvantaged communities, including Scottish Government's Thrive Outdoors 2011-2018 Fund¹⁷⁹⁴ and Inspiring Scotland's Community Play Fund supporting eligible charities in delivering outdoor play-based interventions in target areas of very high deprivation.¹⁷⁹⁵ Scottish Government also stated in its 2018 *Progressing the Human Rights of Children* report that it was committed to providing £0.6 million in funding to the Outdoor Learning in Nature Fund to support children from deprived areas to spend time in nature.¹⁷⁹⁶

Children with disabilities are often excluded from leisure and play activities with their peers. This is often as a result of multiple barriers and intersections between poverty, disability, disadvantage, and inaccessible environments.¹⁷⁹⁷ Together's members have reported that bullying in school or in public places is a significant barrier in accessing play for children with learning disabilities.¹⁷⁹⁸ However, children and families have also shared some positive practices in promoting inclusion in play and leisure.¹⁷⁹⁹

For some children and young people, the cost of public transport poses a barrier to accessing clubs, hobbies and entertainment venues.¹⁸⁰⁰ Nearly two thirds of respondents to a Scottish Youth Parliament survey with a disability or access requirement (aged 12-25) said they did not feel comfortable using public transport.¹⁸⁰¹ This has an impact on their ability to access leisure and cultural activities outwith their immediate local area. Disabled children desire better access to leisure facilities.¹⁸⁰²

LGBT children and young people may be significantly disadvantaged in accessing adequate play, leisure and culture opportunities. In a survey of 684 LGBT children and young people (aged 13-25), less than half said there were enough places where they could safely socialise and be open about their sexual orientation and gender identity.¹⁸⁰³ This was a particular issue for transgender and non-binary people, of whom less than one third said there were enough places where they could socialise safely.

Gender equality also needs to be considered in relation to children's access to safe and inclusive spaces for play and recreational activities. Stereotypes influence the activities children engage in, their interests and skills – and, ultimately, the roles they take in society as adults. Academic research highlights the negative impact on all children of gender stereotyping and the important role that ELC services can have in positively promoting gender equality.¹⁸⁰⁴ Parents have also identified the importance of equality in the early years, including when children engage in play activities, and have called for health and education providers to promote gender equality amongst staff, children and other parents.¹⁸⁰⁵ A gender equal play resource for ELC settings has been developed by the Care Inspectorate and Zero Tolerance.¹⁸⁰⁶ The resource promotes gender equality in how children experience ELC and gives people working in these settings practical tips on avoiding gender stereotyping. A variety of constraints outside ELC settings need to be further addressed, including general social attitudes, as well as gender stereotyping reinforced through media and products such as toys, books, online resources and clothes which are increasingly being produced and marketed along gender lines.¹⁸⁰⁷

Play in hospitals

The *Children in Hospital Survey 2018-19*¹⁸⁰⁸ found that nearly all (94%) paediatric wards had a dedicated play room, and that provision of a full range of play for children remained high in the 2-13 age group (94%) and 14-16 age group (91%). The equivalent figure for babies (0-1 years) was 85%. Access to a trained Health Play Specialist was available in 73% of paediatric wards and in half the neonatal units surveyed. There were few or no play facilities on adult wards that treat children, but comments from survey respondents indicated that children treated there can access games and play elsewhere in the hospital.

Sport and physical activity

Children have said they want more Physical Education (PE) at school, involvement of specialist PE teachers/coaches and improved facilities - especially in primary schools. Children think that facilities in secondary schools are better because the interests of older pupils are taken more seriously. Children enjoy additional after school, lunchtime and weekend sports at school, as well as community-based opportunities and sports clubs. They emphasise the importance of having knowledgeable, kind and patient adults that teach or coach sports and note that they should not shout at children taking part. Children have identified multiple barriers preventing them from taking part in sports, including the cost of participating, dependence on busy adults, lack of opportunities for disabled children and gender stereotyping.¹⁸⁰⁹

sportscotland has stated that one of its planned equality outcomes for 2017-21 is to improve access to sport and physical activity opportunities in school sport and club sport for children from deprived areas, girls and young women, and disabled children.¹⁸¹⁰ This will include working with partners to develop clubs in the most deprived areas, delivering an *Active Schools* programme with a focus on girls, young women, disabled children and young people, and those living in the most deprived areas, developing leadership opportunities within sports, improving para-sport pathways, and completing development of a high quality inclusive facility. An update on sportscotland's performance against these outcomes was provided in its 2017-19 *Equality Mainstreaming and Outcome Progress Report*, which listed various projects it had been involved in throughout the period.¹⁸¹¹ In *Active Schools* programmes, there remains a gap between participation of boys and girls, albeit one which has been decreasing since 2012-13, particularly for primary pupils. Participation in the programme at special schools declined by 5% between 2012-13 and 2017-18. There is no information on why this may have happened.

Participation in planning processes

UNCRC Concluding Observation

Fully involve children in planning, designing and monitoring the implementation of play policies and activities relevant to play and leisure, at the community, local and national levels.¹⁸¹²

The Planning (Scotland) Bill was passed on 20 June 2019.¹⁸¹³ This will amend existing legislation¹⁸¹⁴ to place a requirement on local authorities to promote and facilitate participation of children and young people aged 25 or under in preparation of Local Development Plans.¹⁸¹⁵ Planning authorities will also have to publish information on any arrangements for child and youth participation which they have put in place. Before preparing a local development plan, planning authorities will also have to publish an evidence report, for which they will be expected to gather children and young people's views. Giving children a statutory right to take part in the formation of Local Development Plans has the potential to increase children's involvement in local planning processes. The Planning (Scotland) Act stipulates a 'Play Sufficiency Duty' which requires local authorities to assess the sufficiency and accessibility of opportunities for play in their area with regard to both quantity and quality. Related guidance was yet to be produced at the time of writing.

The Place Standard Tool developed by Scottish Government, NHS Health Scotland and Architecture and Design Scotland 2015 supports the delivery of high-quality public spaces which can help reduce health inequalities.¹⁸¹⁶ A child-specific set of Place Standard Tools has been commissioned by Scottish Government, NHS Health Scotland and Architecture and Design Scotland to bring children more effectively into placemaking. Play Scotland in partnership with A Place in Childhood is developing these tools in co-production with children as equal partners.

The meaningful participation of children in decisions around their built environment has been found to impact positively on communities¹⁸¹⁷ and to promote equality and empower those children who are often overlooked in decision-making.¹⁸¹⁸ There are pockets of good practice across Scotland. Examples include Planning Aid Scotland's efforts to actively involve children in several community planning projects during 2018.¹⁸¹⁹ A project delivered by Planning Aid Scotland and Article 12 Scotland received an award at the Scottish Awards for Quality in Planning 2018 for its engagement of young Gypsy/Travellers in planning and placemaking.¹⁸²⁰ Throughout 2017-18, Children's Parliament facilitated engagement with children from the Dunkeld & Birnam area to ensure they were involved in discussions about the future of their community.¹⁸²¹ This included workshops with children aged 5-16, exploring their views on the impact of proposed plans on the community, as well as the creation of a series of billboards showcasing what local Primary 7 children valued and wanted for their community.

Based on six case studies concerning participation in planning processes, Children in Scotland suggested that children tend to have more impact on policy making where they have been involved early in the process and where they have influence over the issues discussed and how these are approached.¹⁸²² A need for decision makers to clearly evidence how children's views have informed policy was identified in all case studies, so that children know if and what impact their input has had. The importance of adequate resourcing to plan and deliver engagement sessions as well as development of methods to support involvement of younger children and those with additional needs was also highlighted in the report.

At its third annual Cabinet meeting with children and young people, Scottish Government committed to taking children's views into account, as well as considering resourcing for children's participation.¹⁸²³ This will include reviewing current funding streams and how national approaches to participation are embedded in local structures which can facilitate participation.

Recommendations

Scottish Government should:

- *Further Article 31 in a consistent and integrated manner, ensuring policies are sufficiently and sustainably resourced, monitored and reviewed, in a way that ensures the inclusion of all children;*
- *Regularly collect comprehensive data on the availability of play spaces and ensure children are involved in assessing the sufficiency and accessibility of both formal and informal play and leisure opportunities (as in Wales¹⁸²⁴).*
- *Reintroduce the questions on children's neighbourhood play spaces in the 2018 Scottish Household Survey,¹⁸²⁵ and collect data on children of all ages;*
- *Report on findings from the implementation of the smoking ban around children in Wales and use findings to inform consideration of similar legislation.¹⁸²⁶*

All local authorities should promote smoke-free playgrounds policies.



Chapter

8

Special protection measures

(Articles 22, 30, 32-36,
37 (b-d), 38, 39, 40)

This cluster of articles lays down the rights of children who are in custody or detention, who are migrants, refugees or asylum seekers or who are victims of torture, trafficking, sexual exploitation, drug abuse and child labour. These children require special protection because of their particular vulnerabilities. Their best interests and wellbeing can only be tackled through special measures.

- Article 22:** refugee children.
- Article 30:** children from minority or indigenous groups.
- Article 32:** child labour.
- Article 33:** protection from drug abuse.
- Article 34:** protection from sexual exploitation.
- Article 35:** prevention of abduction, sale and trafficking of children.
- Article 36:** protection from other forms of exploitation.
- Article 37(b-d):** arrest, detention and imprisonment of children.
- Article 38:** war and armed conflict.
- Article 39:** recovery from trauma and reintegration.
- Article 40:** juvenile justice.

8.1 Asylum-seeking, refugee and migrant children

Data collection on children seeking asylum

UNCRC Concluding Observation

Systematically collect and publish disaggregated data on the number of children seeking asylum, including those whose age is disputed.¹⁸²⁷

Other treaty bodies, UPR recommendations and SDGs

Similar recommendations were made by CAT in its 2019 review, specifically in relation to asylum applications involving claims of torture.¹⁸²⁸

Asylum law is an issue reserved to UK Government and administered by the Home Office.¹⁸²⁹ Issues relating to essential services for asylum seekers - including healthcare, housing and education - are devolved to Scotland.

In 2016, the UN Committee expressed concerns about the availability of reliable data on asylum-seeking children, including those whose age is disputed.¹⁸³⁰ The Home Office releases quarterly immigration statistics, which include the number of applications by unaccompanied asylum-seeking children (UASC) and the number of age-disputed cases across the UK.¹⁸³¹ The Home Office does not provide separate figures for Scotland although Scottish Government estimates that as many as five unaccompanied children arrive in the country each month.¹⁸³²

In 2013, the Joint Select Committee on Human Rights (JCHR) noted insufficient data on age disputed cases and recommended UK Government record and publish this data, disaggregated by gender and nationality.¹⁸³³ The JCHR recommended the data should include, but not be limited to:

- The number of asylum applicants who claim to be children but who are treated as adults by the immigration authorities on the ground that their appearance or demeanour very strongly suggest that they are significantly over 18 (now 25 following a 2019 change in Home Office guidance);^{1834 1835}
- The number of cases where an individual claiming to be a child is placed in immigration detention, and any subsequent action in relation to those cases;
- The number of cases in which age is assessed by local authorities, and, in such cases, how many children are determined to be adults and how many are determined to be children;
- The number of cases that are challenged by judicial review, and the number of such challenges that are successful.¹⁸³⁶

UK Government has made some progress in taking these recommendations forward. The Home Office now publishes data on the outcomes of age disputes, indicating whether an applicant was found to be older or younger than 18. Data is disaggregated by nationality but not by gender. Data on the number of children placed in immigration detention is also published, although this does not indicate how many of these cases are age disputed.¹⁸³⁷

Other data gaps persist. Home Office statistics on age disputed cases still do not include the number of asylum applicants who claim to be children but who are treated as adults by the immigration authorities on the ground that their appearance or demeanour very strongly suggest they are significantly over 18 years old (now 25 years old, see below).¹⁸³⁸ This is despite a localised Home Office pilot on the collection of this data in 2014.¹⁸³⁹ Data on the number of cases challenged through judicial review, and how many of these are successful, is not published.

Recommendation

- *UK Government should systematically collect and publish disaggregated data on children seeking asylum, in line with outstanding 2013 JCHR recommendations, including separate data for the devolved nations.*

Statutory independent guardians

UNCRC Concluding Observation

Establish statutory independent guardians for all unaccompanied and separated children throughout the State party.¹⁸⁴⁰

Scottish Ministers have led the way in the UK, funding the Scottish Guardianship Service (SGS) since April 2013. The SGS provides unaccompanied children with independent support in navigating immigration and welfare processes as well as helping the child build social connections and resilience. The guardian acts as a point of contact and continuity as the child progresses through the asylum and immigration system, makes them aware of their rights and helps the child integrate into community life.

The SGS was placed on a statutory footing by the Human Trafficking and Exploitation (Scotland) Act 2015 ('2015 Act').¹⁸⁴¹ The 2015 Act provides that separated children who have or may have been trafficked, or are considered vulnerable to trafficking, are entitled to an Independent Child Trafficking Guardian (ICTG). The scope of the 2015 Act is therefore narrower than the UN Committee's 2016 recommendation, which states that *all* unaccompanied and separated children should have access to a guardian. Scottish Government has since clarified its position that "*all* children and young people who arrive in Scotland unaccompanied and who will have undergone an arduous migration alone, are considered to being at risk of having been trafficked or becoming trafficked and would be referred to a ICTG for support."¹⁸⁴² This clarification has been welcomed by Together's members.¹⁸⁴³

While certain provisions of the 2015 Act came into force in 2016, the relevant provisions on ICTGs first require Scottish Government to consult on and draft regulations to define the role and responsibilities of the guardians.¹⁸⁴⁴ In August 2019, Scottish Government launched a consultation on proposed regulations for the SGS and ICTGs, together with accompanying guidance.¹⁸⁴⁵

Anecdotal evidence from Together's members suggests that SGS does not have the capacity to accommodate all age disputed children. Those dispersed as adults with an age dispute work with the British Red Cross Youth Service.

Refer to Chapter 8.1 for information on the National Referral Mechanism.

Recommendation

- *Scottish Government should ensure that all age disputed children have access to an independent guardian through SGS until they have exhausted all legal avenues to be recognised as a child.*

Age assessments

UNCRC Concluding Observation

Conduct age assessments only in cases of serious doubt through multidisciplinary and transparent procedures, taking into account all aspects, including the psychological and environmental aspects of the person under assessment.¹⁸⁴⁶

Table 22: Unaccompanied asylum-seeking children subject to age disputes (UK-wide, 2016-19)¹⁸⁴⁷

Year	2014	2015	2016	2017	2018	2019 (Q1-3 only)
Asylum applications from UASC	1945	3254	3290	2401	3063	2605
No. age disputed cases	318	791	929	718	875	596
Age disputed cases as % of total UASC applications	16%	24%	28%	30%	29%	23%

Table 23: Number and % of age disputes resolved as under 18 or 18+ (UK-wide, 2016-2019)¹⁸⁴⁸

Year	2014	2015	2016	2017	2018	2019 (Q1-3 only)
No. age disputes resolved	466	718	945	673	795	571
No. age disputes resolved: u18 when raised	242	274	370	289	367	289
% of total age disputes resolved: u18 when raised	52%	38%	39%	43%	46%	51%
Age disputes resolved: 18+ when raised	224	444	575	384	428	282
% of total age disputes resolved: 18+ when raised	48%	62%	61%	57%	54%	49%

Age assessments are regularly undertaken on children seeking asylum because they do not have the correct documentation to prove their date of birth. UK Government’s statutory guidance advises:

Age assessments should only be carried out where there is reason to doubt that the individual is the age they claim. Age assessments should not be a routine part of a local authority’s assessment of unaccompanied or trafficked children.¹⁸⁴⁹

The proportion of age disputed cases involving UASC has risen significantly from a low of 16% in 2014, to 29% in 2018 (see table 22). Of the 571 age disputes resolved in the first three quarters of 2019, 289 children (51%) were found to be under the age of 18 (see table 23). A significant proportion of children are still regularly disbelieved about how old they are.

Together members have raised concerns about ‘initial age assessment’ meetings, which are conducted by social services with children, and used to determine whether or not a full age assessment is necessary. Meetings can take at least an hour, in which children are asked similar questions to those asked in a formal age assessment. There is no compulsion to ensure that an appropriate adult is present or to produce a report as the meetings are not defined as a formal age assessment. This results in a lack of transparency which impacts on the child’s ability to challenge the assessment. By definition, any meeting to decide whether or not an age assessment is necessary should be conducted as a formal age assessment.

Children can face a number of barriers to participating fully in their age assessment, including brief visual assessments being made which the child has not fully understood, interpreters not being provided, and/or an appropriate and responsible adult not being present to safeguard their rights. If a child is wrongly considered to be an adult, they will not be supported by children’s services and may be detained or accommodated with adults.¹⁸⁵⁰ This was recently illustrated in an English case¹⁸⁵¹ where a child was detained as an adult before his age was established as 16 years old. The Court criticised Home Office guidance that stated a person claiming to be a child could be treated as an adult if their physical appearance or demeanour suggested they were “significantly” over 18 years old. The Court found that the guidance failed to recognise the unreliability of assessing age on the basis of appearance and demeanour and, accordingly, a wider margin of error was required. Updated Home Office guidance has raised the age from 18 to 25 years old: “You must treat the claimant as an adult if their physical appearance and demeanour **very strongly suggests that they are 25 years of age or over**”¹⁸⁵² (emphasis included). However, this is only an interim position subject to ongoing legal proceedings.¹⁸⁵³

International and domestic legal obligations around presumption of age should be rigorously and consistently applied in Scotland.¹⁸⁵⁴ If an assessment is to be undertaken it should be made following multidisciplinary and transparent procedures that are not limited to appearance, but take into account wider and equally relevant considerations such as psychological state and behaviour, environmental factors and social background.¹⁸⁵⁵

The 2015 Act requires that in situations where the age of a potential human trafficking victim is uncertain, the relevant authorities must presume them to be a child if there are reasonable grounds to believe they may be under 18.¹⁸⁵⁶ In these circumstances, the victim is presumed a child for the purpose of receiving immediate age-appropriate support and services until their age is formally established. This presumption now in practice applies not just to potential victims of trafficking but to all age disputed asylum seekers pending age assessment.¹⁸⁵⁷

In March 2018, Scottish Government produced revised *Age Assessment Practice Guidance for Scotland* reflecting the change in legislation.¹⁸⁵⁸ This guidance is non-statutory, despite calls from Together’s members in 2016 that statutory guidance was needed.¹⁸⁵⁹

Recommendation

- *Scottish Government should ensure that age assessment guidance is implemented in a manner that ensures all meetings, including initial assessments, are regarded as part of the age assessment, conducted and reported in a transparent, clear and appropriate manner, and that an interpreter and appropriate adult are present to safeguard the child's rights.*

Child detention

UNCRC Concluding Observation

Cease the detention of asylum-seeking and migrant children.¹⁸⁶⁰

Other treaty bodies, UPR recommendations and SDGs

Similar recommendations have been made by the Human Rights Committee in its 2015 Concluding Observations,¹⁸⁶¹ CERD in its 2016 Concluding Observations,¹⁸⁶² and by Bangladesh in the United Kingdom's 2017 Universal Periodic Review.¹⁸⁶³ In its 2019 Concluding Observations, the CEDAW Committee called for an end to the detention of pregnant women and nursing mothers.¹⁸⁶⁴

UK Government announced its intention to end immigration detention of children in May 2010. In August 2011 a 'pre-departure' accommodation facility, known as Cedars, was opened near Gatwick Airport in England to house families with children. Until late 2016, Cedars was used for families subject to ensured return for short periods of 'pre-departure detention', including families previously living in Scotland. The centre was run by G4S, with family support, social work and welfare services provided on site by Barnardo's. In July 2016, UK Government announced plans to close Cedars and replace it with new pre-departure accommodation at a nearby Immigration Removal Centre. Barnardo's responded that the proposed accommodation was not in the best interests of the children involved.¹⁸⁶⁵

In May 2017, a "discrete self-contained unit" opened at Tinsley House to accommodate families. The unit is part of a secure, fenced-in site on the periphery of Gatwick Airport, very different to the apartment-style family accommodation at Cedars. In a recent inspection, HM Chief Inspector of Prisons noted "the new unit was located in a more restricted space in the grounds of the removal centre and could not fully replicate the welcoming, open environment of Cedars", although efforts had been made to ensure walls and fences were not easily visible once families were inside and activities were planned to help distract the children from their situation.¹⁸⁶⁶ G4S is fully responsible for welfare services at Tinsley House.¹⁸⁶⁷ Families at Tinsley House can be held for up to 72 hours, with ministerial declaration required to extend a family's stay to up to seven days in exceptional cases.

Despite the 2010 commitment, the UK Government still has the statutory power to detain children. They can be detained as part of the family removals process, in age dispute cases, in entry refusal cases or at ports and airports on arrival in the UK. While the number of children placed in detention has fallen following the UK Government's announcement in May 2010, they are still being detained. A total of 294 children were detained between January 2016 – June 2019 (see table 24).

In 2016, it was announced that Dungavel Immigration Removal Centre in Scotland would close, though it remains open after plans for a new facility were rejected by Renfrewshire Council.¹⁸⁶⁸ A BBC investigation in found that at least 21 children entered detention at Dungavel between 2010 and 2018.¹⁸⁶⁹ The report prompted a joint letter from the Children and Young People's Commissioner Scotland and Children's Commissioner for England calling on UK Government to clarify its position regarding the detention of children at Dungavel.¹⁸⁷⁰ Home Office data indicates that no children were detained at Dungavel between 2018 and the date of the current report's publication.¹⁸⁷¹

Table 24: Total children entering detention by year and age (UK-wide)¹⁸⁷²

	Children under 5 years entering detention	Children 5-11 years entering detention	Children 12-16 years entering detention	Children 17 years entering detention	Total children entering detention
2019 (Q1-Q2)	14	11	12	6	43
2018	16	27	29	13	85
2017	10	10	23	20	63
2016	24	18	30	31	103
2015	38	35	56	34	163
2014	70	28	37	23	128
2013	70	85	50	23	228
2012	72	84	67	19	242
2011	43	24	40	20	127
2010	153	145	106	32	436
2009	498	369	211	41	1,119

Table 25: Number of children by duration of detention (UK-wide)¹⁸⁷³

	<3 days	4-7 days	8-14 days	15-28 days	29 days – less than 2 months	2 months – less than 3 months	3 months +
2018	76	4	0	5	0	0	0
2017	52	6	4	1	3	1	0
2016	63	14	7	9	8	1	2
2015	109	37	4	7	3	6	0
2014	96	16	4	3	5	1	1
2013	172	39	3	6	6	1	2
2012	184	38	5	7	6	1	1
2011	83	23	8	10	5	1	0
2010	184	89	80	54	22	6	2

In June 2012, the Home Affairs Select Committee recommended that UK Government publish a breakdown of the number of children entering immigration detention by the reason for their detention.¹⁸⁷⁴ This would provide scrutiny of the extent of child detention at different points in the immigration process. To date, the Home Office does not publish this information.¹⁸⁷⁵

Recommendations

- UK Government should confirm and fulfil its commitment to cease the detention of asylum-seeking and migrant children. In the short-term, UK Government should publish a breakdown of the number of children entering immigration detention by the reason for their detention.

Family reunion

UNCRC Concluding Observation

Review its asylum policy in order to facilitate family reunion for unaccompanied and separated refugee children within and outside of the State party, including through implementation of the European Union Dublin III Regulation.¹⁸⁷⁶

Other treaty bodies, UPR recommendations and SDGs

Similar recommendations have been made by Honduras and Argentina in the United Kingdom's 2017 Universal Periodic Review.¹⁸⁷⁷

In 2016, the UN Committee expressed concern that unaccompanied and separated refugee children within and outside of the UK can face restrictions on family reunification.¹⁸⁷⁸ There are several regimes for family reunion in the UK, primarily family reunion under the UK Immigration Rules and family reunion under the Dublin III Regulation.¹⁸⁷⁹ This EU regulation determines which EU country is responsible for assessing an asylum application. If the asylum applicant has family living in another EU country, their application may be transferred for consideration in that state.¹⁸⁸⁰

Child inside the UK

UK Immigration Rules do not give children the same entitlements to be reunited with their parents, as adults have to be reunited with their children.¹⁸⁸¹ Under the current rules, only adult refugees can apply for family reunion.¹⁸⁸² If successful, the arriving family member is given the same immigration status as the person they are joining. The UK is one of only two EU countries that do not allow child refugees to sponsor even their closest family members. UK Government has stated this is to avoid creating a situation of families sending their children ahead in the hope that parents can join them at a later date.¹⁸⁸³ There is little evidence that this has happened in other EU countries according to the EU Home Affairs Sub-Committee.¹⁸⁸⁴ The current UK rules discriminate against children as they treat the child's parents as being of less importance to the child, than a child is to their parents.

Child refugees have the same right to live with their family as adults do, and accordingly the UK's responsibilities to child refugees should be no less than they would be to an adult refugee.¹⁸⁸⁵ The Home Affairs Select Committee has described the situation as "perverse" and recommended that UK Government amend its Immigration Rules to allow children to bring their close family to join them in the same way as adults can.¹⁸⁸⁶

In June 2017, a Private Members Bill on family reunion was introduced to the House of Lords.¹⁸⁸⁷ This sought to give refugee children the right to apply for family reunion, as well as broadening the definition of "family member" for the purposes of reunion.¹⁸⁸⁸ A similar Bill was introduced to the House of Commons in July 2017.¹⁸⁸⁹ Both Bills failed to pass before the end of the parliamentary term. An inspection into the Home Office's handling of family reunion applications under the Immigration Rules is currently underway, a call for evidence opened in June 2019.¹⁸⁹⁰

Although not able to make a family reunion application 'inside' the UK Immigration Rules, unaccompanied children may make an application 'outside the rules' by relying on Article 8 of the European Convention on Human Rights (ECHR) which sets out the right to private and family life.¹⁸⁹¹ However, these applications have a lower chance of success than those made inside the rules and may only be granted in exceptional or compassionate cases.¹⁸⁹²

Child outside the UK

Children may be eligible to join parents in the UK under family reunion provisions in the Immigration Rules (above).¹⁸⁹³ Under these rules, adult with refugee or humanitarian status can apply to be joined by dependent children who are under 18 years old and were part of the family unit before the parent fled.¹⁸⁹⁴ ¹⁸⁹⁵ The rules do not apply to children who are married or in a civil partnership or who are "leading an independent life" even if they are under 18.¹⁸⁹⁶ The rules do not allow children to join other family members in the UK, such as aunts, uncles, older siblings or grandparents. Since 2012, legal aid has not been available for refugee family reunion cases even though these cases involve difficult procedures. This has resulted in long delays, keeping families apart.¹⁸⁹⁷

Separately, European Union law currently provides a route of entry to the UK for unaccompanied and separated children who have a family member living in the UK. This is not limited to parents, and includes wider family such as aunts, uncles, siblings and grandparents.¹⁸⁹⁸ Under the Dublin III Regulation, an existing asylum case lodged in one EU country can be transferred to the UK for determination. The UK Government expressed a clear commitment to meeting its obligations under the Regulation in January 2016.¹⁸⁹⁹ The Home Office issued guidance on Dublin III regulation in November 2017, followed by updated guidance in April 2019.¹⁹⁰⁰

Children can face difficulties in accessing their rights under Dublin III due to a lack of information and support. Children can also be reluctant to access the asylum procedure, as they lack confidence that their case will be transferred to the UK and result in family reunion.¹⁹⁰¹ Dublin III puts in place a maximum time limits of 11 months for a child to be transferred, yet in practice the process can take even longer. This presents yet another barrier to children seeing Dublin III as a viable solution for family reunion.

In February 2018, UK Government published up-to-date Dublin statistics for the first time.¹⁹⁰² These statistics have since been updated quarterly, and are available for 2015 onwards (see table 26).

Table 26: Requests for transfer and completed transfers of unaccompanied children under Dublin regulation (UK-wide)¹⁹⁰³

Year	2015	2016	2017	2018
Requests (into UK)	50	316	239	249
Transfers (into UK)	24	175	92	159
Transfers into UK as % of requests made	48%	55%	39%	64%
Requests (out of UK)	1	2	1	0
Transfers (out of UK)	0	0	1	0
Transfers out of UK as % of requests made	0%	0%	100%	n/a

The UK Government has confirmed that family reunion under the Dublin III regulation will cease if the UK leaves the European Union without a deal.¹⁹⁰⁴ If a deal is reached, an alternative agreement with the EU on family reunion will require to be negotiated as part of transition agreements. In October 2019, a public petition with 80'000 signatures was presented to the Home Office calling for family reunion rules for children to be preserved after leaving the EU.^{1905 1906} Unicef UK has expressed concern that many children may not be able to join family in the UK if Dublin III ceases to apply after Brexit, as they will not meet the narrower requirements of the UK Immigration Rules.¹⁹⁰⁷

Recommendations

UK Government should:

- Allow unaccompanied or separated children who have been granted refugee status or humanitarian protection the right to sponsor their parent or main carer to reunite with them;
- Make UK family reunion rules less restrictive to allow children at risk to join extended family members such as grandparents and adult siblings in the UK;
- Take forward recommendations made by UNICEF UK in 2017.

Access to basic services

UNCRC Concluding Observation

Provide sufficient support to migrant, refugee and asylum-seeking children to access basic services.¹⁹⁰⁸

Other treaty bodies, UPR recommendations and SDGs

Similar recommendations were made by CESCR in its 2016 Concluding Observations,¹⁹⁰⁹ and by Nepal and Sri Lanka in the United Kingdom's 2017 Universal Periodic Review.¹⁹¹⁰

Migrant children Scotland can hold one of a range of immigration statuses. Depending on the status held, they will be entitled to access different services. It can be impossible to predict timescales when awaiting decisions of immigration status, making it even more difficult for children, families and professionals to plan next steps in terms of education, for example. Complex bureaucracy and limited access to specialist support can impact on families accessing services.

Dispersal

The Immigration Act 2016 introduced the National Transfer Scheme for UASC in England.¹⁹¹¹ Under the voluntary scheme, local authorities can accept the transfer of unaccompanied children from another council area.¹⁹¹² The intention was to relieve pressure on local authorities in the south of England close to major points of entry into the UK. Secondary legislation extending the scheme to the rest of the UK, including Scotland, was passed on 7th February 2018.¹⁹¹³ Scottish local authorities will now consider whether, and on what scale, they are able to participate in the scheme. The Immigration Act 2016 also contains powers that can be used to compel local authorities to accept transfers if they are not willing to do so on a voluntary basis.¹⁹¹⁴

Any such transfer of additional unaccompanied children to Scotland needs to be carefully planned and managed to ensure that sufficient capacity and provision is in place, including accommodation, education services, healthcare, specialist legal services and interpreting. Some concerns were raised in advance of the scheme's extension to Scotland. These included that children subject to the scheme in England were not assessed before dispersal and that the child's views were often not sought.¹⁹¹⁵ In April 2018, COSLA and the Home Office jointly published a Protocol for Scotland, setting out how Scottish local authorities will interact with the scheme.¹⁹¹⁶ Further research is needed to assess the operation and impact of the National Transfer Scheme in Scotland.

In January 2018, Scottish Government published its *New Scots Refugee Integration Strategy 2018-2022*.¹⁹¹⁷ This acknowledges the traumatic experiences many children subject to dispersal (unaccompanied or with family) may have been through and their specific needs. The Strategy states that it "recognises that children and young people may require additional support to access the services they need and opportunities to participate in society." A progress update on the New Scots Strategy is due in spring 2020.

Accommodation

The Home Office has a duty to provide asylum-seekers with accommodation if they have nowhere else to stay while their claim is being assessed.¹⁹¹⁸ This has been delivered through regional contracts with three companies since 2012, prior to which responsibility lay with local authorities. In 2012, UK Government awarded the contract to manage asylum accommodation in Scotland and Northern Ireland to Serco. Serco managed provision in Scotland until September 2019, after which the contract was awarded to Mears Group. While Scottish Government does not hold powers over immigration and asylum, it does have powers in relation to housing and can therefore use Scottish housing legislation and standards to ensure that accommodation for asylum seekers is of an acceptable quality.¹⁹¹⁹

Concerns have been raised by a number of Together's members around the quality of accommodation provided to families seeking asylum. A 2017 examination by the House of Commons Home Affairs Committee expressed concern at the substandard level of housing provided to asylum applicants, noting that some accommodation was a "disgrace".¹⁹²⁰ The need for improvement was reiterated in a subsequent report from the Committee in 2018.¹⁹²¹ Of 1,467 Home Office inspections of properties across Scotland and Northern Ireland between April 2016 and January 2018, less than a quarter (352) were deemed compliant with the indicators 'safe', 'habitable' and 'fit for purpose'.¹⁹²² Freedom of Information (FOI) requests by the Scottish Refugee Council in 2019 found that Serco incurred £2.8 million in penalties in relation to property standards between April 2013 and December 2018.¹⁹²³

Further concerns have been raised around the treatment of failed asylum-seekers by contractor and sub-contractor staff. In July 2018, Serco began a programme of 'lock change evictions' in Glasgow. These evictions involved changing the locks on properties without first obtaining a court order. In August 2018, Scottish Government announced emergency funding for refused asylum seekers facing eviction.¹⁹²⁴ Lock change evictions were temporarily suspended in spring 2019, following legal proceedings raised by Govan Law Centre.¹⁹²⁵ In June 2019, Serco announced that it would be restarting the evictions.¹⁹²⁶ In appeal proceedings before the Court of Session in November 2019, the Inner House held that lock-change evictions were lawful.¹⁹²⁷ It concluded that Serco was not a public authority within the meaning of the Human Rights Act 1998.¹⁹²⁸ The Scottish Human Rights Commission and Shelter Scotland have criticised the decision as allowing governments to escape their human rights obligations by outsourcing the provision of public services.¹⁹²⁹ ¹⁹³⁰ In December 2019, Scottish Government announced a further £252,000 in funding to help ensure that those facing homelessness have access to legal support and other services.¹⁹³¹

Scottish Government's *New Scots Refugee Integration Strategy 2018-2022* recognises a range of challenges asylum seekers face in relation to housing including availability, location, feeling safe, support and information.¹⁹³² The strategy outlines a range of objectives and actions Scottish Government will take including: improving access to support, advice and advocacy; ensuring that housing services are aware of safe reporting methods for hate crime and are using third party reporting; and continuing to build on partnerships with Registered Social Landlords in Glasgow including the possibility of transferring tenancy agreements to allow new refugees to remain in their asylum accommodation.¹⁹³³ A progress update on the New Scots Strategy is due in spring 2020.

Healthcare

Refugee children and UASC have the same rights to care as UK nationals yet children's organisations report they face barriers in accessing it. Issues include language and communication barriers,¹⁹³⁴ ¹⁹³⁵ delays in accessing interpreters,¹⁹³⁶ ¹⁹³⁷ distance of accommodation from surgeries and travel costs.¹⁹³⁸ There is anecdotal evidence that many women identify their husband as an interpreter for themselves and their children, which breaches NHS practice, and raises concerns about women and children's rights to privacy.¹⁹³⁹ Further evidence suggests that pregnant asylum-seekers are often scared to seek medical care, for fear of being reported to the Home Office.¹⁹⁴⁰ A 2018 Equalities and Human Rights Commission study considered the multiple barriers faced by asylum-seeking families when accessing healthcare, and ways these barriers could be minimised. The study highlighted examples of good practice including 'holistic' approaches to healthcare, support from charitable and voluntary organisations, and compassionate approaches from healthcare staff.¹⁹⁴¹

The New Scots Refugee Integration Strategy 2018-2022 emphasises the importance of empowering people to know and claim their rights, participate in decisions that affect them, and maintain and improve their own health and wellbeing. The strategy aims to do this through a range of actions including improving health literacy and availability of information, increasing awareness and training on trauma informed practice, ensuring accessible complaints processes, guidance and staff training. Under the strategy, refugee families and unaccompanied children housed by local authorities receive support from the relevant Health Board to register with a GP, dentist and receive a health check.¹⁹⁴² The NHS has also improved the availability of online information for asylum-seekers and refugees,¹⁹⁴³ and produced medical cards which can be shown at GP practices to ensure staff understand the child and family's rights to healthcare. A progress update on the New Scots Strategy is due in spring 2020.

Refer to Chapter 6.2 for more information on health inequalities.

Education

Asylum-seeking children can face difficulties in accessing appropriate education. A 2018 Unicef UK study found that all UK regions were failing to meet the 20-school day target for UASC to access education.¹⁹⁴⁴ The most significant delays were for secondary or further education, where children often had to wait over three months for a place.

Under the Education (Additional Support for Learning) (Scotland) Act 2004, children who do not have English as their first language are entitled to additional support, including through a coordinated support plan.¹⁹⁴⁵ A Unicef UK study highlighted that long waiting lists for ESOL provision was a key factor in delays in Scotland.¹⁹⁴⁶ Parents report that their own lack of English and knowledge of school catchment areas can present barriers to enrolling their children in school. Unicef UK notes that access to education can be facilitated by clear admissions policies, local authority staff training and liaising with voluntary sector and support workers.

Refugee and asylum-seeking children also face barriers to remaining and thriving in education. Some are placed in college when school would be more appropriate (or vice versa) and limited access to full-time ESOL presents further issues. Unicef UK's study identified key factors for improving the number of children remaining and thriving in education, including support from a committed and caring adult, education programmes that are adapted to meet children's needs, high levels of pastoral care and mental health support, partnerships between schools and the voluntary sector, creative approaches to peer support, and training staff on the needs of refugee and asylum-seeking children. In 2019, the University of Stirling published a study into good practice in ESOL 16+ provision at Glasgow Clyde College.¹⁹⁴⁷ A key factor was teachers building relationships with students, and individual planning.

Refugee and migrant children can face barriers in accessing college and university. Prior to 2015, student funding was dependent on 'settled' immigration status. Those with limited or discretionary leave to remain were not eligible for SAAS (Student Awards Agency for Scotland) funding. A 2015 UK Supreme Court case led to a change in the law in England but there was no immediate change in Scotland. Following successful advocacy by JustRight Scotland, Scottish Government updated its regulations.¹⁹⁴⁸ The new regulations provide that a person is eligible for student finance if they have settled status (i.e. indefinite leave to remain); or have lived in the UK for 7 years and are under the age of 18; or are aged 18 or above and have lived in the UK for half their life or a period of 20 years.

Scottish Government commits to a range of actions aimed at promoting access to education for asylum seekers in its New Scots Refugee Integration Strategy 2018-22. These include identifying and promoting funding support for further and higher education to young refugees and asylum seekers,¹⁹⁴⁹ identifying possible gaps around preparation for further and higher education, monitoring uptake of ESOL, including in schools, and barriers to accessing ESOL.¹⁹⁵⁰ A progress update on the New Scots Strategy is due in spring 2020.

Recommendation

- *UK and Scottish Government should ensure that sufficient support is provided to migrant, refugee and asylum-seeking children to ensure they can access basic services, including suitable accommodation, healthcare and education.*

Asylum support

Other treaty bodies, UPR recommendations and SDGs

In its 2016 Concluding Observations, CESCR called for an increase in the level of support provided to asylum seekers, including their daily allowance, to ensure the right to an adequate standard of living.¹⁹⁵¹ Following a visit to the UK in November 2018, the UN Special Rapporteur on extreme poverty and human rights criticised the low level of asylum support as causing many asylum seekers to live in poverty.¹⁹⁵²

Asylum support is primarily set out in the Immigration and Asylum Act 1999.¹⁹⁵³ Measures in the Immigration Act 2016 ('2016 Act') seek to significantly change the system. In the absence of awaited regulations, the changes under the 2016 Act have not yet come into force.

The current regime

Asylum seekers

Asylum seekers (other than UASC) can apply for 'Section 95 support' while their asylum claim is being determined.¹⁹⁵⁴ This can be for subsistence and accommodation, or subsistence only. Applicants must satisfy a "destitution test", meaning they do not have adequate accommodation or money to meet living costs for themselves and any dependents now or within the next two weeks. The cash element of support is loaded onto an ASPEN card, which works like a debit card. The cash value of support is £37.75 per person per week, regardless of age. This means that a parent with one child currently receives £75.50 per week. This is slightly more than a lone parent on mainstream benefits (income support) currently receives, although people claiming mainstream benefits who have children will also receive child benefit and may be eligible for tax credits.¹⁹⁵⁵

If an asylum seeker is or is likely to become destitute while their application for Section 95 support is being processed, short term accommodation and essential living needs may be provided ("Section 98 support").^{1956 1957}

In April 2019, the UN Special Rapporteur on extreme poverty and human rights criticised the "inadequate, poverty-level" payments for asylum-seekers. He concluded that the "derisory level of support...guarantees [asylum-seekers] will live in poverty".¹⁹⁵⁸

Unaccompanied asylum-seeking children (UASC)

UASC are provided with support and accommodation administered by local authorities under the Children (Scotland) Act 1995 ('1995 Act').¹⁹⁵⁹ From this point they become "looked after" within the meaning of the 1995 Act. The duty to provide support also applies to age disputed children pending the outcome of their age assessment.¹⁹⁶⁰

Pregnant asylum seekers

Pregnant asylum seekers receive an extra £3 per week.¹⁹⁶¹ A mother whose baby is due in 8 weeks or less, or whose baby is under 6 weeks old, can apply for a one-off £300 maternity payment.¹⁹⁶² Mothers with young children receive an extra £5 per week for a baby under 1-year-old, and an extra £3 for a child aged 1 to 3.¹⁹⁶³

Refused asylum seekers

An asylum seeker with dependent children will continue to be supported after refusal at the same rate as during their claim until they leave or are removed from the UK, or until the youngest child turns 18. Support may be ended if the Home Secretary certifies that the family has refused to leave the UK voluntarily.

Refused asylum seekers with no dependent children may be eligible for 'Section 4 support' in limited circumstances. This consists of accommodation and support to the value of £35.39 per week loaded on an ASPEN card.¹⁹⁶⁴

Immigration Act 2016 reform

The Immigration Act 2016 ('2016 Act') proposes significant changes to the asylum support system. In the absence of required regulations, these changes have not yet come into force. Refer to Chapter 8.1 for more information on the 2016 Act.

Developments in Scotland

In 2017, Scottish Parliament's Equalities and Human Rights Committee published *Hidden Lives – New Beginnings* following an inquiry into destitution, asylum and insecure immigration status in Scotland.¹⁹⁶⁵ The report finds that destitution is built into the current system, and that the system's complex and inaccessible nature makes it "unnecessarily difficult" for destitute people to navigate. The report recommended the creation of a Scottish anti-destitution strategy and a new Scottish Government advocacy service for destitute people. Scottish Government's *New Scots Refugee Integration Strategy 2018-2022* commits to "support the response" to the inquiry.¹⁹⁶⁶ In its Programme for Government 2019-20, Scottish Government made a commitment to publish an Anti-Destitution Strategy within a year, focused on people with no recourse to public funds.¹⁹⁶⁷ A progress update on the New Scots Strategy is due in spring 2020.

Recommendation

- UK Government should ensure that Scottish Government and local authorities are consulted in proposals for legislation to replace the Immigration Act 2016.

Review of Immigration Act (2016)

UNCRC Concluding Observation

Review the Immigration Act (2016) in order to ensure its compatibility with the Convention.¹⁹⁶⁸

Other treaty bodies, UPR recommendations and SDGs

Similar recommendations were made by Honduras, Indonesia and Syrian Arab Republic in the United Kingdom's Universal Periodic Review in 2017.¹⁹⁶⁹ Related issues are addressed by target 10.7 of the Sustainable Development Goals.¹⁹⁷⁰

The Immigration Act 2016 ('2016 Act') continues to be of concern to our members as highlighted in our 2016 report.¹⁹⁷¹ It creates an immigration, rather than a child rights-based, system for supporting families with children and unaccompanied children, and is a step backwards in terms of fulfilment of the UNCRC. In the absence of awaited regulations, the changes under the 2016 Act have not yet come into force. There is no indication they will come into force in the near future. UK Government has indicated its intention to introduce a new Immigration Bill in the context of leaving the European Union. This will enact a "global immigration system".

Return

UNCRC Concluding Observation

Ensure that children are returned only where there are adequate safeguards, including a formal best-interests determination, effective family tracing, including individual risk and security assessments, and appropriate reception and care arrangements.¹⁹⁷²

The Committee expresses concern that children are returned to the country of origin or habitual residence without adequate safeguards.¹⁹⁷³

Recommendation

- UK Government should ensure that separated children are only returned to their country of origin on a voluntary basis and to family, not institutionalised care. Where a parent with a child in the UK is appealing their return, the appeal should be brought from within the UK if this is in the best interests of the child.

EU Settlement Scheme

EU national children must apply to the EU Settlement Scheme (EUSS) in order to continue living in the UK once the country leaves the European Union. The scheme opened on 30th March 2019 and the deadline for applications is 30th June 2021.¹⁹⁷⁴ Parents can apply on behalf of their children (under 21 years old). The proposed fees for settled status have been removed and applications are now free. Successful applicants will be given either 'settled' or 'pre-settled' status. Eligible people with these statuses will be able to use the NHS, access education, public funds and travel in and out of the UK.

Children's charities and academics have raised concerns that UK Government policy around the EUSS lacks clarity. Concerns include the provision of support for vulnerable children, such as care experienced children or children whose parents are not be able to apply on their behalf,¹⁹⁷⁵ and how children's offending behaviour might affect their application.¹⁹⁷⁶ The Home Affairs Committee has warned that the EUSS poses a risk to children who may not be able to satisfy the eligibility criteria or produce sufficient documentation, heightening the risk of another Windrush scandal.¹⁹⁷⁷ These concerns were reiterated by Coram Children's Legal Centre in a 2019 report.¹⁹⁷⁸

In 2019, the Home Office commissioned the European Children’s Rights Unit at the University of Liverpool to conduct a UK-wide consultation with children about the EUSS. This was to assess children’s awareness and understanding of the EUSS, accessibility of the process, and to obtain children’s feedback on Home Office resources with a view to suggesting how these could be made more child-friendly.¹⁹⁷⁹ The first phase of the project ran from June-August 2019 and engaged with 54 children (aged 10-18) all of whom were likely to be affected by the EUSS. Findings included that children were confused by jargon in Home Office resources, and that information on where children could access support was unclear.¹⁹⁸⁰ The second phase of the consultation is ongoing and full recommendations and analysis will be published upon completion.

The Scottish Government has produced a “package of support” to help EU citizens applying to the EUSS including a free support service provided by Citizens Advice Scotland.¹⁹⁸¹

Recommendation

- UK Government should ensure that EU national children face no barriers in accessing settled status.

8.2 Administration of child justice

Minimum age of criminal responsibility

UNCRC Concluding Observation

Raise the minimum age of criminal responsibility in accordance with acceptable international standards.¹⁹⁸²

Other treaty bodies, UPR recommendations and SDGs

Similar recommendations have been made by the Human Rights Committee in its 2015 Concluding Observations,¹⁹⁸³ by CAT in its 2019 Concluding Observations,¹⁹⁸⁴ and by Albania, Peru, Belarus, and Bulgaria in the United Kingdom’s 2017 Universal Periodic Review.¹⁹⁸⁵

Raising the minimum age of criminal responsibility

The Age of Criminal Responsibility (Scotland) Act 2019 (‘2019 Act’) was passed by the Scottish Parliament in May 2019.¹⁹⁸⁶ Once fully commenced, the Act will raise the minimum age of criminal responsibility from 8 to 12 years old.^{1987 1988}

The 2019 Act will enter into force incrementally. Sections 3 (referral to Children’s Reporter) and 27 (victim information) became operational on 29th November 2019.¹⁹⁸⁹ It is now no longer possible to refer a child under 12 to the Children’s Reporter on offence grounds – they may only be referred on care and protection grounds.¹⁹⁹⁰ Prior to this change, the number of 8 to 11-year-olds referred for offending had been in steady decline (see table 27). Research found that these children were particularly vulnerable, with 39% having physical and/or mental health problems, and a majority having been subject to previous referral on care and protection grounds.¹⁹⁹¹ Whilst these children could not be prosecuted, information about an offence accepted or established through a Children’s Hearing is classed as a ‘conviction’ and can appear on a child’s Disclosure Certificate or Protection of Vulnerable Groups (PVG) scheme record well into adulthood, causing difficulties when applying for jobs or educational courses.^{1992 1993} New provisions under the 2019 Act on disclosure of pre-12 behaviour have yet to enter into force.¹⁹⁹⁴

Table 27: Children referred on offence grounds (2014-2019)^{1995 1996}

Year	2010-11	2011-12	2012-13	2013-14	2014-15	2016-17	2017-18	2018-19
8-11 year olds	799	496	255	228	210	210	238	185

Until Section 1 of the 2019 Act enters into force, the age of criminal responsibility in Scotland remains 8 years old, the lowest in Europe, and behaviour of 8-11 year olds can still be investigated as a crime. There is no set date for commencement of the remaining parts of the 2019 Act. Scottish Government reports that it is working to implement the full Act “as quickly and safely as possible”.¹⁹⁹⁷

A minimum age of criminal responsibility of 12 years old remains below internationally acceptable standards. In 2019, the UN Committee on the Rights of the Child issued General Comment 24 stating that the minimum acceptable age is at least 14 years old.¹⁹⁹⁸ The Council of Europe’s Commissioner for Human Rights emphasised the need for Scotland to raise the age of criminal responsibility to at least 14.^{1999 2000} This reflects practice across the European Union, where most countries have a minimum age of 14 years or above.²⁰⁰¹

The 2019 Act provides that Scottish Government must conduct a review during the first three years of the Act's operation "with a view to considering the future age of criminal responsibility". In April 2019, Scottish Government announced that an Age of Criminal Responsibility Advisory Group would be established to review operation of the 2019 Act and consider potential future ages of criminal responsibility.²⁰⁰² The group met for the first time in August 2019.²⁰⁰³

Police powers

The 2019 Act sets out a range of police powers to enable investigation into alleged harmful behaviour by children under 12 years old.²⁰⁰⁴ The relevant provisions had not entered into force at the time of publication. The powers include:

Emergency place of safety

The power to take a child to a 'place of safety' if they believe that the child's behaviour may cause significant harm to another person, and their removal is necessary to protect a person from "an immediate risk of significant harm",²⁰⁰⁵ The child can be kept in a place of safety for a limited period, not exceeding 24 hours.²⁰⁰⁶ This can include a police station but should not be a police cell unless there is no reasonable alternative.²⁰⁰⁷ If taken to a police station, steps must be taken to identify an alternative place of safety and transfer the child there as soon as practicable.²⁰⁰⁸

Search

Police have the power to search children under 12 in the most serious cases. This includes searches without a warrant under existing legislation and searches authorised by a court order.^{2009 2010}

Questioning

There is a general prohibition on questioning under 16s in relation to conduct that occurred before they were 12.²⁰¹¹ Exceptions allow questioning in the most serious cases. This includes when the child and parent agree to an investigative interview, where questioning is authorised by a court order,²⁰¹² or in an emergency situation with authorisation from a senior ranking police officer.²⁰¹³

Samples and prints

These may be taken from children under 12 under a court order,²⁰¹⁴ or in an emergency situation with authorisation from a senior ranking police officer.²⁰¹⁵ Samples and information relating to them may not be retained beyond the immediate investigation of the incident.²⁰¹⁶

Use of reasonable force

The 2019 Act authorises the use of 'reasonable force' in relation to exercising the above powers.²⁰¹⁷ This may be used only as a measure of last resort and after all reasonable steps have first been taken to try to obtain the child's cooperation. The police officer must use "no more force than is absolutely necessary" and must explain to the child why the officer considers force must be used.

Police powers can play an important role in investigating incidents, validating the experience of victims and ensuring public safety. They may also prove that a child was not involved. Yet any contact with the police can be traumatic for a child, regardless of the number of safeguards in place,²⁰¹⁸ particularly where force is used. Police powers relating to under 12s should only be used in the most serious cases and the exercise of these powers must be subject to rigorous monitoring.

Together welcomes the general duty under the 2019 Act to consider the wellbeing of the child as a primary consideration in relation to exercising police powers. To be effective, this must be accompanied by full training for all persons involved including police officers, sheriffs, social workers and advocacy workers.

The 2019 Act provides that Scottish Government must produce guidance in relation to place of safety²⁰¹⁹ and questioning powers.²⁰²⁰ It is crucial that this guidance is clear, and instructs officers, sheriffs and other officials to take a rights-based approach. The 2019 Act also provides that Scottish Government must report annually on the exercise of place of safety powers.²⁰²¹

Future analysis will be needed to assess the implementation and impact of the 2019 Act once it fully enters into force.

Recommendations

Scottish Government should:

- *Raise the age of criminal responsibility to at least 14 years old without delay, in line with international standards;*
- *Prepare child rights-based guidance on the use of police powers in relation to under 12s, that ensures these are used only in the most serious cases, subject to strict safeguards, thorough scrutiny and monitoring.*

Child justice system

UNCRC Concluding Observation

Ensure that children in conflict with the law are always dealt with within the juvenile justice system up to the age of 18 years, and that diversion measures do not appear in children's criminal records.²⁰²²

Children in adult courts

In 2016, the UNCRC Committee expressed concern that some children are tried in adult courts in the UK.²⁰²³ Although the aim of youth justice in Scotland is to keep as many under 18s as possible in the Children's Hearing System, some are still dealt with by the adult criminal justice system. This can be due to the nature of the offence, legal status and/or circumstances.²⁰²⁴

Children aged 12-15 (as well as 16 and 17-year-olds subject to a Compulsory Supervision Order) who offend are reported by police both to the Procurator Fiscal and to the Children's Reporter.^{2025 2026} A Joint Agreement between the two bodies, revised in June 2019, sets out decision making standards.²⁰²⁷ The Agreement sets out a general presumption in favour of referring jointly reported cases to the Children's Reporter.²⁰²⁸ If the Procurator Fiscal considers it is in the public interest to prosecute the child, in overriding this presumption, the Procurator Fiscal must take a range of factors into account including the gravity of the offence, pattern of offending, and whether the child's behaviour could be addressed through the Children's Hearing System.²⁰²⁹

A 2016 study by the Centre for Youth & Criminal Justice (CYCJ) found that many children were being prosecuted as adults, in adult courts, rather than appearing before the Children's Hearing System.²⁰³⁰ CYCJ has identified two situations where opportunities to use the Children's Hearing System are not maximised:

Premature termination of a Compulsory Supervision Order (CSO):

There is limited ability to refer 16 and 17-year-olds to the Children's Hearing System unless they are subject to a CSO. A CSO may be continued until a child turns 18. CYCJ reports anecdotal evidence of premature terminations, particularly on or around a child's 16th birthday.²⁰³¹ Accordingly, these children can end up in the adult system. Children have reported the negative impact that premature termination of their CSO can have, including moving away from the more positive, inclusive and child friendly nature of Children's Hearings into an adult court.²⁰³² A series of guidance documents and reviews have encouraged against premature termination of CSOs.²⁰³³ In 2019, CYCJ highlighted arguments commonly cited for prematurely ceasing CSOs, alongside counterarguments for continuing the orders where appropriate.²⁰³⁴

Failure to remit cases to the Children's Hearing System

Under 18s found guilty in adult court can have their case remitted to the Children's Hearings System for advice or disposal.²⁰³⁵ CYCJ has noted that remittal rates remain extremely low^{2036 2037} with inconsistent practice across Scotland.²⁰³⁸

Criminal records

Current law

Convictions of under 18s are recorded on the Scottish Criminal History System. Convictions include those obtained through adult court, as well as offence grounds which have been accepted or established through the Children's Hearing System. Generally, the rehabilitation period (the length of time before a conviction becomes spent) for a childhood criminal record is half that of an adult conviction.^{2039 2040}

Since September 2015, spent convictions are divided into two groups, namely 'offences which must always be disclosed' and 'offences which are to be disclosed subject to rules'.²⁰⁴¹ A conviction in the former category must always be disclosed even if spent, no matter how old the conviction. A conviction in the latter category will not be disclosed for people under 18 when convicted if it is over 7.5 years old. If the conviction is less than 7.5 years old, it will not be disclosed if it did not result in a punishment or intervention.²⁰⁴²

Other Relevant Information (ORI) may also be included on a child's record. This non-conviction information includes where a child's behaviour has been addressed through Early and Effective Intervention processes. Unlike conviction information, ORI does not become 'spent' and has the potential to remain disclosable indefinitely on enhanced disclosure and PVG Scheme records.

There are non-statutory arrangements which determine when records relating to offences committed by children are completely deleted from the central criminal history system. These arrangements are determined by the way in which the case was resolved. Information relating to children is generally deleted after two years unless the child was placed under compulsory supervision by the Children's Hearing, or the case involved disposal by a court of law.²⁰⁴³

Reforms

The current law has been criticised as complex and preventing children from moving past early behaviour. ORI and conviction information can impact older children and young people when applying for educational courses or trying to follow a particular career path.

Once fully implemented, the 2019 Act will prevent pre-12 behaviour resulting in a conviction.²⁰⁴⁴ Pre-12 behaviour may still be recorded as ORI which has the potential to remain disclosable indefinitely. Disclosure of ORI for pre-12 conduct will no longer be automatic but will be subject to approval by an Independent Reviewer. Children and young people will be able to make representations to the Independent Reviewer and appeal resulting decisions. Sufficient information and support must be available in order for children and young people to participate effectively in these procedures.

The wider disclosure system is currently under review following a Scottish Government consultation in 2018.²⁰⁴⁵ In June 2019, the Disclosure (Scotland) Bill was introduced. This seeks to simplify the system and will apply to those aged 12 years and older. The Bill proposes introducing an independent review of disclosure information (ORI and convictions) whereby individuals can challenge their inclusion in a disclosure rather than this information being included automatically. In evidence before the Scottish Parliament in August 2019, the Children and Young People's Commissioner Scotland expressed several concerns in relation to the Bill.²⁰⁴⁶ These focused on the proportionality of its response to children and the application of the best interests test to disclosure decisions. Key concerns included the classification of offence grounds accepted or established via the Children's Hearing System as a 'conviction', the lack of formal process to challenge the accuracy of information disclosed as ORI, and accessibility concerns for children around the Independent Review process for convictions and ORI.

At the time of publication, the Disclosure (Scotland) Bill was at Stage 2 before the Scottish Parliament.

Recommendations

Scottish Government should:

- Ensure that all children who offend and cannot be diverted to non-formal measures are reported to the Children's Reporter;
- Ensure that diversion measures do not appear in children's criminal records.

Life imprisonment

UNCRC Concluding Observation

Abolish the mandatory imposition of life imprisonment for children for offences committed while they are under the age of 18.²⁰⁴⁷

Other treaty bodies, UPR recommendations and SDGs

Similar recommendations were made by Paraguay, Greece and Albania in the United Kingdom's 2017 Universal Periodic Review.²⁰⁴⁸

There is no legislative protection against the sentencing of children aged 12 and over to 'detention without limit of time'.²⁰⁴⁹ If a child aged 12 to 17 is convicted of murder, they must be sentenced to detention "without limit of time and shall be liable to be detained in such place, and under such conditions, as the Secretary of State may direct".²⁰⁵⁰ In 2013-14, 18 young people were sentenced to "detention without limit of time", although this figure does not distinguish between young offenders (defined as those under 21 years old) and children (defined as those under 18 years old), nor does it show the number of adults who may be held after being convicted as a child.²⁰⁵¹ More recent data from Scottish Government was unavailable at the time of publication due to a "technical issue [...] currently under investigation".²⁰⁵²

Recommendation

- Scottish Government should publish disaggregated data on the number of children sentenced to detention 'without limit of time'.

Child detention

UNCRC Concluding Observation

Establish the statutory principle that detention should be used as a measure of last resort and for the shortest possible period of time and ensure that detention is not used discriminatorily against certain groups of children.

Ensure that child detainees are separated from adults in all detention settings.

Immediately remove all children from solitary confinement, prohibit the use of solitary confinement in all circumstances and regularly inspect the use of segregation and isolation in child detention facilities.²⁰⁵³

Other treaty bodies, UPR recommendations and SDGs

Similar recommendations were made by the Human Rights Committee in its 2015 Concluding Observations,²⁰⁵⁴ and CAT in its 2019 Concluding Observations. CAT called for the establishment of effective and child accessible complaints mechanisms, improved conditions of detention for all age groups, improved data collection on deaths in detention, assessment of effectiveness of suicide prevention and risk identification strategies, and prompt and impartial investigations of deaths in custody.²⁰⁵⁵

Detention as a last resort

At the end of November 2019, there were 28 children aged 16-17 in custody in Scotland. Twelve were untried, 6 convicted but awaiting sentence, and 10 sentenced.²⁰⁵⁶ There are widespread concerns about the detention of children,²⁰⁵⁷ with the UN Special Rapporteur on Torture stating that even “very short periods of detention can undermine the child’s psychological and physical well-being and compromise cognitive development”.²⁰⁵⁸ The Child Rights International Network (CRIN) has long argued that “the only justification for the detention of a child should be that the child has been assessed as posing a serious risk to public safety”.²⁰⁵⁹ The 2019 *Global Study on Children Deprived of their Liberty* urged states “to develop national action plans aimed at an overall reduction in the numbers of children in detention and/or the elimination of detention for children”.²⁰⁶⁰

Scottish Government’s Whole System Approach advocates that secure care should be used where possible rather than Young Offender’s Institutions (YOIs).^{2061 2062} Whilst both facilities deprive children of their liberty, secure care establishments are deemed more age-appropriate, being more relationship-based, providing therapeutic trauma-informed support, child-care trained staff, and with stricter limits on the use of restraint.²⁰⁶³ A new study notes that if deprivation of liberty is really the only option to keep the child and other people safe, then secure care may be a more appropriate setting than a YOI.²⁰⁶⁴ Nevertheless, there are a range of concerns about compliance with rights in secure care, with measures that are designed to ‘protect’ children regularly leading to breaches of their rights in relation to interactions and intervention which do not prioritise the child’s participation or best interests.²⁰⁶⁵ There have proved to be financial and legislative barriers to the increased use of secure care, and numerous instances in which children on remand or sentenced are placed in YOIs rather than secure care.²⁰⁶⁶

Cross border placements

There have been an increasing number of cross-border placements, as a result of a reduction in secure places in England and Wales, and Scottish Government giving legislative consent to enable cross-border placements through the Children and Social Work Act 2017.²⁰⁶⁷ In 2018, 44% of children in secure care in Scotland were from outside Scotland. From 2017 to 2018, the number of children in secure care in Scotland from outside Scotland increased by 89%.²⁰⁶⁸ Moreover, there has been an increase in cases where Scottish centres have been at full capacity, raising questions around how the needs of highly vulnerable children in Scotland will be met in such instances.²⁰⁶⁹

Whilst cross-border placements may be necessary due to lack of local support, they raise significant concerns around safeguarding, governance and accountability, as well as placing children in an area where they have no local support from family or friends. Concerns have been raised that cost rather than the ‘best interests’ of the child is driving decision-making.²⁰⁷⁰

Mental health in detention

Together members have noted the importance of considering the impact of trauma on children in detention in the context of support for their mental health and wellbeing. CYCJ’s evaluation of Barnardo’s Scotland *Here and Now* service in Polmont, which supports children with issues around trauma, bereavement and loss, found that boys referred to the service had experienced a wide range of loss, bereavement and other adverse childhood experiences.²⁰⁷¹

Whilst the Scottish Government's independent expert review of mental health and other support for children entering prisons and YOIs is welcomed,^{2072 2073} some members believe more could be done, identifying broader issues around access to continuous mental health care. Many children with behavioural problems (including offending) often as a result of trauma in childhood, are unable to access Child and Adolescent Mental Health Services (CAMHS) due to high thresholds for referrals,²⁰⁷⁴ or experience disruption in services previously provided in the community upon entering a YOI (which may be in a different NHS Board area).

Refer to Chapter 6.3 for more information on rejected CAMHS referrals.

Suicides in detention

Between January 2012 and September 2019, 204 people died in Scottish Prison Service custody, with many of the causes of death unclear ('awaiting determination').²⁰⁷⁵ Ten of these deaths were of individuals aged 21 or younger, 8 of which occurred at HMYOI Polmont. Two deaths were children who took their own lives.²⁰⁷⁶ Together's members are seriously concerned by the apparent increase in the number of deaths by suicide and the lack of publicly available information on instances of attempted suicide, self-harm, and learning taken from reviews of these.

Deaths in custodial settings (YOIs and prisons) lead to a Fatal Accident Inquiry (FAI) under the Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016.²⁰⁷⁷ However, many recent reviews have taken years before the report is published, leading to concerns that there are missed opportunities for putting learning into practice timeously. CYCJ has noted there is no statutory time limit for FAIs, that high numbers are currently outstanding, that few FAIs make recommendations for improving systems, and that there is an apparent lack of coordination of FAI findings.

Recommendations

Scottish Government should:

- Respond to and progress the recommendations made in the report 'Rights Respecting? Scotland's approach to children in conflict with the law;
- Amend legislation to ensure that no child under 18 years old can be placed or detained in a YOI or an adult prison, whilst ensuring that there are always secure care placements available for children in Scotland;
- Contribute to a national action plan aimed at an overall reduction in the numbers of children in detention/the elimination of detention for children, as recommended by the Global Study on Children Deprived of their Liberty.²⁰⁷⁸

8.3 Child victims and witnesses of crimes

UNCRC Concluding Observation

The Committee recommends that the State party introduce, as a standard, video recording of the interview with a child victim or witness during investigation and allow the video recorded interview as evidence in court.²⁰⁷⁹

Interaction with the justice system can cause further trauma, distress and harm to child witnesses due to unnecessarily complex procedures.²⁰⁸⁰ The Victims and Witnesses (Scotland) Act 2014 improved support for vulnerable witnesses in Scotland, including child witnesses (under the age of 18).²⁰⁸¹

In March 2015, Lord Carlway published the Evidence and Procedure Review Report which considered the use of pre-recorded evidence.²⁰⁸² This work was expanded upon in a February 2016 Scottish Courts and Tribunals Service report, which further explored the possibilities of pre-recording evidence of children and vulnerable witnesses.²⁰⁸³ In 2017, the Lord Justice Clerk, Lady Dorrian, launched a High Court Practice Note, encouraging the use of the evidence by commissioner to allow pre-recorded evidence to be used in court more often, setting out how to make sure the process is successful.²⁰⁸⁴

In May 2019, the Scottish Parliament unanimously passed the Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019 ('2019 Act').²⁰⁸⁵ This was developed with the support of children's and victim's charities. The 2019 Act sets out a presumption that child witnesses will provide evidence through pre-recordings to spare them the trauma of appearing in court. It makes provisions about the use of special measures for the purpose of taking the evidence of child witnesses and other vulnerable witnesses in criminal proceedings; to make provision about the procedure relating to taking evidence by commissioner and the procedure for authorisation of standard special measures. It specifically put in place a rule, applying to child witnesses involved in certain serious cases prosecuted under solemn procedure, which would generally require the court to make provision for all of the child's evidence to be given in advance of the trial. This includes cases involving charges relating to murder, various sexual offences and domestic abuse. Child victims and witnesses in Scotland can now access a range of special measures, with the aim of assisting vulnerable witnesses in giving their evidence for a trial.

Whilst the 2019 Act delivers measures that address some of the issues identified by the Scottish Courts and Tribunals Service report in the most serious of cases, it does not fully bring about the more fundamental transformation needed that “urgent consideration should be given to the options for such a longer term strategy to secure, as quickly as reasonably achievable, a change in the way that children and young people are questioned and cross-examined”. The Scottish Government has recognised that it needs to go further in ensuring that interaction with the justice system does not cause further trauma, distress and harm to child victims and witnesses. During the passage of the 2019 Act, Humza Yousaf Cabinet Secretary for Justice suggested that such a change could be delivered through the adoption of the Scandinavian ‘Barnahus’ approach to supporting child victims and witness, stating the adoption of a Barnahus approach, tailored to the Scottish context, was Scottish Government’s preferred destination for supporting child victims and witnesses.²⁰⁸⁶

In the 2019-20 Programme for Government, Scottish Government stated it would develop Scottish standards for the Barnahus concept, forming a framework for a child-centred approach to delivering justice, care and recovery for children who have experienced trauma.²⁰⁸⁷ In 2019, Scottish Government commissioned Healthcare Improvement Scotland and the Care Inspectorate to develop a set of standards to introduce the Barnahus concept to Scotland as part of a commitment to improving how the criminal justice system serves children and their families.²⁰⁸⁸ Scottish Government committed to publishing draft standards for consultation at the end of 2019, with finalised standards in 2020.²⁰⁸⁹ Such an approach would not only address the UNCRRC Concluding Observation on child victims or witnesses of crime, but also ensure that all child victims or witnesses of crime receive support commensurate with their rights under Article 39 of the UNCRRC to appropriate measures to promote physical and psychological recovery and social reintegration of child victims of any form of neglect, exploitation, or abuse.

Refer to Chapter 2.4 for more information on children’s views in court.

Recommendations

Scottish Government should:

- Consider how best to meet the support needs of child victims and witnesses, including through the modernisation of court procedures and use of digital technology;
- Introduce the Barnahus model of support for all child victims and witnesses to crime, tailored to the Scottish context.

8.4 Optional Protocol to the Convention on the sale of children, child prostitution and child pornography

UNCRRC Concluding Observation

Ensure that all children up to 18 years of age are protected from all types of offence covered by the Optional Protocol and that domestic legislation throughout the State party, including in its devolved administrations, enables it to establish and exercise extraterritorial jurisdiction, without the dual criminality criterion, over all the offences covered by the Optional Protocol;

Strengthen the National Referral Mechanism for identifying trafficked and exploited children, which is embedded in existing child protection procedures;

Establish mechanisms and procedures to protect the rights of child victims of offences covered by the Optional Protocol, including by establishing a clear obligation of non-prosecution, and ensure that they are treated as victims rather than criminals by the law enforcement and judicial authorities;

Operationalize the provision of a competent and statutory guardian during the criminal justice process;

Revise its legislation to ensure that all children up to 18 years of age are protected from all types of offence covered by the Optional Protocol.²⁰⁹⁰

Other treaty bodies, UPR recommendations and SDGs

Similar recommendations have been made by the CEDAW Committee in its 2019 Concluding Observations,²⁰⁹¹ UNCAT in its 2019 Concluding Observations,²⁰⁹² and by a number of countries in the United Kingdom’s 2017 Universal Period Review.²⁰⁹³

In 2018, 3137 children were identified as victims or potential victims of trafficking in the UK, up 48% from 2017. Seventy-two percent (72%) of the reported potential victims were boys and 28% were girls. Boys were predominantly subject to labour exploitation (80%) and girls most commonly subject to sexual exploitation (60%).²⁰⁹⁴ Though children of all ages are trafficked, official data is no longer published on the specific ages of potential victims. This data gap makes it difficult to analyse trends in age over time.²⁰⁹⁵

In Scotland, 53 children were identified as potential victims of trafficking in 2018, down from 63 in 2017.²⁰⁹⁶ During the first three quarters of 2019, 100 children were identified as potential victims of trafficking indicating a significant increase.^{2097 2098 2099}

The Human Trafficking and Exploitation (Scotland) Act 2015 ('2015 Act') introduced a single offence for all types of trafficking.²¹⁰⁰ The offences of human trafficking and of slavery, servitude and forced or compulsory labour have the maximum penalty of life imprisonment for anyone who is convicted of these offences.^{2101 2102} Crown Office and Procurator Fiscal Service figures show there were 38 prosecutions and four convictions under the 2015 Act between 2016 and June 2019.²¹⁰³ However, it is unclear whether these charges related to the exploitation of children or adults.

The 2015 Act placed a statutory obligation on Scottish Government to prepare and publish a Trafficking and Exploitation Strategy for Scotland. This was published in 2017 following a public consultation, workshops with victims of trafficking, and a 2017 study commissioned by Scottish Government into public awareness of trafficking.^{2104 2105} The Strategy aims to improve how victims are identified and supported, address the root causes of trafficking and exploitation, and how perpetrators are punished. The Strategy includes a specific section on child victims of trafficking. This makes clear that local Child Protection Committees should ensure that there are specific and appropriate arrangements on child trafficking and exploitation in place through guidance, protocols or procedures, which are known and complemented by relevant services. Progress reports on the Strategy were published in June 2018 and June 2019.^{2106 2107} Scottish Government ran a consultation from October-December 2019 as part of its review of the Strategy.²¹⁰⁸ It is anticipated that Scottish Government will publish the results of the review, alongside a revised Strategy if necessary, by the end of May 2020.

Specifically in relation to children, the 2015 Act places a duty on Scottish Ministers to make arrangements for an Independent Child Trafficking Guardian (ICTG) to be appointed for any child in Scotland who is, or is at risk of becoming, a victim of human trafficking and has no-one with them in the UK who holds parental rights or responsibility for them.²¹⁰⁹ Refer to Chapter 8.1 for more information on the Scottish Guardianship Service.

The 2015 Act also requires local authorities and health boards to apply a presumption of age in cases where a victim of human trafficking appears to be a child but their age is uncertain.²¹¹⁰ This means that the relevant authority will have to provide support and services in line with their entitlements as children. This section entered into force on 31st January 2018.²¹¹¹ Scottish Government issued updated age assessment practice guidance in March 2018 to reflect the legislative change.²¹¹²

The 2015 Act requires the Lord Advocate to issue guidance to prosecutors about how trafficking victims should be treated if they are alleged to have committed an offence. The Lord Advocate's guidance sets out a clear non-prosecution principle for children who commit an offence as a consequence of being trafficked.²¹¹³

National Referral Mechanism

The National Referral Mechanism (NRM) is a framework for identifying victims of human trafficking and modern slavery.²¹¹⁴ Organisations known as 'first responders' make referrals to the Home Office. A 'conclusive grounds' decision is then made determining whether or not, on the balance of probabilities, the person is a victim of human trafficking or modern slavery. The NRM applies to trafficking from both outwith and within the UK (internal trafficking).

A 2017 survey by ECPAT UK found that a majority of frontline practitioners did not believe that the current NRM was working effectively for children.²¹¹⁵ In October 2017, UK Government announced a package of reforms following a review which began in 2014. The reforms included the transfer of NRM decision-making powers from the National Crime Agency to the Home Office and the creation of a new digital system. The transfer of responsibilities was completed in April 2019.^{2116 2117} UK Government's position is that the changes will make it faster and more straightforward for 'first responder' organisations.²¹¹⁸ To achieve this aim, it is vital that relevant agencies and staff are familiar with the new process.

Some Together members have expressed concerns that Home Office decisions on trafficked status often conflict with what professionals and specialists have identified.²¹¹⁹ Other concerns include the absence of a requirement for children's consent, that the process is not child-centred, that children suffer from a lack of support, and that decisions take a long time to be made. Anecdotal evidence from members highlights the example of a child who had to wait three years for determination of their status. These delays can have a significant impact on the mental health and wellbeing of vulnerable children, in addition to directly impacting children's asylum applications, as these can only be assessed once the Home Office has established the child's trafficked status.

A particular area of concern relates to children trafficked internally within the UK. Some Together members observe that it is not always clear in practice whether these children are being effectively identified and therefore receiving appropriate support. In 2019, Scottish Government acknowledged the low level of NRM referrals for UK nationals, highlighting that the issue was being explored with Child Protection Committees and social work.²¹²⁰

Refer to Chapter 4.5 for further information on child sexual exploitation and abuse.

Recommendations

UK Government should:

- Systematically collect and publish disaggregated data on potential child victims of trafficking;
- Ensure that the reformed NRM promotes a multi-agency model requiring mandatory, accredited and specialist training for all social workers, police and front-line professionals, with rights of appeal for children.

8.5 Children in armed conflict

UNCRC Concluding Observation

Consider reviewing its position and raise the minimum age for recruitment into the armed forces to 18 years in order to promote the protection of children through an overall higher legal standard;

Reconsider its active policy of recruitment of children into the armed forces and ensure that recruitment practices do not actively target persons under the age of 18 and ensure that military recruiters' access to school be strictly limited;

In recruiting persons under the age of 18, strengthen its safeguards required by article 3 of the Optional Protocol, in order to ensure that the recruitment is genuinely voluntary and based on fully informed consent of the recruit and their parents and legal guardians, and ensure that recruitment does not have a discriminatory impact on children of ethnic minorities and low-income families;

Ensure that the minimum period of service applied to children who enlist into the army is no longer than that applied to adult recruits.²¹²¹

The Committee recommends that the State party implement its previous recommendation on the Optional Protocol, on captured child soldiers (CRC/C/OPAC/GBR/CO/1, para. 29), for all children under 18 years old.²¹²²

Other treaty bodies, UPR recommendations and SDGs

A similar recommendation was made by Czechia during the 2017 Universal Periodic Review.²¹²³

Minimum age for recruitment

The UK is one of around 20 countries in the world to recruit children to the armed forces.²¹²⁴ It is the only state in Europe and the only Permanent Member of the UN Security Council to do so.²¹²⁵

In the 2016 Concluding Observations, the UN Committee raised concerns regarding the minimum age of voluntary recruitment, and the percentage of new recruits under 18 years old.²¹²⁶ The Committee also expressed concern at the endorsement by the Army Board to actively increase the recruitment of personnel under 18 years. Further, the Committee noted that children from vulnerable groups were “disproportionately represented” among recruits and briefing materials were not sufficient in explaining the “risks and obligations” of entering the forces. In December 2016, the UN Committee published General Comment 20 calling on all states to ensure a minimum armed forces recruitment age of 18 years old.²¹²⁷

Alongside international recommendations made by the UN Committee and through the UPR, the UK's minimum age for recruitment has been criticised by the Joint Committee on Human Rights (JCHR),²¹²⁸ the Commons Defence Committee,²¹²⁹ the Equality and Human Rights Commission,²¹³⁰ the four Children's Commissioners for Scotland, England, Wales and Northern Ireland^{2131 2132} and a wide range of Together's members.²¹³³ The nationwide ICM survey, commissioned by campaigners including Child Soldiers International, found that 72% of respondents believed people should not be able to join the Army until they are 18 years old.²¹³⁴

In 2018-19, 2500 16 and 17-year-olds were enlisted across the UK armed forces (see table 28). This is the highest number recruited into the UK military since 2012-13. Most (1810) were enlisted into the Army (see table 29). As total intake into the Army has fallen, recruits under the age of 18 now make up nearly 26% of all recruits, rising from around 22% in 2015. Those with experience of working in the armed forces are at increased risk of negative health outcomes such as fatality, PTSD, alcohol misuse and self-harm, and those who enlist at a young age are at particular risk.²¹³⁵

16-year-old Army recruits now outnumber 17-year-olds by a significant margin, constituting 1000 and 810 recruits respectively (see table 29). Many of these youngest recruits would have begun the enlistment process when they were 15 years old before having an opportunity to sit their GCSE exams. Those who enlist aged 16 and 16½ must be given jobs in combat roles (or join as drivers in the logistics corps) which carry the highest risk of fatality over the course of their military career.²¹³⁶

Although children need to be at least 16 years old before they can join the Army, it is possible to start the application process earlier. The minimum age a person can begin the formal selection process is 15 years and 7 months. A person under the age of 18 can only be enlisted after providing written consent from an “appropriate person”.²¹³⁷ In Scotland, an appropriate person is interpreted as a person with parental responsibilities.²¹³⁸

Table 28: Intake of UK regulars by age (all services) (2012-2019)²¹³⁹

12 months ending	31/03/2012	31/03/2013	31/03/2014	31/03/2015	31/03/2016	31/03/2017	31/03/2018	31/03/2019
Intake aged 16	1480	1000	870	850	1020	1160	1080	1210
% of intake aged 16	10.0%	7.0%	7.3%	6.6%	7.4%	8.6%	8.8%	9.7%
Intake aged 17	1620	1520	1250	1320	1230	1240	1200	1290
% of intake aged 17	11.0%	10.6%	10.5%	10.1%	8.9%	9.3%	9.7%	10.4%
Intake under 18	3110	2520	2120	2170	2250	2400	2280	2500
% of intake under 18	21.0%	17.5%	17.9%	16.7%	16.3%	17.9%	18.4%	20.0%

Table 29: Intake of minors into the Army (2015-2019)²¹⁴⁰

12 months ending	31/03/2015	31/03/2016	31/03/17	31/03/18	31/03/19
Intake aged 16	810	920	980	920	1000
% intake aged 16	9.9%	10.7 %	11.8%	12.7%	14.3%
Intake of minors	1820	1780	1800	1690	1810
% intake of minors	22.3%	20.1%	21.7%	23.4%	25.9%
Total intake	8160	8600	8290	7220	6980

Sixteen and 17-year-old soldiers are not routinely deployed to take part in direct hostilities. However, the United Kingdom OPAC Declaration states it will do so for reasons such as “genuine military need”, “the successful completion of the military mission”, “operational effectiveness” and where “it is not practicable to withdraw such persons before deployment.”²¹⁴¹

Child Soldiers International has highlighted that the United Kingdom mistakenly deployed 16 and 17-year-old soldiers to war zones at least 22 times between 2003 and 2010.²¹⁴²

Recruitment practices

The Army is increasingly relying on 16 and 17-year-olds to maintain intake levels. The proportion of recruits who are minors is the highest for 5 years (see table 29). In reply to the UN Committee’s List of Issues, UK Government stated in 2016 that “[i]ncreasing the number of personnel recruited prior to their 18th birthday is one of many measures the Army Board endorsed to alleviate the risk of undermanning.”²¹⁴³ A recent Review of Junior Entry stated that reducing minimum length of service and aligning it to that available to adult recruits would “have a negative effect on the Army’s numbers” and that a change “may” be considered “once the Army is moving towards Manning Balance”.²¹⁴⁴

Informed consent

The UK ratified the Optional Protocol to the UNCRC on Children Involved in Armed Conflict (OPAC) in June 2003, accepting the additional obligations in the Optional Protocol as being binding on the UK. OPAC is clear that when a person under the age of 18 is recruited to the armed forces it is necessary for them to provide consent that is both voluntary and informed.²¹⁴⁵ There are reasons to believe that recruitment of children is often not based on voluntary and fully informed consent. One reason is the lack of balanced information during the recruitment process.²¹⁴⁶ Recruitment literature emphasises potential benefits, while omitting or obscuring the potential downsides.²¹⁴⁷ It is targeted towards lower income audiences and utilises marketing messages that exploit adolescent vulnerabilities.²¹⁴⁸

Another reason is the targeting of vulnerable children from socially disadvantaged backgrounds.^{2149 2150 2151} For example, many recruits who are under 18 have poor or no GCSE qualifications and the Army has enlisted recruits with literacy skills at Entry Level 1 (equivalent to the reading age of a five to seven-year-old).²¹⁵² In addition, the Army has a high proportion of recruits with a history of adversity.²¹⁵³ Not only does this exacerbate negative short and long-term health and wellbeing outcomes for those joining the Army at a young age^{2154 2155} but this targeting of vulnerable children undermines the notion that armed forces recruitment is carried out with fully informed and genuinely voluntary consent.²¹⁵⁶

Recruitment safeguards

A person under the age of 18 can only be enlisted after providing written consent from an “appropriate person”.²¹⁵⁷ In Scotland, an appropriate person is interpreted as a person with parental responsibilities.²¹⁵⁸ There are a number of reasons why parental consent safeguards are inadequate including a lack of detailed information on risks and legal obligations or exact terms of service, and requirement to meet recruiters prior to a child enlisting.²¹⁵⁹ Once consent has been given, parents/guardians are not allowed to withdraw it after the child has enlisted.

Minimum period of service

The Defence Council has the power to set the terms and conditions of enlistment and service in the armed forces.²¹⁶⁰ A recruit enlisted to the Army at age 16 would have to serve six years before leaving, while an ‘adult’ recruit enlisted at age 18 would only have to serve four years.²¹⁶¹ There are some opportunities to leave early up to the age of 18 but these exceptions have to be applied for.

School visits

From March 2016 to September 2019, the Scottish Parliament Public Petition Committee considered a petition to ensuring greater scrutiny, guidance and consultation on armed forces visits to schools in Scotland. Whilst the petition has now been closed, Together supported the petitioners’ calls and believes that further action is still needed.

There is evidence to suggest that methods currently used by the armed forces during the process of recruitment, including during visits to schools, do not offer a realistic representation of an armed forces career. For example, consultations regarding armed forces visits to schools revealed that some children whose school had been visited felt that the presentations often glorified violence and very few offered a perspective of both the positive and negative consequences of a career in the forces.²¹⁶² Recruitment resources also often omit information regarding conditions of service and the potential risks involved in an armed forces career.²¹⁶³ This can make it difficult for children to have access to a balanced perspective of what a career in the armed forces is like and how it will affect them. This cannot be seen to be compliant with OPAC.

During the period from August 2010 until June 2012, the armed forces made 1455 visits to 303 Scottish secondary schools.²¹⁶⁴ Data collected through FOI requests also suggests there has been a significant increase in the number of visits made to schools since 2003. Concerns have been raised regarding the disproportionate number of visits made to schools in areas of higher deprivation and potential targeting of children from disadvantaged backgrounds by the armed forces.²¹⁶⁵

Together continues to support calls for increased scrutiny and guidance on armed forces visits to schools. There remains a need for guidance for schools that supports voluntary and informed consent and ensures children are provided with unbiased and balanced information.

Recommendations

UK Government should:

- *Raise the minimum age for recruitment into the armed forces to 18 years; and meet the standards required by Article 3 of the Optional Protocol on the involvement of children in armed conflict (OPAC);*
- *Publish disaggregated data on armed forces visits to schools.*

Scottish Government should:

- *Publish guidance on visits to schools by armed forces that supports voluntary and informed consent and ensures children are provided with balanced information;*
- *Ensure schools give children and their parents/carers the opportunity to decide whether or not they wish to take part in armed forces visits.*

Appendix 1:

Selected recommendations made through the Universal Periodic Review and international treaty bodies

The UK is also signatory to six other United Nations human rights treaties, including the International Covenants on Civil and Political Rights (ICCPR) and Economic, Social and Cultural Rights (ICESCR), as well as conventions against torture (UNCAT), racial discrimination (ICERD), discrimination against women (CEDAW) and the rights of persons with disabilities (UNCRPD). In addition to reviews from specific treaty bodies, an overarching review of the UK's human rights record takes place every five years through the Universal Periodic Review (UPR). Through this process, UN member states make recommendations relating to the UK's human rights record, many of which concern children's rights.

This appendix details specific UPR recommendations and treaty body Concluding Observations that are included in the *State of Children's Rights* report 2019 and have been assessed to have the most impact on children's rights. The appendix also covers related targets from the UN Sustainable Development Goals. This appendix is not intended to be exhaustive. It is important to note that there are very many other recommendations and Concluding Observations that may also have relevance to children's rights.

Universal Periodic Review (recommendations made in 2017)

UPR Para. No.	Recommendation	See report chapter:
134.3	Consider ratifying those international human rights instruments that the United Kingdom of Great Britain and Northern Ireland has not yet ratified (Uganda).	General measures of implementation
134.4	Step up the process of reviewing the reservations made to the international human rights treaties (Belarus).	General measures of implementation
134.7	Ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the Optional Protocol to the Convention on the Rights of the Child on a communications procedure and the International Convention for the Protection of All Persons from Enforced Disappearance (Portugal).	General measures of implementation
134.10	Consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Chile).	General measures of implementation
134.12	Take necessary steps to allow individual complaints mechanisms under United Nations human rights treaties such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child (Czechia).	General measures of implementation
134.15	Withdraw reservations from the International Covenant on Economic, Social and Cultural Rights (Pakistan).	General measures of implementation
134.17	Ratify the third optional protocol to the Convention on the Rights of the Child on a communications procedure as it reinforces and complements national and regional mechanisms (Slovakia).	General measures of implementation
134.18	Consider the ratification of the Optional Protocol to the Convention on the Rights of the Child on a communications procedure (Georgia).	General measures of implementation
134.19	In order to further strengthen the fulfilment of children's rights, ratify the Optional Protocol to the Convention on the Rights of the Child on a communications procedure (Liechtenstein).	General measures of implementation
134.20	Ratify the Optional Protocol to the Convention on the Rights of the Child on a communications procedure (Montenegro).	General measures of implementation
134.22	Withdraw its interpretative declaration to article 1 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and unconditionally forbid children from taking part in hostilities (Czechia).	General measures of implementation
134.21	Consider ratifying the Optional Protocol to the Convention on the Right of the Child on a communications procedure (Croatia).	General measures of implementation
134.22	Withdraw its interpretative declaration to article 1 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and unconditionally forbid children from taking part in hostilities (Czechia).	Special protection measures
134.23	Ratify promptly the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Guatemala).	General measures of implementation
134.32	Ratify the International Convention for the Protection of All Persons from Enforced Disappearance (Tunisia).	General measures of implementation
134.42	Ratify the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (the Lanzarote Convention) (Slovenia).	Violence against children
134.43	Ratify the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention) (Italy).	Violence against children

134.44	Ratify the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Montenegro).	Violence against children
134.45	Ratify the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Spain).	Violence against children
134.47	Pursue its efforts towards ratification to become a State party to the Istanbul Convention in the near future (Bosnia and Herzegovina).	Violence against children
134.48	Make the necessary legal, policy and practice-related changes to enable the ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) and dedicate sufficient resources to central, devolved and local authorities to ensure its effective implementation (Finland).	Violence against children
134.49	Ratify the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Andorra).	Violence against children
134.50	Ratify the Convention of the Council of Europe on the Protection of Children against Sexual Exploitation and Sexual Abuse (Bulgaria).	Violence against children
134.59	Establish effective coordination and monitoring structures to ensure Convention on the Rights of the Child implementation across national and local governments (Kazakhstan).	General measures of implementation
134.60	Integrate fully the principles and provisions of the Convention on the Rights of the Child into its domestic law (Slovakia).	General measures of implementation
134.62	Ensure that all laws and policies adopted are in conformity with international human rights law and standards, including on the fight against terrorism (Botswana).	General principles
134.65	Speed up the adjustment of national legislation to the Convention on the Rights of the Child, both at State and autonomous regions levels (Chile).	General measures of implementation
134.81	Further reinforce measures to combat all forms of discrimination and inequality (Georgia).	General principles
134.83	Ensure equality and non-discrimination in the current legislation through due compliance with measures to fight against prejudices, xenophobia and violence against women and girls (Paraguay)	Violence against children & General principles
134.84	Dedicate more resources to fight against negative stereotypes in the media, against the most affected minority groups (lesbian, gay, bisexual, transgender and intersex persons, Gypsies, Muslims, refugees and persons granted asylum) (Spain).	General principles
134.87	Review and strengthen current policies and initiatives to combat societal discrimination against members of racial, religious and ethnic minority groups (United States of America).	General principles
134.94	Develop a comprehensive strategy to address inequalities experienced by ethnic minorities (Sierra Leone).	General principles
134.95	Take effective measures to address inequalities experienced by ethnic minority groups and combat discrimination (Kazakhstan)	General principles
134.96	Adopt comprehensive anti-discrimination measures, to promote equal political, social and economic rights of women of ethnic minorities (Republic of Korea).	General principles
134.97	Take effective measures to prevent manifestations of intolerance on the grounds of nationality and race (Russian Federation).	General principles
134.125	Review its Equality Act in relation to gender identity and the rights of intersex persons in the context of rights to health services (Australia).	Disability, basic health and welfare
134.128	Review counter-terrorism measures which target individuals or groups based on race, ethnic background or religion, including Muslims or Muslim communities (Malaysia).	General principles
134.163	Ensure the welfare of all segments of society in an inclusive manner, including those of migrants (Nepal).	Special protection measures
134.164	Provide more targeted social policies to help disadvantaged families, and in particular their children, so as to boost social mobility (Singapore).	Disability, basic health and welfare
134.165	Simplify, harmonize and reinforce the current legal norms on equality in favour of those most vulnerable (Bolivarian Republic of Venezuela).	General principles
134.166	Strengthen measures to foster access of vulnerable populations to public services and social and health services (Côte d'Ivoire).	Disability, basic health and welfare
134.168	Develop clear national strategies for the eradication of the poverty of about four million children, as indicated in the United Kingdom universal periodic review summary report of the stakeholders' submissions (Syrian Arab Republic).	Disability, basic health and welfare
134.169	Further strengthen its 'Equality Act', in particular, to provide better health services to groups in vulnerable situations including migrants (Sri Lanka).	Disability, basic health and welfare & Special protection measures
134.171	Take necessary measures to provide reproductive health-care services for women and girls in line with its Convention on the Elimination of All Forms of Discrimination against Women obligations (Myanmar).	Disability, basic health and welfare

134.180	Exert more efforts to combat or to counter violence against women and girls (Libya).	Violence against children
134.181	Adopt national legislation, especially in Northern Ireland, on domestic violence protection, that ensures all cases of domestic violence are thoroughly investigated and that perpetrators are prosecuted (Maldives).	Violence against children
134.182	Ensure a holistic approach to the prevention of violence against women and girls, including harmful practices (Slovenia).	Violence against children
134.183	Combat violence against women and girls, in particular domestic violence (Sudan).	Violence against children
134.184	Continue efforts to combat discrimination on any ground and violence against women and girls (Bosnia and Herzegovina).	Violence against children
134.185	Continue its positive efforts to reduce domestic violence throughout the country (Indonesia).	Violence against children
134.186	Effectively fight violence against women and take substantive measures to combat sexual exploitation and sexual crimes against children (China).	Violence against children
134.187	Step up its efforts in fighting domestic violence and take measures to prevent secondary victimization and the negative impact of domestic violence on children (Czechia).	Violence against children
134.188	Strengthen its legislative framework by including penal sanctions for perpetrators of acts of force (Gabon).	Violence against children
134.189	Place children's rights at the centre of climate change adaption and mitigation strategies by mainstreaming child-sensitive risk and vulnerability reduction strategies into its National Adaptation Programme (Maldives).	Disability, basic health and welfare
134.190	Reviewing the laws on immigration in Britain in order to comply with the Convention on the Rights of the Child (Syrian Arab Republic).	Special protection measures
134.191	Increase efforts to eliminate child poverty and bring domestic legislation in line with the Convention on the Rights of the Child (Hungary).	Disability, basic health and welfare
134.192	Increase government efforts to eradicate child poverty, and in this regard undertake an assessment of the impact of the welfare reform on children from disadvantaged families (Kazakhstan).	Disability, basic health and welfare
134.193	In all devolved administrations, overseas territories and Crown dependencies, prohibit all corporal punishment in the family, including through the repeal of all legal defences, such as "reasonable chastisement" (Liechtenstein).	Violence against children
134.194	Ensure that corporal punishment is explicitly prohibited in all schools and educational institutions and all other institutions and forms of alternative care (Liechtenstein).	Violence against children
134.195	Prohibit corporal punishment in all settings, including the family (Ireland).	Violence against children
134.196	Reconsider its position on the legality of corporal punishment of children (Mongolia).	Violence against children
134.197	Ban corporal punishment of children to ensure the full protection and freedom from violence for all children (Sweden).	Violence against children
134.198	Consider prohibiting corporal punishment against children and ensure that it is explicitly prohibited in all schools and educational institutions, and all other institutions and forms of alternative care (Croatia).	Violence against children
134.199	Take further actions in protecting the rights of the child by prohibiting all corporal punishment of children as required by the Convention on the Rights of the Child (Estonia).	Violence against children
134.200	Develop and implement comprehensive multisectoral strategies on child exploitation and abuse (Timor-Leste).	Violence against children
134.201	Complete the investigation on numerous cases of sexual violence against children perpetrated by the high-level officials and bring the perpetrators to justice (Russian Federation).	Violence against children
134.202	Take more measures to fight against sexual exploitation of children and violence against them (Algeria).	Violence against children
134.203	Abolish the life sentence for minors, in conformity with the Convention on the Rights of the Child (Paraguay).	Special protection measures
134.204	Consider abolishing the mandatory imposition of life imprisonment for offences committed by children under the age of 18 (Greece).	Special protection measures
134.205	Raise the minimum age of criminal responsibility in accordance with acceptable international standards and abolish the mandatory imposition of life imprisonment for offences committed by children under the age of 18 (Albania).	Special protection measures
134.206	Consider revising the minimum age of criminal responsibility (Peru).	Special protection measures

134.208	Raise the minimum age of criminal responsibility in accordance with acceptable international standards (Bulgaria).	Special protection measures
134.213	Review the 2016 Immigration Act in order to ensure its compatibility with the Convention on the Rights of the Child (Honduras).	Special protection measures
134.219	Like other European countries, set a statutory time limit for immigration detention and ensure that children are not subjected to such detention (Bangladesh).	Special protection measures
134.221	Improve on the United Kingdom's Immigration Act 2016 dealing with refugees to be compatible with United Nations Human Rights Conventions, particularly the Convention on the Rights of the Child (Indonesia).	Special protection measures
134.222	Reform its directive on family reunification to establish specifically family reunification for child asylum seekers relocated to the United Kingdom or who have been recognized as refugees (Honduras).	Special protection measures
134.223	Take the necessary measures to guarantee the exercise of the right to family reunification of unaccompanied children recognized as refugees or resettled (Argentina).	Special protection measures

Universal Periodic Review (recommendations made in 2012)

UPR Para. No.	Recommendation	See report chapter:
110.96	Ensure that the best interests of the child are taken into account when arresting, detaining, sentencing or considering early release for a sole or primary carer of the child, bearing in mind that visits of a parent in prison are primarily a right of the child than a privilege of the prisoner that can be withdrawn as a disciplinary measure (Slovakia).	Family environment and alternative care

International Covenant on Civil and Political Rights (Concluding Observations made in 2015)

ICCPR Para. No.	Recommendation	See report chapter:
5	(c) Ensure that any legislation passed in lieu of the Human Rights Act 1998, were such legislation to be passed, would be aimed at strengthening the status of international human rights, including the provisions of the Covenant, in the domestic legal order and provide effective protection of those rights across all jurisdictions.	General measures of implementation
10	The State party should strengthen its efforts to prevent and eradicate all acts of racism and xenophobia, including in the mass media and on the Internet, in accordance with articles 19 and 20 of the Covenant and the Committee's general comment No. 34 (2011) on freedoms of opinion and expression, by, inter alia: (a) Effectively implementing and enforcing the existing relevant legal and policy frameworks on combating hate crimes; (b) Introducing new awareness-raising campaigns aimed at promoting respect for human rights and tolerance for diversity; (c) Improving the reporting of cases of incitement to discrimination, hostility or violence, and of cases of hate crimes; (d) Thoroughly investigating alleged cases of incitement to discrimination, hostility or violence, and alleged hate crimes, prosecuting the perpetrators and, if they are convicted, punishing them with appropriate sanctions, and providing victims with adequate remedies, including compensation.	General principles
11	(a) Repeal non-statutory stop and search powers in Scotland and pursue its efforts aimed at improving the process of selecting targets under statutory mandates, so as to ensure conformity with the Covenant, engage in training of law enforcement officers, undertake comprehensive data-gathering about the application of stop and search powers and improve the transparency of the process. (b) Implement, as a matter of priority, the recommendation by the Policing Board to the Police Service of Northern Ireland (PSNI) concerning the inclusion on the PSNI's recording form of the community background of persons stopped and searched under the Justice and Security (Northern Ireland) Act 2007. (c) Ensure the operation of robust independent scrutiny and oversight of any stop and search powers in the United Kingdom with a view to ensuring that such powers are not exercised in an arbitrary or discriminatory manner and are fully compliant with the State party's obligations under articles 2, 9, 12, 17 and 26 of the Covenant.	Civil rights and freedoms

13	<p>(b) Encouraging reporting of domestic violence cases, inter alia by informing women of their rights and the existing legal avenues through which they can receive protection.</p> <p>(c) Ensuring that all domestic violence cases, in all UK territories and dependencies, are thoroughly investigated, that perpetrators are prosecuted and, if convicted, punished with appropriate sanctions.</p> <p>(d) Ensuring that victims have access to effective remedies and means of protection, including to strong police protection, adequate emergency shelter, rehabilitative services, legal assistance and other support services.</p>	Violence against children
20	The State party should take practical steps, including through legislative measures where appropriate, to put an end to corporal punishment in all settings, including the home, throughout United Kingdom and all Crown Dependencies and Overseas Territories, and repeal all existing legal defences across the State party's jurisdiction. It should encourage non-violent forms of discipline as alternatives to corporal punishment, and conduct public information campaigns to raise awareness about its harmful effects.	Violence against children
21	Review detention policy with regard to asylum-seekers, especially children. Take immediate and effective measures to ensure that all asylum-seekers who are detained pending deportation are held in centres specifically designed for that purpose, consider alternatives to detention, and end the detention of asylum-seekers in prisons. Ensure that asylum-seekers have full access to early and free legal representation so that their rights under the Covenant receive full protection.	Special protection measures

International Convention on the Elimination of Racial Discrimination (Concluding Observations made in 2016)

CERD Para. No.	Recommendation	See report chapter:
14	<p>(a) Carefully review the impact of existing policies and programmes aimed at promoting integration so as to ensure that they do not constitute indirect discrimination;</p> <p>(b) Consider adopting a detailed action plan that has concrete targets, monitoring mechanisms and sufficient resources, and that includes temporary special measures, to secure the adequate advancement of certain ethnic groups to ensure that persons belonging to such groups are able to enjoy their rights on an equal footing.</p>	General principles
16	<p>(a) Investigate all reported acts of racist hate crimes, prosecute and punish the perpetrators with sanctions commensurate with the gravity of the offence, and provide effective remedies to victims.</p> <p>(b) Systematically collect disaggregated data on hate crimes, ensure that measures to combat racist hate crimes are developed with the meaningful participation of affected groups, and undertake a thorough impact assessment of the measures adopted to ensure their continued effectiveness.</p> <p>(c) Adopt concrete measures, in consultation with affected groups, to increase the reporting of racist hate crimes by ensuring that the reporting mechanism is transparent and accessible, and that victims have trust in the police and the justice system.</p> <p>(d) Taking into account the Committee's general recommendation No. 35 (2013) on combating racist hate speech, adopt comprehensive measures to combat racist hate speech and xenophobic political discourse, including on the Internet, particularly with regard to the application of appropriate sanctions, and ensure that public officials not only refrain from such speech but also formally reject hate speech and condemn the hateful ideas expressed so as to promote a culture of tolerance and respect.</p> <p>(e) Take effective measures to combat racist media coverage, taking into account the Committee's general recommendation No. 35 (2013) on combating racist hate speech, and ensure that such cases are thoroughly investigated and, where appropriate, sanctions are imposed.</p>	Violence against children
19	The Committee urges the State party to review the implementation and evaluate the impact of existing counter-terrorism measures, and in particular the "Prevent duty" under the CounterTerrorism and Security Act 2015, to ensure that there are effective monitoring mechanisms and sufficient safeguards against abuse, and that they are implemented in a manner that does not constitute profiling and discrimination on the grounds of race, colour, descent or national or ethnic origin, in purpose or effect.	General principles
21	The Committee calls upon the State party to ensure that individuals belonging to ethnic minorities in England, Northern Ireland, Scotland and Wales, as well as in its overseas territories and Crown dependencies, have fair and effective access to legal aid to seek justice. It recommends that the State party undertake a thorough assessment of the impact of the reforms to the legal aid system to ensure that individuals belonging to ethnic minorities are not affected disproportionately.	General principles
25	(a) Develop a comprehensive strategy, in consultation with members of Gypsy, Traveller and Roma communities, to ensure a systematic and coherent approach in addressing the challenges that they continue to face in the fields of health, education, housing and employment, and ensure its effective implementation by adopting specific action plans and effective oversight and monitoring mechanisms to track progress, with adequate human and financial resources.	General principles

26	While welcoming the range of measures adopted by the State party to ensure that “stop and search” powers by the police are used fairly and effectively, as well as the reduction in the use of stop and search against people of African and Asian descent among some police forces in England, the Committee remains concerned that the use of “stop and search” powers continues to have a disproportionate impact on persons belonging to ethnic minorities, especially young men (arts. 2 and 5).	Civil rights and freedoms
27	Recalling its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recommends that the State party ensure that the governments of Northern Ireland, Scotland and Wales, regularly review the impact of stop and search powers on persons belonging to visible ethnic minority groups, and take effective measures to ensure that such powers are used in a lawful, non-arbitrary and non-discriminatory manner on the basis of reasonable suspicion, with rigorous monitoring and review mechanisms.	Disability, basic health and welfare & Civil rights and freedoms
35	(a) Strengthen efforts to eliminate all racist bullying and harassment in the State party’s schools, including by requiring schools to collect qualitative and quantitative data on bullying and school exclusions on grounds of race, colour, descent, or national or ethnic origin, and to use the data to develop concrete strategies.	Education, leisure and cultural activities & General principles
39	Recalling its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee recommends that the State party establish a statutory time limit on the duration of immigration detention and ensure that detention is used as a measure of last resort, and take further steps to end the immigration detention of children. The State party should also ensure that individuals who are held in immigration detention facilities have effective access to justice, including legal aid.	Special protection measures

International Covenant on Economic, Social and Cultural Rights (Concluding Observations made in 2016)

CESCR Para. No.	Recommendation	See report chapter:
19	The Committee reminds the State party of its obligations under the Covenant to use the maximum of its available resources with a view to progressively achieving the full realization of economic, social and cultural rights. The Committee draws the State party’s attention to the recommendations contained in its open letter of 16 May 2012 to States parties on economic, social and cultural rights in the context of the economic and financial crisis, with regard to the criteria for austerity measures. Such measures must be temporary, necessary, proportionate and not discriminatory, must not disproportionately affect the rights of disadvantaged and marginalized individuals and groups and respect the core content of rights. In that context, the Committee recommends that the State party review its policies and programmes introduced since 2010 and conduct a comprehensive assessment of the cumulative impact of these measures on the enjoyment of economic, social and cultural rights by disadvantaged and marginalized individuals and groups, in particular women, children and persons with disabilities, that is recognized by all stakeholders.	Disability, basic health and welfare & General principles
23	The Committee recommends that the State party review the impact of the reforms to the legal aid system with a view to ensuring access to justice and the provision of free legal aid services, in particular for disadvantaged and marginalized individuals and groups. The Committee takes note of the information provided by the State party on the ongoing review of the employment tribunal fees and recommends the elimination of such fees.	General principles
25	The Committee recommends that the State party increase the level of support provided to asylum seekers, including through the daily allowance, in order to ensure that they enjoy their economic, social and cultural rights, in particular the right to an adequate standard of living. The Committee reiterates its previous recommendation (see E/C.12/GBR/CO/5, para. 27) and encourages the State party to ensure that asylum seekers are not restricted from accessing employment while their claims are being processed.	Special protection measures
26	The Committee recommends that the State party review the impact of the reforms to the legal aid system with a view to ensuring access to justice and the provision of free legal aid services, in particular for disadvantaged and marginalized individuals and groups. The Committee takes note of the information provided by the State party on the ongoing review of the employment tribunal fees and recommends the elimination of such fees.	General principles
27	The Committee recommends that the State party: (a) Intensify its efforts to increase the level of representation of women in decision-making positions, in both the public and private sectors; (b) Adopt effective measures to eliminate the persistent gender pay gap, including by addressing the significant vertical and horizontal gender-based segregation in the labour market, which results in women occupying lower-paid positions and facing obstacles to their enjoyment of career opportunities on an equal footing with men; (c) Increase its efforts to ensure equal remuneration for work of equal value, without distinction of any kind.	General principles

31	The Committee is concerned at the high incidence of part-time work, precarious self-employment, temporary employment and the use of “zero hour contracts” in the State party, which particularly affect women. It is also concerned about the negative impact that all those forms of employment have on the enjoyment by workers of their right to just and favourable conditions of work. Furthermore, the Committee is concerned about the high number of low-paid jobs, which affects in particular certain sectors, such as the cleaning and home-care sectors (arts. 68).	Disability, basic health and welfare
37	The Committee recommends that the State party ensure that the national minimum wage is periodically reviewed and set at a level sufficient to provide all workers and their families with a decent standard of living. It also recommends that the State party extend the protection of the national minimum wage to those under the age of 25.	Disability, basic health and welfare & General principles
41	(a) Review the entitlement conditions and reverse the cuts in social security benefits introduced by the Welfare Reform Act 2012 and the Welfare Reform and Work Act 2016. (b) Restore the link between the rates of State benefits and the costs of living and guarantee that all social benefits provide a level of benefit sufficient to ensure an adequate standard of living, including access to health care, adequate housing and food. (c) Review the use of sanctions in relation to social security benefits and ensure that they are used proportionately and are subject to prompt and independent dispute resolution mechanisms. (d) Provide in its next report disaggregated data on the impact of the reforms to social security on women, children, persons with disabilities, low income families and families with two or more children.	Disability, basic health and welfare
44	The Committee recommends that the State party increase its efforts to ensure the availability, accessibility and affordability of childcare services throughout the State party, particularly in Scotland and Northern Ireland. The Committee also recommends that the State party review the system of shared parental leave and modify it with a view to improve the equal sharing of responsibilities within the family and in the society.	Family environment and alternative care
46	The Committee requests the State party to include in its next periodic report information on the impact of the implementation of the national strategy on gender-based violence, particularly with regard to violence against women and girls with disabilities.	Violence against children
48	The Committee recommends that the State party take steps to introduce measures to guarantee targeted support to all those living in poverty or at risk of poverty, in particular persons with disabilities, persons belonging to ethnic, religious or other minorities, single-parent families and families with children, and adopt an anti-poverty strategy in Northern Ireland. The Committee also urges the State party to develop a comprehensive child poverty strategy and reinstate the targets and reporting duties on child poverty. In that regard, the Committee draws the attention of the State party to its statement on poverty and the International Covenant on Economic, Social and Cultural Rights, adopted on 4 May 2001 (E/C.12/2001/10).	Disability, basic health and welfare
50	(a) Adopt all necessary measures to address the housing deficit by ensuring a sufficient supply of housing, in particular social housing units, especially for the most disadvantaged and marginalized individuals and groups, including middle- and low-income individuals and households, young people and persons with disabilities. (b) Take specific measures to deal with the inability of renters in the private rental sector to pay rents on account of the limits imposed on housing allowance and effectively regulate the private rental sector, including through security of tenure protection and accountability mechanisms. (c) Take corrective measures to address bad housing, including substandard housing conditions and uninhabitable housing. (d) Ensure adequate access to culturally appropriate accommodation and stopping sites for the Roma, Gypsy and Traveller communities, as appropriate; take steps to avoid all forms of discrimination in the provision of accommodation; and repeal the Unauthorised Encampments (Northern Ireland) Order 2005.	Disability, basic health and welfare
54	The Committee recommends that the State party develop a comprehensive national strategy for the protection and promotion of the right to adequate food in order to address food insecurity in all jurisdictions of the State party and to promote healthier diets. This should include policies in support of breastfeeding in accordance with the resolutions of the World Health Assembly, including breastfeeding breaks or breastfeeding facilities in educational institutions and workplaces. The Committee also recommends that the State party introduce higher taxes on junk foods and sugary drinks and consider adopting strict regulations on the marketing of such products, while ensuring improved access to healthy diets. The Committee refers the State party to its general comment No. 12 (1999) on the right to adequate food and the Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security adopted by the Food and Agriculture Organization of the United Nations as well as to the International Code of Marketing of Breast-milk Substitutes.	Disability, basic health and welfare
56	The Committee recommends that the State party take steps to ensure that temporary migrants and undocumented migrants, asylum seekers, refused asylum seekers, refugees and Roma, Gypsies and Travellers have access to all necessary health-care services and reminds the State party that health facilities, goods and services should be accessible to everyone without discrimination, in line with article 12 of the Covenant. The Committee draws the State party's attention to its general comment No. 14 (2000) on the right to the highest attainable standard of health.	Special protection measures

58	The Committee recommends that the State party ensure the effective implementation of the duty introduced by the Health and Social Care Act 2012 and allocate sufficient resources to the mental health sector. The Committee urges the State party to continue its efforts to guarantee the effective implementation of the mental health legislation in all jurisdictions of the State party and to ensure the accessibility, availability and quality of mental health care, including for persons in detention.	Disability, basic health and welfare
64	The Committee recommends that the State party take all necessary measures to reduce the attainment gaps, particularly among children belonging to low-income families, including by reconsidering the austerity programmes adopted and effectively implementing measures aimed at reducing de facto discrimination and segregation of students based on their religion, national or social origin, as well as their economic background.	Education, leisure and cultural activities & General principles
66	The Committee recommends that the State party take all necessary steps to reduce higher education fees, with a view to making higher education equally accessible to all, in accordance with capacity, and by progressively introducing free higher education.	Education, leisure and cultural activities & General principles
69	The Committee encourages the State party to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.	General measures of implementation

United Nations Convention on the Rights of Persons with Disabilities (Concluding Observations made in 2017)

CRPD Para. No.	Recommendation	See report chapter:
11	(a) Allocate financial resources to support organizations representing persons with disabilities, including women and children with disabilities, and develop mechanisms to ensure the inclusive, strategic and active involvement of organizations of persons with disabilities, including women, children and intersex persons, in the planning and implementation of all legislation and measures that affect the lives of persons with disabilities. (b) Establish mechanisms to secure the full participation of organizations of persons with disabilities in the design and implementation of strategic policies aimed at implementing the Convention across the State party, through objective, measurable, financed and monitored strategic action plans.	Disability, basic health and welfare
15	The Committee recommends that the State party, in line with Goal 10 and targets 10.2 and 10.3 of the Sustainable Development Goals, explicitly incorporate in its national legislation protection from multiple and intersectional discrimination on the basis of gender, age, race, disability, migrant, refugee and/or other status, and provide appropriate compensation and redress for victims, and sanctions proportional with the severity of the violation.	General principles
19	The Committee recommends that the State party, in close consultation with organizations of women and girls with disabilities, mainstream the rights of women and girls with disabilities into disability and gender equality policies. It also recommends that the State party, in line with the Committee's general comment No. 3 (2016) on women and girls with disabilities and targets 5.1, 5.2 and 5.5 of the Sustainable Development Goals, adopt inclusive and targeted measures, including the collection of disaggregated data, to prevent multiple and intersectional discrimination against women and girls with disabilities, particularly those with intellectual and/or psychosocial disabilities, in education, employment, health and access to justice and in terms of poverty and violence.	General principles
21	The Committee recommends that the State party, in close consultation with organizations representing children with disabilities, develop and implement policies aimed at: (a) Eliminating the higher level of poverty among families with children with disabilities. (b) Incorporating the human rights model of disability into all laws and regulations concerning children with disabilities. (c) Setting up an independent monitoring mechanism to assess the situation of children with disabilities in school, particularly those facing bullying, through reliable indicators. (d) Securing sufficient and disability-sensitive childcare as a statutory duty across the State party. (e) Strengthening measures to prevent bullying, hate speech and hate crime against children with disabilities.	Disability, basic health and welfare & Family environment and alternative care
25	The Committee recommends that the State party, in close collaboration with organizations of persons with disabilities: (a) Identify outstanding gaps across the State party in terms of obligatory accessibility standards in all areas of the Convention, among others, the design of affordable and accessible physical environments, housing, ICT, information formats and transport infrastructure, including emergency services and green and public spaces in both urban and rural areas, and ensure that the standards are met. (b) Pay attention to the links between article 9 of the Convention and the Committee's general comment No. 2 (2014) on accessibility, and targets 9, 11.2 and 11.7 of the Sustainable Development Goals. (c) Monitor the development towards full inclusion through accessibility and sanction violations of accessibility regulations.	Disability, basic health and welfare

27	The Committee recommends that the State party adopt a plan of action aimed at eliminating perceptions towards persons with disabilities as not having “a good and decent life” and recognizing persons with disabilities as equal to others and part of the diversity of humankind. It also recommends that the State party ensure access to life-sustaining treatment and/or care.	Disability, basic health and welfare
29	(a) Adopt a comprehensive disaster risk reduction plan and strategies that provide for accessibility and inclusion of persons with disabilities in all situations of risk, in line with the Sendai Framework for Disaster Risk Reduction, in close consultation with organizations of persons with disabilities. (b) Mainstream disability in all humanitarian aid channels and involve organizations of persons with disabilities in setting priorities on aid distribution in the context of risk and humanitarian emergencies, paying attention to the Charter on Inclusion of Persons with Disabilities in Humanitarian Action. (c) Develop information and warning systems in humanitarian emergencies that are accessible for all persons with disabilities. (d) Ensure that organizations of persons with disabilities participate in resilience teams at the local level and have an active role in advising on and formulating policies and guidelines regarding disaster preparedness and planning.	Disability, basic health and welfare
31	The Committee recommends that the State party, in close consultation with organizations of persons with disabilities, including those representing persons from black and minority ethnic groups and in line with the Committee’s general comment No. 1 (2014) on equal recognition before the law, abolish all forms of substituted decision-making concerning all spheres and areas of life by reviewing and adopting new legislation in accordance with the Convention to initiate new policies in both mental capacity and mental health laws. It urges the State party to step up efforts to foster research, data and good practices in the area of, and speed up the development of, supported decision-making regimes. It recommends that the State party ensure that asylum seekers and refugees with disabilities can exercise all rights enshrined in the Convention.	Disability, basic health and welfare
33	(c) Provide free or affordable legal aid for persons with disabilities in all areas of law and remove fees to access courts and tribunals;	General principles
37	(b) Set up strategies, in collaboration with monitoring authorities and national human rights institutions, in order to identify and prevent the use of restraint for children and young persons with disabilities.	Violence against children
45	(a) Recognize the right to living independently and being included in the community as a subjective right, recognize the enforceability of all its elements, and adopt rights-based policies, regulations and guidelines to ensure implementation. (b) Conduct periodic assessments in close consultation with organizations of persons with disabilities to address and prevent the negative effects of policy reforms through sufficiently funded and appropriate strategies in the area of social support and living independently. (c) Provide adequate, sufficient earmarked funding to local authorities and administrations, including the devolved governments, to be able to continuously allocate adequate resources allowing persons with disabilities to live independently and be included in the community and to exercise their right to choose their place of residence and where and with whom to live. (d) Set up a comprehensive plan, developed in close collaboration with organizations of persons with disabilities, aimed at the deinstitutionalization of persons with disabilities, and develop community-based independent living schemes through a holistic and cross-cutting approach, including education, childcare, transport, housing, employment and social security. (e) Allocate sufficient resources to ensure that support services are available, accessible, affordable, acceptable, adaptable and are sensitive to different living conditions for all persons with disabilities in urban and rural areas.	Disability, basic health and welfare
47	The Committee recommends that the State party, in consultation with organizations representing persons with disabilities: (a) Identify outstanding gaps in the implementation of obligatory accessibility standards on information channels based on ICT. (b) Ensure that legislation provides for the right to high-quality sign language interpretation and other forms of alternative communication in all spheres of life for deaf persons and hard of hearing persons, in accordance with the Convention. (c) Allocate resources for the education of children with hearing impairments, their families and others, such as classmates and co-workers, in British Sign Language and tactile language.	Disability, basic health and welfare

53	<p>(a) Develop a comprehensive and coordinated legislative and policy framework for inclusive education and a timeframe to ensure that mainstream schools foster real inclusion of children with disabilities in the school environment and that teachers and all other professionals and persons in contact with children understand the concept of inclusion and are able to enhance inclusive education.</p> <p>(b) Strengthen measures to monitor school practices concerning enrolment of children with disabilities and offer appropriate remedies in cases of disability-related discrimination and/or harassment, including deciding upon schemes for compensation.</p> <p>(c) Adopt and implement a coherent and adequately financed strategy, with concrete timelines and measurable goals, on increasing and improving inclusive education. The strategy must:</p> <p>(i) Ensure the implementation of laws, decrees and regulations on improving the extent and quality of inclusive education in classrooms, support provisions and teacher training, including pedagogical capabilities, across all levels providing for high-quality inclusive environments, including within breaks between lessons and through socialization outside “education time”.</p> <p>(ii) Set up awareness-raising and support initiatives about inclusive education among parents of children with disabilities.</p> <p>(iii) Provide sufficient, relevant data on the number of students both in inclusive and segregated education, disaggregated by impairment, age, sex and ethnic background, and on the outcome of the education, reflecting the capabilities of the students.</p>	Disability, basic health and welfare
55	<p>The Committee recommends that the State party, in close collaboration with representative organizations of persons with disabilities:</p> <p>(a) Develop a targeted, measurable and financed plan of action aiming at eliminating barriers in access to health care and services, and monitor and measure its progress, especially in relation to persons with intellectual and/or psychosocial disabilities and those with neurological and cognitive conditions.</p> <p>(b) Set up protocols for medical services that respect the right of persons with disabilities to privacy in information about health.</p> <p>(c) Ensure equal access to sexual and reproductive health-care services, as set out in target 3.7 of the Sustainable Development Goals, and provide information and education on family planning for persons with disabilities in accessible formats, including Easy Read.</p> <p>(d) Ensure that medical professionals are under the obligation to enforce standards set in guidance and criteria on “do not resuscitate” orders for persons with disabilities on an equal basis with others.</p> <p>(e) Address the high suicide rate among persons with disabilities, especially persons with intellectual and/or psychosocial disabilities.</p>	Disability, basic health and welfare
59	<p>(a) Introduce, adopt and implement legislative frameworks to ensure that social protection policies and programmes across the State party secure income levels for all persons with disabilities and their families, by taking into account the additional costs relating to disability, and ensuring that persons with disabilities are able to exercise their parental responsibilities. The State party must ensure that members of the new Employment and Support Allowance work-related activity group have access to full compensation of disability-related costs;</p> <p>(b) Carry out a cumulative impact assessment, based on disaggregated data, of the recent and forthcoming reforms of the social protection system for persons with disabilities, and in close collaboration with organizations of persons with disabilities define, implement and monitor measures to tackle retrogression in their standard of living and use the cumulative impact assessment as a basis for policy development across the State party;</p> <p>(c) Repeal the Personal Independence Payment (Amendment) Regulations of 2017 and ensure that eligibility criteria and assessments to access Personal Independence Payments, Employment Support Allowance and Universal Credit are in line with the human rights model of disability;</p> <p>(d) Ensure that the budget allocation is sufficient for local authorities to meet their responsibilities regarding assistance for persons with disabilities, and extend support packages to mitigate the negative impacts of social security reform in Northern Ireland.</p> <p>(e) Conduct a review of the conditionality and sanction regimes concerning the Employment and Support Allowance, and tackle the negative consequences on the mental health and situation of persons with disabilities.</p>	Disability, basic health and welfare

UN Convention on the Elimination of Discrimination Against Women
(Concluding Observations made in 2019)

CEDAW Committee Para. No.	Recommendation	See report chapter:
24	The Committee recommends that the State party ensure that women, in particular women in vulnerable situations, such as women with disabilities, “Black, Asian and Minority Ethnic” women, asylum-seeking and refugee women and victims of gender-based violence and of trafficking, have effective access to justice and remedies with adequate legal support and representation, including by ensuring that legal aid and representation is accessible and available and the provision of procedural and age-appropriate accommodations. It also recommends that the State party take effective measures to ensure that women have access to legal aid in areas that affect them the most, such as family, housing, immigration and welfare benefits law.	Violence against children
30	(a) Ratify the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. (b) Adopt legislative and comprehensive policy measures to protect women from all forms of gender-based violence throughout the State party’s jurisdiction, including Northern Ireland. (c) Ensure that asylum-seeking and migrant women and women with insecure immigration status are able to seek effective protection and support services without fear of having their immigration status reported to authorities. (d) Ensure that its laws and policies effectively protect women with disabilities from all forms of gender-based violence, in particular violence perpetrated by their caregivers. (e) Ensure that the policy of commissioning services does not undermine the provision of specialized services for women who are victims of gender-based violence.	Violence against children
32	The Committee recommends that the State party ensure the full implementation of its legislation on female genital mutilation and take further measures to effectively prosecute perpetrators of this offence. It also recommends that the State party step up its efforts to raise awareness that female genital mutilation is a form of child abuse and gender-based violence against women and girls.	Violence against children
34	(a) Ensure that the definition of trafficking in persons in its national legislation is in line with the internationally agreed definition set out in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. (b) Adopt a comprehensive national strategy to combat trafficking in women and girls, as previously recommended; (c) Continue to improve the national referral mechanism, including by implementing the reform package announced in October 2017, to ensure that victims of trafficking are properly identified and adequately protected and supported.	Special protection measures
35	The Committee expresses concern about reports of the increasing number of women who are turning to prostitution due to poverty and of the practice of male landlords offering accommodations to women in return for sex (known as “sex for rent”). It is also concerned that existing services provided to women in prostitution are focused on harm reduction, rather than on exiting prostitution, which may have the effect of prolonging the exploitation of women in prostitution. While noting that it is an offence to pay for the sexual services of a child, the Committee is concerned that the prosecution is required to prove that the accused believed the child to be under 18 years old, rather than the burden of proof being placed on the accused, which contributes to impunity for exploitation of child prostitution.	Violence against children
36	(d) Ensure the availability of specialist services that are adequately funded, inclusive and accessible to assist women and girls in exiting prostitution.	Violence against children
42	(c) Take measures to introduce into school curricula mandatory, age appropriate education on sexual and reproductive rights, including issues such as gender relations and responsible sexual behaviour, throughout the State party	Disability, basic health and welfare
42	(d) Promote human rights education that includes a focus on the empowerment of girls and the Convention in schools.	Education, leisure and cultural activities
46	(a) Ensure the availability of affordable and accessible childcare facilities and/or arrangements throughout the State party, in particular in Northern Ireland.	Family environment and alternative care
46	(c) Provide further incentives to encourage men to take parental leave, such as non-transferrable leave, and encourage men to participate equally in childcare responsibilities.	Family environment and alternative care
50	The Committee recommends that the State party strengthen the implementation of programmes and policies aimed at providing effective access to healthcare for women belonging to marginalized groups, in particular asylum seeking and refugee women, migrant women, Roma and Traveller women, and victims of trafficking.	Disability, basic health and welfare
52	(b) Repeal the two-child tax credit limit.	Disability, basic health and welfare

54	(a) Adopt inclusive and accessible measures to facilitate access for women and girls to education, employment, healthcare services and support services in rural areas, including by ensuring their access to transportation and the Internet and their participation in decision-making processes regarding rural development.	Disability, basic health and welfare & Education, leisure and cultural activities
56	(a) Introduce a general time limit on immigration detention and implement alternatives to detention. (b) Take immediate measures to end the detention of pregnant women and nursing mothers. (c) Take measures to enable asylum-seeking and refugee women to gain access to employment and appropriate housing.	Special protection measures
60	(b) Strengthen efforts to combat forced marriages, including by sensitizing parents on the need for free and full consent of their daughters to enter into marriage, in line with article 16 (1) (b) of the Convention and the Committee's general recommendation No. 21 (1994) on equality in marriage and family relations, and consider alleviating the costs for the repatriation of victims.	Violence against children

UN Convention on the Elimination of Discrimination Against Women (Concluding Observations made in 2013)

CEDAW Committee Para. No.	Recommendation	See report chapter:
33	(a) Continue to engage with the media to eliminate stereotypical imaging of women and their objectification in the media, especially in advertising.	General principles
45	(b) Enhance measures to prevent, punish and eradicate all forms of violence against women and girls, including bullying and expressions of racist sentiments, in educational institutions.	Violence against children & General principles
61	(a) Step up efforts to eliminate discrimination against ethnic minority women and improve access to social services, including health care, education and employment. (b) Provide adequate sites designated for use by Traveller women and members of their families.	Disability, basic health and welfare & General principles

UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Concluding Observations made in 2019)

CAT Para. No.	Recommendation	See report chapter:
19	(a) Ensure that all cases of violence, especially sexual assault, against children in detention, including those documented by the Independent Inquiry into Child Sexual Abuse, are promptly, impartially and effectively investigated, that substantiated allegations result in the prosecution and punishment of perpetrators with appropriate sanctions, and that victims receive adequate redress. (b) Establish effective inspection and complaints mechanisms that are genuinely accessible to children in detention, and maintain effective monitoring. (c) Ensure that judges, prosecutors and members of the police receive specialized training in preventing the abuse of children in detention and in dealing with claims of such abuse.	Violence against children
23	The Committee reiterates its previous recommendation (CAT/C/GBR/CO/5, para. 27) that the State party raise the minimum age of criminal responsibility and ensure the full implementation of juvenile justice standards. In accordance with rules 63 and 64 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (General Assembly resolution 45/113, annex), instruments of restraint and force can only be used in exceptional cases, where all other control methods have been exhausted and failed. In addition, the State party should prohibit the application of solitary confinement to juveniles. It should also prohibit the transport of prisoners in any way that subjects them to unnecessary physical risk of abuse in violation of the Convention.	Special protection measures
29	The Committee considers that the State party should ensure that the use of electrical discharge weapons is strictly compliant with the principles of necessity, subsidiarity, proportionality, advance warning (where feasible) and precaution. The State party should provide clear presumptions against the use of tasers on vulnerable groups, such as children and young people, investigate the causes for their disproportionate use against members of minorities and prohibit their use in drive stun mode. The Committee is of the view that electric discharge weapons should not form part of the equipment of custodial staff in prisons or any other place of deprivation of liberty, including mental health settings.	Violence against children

53	<p>(a) Compile detailed statistical data on the number of asylum applications involving torture claims and their outcome, disaggregated by the applicants' country of origin and/or return, and provide this information to the Committee.</p> <p>(b) Review the application of the standard of proof in asylum decisions and improve performance in this area, including with respect to caseworkers' evaluation of medical evidence of past torture and particularly with respect to negative determinations on applications for asylum from nationals of Afghanistan and Sri Lanka.</p> <p>(c) Review the State party's inclusion of Ukraine on the list of safe countries for return of asylum seekers, particularly in light of the recent findings of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.</p>	Special protection measures
57	(f) Review the effectiveness of preventive and protection measures in place for children at risk of female genital mutilation and forced marriage in the State party.	Violence against children
59	<p>(a) Enhance its efforts to investigate claims of human trafficking and prosecute perpetrators and ensure that victims of trafficking obtain compensation, including by considering creating a civil remedy for victims of trafficking.</p> <p>(b) Ensure access to sufficient protection and support for all victims of trafficking and, in particular, ensure that the State party's establishment of a child trafficking protection fund results in an improvement in the availability of specialist care and support for child victims of trafficking.</p> <p>(c) Improve the training of law enforcement officers, prison personnel and other first responders by including statutory training on the identification of potential victims of human trafficking and modern slavery, and continue developing specialized training programmes for support workers and those providing foster care.</p>	Special protection measures

UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Concluding Observations made in 2013)

CAT Para. No.	Recommendation	See report chapter:
13	Ensure that restraint against children is used only as a last resort and exclusively to prevent harm to the child or others and that all methods of physical restraint for disciplinary purposes be abolished. The Committee also recommends that the State party ban the use of any technique designed to inflict pain on children.	Violence against children

UN Sustainable Development Goals 2015

SDG Para. No.	Recommendation	See report chapter:
1.1	By 2030, eradicate extreme poverty for all people everywhere, currently measured as people living on less than \$1.25 a day.	Disability, basic health and welfare
1.2	By 2030, reduce at least by half the proportion of men, women and children of all ages living in poverty in all its dimensions according to national definitions.	Disability, basic health and welfare
1.B	Create sound policy frameworks at the national, regional and international levels, based on pro-poor and gender-sensitive development strategies, to support accelerated investment in poverty eradication actions.	Disability, basic health and welfare
1.3	Implement nationally appropriate social protection systems and measures for all, including floors, and by 2030 achieve substantial coverage of the poor and the vulnerable.	Disability, basic health and welfare
2.1	By 2030, end hunger and ensure access by all people, in particular the poor and people in vulnerable situations, including infants, to safe, nutritious and sufficient food all year round.	Disability, basic health and welfare
2.2	By 2030, end all forms of malnutrition, including achieving, by 2025, the internationally agreed targets on stunting and wasting in children under 5 years of age, and address the nutritional needs of adolescent girls, pregnant and lactating women and older persons.	Disability, basic health and welfare
3.2	By 2030, end preventable deaths of newborns and children under 5 years of age, with all countries aiming to reduce neonatal mortality to at least as low as 12 per 1,000 live births and under-5 mortality to at least as low as 25 per 1,000 live births	Disability, basic health and welfare
3.7	By 2030, ensure universal access to sexual and reproductive health-care services, including for family planning, information and education, and the integration of reproductive health into national strategies and programmes.	Disability, basic health and welfare
3.8	Achieve universal health coverage, including financial risk protection, access to quality essential health-care services and access to safe, effective, quality and affordable essential medicines and vaccines for all.	Disability, basic health and welfare
4.1	By 2030, ensure that all girls and boys complete free, equitable and quality primary and secondary education leading to relevant and effective learning outcomes	Education, leisure and cultural activities

4.2	By 2030, ensure that all girls and boys have access to quality early childhood development, care and pre-primary education so that they are ready for primary education.	Education, leisure and cultural activities
4.3	By 2030, ensure equal access for all women and men to affordable and quality technical, vocational and tertiary education, including university.	Education, leisure and cultural activities
4.4	By 2030, substantially increase the number of youth and adults who have relevant skills, including technical and vocational skills, for employment, decent jobs and entrepreneurship.	Education, leisure and cultural activities
4.5	By 2030, eliminate gender disparities in education and ensure equal access to all levels of education and vocational training for the vulnerable, including persons with disabilities, indigenous peoples and children in vulnerable situations	Education, leisure and cultural activities
4.6	By 2030, ensure that all youth and a substantial proportion of adults, both men and women, achieve literacy and numeracy.	Education, leisure and cultural activities
4.7	By 2030, ensure that all learners acquire the knowledge and skills needed to promote sustainable development, including, among others, through education for sustainable development and sustainable lifestyles, human rights, gender equality, promotion of a culture of peace and non-violence, global citizenship and appreciation of cultural diversity and of culture's contribution to sustainable development.	Education, leisure and cultural activities
4.a	Build and upgrade education facilities that are child, disability and gender sensitive and provide safe, non-violent, inclusive and effective learning environments for all.	Education, leisure and cultural activities
4.c	By 2030, substantially increase the supply of qualified teachers, including through international cooperation for teacher training in developing countries, especially least developed countries and small island developing States.	Education, leisure and cultural activities
5.1	End all forms of discrimination against all women and girls everywhere.	General principles
5.3	Eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation.	Violence against children
5.4	Recognize and value unpaid care and domestic work through the provision of public services, infrastructure and social protection policies and the promotion of shared responsibility within the household and the family as nationally appropriate.	Family environment and alternative care
10.1	By 2030, progressively achieve and sustain income growth of the bottom 40 per cent of the population at a rate higher than the national average.	Disability, basic health and welfare
10.2	By 2030, empower and promote the social, economic and political inclusion of all, irrespective of age, sex, disability, race, ethnicity, origin, religion or economic or other status.	Disability, basic health and welfare & General principles
10.3	Ensure equal opportunity and reduce inequalities of outcome, including by eliminating discriminatory laws, policies and practices and promoting appropriate legislation, policies and action in this regard.	Disability, basic health and welfare & General principles
10.4	Adopt policies, especially fiscal, wage and social protection policies, and progressively achieve greater equality.	Disability, basic health and welfare
10.7	Facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies.	Special protection measures
11.1	By 2030, ensure access for all to adequate, safe and affordable housing and basic services and upgrade slums.	Disability, basic health and welfare
11.6	By 2030, reduce the adverse per capita environmental impact of cities, including by paying special attention to air quality and municipal and other waste management.	Disability, basic health and welfare
13.1	Strengthen resilience and adaptive capacity to climate-related hazards and natural disasters in all countries.	Disability, basic health and welfare
13.2	Integrate climate change measures into national policies, strategies and planning.	Disability, basic health and welfare
13.3	Improve education, awareness-raising and human and institutional capacity on climate change mitigation, adaptation, impact reduction and early warning.	Disability, basic health and welfare
16.1	Significantly reduce all forms of violence and related death rates everywhere.	Violence against children
16.2	End abuse, exploitation, trafficking and all forms of violence against and torture of children.	Violence against children

Appendix 2: Credits

The *State of Children's Rights* report 2019 represents an overall consensus of opinion of NGOs within Together's membership. It does not necessarily represent in all respects or detail the views of every member of Together, nor every organisation that has contributed to this report. Views expressed separately by Together's members should also be taken into account. Thanks go to the following organisations for sharing their experiences to inform the preparation of this report:

Aberlour	LGBT Youth Scotland
Article 12 in Scotland	One Parent Families Scotland
Balivanich School	NSPCC Scotland
Barnardo's Scotland	National Parent Forum of Scotland (NPFS)
Borders Additional Needs Group SCIO	Nourish Scotland
Carers Trust	Parenting Across Scotland
CELCIS	European Children's Rights Unit, University of Liverpool
Centre for Youth and Criminal Justice	Play Scotland
Child Poverty Action Group in Scotland	Quakers in Scotland
Children's Health Scotland	respectme
Children and Young People's Commissioner Scotland	Royal Caledonian Education Trust (RCET)
Children with Cancer UK	RoSPA Scotland
Children in Scotland	Salvesen Mindroom Centre
Children's University Scotland	Save the Children
Children 1st	Scottish Commission for Learning Disability (SCLD)
Children's Parliament	Scottish Refugee Council
Clan Childlaw	Scottish Throughcare and Aftercare Forum (Staf)
Contact - for families with disabled children	Scottish Women's Aid
Child Rights International Network (CRIN)	Scottish Youth Parliament
Early Years Scotland	Shelter Scotland
Engender	Starcatchers
Enquire	Trussell Trust
European Children's Rights Unit, University of Liverpool	UNICEF UK
Families Outside	University of Edinburgh Law School
Forces Watch	Upstart Scotland
for Scotland's Disabled Children (fSDC)	Who Cares? Scotland
JustRight Scotland	YouthLink Scotland
Humanist Society Scotland	Zero Tolerance
Human Rights Consortium Scotland	

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Endnotes

- 1 CRC/C/GBR/CO/5.
- 2 International Covenant on Civil and Political Rights (ICCPR) (1966)
- 3 International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966)
- 4 Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (1984)
- 5 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) (1965)
- 6 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979)
- 7 Convention on the Rights of Persons with Disabilities (UNCRPD) (2006)
- 8 OHCHR (2016). General Comments. <http://bit.ly/2uREhTW>. [Date accessed: 31.10.2016].
- 9 Scottish Government (2019). Strengthening children's rights. <http://bit.ly/31acH0x> [Date accessed: 20.1.20].
- 10 See A/HRC/21/9: Paras: 110.9-10, 110.32.
- 11 Scottish Government (2019). Strengthening children's rights. <http://bit.ly/31acH0x> [Date accessed: 20.1.20].
- 12 Together (2016). European and External Relations Committee: The EU Referendum and its Implications for Scotland. <http://bit.ly/2GHsRFa>. [Date accessed: 26.10.2019].
- 13 European Union (Withdrawal) Act 2018. <http://bit.ly/2GLHF5r> [Date accessed: 20.1.20].
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- 15 Scottish Government (2017). A nation with ambition: The Government's Programme for Scotland 2017-2018. <http://bit.ly/37Fq8rD> [Date accessed: 20.1.20].
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*‘Working to promote the
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