



SCOTTISH ALLIANCE FOR CHILDREN'S RIGHTS

*"Working to promote the full implementation of the
UN Convention on the Rights of the Child in Scotland"*

THE NGO ALTERNATIVE REPORT (SCOTLAND) TO THE UNITED NATIONS COMMITTEE ON THE RIGHTS OF THE CHILD

2008



GLOSSARY OF TERMS

Child / children refers to person/s under 18 unless otherwise stated

NGOs refers to non governmental organisations in Scotland unless otherwise stated

UNCRC – United Nations Convention on the Rights of the Child

State party – country that has ratified the UNCRC

The Committee – United Nations Committee on the Rights of the Child

ECHR – European Convention on Human Rights

SCCYP – Scotland's Commissioner for Children and Young People

Westminster refers to the UK Parliament in London

Holyrood refers to the Scottish Parliament in Edinburgh

Scottish Executive – refers to administration in Scotland prior to elections in May 2007

Scottish Government – refers to administration in Scotland post elections May 2007

2002 Concluding Observations – extract from the Concluding Observations Report from the UN Committee on the Rights of the Child on the Second Periodic Report of the United Kingdom of Great Britain and Northern Ireland, October 2002 (CRC/C/SR.833)

SACR – Scottish Alliance for Children's Rights

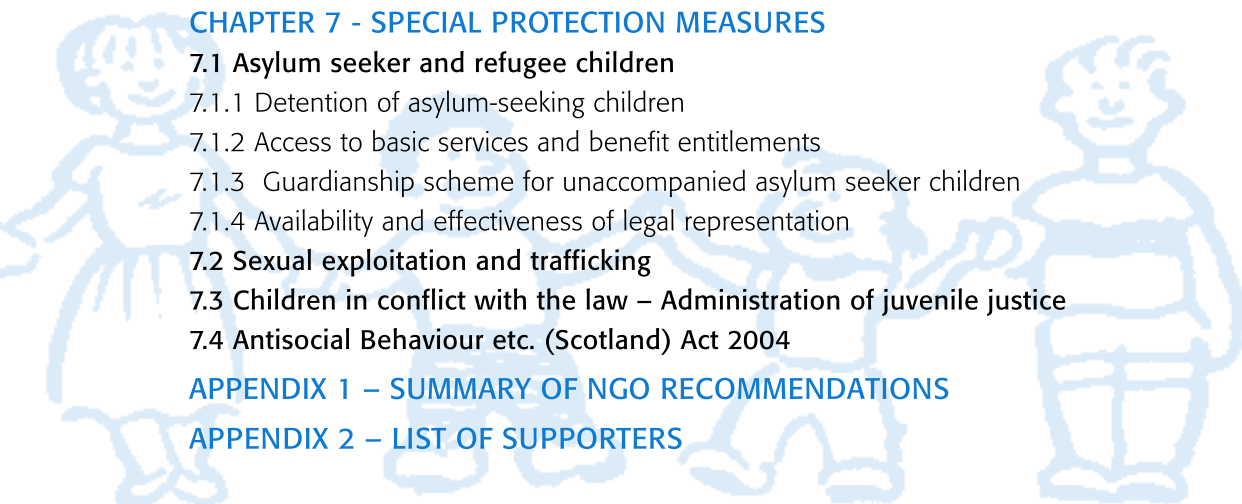
SACR is a company limited by guarantee with charitable status, comprising a 10 member Board of Directors, one part time co-ordinator, and a wide membership of organisations and individuals. SACR works to promote the full implementation in Scotland of the United Nations Convention on the Rights of the Child. The objectives of the alliance are to:

- Promote the importance of children and young people's rights in order to highlight issues of concern to policy makers, the media and the general public, and to disseminate information on the UNCRC;
- Provide a focal point for NGOs in Scotland on child rights issues, and in the preparation of reports to the UN Committee on the Rights of the Child on the progress of UK governments in implementing the UNCRC;
- Establish links with statutory agencies and other bodies to ensure the monitoring and promotion of the full implementation of the UNCRC in Scotland through policy and legislative mechanisms and good practice.



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SCOTTISH ALLIANCE FOR CHILDREN'S RIGHTS

INTRODUCTION

The Scottish Government contributed to the Third Periodic UK Government Report¹ submitted to the UN Committee on the Rights of the Child in July 2007, and also published a more comprehensive report for Scotland². This NGO Report is first and foremost a response to the Scottish Executive (as the Scottish Government was then known) Report, but will form the basis of the report to be submitted to the Committee early in 2008.

The UK government signed up to the United Nations Convention on the Rights of the Child (UNCRC) in 1991, thereby undertaking to reflect its principles in UK policy and legislation. State parties to the UNCRC are required to submit reports roughly every five years to a Committee of eighteen experts from around the world, on the measures adopted that give effect to the rights recognized in the UNCRC, and on the progress made on the enjoyment of those rights by children in the reporting country. The UNCRC reporting process also provides for NGOs, human rights bodies and specialised agencies such as UNICEF to submit reports on the record of governments in implementing the rights set out in the UNCRC.

The Scottish Alliance for Children's Rights (SACR) was set up in 1996 with a remit to promote the full implementation in Scotland of the UNCRC. SACR is the coordinating body for the NGO report for Scotland, and its members include many leading non-governmental organisations concerned with child welfare and rights in Scotland, as well as many individuals committed to promoting and advocating for children's rights.

The UK government has overall responsibility for the implementation of the UNCRC, and the coordination of the state party report to the Committee. The Scottish Government has devolved responsibility for many of areas covered by the UNCRC - specifically social services, public health, education, and youth justice, whilst the UK government has reserved powers in the matter of taxes, social security benefits, immigration / asylum, as well as defence and national security.

The Committee completed their last examination of the record of the UK government in 2002. Whilst acknowledging limited progress in some areas, the conclusions of the Committee made clear their dismay that a wealthy country like the UK had done relatively little to tackle child poverty levels, and were highly critical of the UK government in many other key areas.

SACR has consulted widely over the last three years, and a list of supporters of the NGO Report is contained in the Appendix.

The NGO report highlights areas where there has not been sufficient progress by government in complying with the 2002 Concluding Observations, and makes a number of recommendations on how the Scottish Government can take forward the process of implementation of the UNCRC, and bring about significant improvement in the lives of children in Scotland. The NGO Report, whilst reflecting the format of the Scottish Executive Report 2007, takes the 2002 Concluding Observations as a starting point, but also deals with newly emerging issues since 2002.

¹ Consolidated 3rd and 4th Periodic Reports by the UK Government Reports 16/7/07

² A REPORT ON IMPLEMENTATION OF THE UN CONVENTION ON THE RIGHTS OF THE CHILD 1999-2007, Scottish Executive July 2007

CHAPTER 1 – GENERAL MEASURES OF IMPLEMENTATION

1.1 Independent monitoring structures (National Human Rights institutions)

2002 Concluding Observations

Establish independent human rights institutions with a broad mandate and appropriate powers and resources all across the State party and at the national level, in accordance with the [Paris] Principles relating to national institutions for the promotion and protection of human rights to monitor, protect and promote all the rights of the Convention for all children.

Follow up to the Concluding Observations

One of the most positive steps to promote and protect the rights of children in Scotland since the last examination of the UK, is the appointment of Scotland's Commissioner for Children and Young People (SCCYP). The 2003 Act that established SCCYP gave the office particular duties in relation to the UNCRC and the European Convention on Human Rights (ECHR).

SCCYP may carry out investigations into rights issues affecting either all children and young people, or particular groups of them, but cannot investigate matters that are non-devolved i.e. 'reserved' to the Westminster Parliament, for example, immigration and asylum, tax and welfare benefits, and therefore cannot be said to comply fully with the Paris Principles. SCCYP has no power to look at matters that affect only one child or young person, nor to enter premises to carry out inspections.

The Commissioner for Children and Young People in England has a UK-wide remit in respect of non-devolved matters for all children – a situation that is unsatisfactory in that the English Commissioner has a much weaker human rights framework than the other Commissioners in the UK, and does not comply with the Paris Principles, in that it is not independent of government. Whilst it is acknowledged that there has been good collaborative working between the four children's Commissioners in the UK, the statutory basis for collaboration on monitoring the implementation of the UNCRC is weak.

SCCYP must submit an annual report to the Scottish Parliament on how its statutory duties have been implemented. NGOs in Scotland regard the independence of SCCYP as fundamental to the delivery of her functions, and were extremely concerned, when the Finance Committee of the Scottish

Parliament called this into question in March 2006. Fortunately, the Finance Committee in their Inquiry Report drew back from recommending that the 2003 Act should be amended to bring SCCYP under the control of the Executive rather than the Scottish Parliament.

NGOs submitted evidence to the Committee, acknowledging that it is entirely appropriate that Parliament should exercise adequate scrutiny of the spending of public money, but taking the view that the Commissioner for Children and Young People (Scotland) Act 2003 already provides a suitable framework to balance public accountability with the need for functional independence. NGOs also made clear that any attempt to limit the powers and independence of the SCCYP to those of the English model, would be a retrograde step.

The Finance Committee Inquiry was prompted to some extent by public and parliamentary perceptions about spending on all Parliamentary Commissioners. Legislation to create a Scottish Commission for Human Rights was enacted by the Scottish Parliament in November 2006. The proposals are designed to comply with the Paris Principles, and the Scottish Commission for Human Rights will be independent of the Scottish Government and accountable to the Scottish Parliament. The Commission will be established by spring 2008.

The Scottish Commission for Human Rights' overall objective will be to promote understanding and awareness of, and respect for human rights, and its remit will cover all international human rights instruments ratified by the UK, including the UNCRC and ECHR.

NGO recommendations

- The **Scottish Government** should disseminate accessible information and child friendly guidance on the roles of the different independent human rights institutions in Scotland, at the same time promoting human rights in positive, enlightened ways;
- The role of the **Scottish Parliament** must be to ensure that SCCYP and other Human Rights Commissions / Commissioners are adequately resourced to perform their statutory duties, and must not be subject to interference that might compromise their independence;
- The **Scottish Parliament** should ensure that the remit of SCCYP complies with the Paris Principles.

1.2 Training on provisions of UNCRC

2002 Concluding Observations

Develop systematic and ongoing training programmes on human rights, including children's rights, for all professional groups working for and with children (e.g. judges, lawyers, law enforcement officials, civil servants, local government officials, personnel working in institutions and places of detention for children, teachers and health personnel)

Follow up to the Concluding Observations

NGOs in Scotland have concerns that five years on from 2002 the UNCRC still does not form a meaningful part of training of all professionals who work with children. Whilst there is now a UNCRC component in teacher training in Scotland, many NGOs question whether this has translated effectively to the classroom, and training on the UNCRC for previously qualified teaching / ancillary staff varies widely across education authorities. Teachers and ancillary staff in schools in Scotland undergo less than ten days per annum of any kind of post-qualifying training, and training for many professionals who work with children focuses very firmly on child protection and welfare issues, rather than children's rights. This is borne out by para. 47 of the Scottish Executive Report, which refers to training for police officers in Scotland, and paras. 48-52 referring to the Crown Office, Procurator Fiscal Service and Scottish Prison Service staff.

Para. 54 states that the UNCRC is included in training sessions for the Scottish judiciary, however training for many professionals, including the judiciary, is very often discretionary rather than mandatory.

NGO recommendation

- The **Scottish Government** must ensure that there is a single integrated approach to children's rights training, and ensure that such training on the UNCRC is mandatory for all people in Scotland whose work involves children, from the most senior judges and police officers to nursery staff and classroom assistants in all schools, (including those in the independent sector).

1.3 Measures taken or foreseen to make the principles and provisions of the UNCRC widely known to adults and children

2002 Concluding Observations

Substantially expand dissemination of information on the Convention and its implementation among children and parents, civil society and all sectors and levels of government, including initiatives to reach vulnerable groups

Follow up to the Concluding Observations

There is concern amongst NGOs that the UNCRC is taught very sparingly, if at all, in schools. The Children's Parliament³ carried out a consultation in 2006 to establish the level of awareness and understanding of the UNCRC amongst school children between the ages of 8 and 13⁴. They consulted with around 400 children in Scotland of mixed abilities and backgrounds. 360 of the children had had no previous contact with The Children's Parliament, and 40 of the children had previously taken part in The Children's Parliament groups. Of the 360 with no previous contact, only 15 said they knew about the UNCRC, and only 35 out of this 360 had any kind of understanding of what constituted a 'right'. Children previously involved with The Children's Parliament demonstrated knowledge of UNCRC well beyond that of their non Children's Parliament peers – of the 40 children who had previously taken part in The Children's Parliament groups, 38 had heard of the UNCRC, and were able to define a right along the lines of an 'entitlement'.

There has been little progress on education and dissemination since the 2002 Concluding Observations. Leaflets giving information on the UNCRC distributed some years ago (referred to in para. 57 of the Scottish Executive Report) would be of little effect without proper explanation by a teacher or someone else trained in UNCRC issues. It is not sufficient to produce and distribute such information as a one-off: pupils at primary and secondary level should receive age appropriate material, backed up by proper teaching on the UNCRC on a regular basis.

³ NGO that provides sustainable and meaningful opportunities for children aged 9 to 14 years old to engage in local, national and international democratic processes.

⁴ Consultation on behalf of the Scottish Executive Education Department in October 2006 in school and community settings in South Ayrshire, Western Isles, Midlothian and City of Edinburgh

Para. 61 of the Scottish Executive Report states that, "Education for Citizenship, including the rights and responsibilities of individuals and communities, is a key part of the early years and school curriculum and of community education programmes." This may be true in some areas and in some schools, but in many local authority areas, 'Education for Citizenship'⁵ is taught with the emphasis clearly and firmly on the pupil's responsibility to be a 'good citizen', with no mention of rights.

The Scottish Executive Report refers to Education for Citizenship for children aged 3-18 and states: "Schools can use this framework document in planning a programme of citizenship education...." The crucial word here is 'can'. NGO evidence would indicate that many schools choose not to do so. Para. 61 goes on: "[the framework document].... has led to schools teaching about the Convention and children's rights as a matter of course." This statement is not borne out by NGO experience, and consultations carried out by SCCYP and The Children's Parliament.

There is a general lack of knowledge and understanding of human rights amongst the public in Scotland⁶ as in the rest of the UK. A 2006 Report by Amnesty International⁷ revealed that 65.5% of those public authorities surveyed either did not understand their duties under the Human Rights Act 1998 or could not provide evidence of steps taken to comply with those duties. In some sections of the media and public, the term 'human rights', particularly relating to children, has negative connotations associated with undeserved privileges accorded to 'wrongdoers' – a misperception that recognising and realising the human rights of children, will somehow automatically lead to adults having to relinquish all authority, and a complete breakdown of social order.

NGO recommendations

- The **Scottish Government** should develop and resource a comprehensive strategy for disseminating knowledge on human rights with particular emphasis on the UNCRC and the ECHR throughout Scotland;
- The **Scottish Government** should ensure that information on human rights with particular emphasis on the UNCRC be incorporated into the Early Years and 5-14 curricula in a meaningful and age appropriate way.

1.4 Data collection, monitoring implementation of the UNCRC, allocation of resources

2002 Concluding Observations

Assign coordination of the implementation of the Convention throughout the State party, including to the devolved administrations, to a highly visible and easily identifiable permanent body with an adequate mandate and sufficient resources.

Establish a nationwide system whereby disaggregated data are collected on all persons under 18 years for all areas covered by the Convention....[to be used] to assess progress and design policies to implement the Convention;

The Committee encourages the development of regular reports in England, Northern Ireland, Scotland and Wales....and the promotion of wide public and parliamentary debate on them in the United Kingdom and Scottish Parliaments....;

Undertake an analysis of all sectoral and total budgets across the State party and in the devolved administrations in order to show the proportion spent on children, identify priorities and allocate resources to the "maximum extent of....available resources";

Expedite the adoption and implementation of a comprehensive plan of action for the implementation of the Convention in all parts of the State party.

Follow up to the Concluding Observations

There is no one body with overall responsibility for monitoring the implementation of the UNCRC in Scotland. The collection of data linked directly to the UNCRC is not currently in place, nor does the Scottish Government present annual reports for debate in the Scottish Parliament on the implementation of the UNCRC. The Scottish Government does not currently disaggregate figures for expenditure on children from the total budget in some key areas such as health, which makes it difficult to analyse what proportion of sectoral and total budgets is spent on children, and assess whether the maximum available resources are allocated.

There is no national plan of action as such for children. The previous administration (pre May 2007) set out its vision for all Scotland's children – that they should be: confident individuals, effective contributors,

⁵ *Education for Citizenship – A paper for discussion and development* published in 2002 by Learning and Teaching Scotland (funded by the Executive to support curriculum development)

⁶ MORI poll for the Justice 1 Parliamentary Committee 2005 revealed that the term 'human rights' meant nothing to 29% of respondents (percentage was higher amongst poorer respondents)

⁷ Amnesty International Report September 2006

successful learners and responsible citizens, and to achieve they need to be “safe, nurtured, healthy, achieving, active, respected and responsible”⁸, however the focus of this policy statement was on service provision, and there was little mention of rights.

That said there have been signs of progress towards rights based policies for children in Scotland in the last few years, and NGOs welcomed the establishment in 2005 of the Children’s Rights Team in the Children and Families Division of the Education Department of the then Scottish Executive⁹. Over the last eighteen months, the team has initiated a series of partnership meetings with NGOs and statutory bodies to look at ways of implementing and monitoring the implementation of the UNCRC in the future.

NGO Recommendations

The Scottish Government should:

- Assign co-ordination of the implementation of the UNCRC to a body with an adequate mandate and sufficient resources;
- Ensure that disaggregated data is collected on all persons under 18 for all areas covered by the UNCRC as well as undertaking sectoral budgetary scrutiny and analysis of resources expended on persons under 18;
- Publish annual reports containing disaggregated data and budgetary information for public and parliamentary debate.



⁸ SE Report paras. 64-65

⁹ post May 2007 the Children’s Rights Team are part of the Positive Futures Division, Children, Young People and Social Care Directorate, Scottish Government

CHAPTER 2 – GENERAL PRINCIPLES

2.1 Non-discrimination

2002 Concluding Observations

Monitor the situation of children, in particular those belonging to vulnerable groups, who are exposed to discrimination;

Monitor the comparative enjoyment by children of their rights in England, Scotland, Northern Ireland and Wales;

Develop, on the basis of the results of this monitoring, comprehensive strategies containing specific and well-targeted actions aimed at eliminating all forms of discrimination;

Follow up to the Concluding Observations

There has been no monitoring carried out on a UK-wide basis of the comparative enjoyment of rights by children in different parts of the UK, and therefore no comprehensive strategies put in place to eliminate all forms of discrimination as a result of such monitoring. Concerns of the Committee expressed in 2002 that there is unequal enjoyment of economic, social, cultural, civil and political rights amongst some specific groups of children, have proven to be well justified in Scotland in relation to Gypsy/Traveller children, asylum-seeking and refugee children, disabled children, children with additional support needs and children in alternative care. NGOs are seriously concerned about the lack of progress in improving the situation of these children in Scotland.

2.1.1 Gypsy/Traveller Children

In June 2001, the Scottish Parliament Equal Opportunities Committee published the findings of their first inquiry into the treatment of Gypsy/Traveller communities by public bodies. The report produced thirty-seven broad-ranging recommendations with the specific aim of providing “the basis of practical proposals and examples of best practice which could be adopted by local authorities and other relevant agencies throughout Scotland and could contribute to cultural and social attitudinal changes towards Travellers.”¹⁰

The Equal Opportunities Committee’s review of progress in October 2005, found that “...while there has been some progress across the range of issues, progress has been patchy and it is unlikely that any good practice developed has been shared effectively across the country.”¹¹

This was borne out by a 2005 report by Save the Children Scotland¹², which was a repeat of their *Having Our Say* Peer Research Project Report in 2001. Thirteen peer researchers carried out a survey of 109 Gypsy/Traveller children mainly between the ages of 13 and 17 to find out if progress had been made in the four years. The research findings presented in this report are shocking and disappointing.

Ninety-two percent of the young respondents said they had been picked on because of their ethnic identity. Many mentioned only being able to gain access to health and education services if they denied or hid their identity. For the Gypsy/Traveller children involved in this peer research project racism and discrimination continue to be a part of their everyday lives.

When the Gypsy/Traveller children were asked if discrimination (being picked on, called names, bullied) was happening more or less than 3 years ago, 45% of the respondents reported the situation had got worse, only 10% felt things had got better, and 39% felt the situation had remained the same. The findings indicate that it is still socially acceptable to discriminate against Gypsy/Travellers in Scotland.

This position has not changed in the past four years despite high profile anti-discrimination campaigns by the Scottish Executive such as *One Scotland Many Cultures*¹³. The *Scottish Social Attitudes Survey* for 2006¹⁴ revealed that nearly half of respondents (48%) think that a Gypsy/Traveller would be unsuitable as a primary school teacher, whereas just over a third (37%) say they would be unhappy about a close relative marrying a Gypsy/Traveller.

As well as stigmatisation, the 2005 peer project highlighted poor living conditions, and lack of access to basic services amongst the Gypsy/Traveller community. Whilst the Scottish Executive Housing Strategy in 2005, stated that, “Local authorities are

¹⁰ Equal Opportunities Committee News Release, 3/10/00

¹¹ Preliminary findings of the Equal Opportunities Committee’s review of progress in relation to the recommendations made in the Equal Opportunities Committee’s 1st Report 2001, Inquiry into Gypsy Travellers and Public Sector Policies

¹² *Having Our Say*, A peer research project with young Gypsy/Travellers in Scotland 2005

¹³ “One Scotland Many Cultures” campaign to celebrate the cultural diversity of Scotland and challenge racist attitudes and behaviour initiated in 2002 by Scottish Executive; current campaign phase is referred to as “One Scotland: No Place for Racism”

¹⁴ www.scottishexecutive.gov.uk/Publications/2007/12/04093547

expected to address the accommodation needs of Gypsies and Travellers in their local housing strategies. We expect strategies to make the provision and maintenance of sites, which reflect the preferences and aspirations of Gypsies and Travellers, part of mainstream housing provision," there is little evidence of that aspiration being realised. The most recent discussion paper on the future direction of housing policy in Scotland issued by the present administration in October 2007¹⁵ makes no mention of Gypsy/Traveller communities.

NGO recommendations

- The **Scottish Government** must tackle racism and discrimination against the Gypsy/Traveller community in the media and in the general population in the same way as it is dealt with in respect of other minority ethnic groups, and Gypsy/Travellers must be given a higher profile in anti-discrimination campaigns;
- **Local authorities** must implement strategies to make the provision and maintenance of sites suitable to the needs and aspirations of the Gypsy/Traveller communities, part of mainstream housing provision.

2.1.2 Disabled children and children with additional support needs

Many factors contribute to the over representation of disabled people in low income families. It is also important to recognise the needs of non-disabled children living in a family affected by disability in this context.

Services for children with complex needs can often be seen by public authorities in the "charitable terms" described in the Committee's General Comments 2003¹⁶, and parents taking a pro-active stance in respect of requesting services for their children can be seen as overly demanding, sometimes even intimidatory towards staff, simply for advocating that their child has a legal right to a service.

The Education (Additional Support for Learning) (Scotland) Act 2004 replaced the law on special educational needs in education from 14 November

2005, and makes it easier for parents of children who have 'additional support needs' in education to get the help they require for their child. The Act broadened the definition of those requiring special help with their education to include problems such as social and emotional difficulties, bullying, not having English as a first language, being a young carer, as well as physical disabilities – anything that impairs a child's ability to learn. The education authority must provide '*adequate and efficient support*'¹⁷ to a child with additional support needs, so that the child is able to benefit fully from his / her education, however this is subject to the proviso in section 4 (2) (b) that the authority need not incur 'unreasonable' public expenditure.¹⁸

NGO Recommendations

- **Local authorities** and other bodies must receive additional funding from the **Scottish Government** to ensure that care and support is provided to disabled children / children with additional support needs in a way that recognises the rights, needs and aspirations of the individual and takes full account of the views of the child as well as the parents;
- Any measures to address child poverty by the **UK / Scottish governments** must consider the specific needs of disabled children / children with additional support needs and their families, as well as the need to address poverty among disabled parents.

2.2 Best interests of the child

There has been concern amongst NGOs that the principle of the best interests of the child being paramount in all policy and legislation has not been fully respected in the justice system, and has been further eroded by the Antisocial Behaviour etc. (Scotland) Act 2004. This is dealt with in more detail in Chapters 3 and 7.

¹⁵ DISCUSSION PAPER ON THE FUTURE DIRECTION OF HOUSING POLICY IN SCOTLAND 31 October 2007

¹⁶ UN Committee on the Rights of the Child General Comments No.5 CRC/GC/2003/5

¹⁷ Education (Additional Support for Learning) (Sc) Act 2004 section 4 (1) (a)

¹⁸ Education (Additional Support for Learning) (Sc) Act 2004 section 4 (2) (b)

CHAPTER 3 – CIVIL RIGHTS AND FREEDOMS

3.1 Physical punishment

2002 Concluding Observations

With urgency adopt legislation throughout the State party to remove the “reasonable chastisement” defence and prohibit all corporal punishment in the family and in any other contexts not covered by existing legislation;

Follow up to the Concluding Observations

Currently in Scotland, the law does not give children the same protection from assault as it gives to adults. The Criminal Justice (Scotland) Act 2003 provides for a defence of justifiable assault on children by adults, if such an assault can be deemed to be reasonable chastisement.

This enactment expressly contradicts the Committee’s recommendation to remove the reasonable chastisement defence and prohibit *all* corporal punishment in the family and in any other contexts not covered by existing legislation. Section 51 of this Act prohibits adults from delivering blows to the head, shaking and using an instrument to punish children. The Scottish Parliament had a further opportunity to remedy this discrimination against children in 2005, and failed to do so, when considering sections of the Family Law Scotland Bill¹⁹.

Child protection workers argue that banning all physical punishment of children would help them, for example, in a case where a child has bruising on its legs over a sustained period – at present parents can argue that such marks were caused by ‘reasonable chastisement’ of a ‘naughty’ child. A clear ban would allow child protection workers to intervene because the law is unequivocal.

Current law makes it harder for people who suspect abuse to report their concerns. When children have been abused by their parents or other carers, it often emerges that neighbours, friends or other relatives had been aware of ill-treatment, but did not feel able to report it. The legal permissibility and public acceptance of physical chastisement can prevent people from acting on their concerns.

2002 Concluding Observations

Promotion of positive, participatory and non-violent forms of discipline and public education programmes on the negative consequences of corporal punishment.

Follow up to the Concluding Observations

Again in contradiction of the Committee’s recommendation, there has been no sustained national campaign to promote positive, participatory and non-violent forms of discipline. The figure provided in the Scottish Executive Report para. 222 of 700,000 leaflets is several years out of date as it was given in an oral Parliamentary answer by the Minister for Justice on 17th June 2004. Leaflets can only be effective if part of a wider public information and support campaign. Although specific projects are being funded, there is a need for comprehensive and accessible information for all parents and carers. It is also crucial for children to have access to information on their rights.

The Scottish Executive Report states that “smacking is embedded in Scottish society”, however a 2007 survey carried out for Parenting Across Scotland (PAS)²⁰ among 1250 parents²¹, found that the vast majority (89%) preferred to discuss issues calmly with their child when problems arose. However, a fifth of parents said they smacked or hit their child at least once or twice in the past year, while over a third (36%) had threatened to do so. Just under a third of Scottish parents believe children should not be smacked in any circumstances, 63% believe that “smacking is not a good thing but sometimes parents need to do it” and only a small proportion – 7% – think there is nothing wrong with smacking to teach children right from wrong.

It is hardly surprising that almost two thirds of parents interviewed still believe that smacking is acceptable, albeit undesirable, given that some forms of physical punishment were given approbation by the Scottish Parliament in the Criminal Justice Act 2003. Physical punishment could be seen to have been endorsed by the Scottish Executive, firstly by its failure to introduce a parenting strategy in Scotland in conjunction with an effective public education programme on non-violent methods of discipline, and secondly by the failure to amend the Criminal Justice Act when the opportunity arose during considerations of the Family Law (Scotland) Bill in 2005.

¹⁹ Justice 1 Committee Meeting, 16th November 2005

²⁰ PAS is a multi-agency partnership, funded by the Scottish Government involving Aberlour Childcare Trust, Capability Scotland, Children 1st, Family Mediation Scotland, One Parent Families Scotland, Relate Scotland Scottish Adoption Association, Stepfamily Scotland and Scottish Marriage Care.

²¹ Survey was carried out for PAS by Ipsos MORI based on telephone interviews with 1250 parents across Scotland, conducted in January and February 2007

NGO recommendations

The Scottish Government should:

- Undertake legal reform as a matter of urgency: The Criminal Justice (Scotland) Act 2003 should be amended without delay to make any form of physical violence against a person under 18 a criminal offence and the defence of 'reasonable chastisement' removed;
- Initiate without further delay widespread promotion of positive, participatory and non-violent forms of discipline and public education programmes on the negative consequences of corporal punishment as called for in the 2002 Concluding Observations.

Emerging issues

3.2 Freedom of association and peaceful assembly

The Antisocial Behaviour etc. (Scotland) Act 2004 Part 3, places unnecessary restrictions on the right to freedom of association and assembly by giving police new powers to disperse and exclude, for a set period of time, groups of two or more people in designated areas, where a senior police officer has reason to believe that the presence of these persons in the designated area "is causing or is likely to cause distress to any members of the public".

Para. 238 of the Scottish Executive Report states that the right to freedom of association and peaceful assembly was enshrined in UK law by the Human Rights Act, and that those rights apply equally to adults and to children. Para. 239 makes the claim that all of the measures in the Antisocial Behaviour etc. (Scotland) Act 2004 Part 3, including dispersal powers, comply with the ECHR. NGOs disagree, and take the view that the provisions in Part 3 of this Act conflict with Articles 15 and 31 of the UNCRC as the dispersal orders apply to all people within a group whether or not they have themselves engaged in antisocial behaviour. Orders under Part 3 can prohibit anyone who does not reside within the designated area to leave and not return to the area for up to 24 hours, even if they have done nothing wrong.

There is a risk that normal teenage behaviour within a designated area can lead to children having their human rights curtailed when the police receive a complaint from a member of the public, whether or not the complaint is justified. Older members of the community can feel intimidated by groups of young people in public places, however the threat is often more perceived than real, and it is important to recognise the rights of all age groups to pursue their social lives without unnecessary interference, when they have not committed any offence.

NGOs recognise that the UNCRC and ECHR both allow for the right of an individual to freedom of association and peaceful assembly to be curtailed in circumstances where public order / safety or national security is threatened, or where necessary for the protection of the health, morals or rights of other citizens, however such matters are often subjective, and law enforcement officers are regularly required to balance the rights of individuals to self-expression with the rights of the rest of the community to live in peace. The difficulty is that dispersal orders are indiscriminate, and theoretically could be invoked on the most flimsy of pretexts, however NGOs welcome the fact that to date police forces in Scotland have used these additional powers very sparingly.

NGO recommendations

- **The Scottish Government** must amend the Antisocial Behaviour etc. (Scotland) Act 2004 to reflect the terms of Article 15 (2) of the UNCRC, and to take account of Article 11 of the ECHR.
- More should be done by the **Scottish Government**, police and local authorities to encourage tolerance of non-criminal behaviour of children, and positive recognition of the contribution children can make to their communities.

CHAPTER 4 – FAMILY ENVIRONMENT AND ALTERNATIVE CARE

4.1 Looked after children

2002 Concluding Observations

Ensure consistent legislative safeguards for all children in alternative care, including those who are privately fostered;

Follow up to the Concluding Observations

Children in alternative care or 'looked after and accommodated children' continue to be one of the most marginalised and socially excluded groups in Scotland. According to Scottish Executive figures, in 2006 there were 1,638 children in residential settings, 3731 children living with foster carers and 184 with prospective adopters²². Many of these children have suffered from the impact of poverty and deprivation on their families as well as the effects of drug and alcohol use, neglect and abuse. Poor educational achievement, health problems and mental illness disproportionately affect this group.

There have been legislative changes in the regulation of residential services for children since 2002. The Regulation of Care (Scotland) Act 2001 set up the Scottish Commission for the Regulation of Care ('the Care Commission'), which inspects care services including residential care homes for children, secure care establishments (along with the Inspectorate of Education (HMIE)) and providers of foster care services against National Care Standards. The Standards as currently published are not child-friendly in assisting children to understand the entitlements and protections they provide to them, with too much emphasis on written text. They do not take into account the lower than average literacy skills levels of many looked after and accommodated children.

The Regulation of Care (Scotland) Act 2001 also created the Scottish Social Services Council, which has a duty to promote high standards of conduct and practice among social services workers, and in their education and training. NGOs welcome established minimum level educational qualifications and a professional register for residential care staff, however, access to training remains restricted due to lack of resources for cover staff to allow attendance at training courses.

Looked after children do not always get a placement that matches their individual needs, and placements can often be some distance from the area where they have been living.

Since 2002, local authorities have expanded their use of advocacy services for children in residential child care, but looked after and accommodated children still do not have an automatic right to independent advocacy services. Recent funding cuts or freezes in many local authority areas have sometimes resulted in reductions in levels of independent advocacy services. Those living in foster care and children with additional support needs continue to have only limited access to independent advocacy services despite their increased isolation. Despite large and increasing numbers of children being placed in foster care by local authorities, most independent advocacy services are required to focus on those in residential care, and advocacy services for those in foster care are severely under-resourced.

As a comparison, 3,493 children were in foster care in 2005 whilst Who Cares? Scotland²³ were only able to provide advocacy to 111 of these children in 2005/06. In a recent consultation undertaken by Who Cares? Scotland (2007, unpublished) young people living in foster care reported that some do not have an allocated social worker, much less access to an independent advocate.

NGOs find that children in secure care are denied the right to participation more so than children accommodated in other settings. Independent advocates and local authority Children's Rights Officers often have difficulties accessing the operating policies and procedures of secure units, and this affects their ability to carry out their safeguarding and advocacy role.

NGOs experience suggests that while complaints procedures exist, they still do not work well for children living in care.

When children leave care, support can be inadequate as there are insufficient throughcare and aftercare services, and many can leave secure care returning directly to their family or community with little support. Given the demand for places, NGOs report pressures for children to leave care at 16 or 17 years of age before they are ready for independent living and without ongoing support networks.

²² Scottish Executive National Statistics Publication December 2006.

²³ Who Cares? Scotland – NGO - one of main providers of advocacy, advice, information and support for children & young people in care.

NGO Recommendations

The Scottish Government should:

- Initiate a national strategy for looked after and accommodated children to inform services and policies;
- Put in place an optimum framework for qualifications in residential childcare work, along with efforts to address the pay, conditions and status of residential childcare staff;
- Ensure that there are more training opportunities for foster carers so they are able to understand and uphold the rights and meet the needs of the children in their care;
- Ensure that more resources are provided for local authorities so that children can be accommodated in their own local authority area, and that all looked after and accommodated children in all areas have adequate access to therapeutic and other support services;
- Enshrine in law the legal right to independent advocacy, and put in place sufficient services to make it consistent and accessible.



CHAPTER 5 – BASIC HEALTH AND WELFARE

5.1 Child poverty

2002 Concluding Observations

(a) To take all necessary measures to the 'maximum extent of...available resources' to accelerate the elimination of child poverty

(b) To better coordinate and reinforce its efforts to address the causes of youth homelessness and its consequences

(c) To review its legislation and policies concerning benefits and social security

Follow up to the Concluding Observations

The UK and Scottish Governments have stated that ending child poverty is a priority in the UK since the historic pledge in 1999 to eradicate child poverty by 2020. On the way to achieving this goal the UK government has set targets to reduce child poverty by a quarter by 2004/05 and by half by 2010. In Scotland, the government met its target to reduce child poverty by a quarter by 2004/05 (despite this target not having been achieved UK wide). Since 1998/99 there has been a notable reduction (35% or 130,000) in the numbers of children living in *relative* poverty in Scotland²⁴.

However, child poverty in Scotland, as in the rest of the UK, remains extremely high. 250,000 children are officially recognised as income poor – that is nearly 1 in 4 children in Scotland. It is almost impossible to ascertain whether the government has taken "all necessary measures to the 'maximum extent of...available resources' to accelerate the elimination of child poverty". The Scottish Government does not currently collate public spending data in a way that can be used to monitor how much spending is allocated towards eradicating child poverty.

Emerging issues

Extensive analysis shows that progress on reducing child poverty is likely to stall unless new policy approaches are implemented²⁵. Current policy and initiatives are not making an impact on the families living in the most severe poverty²⁶. Save the Children estimates that there are 90,000 children living in severe poverty in Scotland and that this number has not changed in recent years²⁷. Research suggests that not receiving any income from employment and lack of uptake of benefits and tax credits are the key risk factors of severe poverty, along with transitions into and out of work²⁸. Furthermore, paid work currently fails to provide an effective route out of poverty for too many families. Half of children living in poverty live in families where an adult is working part time, a quarter where an adult works full time²⁹.

While the new Scottish Government (post election May 2007) has signed up to the 2020 aim of ending child poverty, it has not committed to the 2010 target of halving child poverty. The 2010 target is a UK wide target but it requires Scottish Government commitment to be achievable. For example, rising employment levels are primarily promoted by UK policy, but are supported by devolved policies focussed on removing barriers to employability, such as childcare, and assisting people with transitions into sustainable employment. Means-tested tax credits aimed at families both in and out of work is again reserved policy, but supported by devolved policy to improve advice provision. A formal mechanism is required to ensure policy at Westminster and Holyrood is joined-up and complementary.

The Scottish government's homelessness legislation - which would see all people who are homeless being given the right to a permanent home by 2012 - has led to progress in addressing the problem of youth homelessness, however the benefits system, which is the responsibility of the UK government, still fails to protect vulnerable young people who cannot rely on their families for support. The reduced rates of benefit entitlements for 16 and 17 year olds, including housing benefit, continue to have a detrimental effect on young people.

²⁴ Scottish Households Below Average Income 2004/05

²⁵ *What will it take to end child poverty*, Donald Hirsh, Joseph Rowntree Foundation (2006)

²⁶ *Britain's Poorest Children Revisited*, Save the Children (2006)

²⁷ *Measuring severe poverty in the UK*, Save the Children (2007)

²⁸ *Britain's Poorest Children Revisited*, Save the Children (2006)

²⁹ *Poverty in Scotland 2007*, CPAG in association with SPIU and Poverty Alliance (2007)

NGO Recommendations

The Scottish Government must:

- Implement an action plan to eradicate child poverty in Scotland as an urgent priority, including a commitment to the UK target of halving child poverty by 2010;
- Establish mechanisms to measure severe and persistent poverty and target resources at those most in need;
- Ensure mechanisms are in place to co-ordinate a joined-up and complementary approach to policy from the UK and Scottish Governments to end child poverty in Scotland including child poverty proofing all government policy (to be extended to local authorities and all public bodies);
- Increase emphasis on initiatives to address social exclusion of severely poor children;
- Ensure more transparency in the amount spent on ending child poverty and in monitoring this spending.

The UK Government must:

- Urgently increase investment in respect of both in and out of work benefits. To achieve its target to halve levels of child poverty by 2010, the UK Government needs to invest an additional £4 billion;
- Ensure that young people have entitlement to non-discriminatory levels of benefits.

5.2 Breastfeeding rates

2002 Concluding Observations

Take all appropriate measures to reduce inequalities in health and access to health services, to promote breastfeeding and adopt the International Code for Marketing of Breast-milk Substitutes.

Follow up to the Concluding Observations

Breastfeeding rates in Scotland have not risen substantially since 1999 and remain pitifully low, especially in poorer communities, despite the enactment of the Breastfeeding, etc. (Scotland) Act 2005. It is clear that more needs to be done to counteract negative cultural attitudes towards breastfeeding particularly in poorer communities. The Scottish Executive's figures show that between 1999 and 2004 less than 10% of 15-19 year old mothers in the lowest SIMD³⁰ quintile were still breastfeeding 6-8 weeks after their babies' births. Even in the highest quintile for this age group, rates are still low at just over 20%.

The UK government has not implemented the *International Code for Marketing of Breast-milk Substitutes*, instead adopting an EU directive on the composition and marketing of baby milks, which many professional bodies and NGOs see as increasing the use of substitutes.

NGO recommendation

- The **Scottish Government** must initiate a health education campaign to encourage breastfeeding by mothers in all income groups, with resources targeted at mothers living in poverty, particularly teenage mothers;
- The **UK government** must make more progress in the implementation of the *International Code for Marketing of Breast-milk Substitutes* and the World Health Assembly's *International Marketing Code*.

³⁰ Scottish Index of Multiple Deprivation

5.3 Teenage pregnancies and sexual health strategies

2002 Concluding Observations

Take further necessary measures to reduce the rate of teenage pregnancies through, inter alia, making health education, including sex education, part of the school curricula, making contraception available to all children, and improving access to confidential and adolescent-sensitive advice and information and other appropriate support.

Follow up to the Concluding Observations

Again the gap between outcomes for rich and poor children is starkly demonstrated by the Scottish Executive's own figures³¹, which show that girls under 19 who live in the most deprived communities are almost five times more likely to become pregnant than those who live in the most affluent communities. The Scottish Executive Minister for Health and Community Care commented in 2006 that Scotland's "teenage pregnancy rates are among the worst in Europe and more people are being treated for sexually transmitted diseases." He went on to acknowledge that as with so many disease areas, people living in less affluent circumstances are more likely to have poor sexual health than those living in more affluent circumstances³².

Rates of teenage pregnancies in Scotland changed very little between 1999 and 2004 and figures released by the Scottish Government in November 2007 show that the rate of pregnancies for every one thousand 15 -19 year old girls actually rose from 55.6 in 2004 to 56.7 in 2007. They also indicate that the Scottish Government is unlikely to fulfil its target for cutting accidental conceptions among school aged girls in poorer communities.

In January 2005 the Scottish Executive launched *Respect and Responsibility: Scotland's Strategy and Action Plan for Improving Sexual Health*³³. £15 million of additional funding was allocated over three financial years (2005-2008) to implement this strategy, which specifically stated that "everyone deserves equal access to sexual health services and information regardless of race, gender, ethnicity, age, disability, sexual orientation and religion".

That said, it would appear that some are more equal than others. There is still a considerable amount of anecdotal evidence that the teaching of sexual health education varies greatly in schools across Scotland, and is sometimes dependent on the attitude of teachers or parents. For example, it can often be the case that a young person with a learning difficulty can go through their entire school career without receiving sex and relationship education, if the child's parents do not wish them to receive it.

It is perhaps early to draw firm conclusions on the long term impact of the strategy and action plan, however concern has been expressed by NGOs that *Respect and Responsibility* allows different messages to be given to different sections of the population (for example, educational materials citing abstinence as the only acceptable method of contraception, being approved for use in Roman Catholic schools). A more holistic approach requires to be taken with sexual health matters. There are difficulties in funding a holistic service throughout Scotland to provide education, clinical services, counselling and support services as these duties fall within the remit of 12 NHS (National Health Service) Boards, several different departments within 32 local authorities, and at least two departments of the Scottish Government.

NGOs have concerns about the experience of other groups of marginalised young people including those who are looked after, school-refusers, and young people with emotional and behavioural problems. These groups of young people are often the ones most in need of sex and relationship education, but can miss out because of poor school attendance.

Many young people in Scotland are discriminated against as they are not able to access appropriate sexual health services – either because there are insufficient services in their area, or because of other restrictions, such as physical disability, being looked after in residential care, or a lack of privacy and confidentiality in rural areas necessitating cost of travel to another area.

NGOs have found that most young people are not aware that they have the right to access health services confidentially before the age of 16, and this reflects a general lack of awareness of their rights.

³¹ Table 50 page 81 of the Scottish Executive Contribution to the UK Report to the UN Committee on the Rights of the Child

³² *Respect and Responsibility: Scotland's Strategy and Action Plan for Improving Sexual Health - Annual Report 2006*

³³ *Respect and Responsibility: Scotland's Strategy and Action Plan for Improving Sexual Health*

Concern has been raised about the lack of support services available for young Lesbian Gay Bisexual and Transexual (LGBT) people, particularly in rural areas; lack of support means that young people face further problems and in many cases their mental health suffers. Young people report in consultations that there is a lot of ignorance amongst young people and adults about LGBT issues, which can lead to bullying and misunderstanding.

Children from minority ethnic backgrounds also face additional barriers in accessing sexual health services due to a lack of interpreters, translation of written materials, and basic staff training in diversity issues.

Policies that restrict provision of contraception for under 16s is discriminatory and conflicts with the national policy of trying to reduce teenage pregnancies and rates of Sexually Transmitted Infections (STIs). Examples of this include condom distribution services that were only for people over the age of sixteen, and policies for foster parents / residential units that restrict the issue of condoms to over 16s.

One issue that has frequently arisen in NGO discussions was the need for consistency in the funding and provision of services. The 'project culture', so prevalent in Scotland, can be damaging as young people who make the effort to build trust with a service can be left without vital support if that service is closed down due to project funding being withdrawn.

Whilst the Scottish Executive's sexual health strategy does emphasise the need for education and prevention, and additional funding was provided to help implement *Respect and Responsibility*, regrettably it appears that the funding received by NHS Trusts was directed to front-line clinical services only.

NGO recommendations

The Scottish Government should ensure that:

- All children have access to quality sex and relationship education that is appropriate for their needs and age: the right of a child who wishes to have information on sexual health issues should over-ride the wishes of parents who wish to withdraw them from sex education classes, or the wishes of teachers who have religious objections to the subject matter;

- All children have a choice of sexual health services that they can freely access locally and confidentially;
- Sexual health services monitor use by ethnic group, have processes to arrange translation of written information and access to interpreters where required;
- All sexual health services staff should receive basic equality and diversity training as a minimum, and appropriate staff training should be provided where client groups have specific needs;
- Local authorities and health boards work with NGOs and consult with young people to design the best possible provision of services.

5.4 Mental health

2002 Concluding Observations

Take all necessary measures to strengthen its mental health and counselling services, ensuring that they are accessible and sensitive to adolescents, and undertake studies on the causes and backgrounds of suicides.

Despite initiatives such as the *see me.....* campaign in 2002,³⁴ the *HeadsUpScotland*,³⁵ and *Choose Life Strategy*³⁶ many NGOs are of the view that improvements have been slight since 2002, and little has been acted upon since the Scottish Executive Review of Child and Adolescent Mental Health (CAMH) Services in 2005. There is little evidence of much needed development being in place, and it would appear that CAMH services are as stretched as ever. Some feel that the best interests of children are still not being addressed, and there is at times a lack of rights awareness amongst staff and children.

As with sexual health services, many workers in the mental health field report problems of short-term projects that are running out of funding, and a lack of any purposeful evaluation. There are still shortages of child psychologists and adolescent counselling services, and many children have difficulties in accessing services, particularly in rural areas.

³⁴ *see me.....* SE publicity campaign in 2002 to help eliminate the stigma and discrimination that can be associated with mental illness

³⁵ *Heads-Up* works on mental health promotion for all; prevention of mental health difficulties for vulnerable groups such as children who are looked after and children of homeless families

³⁶ *Choose Life* - a national strategy and action plan for preventing suicide in Scotland launched in 2002 – aims to reduce suicide rates by 20% by 2013.

NGO recommendations

The Scottish Government must:

- Improve access to mental health services for children, and ensure that services are local, accessible, and child friendly;
- Improve delivery of child and adolescent mental health services with more training for front line staff, and use of social support, peer support and the broadening of mentoring or befriending services.

Emerging Issue

5.5 Substance abuse

The problem of children affected by parental drug / alcohol abuse was not mentioned in the 2002 Concluding Observations. Current estimates suggest that there are 60,000 children affected by parental drug use, and 100,000 children affected by parental alcohol abuse in Scotland. It is likely that these are under-estimates. Since the publication of the UK *Hidden Harm* report 2003, there has been much greater political and public awareness of the needs of children of drug users. The Scottish Executive response to *Hidden Harm* (2004) and *Hidden Harm: Next Steps* (May 2006) have also widened the policy agenda in Scotland to include children of problem alcohol users. The phrase 'hidden harm' encapsulates two key features of the problem: the children are often not known to services; and they suffer from harm through poor parenting, physical and emotional neglect and exposure to danger.

In May 2006 and January 2007, Aberlour Child Care Trust, one of Scotland's main charitable organisations providing services for children and families affected by parental substance abuse, published two reports *Have We Got Our Priorities Right?* (2006) and *A Matter of Substance* (2007), following two think tanks of professionals and organisations working in the field. The purpose was to promote dialogue on appropriate responses to children and families whose lives are affected by drug and alcohol abuse.

These reports highlighted that substance abuse impacts on children in a number of ways: lack of stability in the household, lack of basic necessities like food, heat, and a safe environment, increased risk of domestic violence and association with criminal culture, lack of affection from and poor attachment to parents, feelings of stigma and isolation and fears of being removed from parents if the problem becomes known to authorities. In addition it was noted that children of parents with substance use

problems are less likely to benefit from the school environment due to lateness, poor attendance, and poor concentration and indeed often become carers of their parents and younger siblings.

Families affected by substance abuse are more likely to have a number of problems requiring intervention and support from a range of agencies. The lack of contact and co-ordination between services, particularly between adult services and children's services can be detrimental to the health and well-being of the children. Concerns for children of drug users are immediate due to illegality. The more tolerant societal attitudes towards alcohol use does mean that services apply different thresholds for intervention when the problem is alcohol related with services under-estimating the effect on the children and also not taking account of the children's circumstances until a later stage.

One of the key conclusions of the second Think Tank is that whilst there are some distinct differences, parental alcohol use and parental drug use have a similar impact on a child's physical, emotional and social development and well-being. What does make a difference for the child is the more tolerant approach of society to alcohol, arising from its cultural and legal acceptability. This influences policy making, planning and approach of services.

There is no consistent collection of information by alcohol services on the children living with alcohol users, but in contrast there are recent improvements whereby drug services routinely collect information on children living with problem drug users.

NGO Recommendations

The Scottish Government must:

- Ensure greater long term and sustainable funding of services for children affected by all kinds of substance abuse with children having a say in the design and delivery of services;
- Facilitate expansion of adult services to include giving consideration to the rights and needs of children affected by substance abuse;
- Ensure that current services are improved by better information sharing and coordinated action between agencies and services; regular multi-disciplinary training and development to help staff understand the effects on children of parental substance abuse; and more emphasis on early intervention and services based in non-stigmatised settings.

CHAPTER 6 – EDUCATION, LEISURE AND CULTURAL ACTIVITIES

6.1 Education

2002 Concluding Observations

Ensure that legislation throughout the State party reflects article 12 and respects children's rights to express their views and have them given due weight in all matters concerning their education, including school discipline;

Take appropriate measures to reduce temporary or permanent exclusion, ensure that children throughout the State party have the right to be heard before exclusion and to appeal against temporary and permanent exclusion, and ensure that children who are excluded do continue to have access to full-time education;

Take all necessary measures to eliminate the inequalities in educational achievement and in exclusion rates between children from different groups and to guarantee all children an appropriate quality education;

Follow up to the Concluding Observations

6.1.1 Participation in education

Para. 449 of the Scottish Executive Report includes as 'recent' legislation the Standards in Scotland's Schools etc. Act 2000. This Act requires education authorities, in carrying out their duties to provide education, to "have due regard to" the views of pupils in decisions that significantly affect them. The Scottish Schools (Parental Involvement) Act 2006 modernises and strengthens the framework for supporting parental involvement in school education, but NGOs are extremely disappointed there is no mention in this Act of strengthening the framework for involvement of pupils in their own education.

In 2002, the Committee welcomed the introduction of pupil councils in all Scottish schools. Para. 192 of the Scottish Executive Report acknowledges that participation in pupil councils is uncommon. A survey of just under 2000 school pupils aged 11-18 commissioned by the Scottish Consumer Council (SCC) in 2007³⁷, showed that while 84% of schools in Scotland have pupil councils, only around 8% of the sample reported that they are a member of a school council. Of those who were not currently members, 18% felt that the council did not have enough power to make a difference. 40% of the total sample disagreed or strongly disagreed with the statement that "the [pupil] council has given me a say on how my school is run". Similarly less than a

third of the pupils could think one important thing that had changed because pupils had asked for change to happen. On a more positive note, 41% of 11 – 16 year olds said they "would find it easy to talk to teachers if there were things I didn't like about the way the school was run" – a considerable increase from the result in a 2005 survey carried out by SCCYP when only 24% agreed with a similar statement.

NGOs have concerns that children in different schools are having entirely different experiences of pupil councils – and of being consulted in other ways. The problem of lack of training for staff and for pupils on children's rights generally, and in particular children's right to participation, is a strong factor. The SCC study shows that many older pupils feel cynical about the extent to which pupils can actually change things.

None of the 400 children who took part in The Children's Parliament consultation mentioned that they felt more empowered by pupil councils. In fact, none of the children mentioned pupil councils at all during discussions of rights in education - a significant omission.

Articles 12 and 13 of the UNCRC set out the right to form and express an opinion. In order to do this many children will need some kind of communication aid. NGOs would like to see communication impairment being recognised and addressed in the same way as a physical impairment. There is no co-ordinated, strategic plan for the delivery of such support in Scotland, but such equipment is vital for many children to enjoy their rights.

NGO Recommendations

The Scottish Government should:

- Ensure that the UNCRC and ECHR is reflected in the overall ethos and management of schools; training of staff and incorporating the UNCRC and ECHR into the curricula would go some way towards achieving this;
- Develop guidance for all schools on pupil participation to ensure consistent working standards across Scotland;
- Put in place a co-ordinated, strategic plan for the delivery of communication aids for every child with communication impairment to ensure that all children in Scotland have the right to express their views on their school and participate in decisions that affect them.

³⁷ Poll conducted by Ipsos MORI in Scotland for Scottish Consumer Council in September 2007

6.1.2 Exclusions

The Scottish Executive / Government figures show that school exclusions for a fixed period continued to rise each year between 2003/04 and 2006/07. In total there were 44,794 exclusions of about 22,800 pupils from Scottish schools in 2006/07 – an increase of 4 per cent on the previous year³⁸. 248 children across Scotland were removed permanently from school. The Scottish Government is currently preparing best practice guidance on exclusions and will consult on this later in 2008.

Statistics show that pupils entitled to free school meals (one of the main indicators of poverty), pupils with additional support needs, and pupils looked after by the local authority, all had higher exclusion rates than other pupils. Where a pupil had all three risk factors the exclusion rate was over 15 times that of the overall school population. Although information on pupils with a disability was incomplete in the 2005 school census, where pupils had been assessed or declared as having a disability, the rate of exclusion was 50% higher than amongst other pupils.

Exclusions of children with additional support needs were generally more common in mainstream classes than in special schools. Pupils with social, emotional and behavioural difficulties had the highest rates of exclusion. Pupils in special classes within mainstream schools had the lowest exclusion rate, suggesting that this rate of exclusion could be reduced if pupils were given the appropriate support.

NGO Recommendation

- The **Scottish Government** must look at further ways of reducing exclusions in schools and pilot alternative methods of engaging excluded children in the education system.

6.1.3 Inequalities in educational attainment

i) Child poverty

Child poverty is linked inextricably with inequalities in educational attainment. In the 15% most disadvantaged communities, 11% of children leave with no qualifications, compared with the national average of 3%.

ii) Children with Additional Support Needs / disabled children

Results for Special Schools were highlighted in the Attainment and School Leaver Qualifications 2005 – 06 figures published by the Scottish Executive, showing

that there has been a decline in the number of qualifications gained in special schools, as well as a decrease in the proportion of passes, between 2004/05 and 2005/06. However, there is a lack of information on the performance of disabled children in mainstream settings. This has been recognised, and moves have been made to address this. The 2005 pupil census, a 'snapshot' from September of the school year, included information on disabled students for the first time.

NGOs welcome the recognition of the need to gather information on disabled students, and look forward to thorough analysis of this information in coming years. However, there are many more steps to be taken if this gap is to be filled.

The Scottish Survey of Achievement does not record achievement levels for disabled pupils. It deliberately excluded students in special schools from the 2005 survey. Pupils with special educational needs who were being taught in mainstream schools were not excluded, although schools could use their discretion and withdraw such pupils from their samples, if they considered the experience potentially or actually distressing for the children. There was no data source to indicate the achievement levels for such students. At the very least, the Scottish Government need to ensure that attainment levels for disabled students are measured, not just in terms of grades achieved, but whether they have reached their potential. Without this information we cannot ensure that the needs of this group are included in relevant policies and initiatives, and will not be able to meet the requirements set out in the 2002 Concluding Observations.

As stated in Chapter 2, the Education (Additional Support for Learning) (Scotland) Act 2004 replaced the law on special educational needs and broadened the definition of those requiring special help with their education. However the experience of many children in Scotland with additional support needs would suggest that education authorities often interpret section 4 (2) (b) of the Act (which states that they need not incur "unreasonable expenditure") to justify failure to provide a level of service that many would regard as essential for the child to achieve his or her full educational potential. The difficulty with this section of the Act is the question of who defines what is or is not *unreasonable* expenditure?

Another problem is that in terms of this Act, the right to ask for an assessment of additional support needs lies with the parents where the child is under sixteen years.

³⁸ Scottish Government National Statistics Publication Exclusions from Schools 2006/07

NGO Recommendation

- The **Scottish Government** must target resources to address inequalities in the educational attainment of the poorest children, looked after children, Gypsy / Traveller children, disabled children / those with additional support needs and asylum seeker / refugee children.

6.1.4 Bullying

For many children in Scottish schools bullying is an ever present issue, and was a day to day reality for the children consulted in The Children's Parliament consultation in 2006³⁹. There was agreement amongst most of the children who took part that it did not always help for a child being bullied to tell a teacher. Adults often appeared uninterested or ineffectual. Some of the quotes from the children aged between 8 and 13 illustrate this:

Telling just makes it worse 'cos then the person who's bullying you finds out and they just do even more things.

I kept all the notes I got from this girl who was bullying me and I told the teacher. She [the teacher] just said 'put them in the bin'.

Within the last year the ChildLine Scotland helpline has taken calls from around 35,000 children. The highest percentage of calls (27%) related to bullying. The widespread nature of the problem was also reflected in a 2006 research report by LGBT Youth Scotland (an organisation working towards the inclusion of Lesbian Gay Bisexual Transgender young people in Scotland). This research provided evidence of the nature and extent of homophobia and homophobic incidents in Scottish schools from the perspective of education authority staff, school staff and young people⁴⁰, however the research also looked at 'general' bullying in schools.

- 88% of respondents were aware of 'general' bullying taking place in their schools and **81% of respondents were being or had been bullied at school.**

- **72% of respondents stated that bullying occurred in their schools 'Frequently' or 'Often'.** 4% stated that it happened 'Sometimes', and 10% 'Rarely'.

Whilst 70% of the schools that took part in the LGBT Youth Scotland survey make reference (in their Anti-Bullying / Equality Opportunities Policy Documents) to racist bullying / Black Minority Ethnic (BME) issues, only 25% include the mention of sexual orientation / homophobic bullying. Findings show that challenging homophobia is not seen as a priority by many schools, and that this marginalisation is partly related to the after effects of Section 28,⁴¹ which, although repealed in Scotland in 2000, undoubtedly is still an issue and was mentioned several times in survey responses from Directors of Education and Head Teachers.

Notwithstanding the emphasis that many schools place in their Anti-Bullying policies on challenging bullying directed towards BME children, Save the Children's research findings in 2005⁴² show that many Gypsy / Traveller children still experience high levels of discrimination and bullying at school.

In 2005 the Scottish Executive convened an Anti-Bullying Leadership Group to support a commissioning process to 'refresh' anti-bullying services in Scotland. The commissioning process reflected the findings of a needs assessment exercise, carried out in 2004, which recommended that the scope of the service be extended to tackle and prevent bullying in both school and community settings. It remains to be seen how effective the new services will be in tackling a problem that blights the lives of many children in Scotland.

NGO Recommendation

- The **Scottish Government** must ensure that effective anti-bullying policies are in place in every school, and that staff in all schools, including denominational ones, are properly trained in equality and diversity issues, in order to reduce the likelihood of bullying incidents and ensure that **all** children regardless of ethnicity, gender, sexual orientation, religion or ability experience a healthy, fulfilling and safe education.

³⁹ Consultation on behalf of the Scottish Executive Education Department in October 2006 with 400 children aged 8-13 in school and community settings in South Ayrshire, Western Isles, Midlothian and City of Edinburgh

⁴⁰ Research undertaken by LGBT Youth Scotland in partnership with the Centre for Education for Racial Equality (CERES) at the University of Edinburgh - www.scotland.gov.uk/socialresearch 60% of respondents were aged between 15 and 19. 22% of surveys were completed by a younger group of pupils aged between 11 and 14 ". The intention was to survey a range of both LGBT and non- LGBT school pupils across Scotland - one quarter of respondents identified as 'Straight' or 'Heterosexual'.

⁴¹ Clause 28 Section 2a of the Local Government (Sc) Act 1988, stated that there was no place in any school for teaching which advocated homosexual behaviour, treated homosexuality as the 'norm' or which somehow encouraged homosexual experimentation by pupils.

⁴² 'Having Our Say' Report - Save the Children Scotland 2005

6.2 Cultural and Leisure Activities

Emerging issue

6.2.1 The importance of play

The topic of play was not specifically dealt with under the 2002 Concluding Observations, however in the Scottish Executive report Para 533 it states that the importance of play is “recognised as being vital to children’s emotional development” and that a ‘wide range of play opportunities are available’ [in Scotland]. The first statement is not backed up by any action, and the second statement is not backed up by any evidence. NGOs such as Play Scotland and the International Play Association have called for a national play strategy as a matter of urgency. Surveys by SCCYP and others consistently show that things to do and places to go that are affordable and appropriate for their age group is the main priority for the majority of children who took part, particularly for the 14-18 age group⁴³.

6.2.2 Restriction of play opportunities and culture of over protection

Modern society has undoubtedly eroded play opportunities for children both in towns and in the countryside. Statistics show that the number of children abducted by strangers has not changed significantly in the last 30 years, but the perception of risk amongst parents has greatly increased, leading to many children not being allowed to play anywhere other than in their own homes or gardens. There has been a real increase in danger to children from rising traffic levels, both in terms of pollution and road traffic accidents, but children are rarely consulted on new road building schemes.

A UK poll of 7-14 year olds in July 2006⁴⁴ showed that 82% of those questioned would rather play outside in natural spaces like gardens, parks and in local fields than play computer games, but lack of opportunities and a culture of ‘over protection’ has led to many children being confined to home, or to activities organised and supervised by adults. This can lead to children not being allowed to develop properly their abilities to assess risk, which can affect their self-esteem in the long term.

Play spaces are being reduced and restricted: open spaces, particularly in cities where green spaces are at a premium, are being sold off by local authorities to private developers for housing and the views of children are not taken into account in the planning processes. School playgrounds are often used now for car-parking, and playing fields are being sold to finance new schools being built through Private Finance / Public Private Partnership Initiatives⁴⁵.

The crossover into and effect on other areas of concern such as youth justice and antisocial behaviour, mental health, and child health in general is self-evident. Physical, emotional, and mental wellbeing are affected by lack of play facilities and opportunities. Scotland tops the tables of European countries for obesity levels amongst Scottish school children, and suicide rates for teenagers.

Child protection concerns have focused on vetting procedures to help ensure that children are better protected from contact with unsuitable adults, but many voluntary organisations find it difficult to recruit volunteers to work with children, and struggle with vetting systems for volunteers in terms of the cost and the length of time that such procedures take. SCCYP has spoken of the risk of children becoming the ‘pariahs of society’ with people too afraid to work with children in case they are blamed when things go wrong. Fear of litigation has meant risk assessment has become unrealistic, restrictive and unhelpful (e.g. staff in schools being reluctant to help disabled children change position in their chairs, and the children having to stay in uncomfortable positions until parents come to the school to move the children).

- Between 1996 and 2003 143 playing fields were sold off for property and retail development;
- One third of children say they never play outside;
- There are children starting secondary school who have never walked to school on their own;
- 22 out of the 25 UK’s unhealthiest neighbourhoods are in Scotland⁴⁶

⁴³ SCCYP / Young Scot National Consultation with Children and Young People 2005

⁴⁴ British Market Research Bureau Survey for Playday

⁴⁵ Private Finance Initiatives / Public Private Partnership – private developers contracted by government / local authorities to build public facilities such as schools and hospitals.

⁴⁶ Play Scotland Annual Report 2006

NGO recommendations

The Scottish Government must:

- Develop a National Play Strategy in consultation with children, SCCYP and the voluntary sector as soon as practicable: the strategy should include public awareness raising on the importance of play in children's development;
- Make available additional resources to enable children and young people with additional support needs to play outside;
- Improve participation of children in planning processes, and ensure that there is a presumption against development of open spaces especially in areas lacking in play spaces;
- Recognise the value of effective play-workers and ensure that this is reflected in professional salaries and resources.



CHAPTER 7 – SPECIAL PROTECTION MEASURES

7.1 Asylum seeker and refugee children

2002 Concluding Observations

(a) Refrain, as a matter of policy, from detaining unaccompanied minors and ensure the right to speedily challenge the legality of detention, in compliance with article 37 of the Convention. In any case, detention must always be a measure of last resort and for the shortest appropriate period of time;

(b) Ensure that refugee and asylum-seeking children have access to basic services such as education and health, and that there is no discrimination in benefit entitlements for asylum-seeking families that could affect children;

(c) Consider the appointment of guardians for unaccompanied asylum-seeking and refugee children;

(d) Take all necessary measures to prevent children who have settled in a particular area being forced to leave when they reach the age of 18 years;

(e) Undertake efforts to expedite the procedure for dealing with asylum applications and to avoid placing children in temporary accommodation which are inappropriate, accommodating them rather as “children in need” under the child care legislation;

(f) Carry out a review of the availability and effectiveness of legal representation and other forms of independent advocacy for unaccompanied minors and other children in the immigration and asylum systems;

(g) Address thoroughly the particular situation of children in the ongoing reform of the immigration and asylum systems to bring them into line with the principles and provisions of the Convention.

Follow up to the Concluding Observations

Scottish Refugee Council estimates that there are currently approximately 10,000 asylum seekers and refugees in Scotland, most living in accommodation in Glasgow provided by the Border and Immigration Agency⁴⁷. Until recently, due to the nature of the accommodation contract between the Border and Immigration Agency and Glasgow City Council there was a higher percentage of asylum-seeking families, thus a higher number of asylum-seeking children in Glasgow compared to other ‘dispersal sites’ around the UK.

Whilst it is recognised that there is limited scope for action in Scotland due to immigration being reserved

to the UK Government, there is considerable concern amongst NGOs, the Scottish Parliament, the media and sections of the general public about the treatment of asylum seeker and refugee children in Scotland. The experience of NGOs in Scotland is that there has been a lack of notable progress in addressing all of the 2002 Concluding Observations. Initiatives in Scotland to improve services to asylum seeker children are limited in their impact by the prescriptions of immigration legislation and the operational policy and practices of the UK Border and Immigration Agency.

NGO Recommendations

The UK Government must:

- Withdraw its general reservation on immigration and asylum as a matter of urgency and bring its immigration and asylum policies and practices into line with the UNCRC;
- Ensure that consideration is given to devolved arrangements in Scotland such as the Children (Scotland) Act 1995, when implementing policy that affects asylum-seeking children in Scotland.

The Scottish Government should:

- Press the UK Government to withdraw its reservation on asylum and immigration and bring its immigration and asylum policies and practices into line with the UNCRC.

7.1.1 Detention of asylum-seeking children

SACR wrote to the Home Office in November 2005 to protest about children and their families, whose asylum applications had failed, being removed in raids on their homes early in the morning (‘dawn raids’). Children, some as young as two years old, were taken from their beds by immigration staff, suffered extreme distress at seeing parents handcuffed, and were transported in vans to immigration removal centres in the south of England, or to Dungavel House – the only Immigration Removal Centre in Scotland.

Many of these families had been in Scotland for more than five years awaiting the outcomes of their asylum applications and appeals, with children who had settled well into school, spoke English fluently, and had integrated into local communities⁴⁸. Despite public, media and parliamentary outcry at this practice, the detention of children for immigration purposes in the UK has continued. Some of these families are eventually given leave to remain contradicting UK

⁴⁷ UK Government agency

⁴⁸ One particular family with four children aged between 14 and 8 were detained for more than a year in Dungavel.

Government claims that they only detain those children and families who are in the country illegally. Although the UK Government has claimed that children and families are only kept at Dungavel House for 72 hours before being removed or sent to Immigration Removal Centres in the south of England, this is not always the case and worryingly, the UK Government recently stated that Dungavel House may be used to detain children for longer periods. In her report on conditions in Dungavel House, the Chief Inspector of Prisons (for England and Wales)⁴⁹, said that young people should be sent to such centres only in exceptional circumstances – and even then only for a few days.

NGO Recommendations

The UK Government must:

- End the detention of asylum-seeking children;
- In any review of legacy cases the presumption that families with children who have integrated well into communities will be granted leave to stay in the UK should be applied, and the onus shifted onto the Borders and Immigration Agency to show that there are compelling reasons why these families should be deported.

The Scottish Government should:

- Press the UK Government to end the detention of asylum-seeking children and support the development of alternatives to detention.

7.1.2 Access to Basic Services and Benefits Entitlements

The Scottish Parliament has responsibility for devolved areas of policy and services that support and impact on asylum seekers living in Scottish communities, such as education, employment, interpreting and translation, policing, housing, health care, legal aid, social work and children's services and child protection.

In 2006 Her Majesty's Inspectorate of Education in Scotland (HMIE), at the behest of Scottish Ministers, coordinated an inspection of services provided (by statutory and voluntary agencies) to the children of asylum seekers in Glasgow up to the point where their request for asylum is granted, or the point where they are removed. HMIE's report⁵⁰ was published in 2007, and a plan to modify services has been produced by the services inspected. The remit of the

inspection excluded all services provided through non-devolved bodies thereby narrowing the perspective of the evaluation.

The following concerns were highlighted:

- *Social work services staff did not always appropriately assess the needs of unaccompanied children seeking asylum aged between 16 and 18 years;*
- *Asylum-seeking parents were provided with 70% of income support given to citizen families and found it difficult to provide for their children, including buying sufficient warm and waterproof clothing;*
- *Some children in further education did not have enough money to buy food or pay for bus fares to college. A small number of unaccompanied children did not have sufficient income to pay for heating in their accommodation;*
- *Educational psychologists, social workers and teachers found it more difficult to recognise and assess the learning needs of children with additional support needs, particularly those with limited English.*

The report also confirmed the findings in Save the Children's report Future Scots, that 50% of asylum children in the 3-4 age group have not been able to access nursery schooling.

Section 9 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 extends provisions under the Nationality, Immigration and Asylum Act 2002 to create the category of, "failed asylum seeker with family", who cease to be eligible for any form of support. Under the Act, families who are deemed to have "failed without reasonable excuse to take reasonable steps to leave the UK voluntarily" have no recourse to financial and other assistance. Children of families in Scotland remain eligible for support under the Children (Scotland) Act 1995, but only if separated from their families and being looked after by local authorities. Support to the whole family can only be provided if there is felt to be a potential breach of the ECHR.

NGOs are also extremely concerned by the destitution experienced by children caused by bureaucratic errors and delays in administering financial support to asylum-seeking families.

⁴⁹ the remit of HM Inspector of Prisons in Scotland does not cover Dungavel House as it falls within the jurisdiction of UK government, immigration matters being reserved to Westminster

⁵⁰ <http://www.hmie.gov.uk/services/glasgowasylum.asp>

NGO Recommendations

The UK Government must:

- Revoke Section 9 of the Nationality, Immigration & Asylum Act (Treatment of Claimants, etc.) 2004 so that families continue to be supported while they remain in the UK.

The Scottish Government must:

- Ensure the recommendations of the HMIE report are implemented;
- In discussion with the UK Government, clarify the role and responsibility of local authorities in Scotland for supporting destitute asylum-seeking families to ensure that children are not made destitute, or forced to rely on charitable support.

7.1.3 Guardianship scheme for unaccompanied asylum seeker and refugee children

The UK Government takes the view that a formal guardianship scheme for unaccompanied asylum seeker / refugee children (or 'separated children' to use the SCEP definition⁵¹) is unnecessary. NGOs do not support this view. The reluctance of the UK Government to do so would not prevent the Scottish Government from introducing an appropriate scheme in Scotland, as care and support services to separated children is a devolved responsibility. This responsibility for the support of separated children lies with local authorities,⁵² however most are accommodated in Glasgow.

In February 2006, the UK Government launched proposals to reform the support of unaccompanied asylum-seeking children in the UK⁵³. One proposal is to move support arrangements away from individual local authorities and create 'specialist' authorities responsible for supporting separated children.

The Scottish Government acknowledges in its own report to the Committee that the arrangements in Scotland are not adequate and research by Glasgow University and Scottish Refugee Council illustrated the shortfalls in support services particularly in relation to inappropriate accommodation. The report found that many young people were being accommodated in homeless hostels, hotels or bed and breakfast accommodation with inadequate access to cooking facilities or social support⁵⁴.

NGO Recommendations

The UK Government must:

- Introduce a statutory guardianship scheme for all separated children, and any reform to the care of separated children must be formulated within the context of the obligations enshrined in the UNCRC and its optional protocols;
- Provide adequate levels of funding to local authorities, including the proposed new 'specialist' authorities, to ensure high quality care is available for all separated children, including for those with specific needs, for example, those with HIV: Specialist authorities must be developed, not with reduction of costs as the main objective, but with the aim of improving the quality of care for separated children.

The Scottish Government should:

- Consult with key stakeholders on the selection of specialist authorities, and establish mechanisms to ensure shared learning and best practice between authorities;
- Ensure that adequate resources are in place to ensure that all separated children can be allocated a social worker and appropriate accommodation to meet the specific needs of children;
- Press the UK government to introduce a guardianship scheme for separated children and, as the Scottish Government has devolved responsibility for the care and welfare of all children in Scotland, should pilot such a scheme as a matter of urgency.

7.1.4 Availability and effectiveness of legal representation

There has been no review of the availability or effectiveness of legal representation in Scotland for unaccompanied minors and other children in the immigration and asylum systems. The availability of appropriately trained and qualified legal representatives is a key factor in ensuring improved protection to separated children, and the proximity of a specialist authority to quality specialist legal practitioners must be a fundamental factor in the selection of any authority. The provision of legal aid to asylum-seeking children is devolved to the Scottish Government.

⁵¹ Separated Children in Europe Programme – "Separated children are children under 18 who are outside their country of origin and separate from both parents, or their previous legal /customary primary caregiver"

⁵² around 100 to 150 children in Scotland

⁵³ <http://www.bia.homeoffice.gov.uk/sitecontent/documents/consultations/closedconsultations/uasc/consultationdocument.pdf?view=Binary>

⁵⁴ *This is a Good Place to Live and Think About the Future*, the needs and experiences of unaccompanied asylum-seeking children in Scotland, March 2006, http://www.scottishrefugeecouncil.org.uk/pub/UASC_report

NGO Recommendations

The UK Government must:

- Enter into joint discussions at the earliest opportunity with the Scottish Government, the Law Society of Scotland, Convention of Scottish Local Authorities (CoSLA), Strategic Migration Partnership and the Scottish Legal Aid Board to ensure the availability of, and adequate funding for, appropriately trained legal practitioners, before selecting any specialist authority.

The Scottish Government must:

- Ensure that any authority selected in Scotland as a "dispersal area" is able to meet the demands for good quality children's immigration advice.

Positive Steps in Scotland

Following widespread public and media concern, criticism by SCCYP and a debate in the Scottish Parliament in 2005, the then First Minister of Scotland criticised the practice of removing refused asylum-seeking families and its impact on asylum-seeking children and communities in Glasgow. This led to an agreement between the Home Office and the Scottish Government in March 2006, which included a commitment by the UK Government to carry out a review of its procedures of forcibly removing families in the whole of the UK⁵⁵; the development of a 'lead professional' to ensure that the Home Office has relevant information about the health, welfare and education of asylum seekers to inform its decisions about family removals in cases covered by the review of backlogged cases (the 'legacy review'), including matters concerned with their timing and handling.

The current Scottish Government announced on 3 August 2007 that asylum-seeking children should have access to higher-education funding and Educational-maintenance allowance, a policy initiative that was welcomed by NGOs and SCCYP.

7.2 Sexual exploitation and trafficking

2002 Concluding Recommendation

the State party should:

(a) Undertake a study on the scope, causes and background of child prostitution;

(b) Review its legislation so as not to criminalise children who are sexually exploited;

(c) Continue to implement policies and programmes in accordance with the Declaration and Agenda for Action, and the Global Commitment adopted at the 1996 and 2001 World Congresses against Commercial Sexual Exploitation of Children;

(d) Ensure that adequate resources, both human and financial are allocated to policies and programmes in this area.

Follow up to the Concluding Observations

A study of child trafficking in England by Save the Children and ECPAT UK⁵⁶ and a study of child trafficking in Scotland by Save the Children⁵⁷ revealed that there was a lack of skills among front line professionals regarding the identification of child victims of trafficking, a lack of safe accommodation and a lack of specialist services to meet their needs. The recording and monitoring of trafficked children is also inadequate and many of these children go missing from local authority care. These children would benefit from the appointment of a guardian as well to ensure their best interests were prioritised.

NGO Recommendations

- The **Scottish Government** should develop appropriate mechanisms and ensure high quality training of professionals for the identification and support of child victims of trafficking
- The **UK Government** must fully resource the UK anti-trafficking action plan and ensure that all child victims of trafficking are protected in line with international human rights standards.

⁵⁵ <http://www.bia.homeoffice.gov.uk/sitecontent/documents/140301/oeminterimnotices/familyremovalsreview?view=Binary>

⁵⁶ ECPAT UK and Save the Children (2007) Missing Out: A study of child trafficking in the North-West, North East and West Midlands.

⁵⁷ Save the Children (2006) Hidden Trade

7.3 Children in conflict with the law – Administration of juvenile justice

2002 Concluding Observations

Considerably raise the minimum age of criminal responsibility;

Ensure that no child can be tried as an adult, irrespective of the circumstances or the gravity of his/her offence;

Ensure that detention of children is used as a measure of last resort and for the shortest appropriate period of time and that children are separated from adults in detention, and encourage the use of alternative measures to the deprivation of liberty;

Ensure that every child deprived of his or her liberty has access to independent advocacy services and to an independent, child-sensitive and accessible complaint procedure;

Take all necessary measures, as a matter of urgency, to review the conditions of detention and ensure that all children deprived of their liberty have statutory rights to education, health and child protection equal to those of other children;

Review the status of young people of 17 years of age for the purpose of remand with a view to giving special protection to all children under the age of 18 years;

Allocate appropriate resources for the Children's Hearings in Scotland to allow the number of cases dealt with to be substantially increased and to allow young offenders of 16 to 18 years of age to be included in the Children's Hearings system.

Follow up to the Concluding Observations

Since 2002 the UK and Scottish governments have made it clear they have no plans to raise the age of criminal responsibility – currently eight years old. Para 26 of the Scottish Executive Report states that “although other countries have a higher age of criminal responsibility, this may often be shifted depending on the seriousness of the offence. Many other countries respond to children who may have offended through a process and with measures designed to be punitive in nature. In short, Scotland responds differently”.⁵⁸

Whilst it has to be acknowledged that the approach of the Children's Hearing System (CHS) in Scotland is well regarded, it also has to be pointed out that the Scottish Government's own figures show that many children in Scotland who offend do not have the advantage of being dealt with by a system that puts their welfare first, and Scotland's justice system also has the capacity to ‘shift’ depending on the seriousness of the offence. In 2004-05 a total of 7652 persons aged under 18 (including 123 under 16) were convicted in Scottish courts. Of these, 749 resulted in a custodial sentence, including 20 for persons aged under 16.

Whilst the age of criminal responsibility remains at eight years, the Lord Advocate's⁵⁹ own guidelines make it clear that there is the possibility in Scotland, that a child as young as eight years old, could theoretically be tried in an adult court for an indictable offence such as murder. For judges simply to dispense with the wearing of wigs, and for the proceedings to be held in a room all on the same level, does not alter the fact that the child is being tried as an adult in an adversarial situation, rather than the needs of the child being considered along with his or her deeds.

As regards the Committee's recommendation that the UK should ensure that no child be tried as an adult, irrespective of the circumstances or the gravity of the offence, it is clear that the Committee regard anyone under eighteen years of age as a child in this context. What is clear from the Scottish Executive Report is that not only sixteen to eighteen year olds, but also children **under the age of sixteen can be tried as adults in Scotland**, if the Lord Advocate deems it appropriate, for example for breaches of antisocial behaviour orders (ASBOs)⁶⁰ alleged against children aged over twelve.

Where a child is aged over sixteen, the presumption in Scotland is that the case should be dealt with by prosecution in the courts. The Committee recommended in 2002 that the Scottish Executive should allocate appropriate resources for the CHS to allow the number of cases dealt with to be substantially increased, and to allow young offenders of 16 to 18 years of age to be included in the CHS, however at present a child aged between 16 and 18 will only be dealt with by CHS where the child was already subject to a supervision requirement when they reached the age of 16.

⁵⁸ A REPORT ON IMPLEMENTATION OF THE UN CONVENTION ON THE RIGHTS OF THE CHILD 1999-2007, Scottish Executive July 2007

⁵⁹ Scotland's most senior law officer and head of the Crown Prosecution Service

⁶⁰ Orders made under the Anti Social Behaviour etc. (Scotland) Act 2004

Detention of 16 and 17 year olds in young offenders institutions in Scotland is increasing year on year, sitting at a high of 995 in the year 2005-06 (766 in 2002), and Her Majesty's Inspector of Prisons Scotland (HMIPS) has stated publicly that he sees this as a cause for serious concern⁶¹.

The Scottish Executive Report states that the Criminal Procedure (Scotland) Act 1995 gives the criminal court power to refer a child to the CHS for advice and/or disposal following a guilty plea or conviction, however it should be stressed to the Committee that the Sheriff is not obliged to do this. In respect of a child under 16 and not subject to a supervision requirement, the Sheriff *may* remit for disposal by a Children's Hearing or may ask for the advice of CHS, but it is open to the Sheriff to dispose of the case him / herself. In other cases it would depend on the seriousness of the offence, and the age of the offender as to whether the court is obliged to ask CHS for advice / remit to the CHS for disposal.

The Committee also requested in 2002 that the UK review the status of young people of 17 years of age for the purpose of remand, with a view to giving special protection to all children under the age of 18 years. The Scottish Executive Report to the Committee confirms that this recommendation has not been met: Where a child is remanded in custody pending trial, Section 51 of the Children (Scotland) Act 1995 provides that children under 16 who are not certified as 'unruly or depraved' should be committed to a local authority secure unit or in a suitable 'place of safety'. However, children aged 16-18 may be remanded in prison, or a Young Offenders Institution. **Children aged over 14 and certified by the court as 'unruly' and 'depraved' are remanded in prison or in a remand centre.**

When the UK government made their initial report to the Committee, the justification for its reservation to Art 37 (c) was advanced on the grounds that it was not possible to comply with 37(c) in full due to a 'lack of resources'. This was always arguable, but for this reservation to remain in place five years on in 1999, when the UK economy was the fifth largest in the world and continuing to grow, was straining credibility, and not surprisingly was firmly rejected by the Committee in its 2002 recommendations. NGOs welcome the fact that the UK government is considering withdrawing its reservation to Article 37(c) in the report submitted in July 2007 on the grounds that "it is no longer necessary". However the Annual Report of Her Majesty's Inspector of Prisons Scotland 2006 shows that 23 children were held in adult prisons, a rise of almost 50% from 2004-05, rather than a decrease. Most were held for only a few days;

but one spent 105 nights in HMP Kilmarnock (a privately run prison for adults), and another 34. The youngest was 14 years and spent 5 days in Polmont Young Offenders Institution (which also houses over 18 year-olds).

The Scottish Executive has recently expanded the secure estate in Scotland to provide 125 places in total, to avoid placement of under 16s in Young Offenders Institutions or prisons, but NGOs share the concerns of HMIPS that children detained in prison are some of the most vulnerable and damaged children, often with severe mental health problems, and take the view that simply building more secure accommodation will not in itself deal with the problems of some of the most vulnerable of children.

Every child in care, whether in secure accommodation or other residential units, should have the right to an independent advocacy service, but these services are over-stretched and under-resourced. The current system of funding means that there is not consistency of access to independent advocacy services across Scotland for young people in public care. The method by which advocacy services are commissioned and contracted can result in variations in outcomes. This issue needs to be addressed by the Scottish Government as a matter of urgency.

NGO Recommendations

The Scottish Government should ensure that:

- The minimum age of criminal responsibility in Scotland should be raised considerably;
- No child under the age of 18 is tried as an adult in Scotland, irrespective of the circumstances or the gravity of his/her offence, and the Children's Hearing System should be allocated such resources as are required to extend the system to 16 and 17 year olds; at the very least Sheriffs in all criminal courts should be required to refer a child to the Children's Hearings System for advice and/or disposal following a guilty plea or conviction of a person under 18;
- Children aged under 18 and certified by the court as unruly and depraved are not remanded in prison or in a remand centre, but placed in a specialised secure unit with staff trained to address mental health issues and the specific needs of vulnerable children;
- Enshrine in law the right to independent advocacy for all looked after and accommodated children including those in secure accommodation.

⁶¹ 2006 Annual Report of Her Majesty's Inspector of Prisons Scotland

Emerging Issue

7.4 - Antisocial Behaviour etc. (Scotland) Act 2004

Perhaps the most damaging development affecting children since 2002 leading to the increasing 'demonisation' of youth, is the Antisocial Behaviour etc. (Scotland) Act 2004, previously mentioned with regard to freedom of association and peaceful assembly. Part 2 of the Act extended existing legislation on Antisocial Behaviour Orders (ASBOs) for over 16s, to persons aged 12 to 15. Breach of an ASBO involving a person under 16 is a criminal offence, and there is a statutory power of arrest for breach of an order. Courts, in dealing with those persons aged 12 and above who have been convicted of an offence involving antisocial behaviour, have access as a result of the 2004 Act, to a new disposal, the Community Reparation Order (CRO). These orders require the offender to complete between 10 and 100 hours of unpaid work in the community. It is anticipated that very few if any CROs will be imposed on under 16s, as the vast majority of such cases are dealt with through the Children's Hearings system, but the possibility of CROs remains for under 16s, and a CRO imposed on anyone under 18 would have ramifications on the right to privacy under Article 16 of the UNCRC.

The 2004 Act also amended the Criminal Procedure (Scotland) Act 1995 to allow for Restriction of Liberty Orders (RLOs) (the use of an electronic monitor or 'tag' attached around the ankle) to be imposed on offenders under 16 who are dealt with by the court system. The 2004 Act provides that a court cannot grant an RLO for a child under 16 unless it is satisfied that the relevant local authority will provide appropriate services to support and rehabilitate the child whilst they are subject to it. RLOs can only be used as a direct alternative to secure accommodation, and whilst the intensive support packages for child offenders cannot be anything other than beneficial, there is a problem in that, if the criteria for secure accommodation is met, then would electronic monitoring be sufficient to prevent the child from harming themselves or others? There is also the difficulty over stigmatisation, or alternatively the tag being seen as a 'badge of honour' among the peer group of offenders.

ASBOs for under 18s have not been used in Scotland to any great extent (which calls into question the need for this part of the legislation in Scotland), and can only be applied to young people aged 12 and above, compared to 10 and above in England. The Scottish Act also specifically prohibits the use of imprisonment as a sanction for breach of an ASBO by an under 16, and there is a presumption that court proceedings involving ASBOs for under 16s will be held in private. Scottish Government guidance on the use of ASBOs for under 16s makes clear that they should complement the Children's Hearings System, which should continue to be the primary forum for dealing with offending behaviour by children. However, there have been calls from some politicians and in the media for local authorities and the police to make more use of powers contained in the 2004 Act, and NGOs in Scotland committed to advocating for human rights, should not be complacent about the potential effect of the Act.

The purpose of Antisocial Behaviour legislation was to protect the interests of communities first and foremost, leading to the erosion of the principle of the best interests of the child being paramount in all proceedings affecting that child. Whilst Scotland has adopted a more humane and child focussed approach than in England and Wales (where children with disabilities and special needs have been made subject to ASBOs because of behaviour linked to their particular circumstances), the legislative powers are similar in Scotland and could be used in the future in a way that takes little account of human rights.

NGO Recommendation

The Scottish Government must:

- Amend the Antisocial Behaviour etc. Scotland Act 2004 to ensure that the 'best interests' of the child is always paramount in any proceedings affecting that child;
- Tackle unduly negative public and media images of young people, and promote ways of involving them in initiatives to improve their communities.

APPENDIX 1 – SUMMARY OF NGO RECOMMENDATIONS

CHAPTER 1 – GENERAL MEASURES OF IMPLEMENTATION

1.1 Independent monitoring structures (National Human Rights institutions)

- The **Scottish Government** should disseminate accessible information and child friendly guidance on the roles of the different independent human rights institutions in Scotland, at the same time promoting human rights in positive, enlightened ways;
- The role of the **Scottish Parliament** must be to ensure that SCCYP and other Human Rights Commissions / Commissioners are adequately resourced to perform their statutory duties, and must not be subject to interference that might compromise their independence;
- The **Scottish Parliament** should ensure that the remit of SCCYP complies with the Paris Principles.

1.2 Training on provisions of UNCRC

- The **Scottish Government** must ensure that there is a single integrated approach to children's rights training, and ensure that such training on the UNCRC is **mandatory** for all people in Scotland whose work involves children, from the most senior judges and police officers to nursery staff and classroom assistants in all schools, (including those in the independent sector);

1.3 Measures taken or foreseen to make the principles and provisions of the UNCRC widely known to adults and children

The **Scottish Government** should:

- Develop and resource a comprehensive strategy for disseminating knowledge on human rights with particular emphasis on the UNCRC and the ECHR throughout Scotland;
- Ensure that information on human rights with particular emphasis on the UNCRC should be incorporated into the Early Years and 5-14 curricula in a meaningful and age appropriate way.

1.4 Data collection, monitoring implementation of the UNCRC, allocation of resources

The **Scottish Government** should:

- Assign co-ordination of the implementation of the UNCRC to a body with an adequate mandate and sufficient resources;
- Ensure that disaggregated data is collected on all persons under 18 for all areas covered by the UNCRC as well as undertaking sectoral budgetary scrutiny and analysis of resources expended on persons under 18;
- Publish annual reports containing disaggregated data and budgetary information for public and parliamentary debate.

CHAPTER 2 – GENERAL PRINCIPLES

2.1 Non-discrimination

2.1.1 Gypsy / Traveller Children

- The **Scottish Government** must tackle racism and discrimination against the Gypsy / Traveller community in the media and in the general population in the same

way as it is dealt with in respect of other minority ethnic groups, and Gypsies / Travellers must be given a higher profile in anti-discrimination campaigns;

- **Local authorities** must implement strategies to make the provision and maintenance of sites suitable to the needs and aspirations of the Gypsy/Traveller communities, part of mainstream housing provision.

2.1.2 Disabled children and children with additional support needs

- Local authorities and other bodies must receive additional funding from the **Scottish Government** to ensure that care and support is provided to disabled children / children with additional support needs in a way that recognises the rights, needs and aspirations of the individual and takes full account off the views of the child as well as the parents;
- Any measures to address child poverty by the **UK / Scottish Governments** must consider the specific needs of disabled children / children with additional support needs and their families, as well as the need to address poverty among disabled parents.

CHAPTER 3 – CIVIL RIGHTS AND FREEDOMS

3.1 Physical punishment

The **Scottish Government** should:

- Undertake legal reform as a matter of urgency: The Criminal Justice (Sc) Act 2003 should be amended without delay to make any form of physical violence against a person under 18 a criminal offence and the defence of reasonable chastisement removed;
- Initiate without further delay widespread promotion of positive, participatory and non-violent forms of discipline and public education programmes on the negative consequences of corporal punishment as called for in the 2002 Concluding Observations;

3.2 Freedom of association and peaceful assembly

- The **Scottish Government** must amend the Antisocial Behaviour etc. (Scotland) Act 2004 to reflect the terms of Article 15 (2) of the UNCRC, and to take account of Article 11 of the ECHR.
- More should be done by the **Scottish Government**, police and local authorities to encourage tolerance of non-criminal behaviour of children, and positive recognition of the contribution children can make to their communities.

CHAPTER 4 – FAMILY ENVIRONMENT AND ALTERNATIVE CARE

4.1 Looked after children

The **Scottish Government** should:

- Initiate a national strategy for looked after and accommodated children to inform services and policies;
- Put in place an optimum framework for qualifications in residential childcare work, along with efforts to address the pay, conditions and status of residential childcare staff;

- Ensure that there are more training opportunities for foster carers so they are able to understand and uphold the rights and meet the needs of the children in their care;
- Ensure that more resources are provided for local authorities so that children can be accommodated in their own local authority area, and that all looked after / accommodated children in all areas have adequate access to therapeutic and other support services;
- Enshrine in law the legal right to independent advocacy, and put in place sufficient services to make it consistent and accessible.

CHAPTER 5 – BASIC HEALTH AND WELFARE

5.1 Child poverty

The Scottish Government must:

- Implement an action plan to eradicate child poverty in Scotland as an urgent priority, including a commitment to the UK target of halving child poverty by 2010;
- Establish mechanisms to measure severe and persistent poverty and target resources at those most in need;
- Ensure mechanisms are in place to co-ordinate a joined-up and complementary approach to policy from the UK and Scottish Governments to end child poverty in Scotland including child poverty proofing all government policy (to be extended to local authorities and all public bodies)
- Increase emphasis on initiatives to address social exclusion of severely poor children;
- Ensure more transparency in the amount spent on ending child poverty and in monitoring this spending.

The UK Government must:

- Urgently increase investment in respect of both in and out of work benefits. To achieve its target to halve levels of child poverty by 2010, the UK Government needs to invest an additional £4 billion;
- Ensure that young people have entitlement to non-discriminatory levels of benefits.

5.2 Breastfeeding rates

- The **Scottish Government** must initiate a health education campaign to encourage breastfeeding by mothers in all income groups, with resources targeted at mothers living in poverty, particularly teenage mothers;
- The **UK Government** must make more progress in the implementation of the International Code for Marketing of Breast-milk Substitutes and the World Health Assembly's International Marketing Code.

5.3 Teenage pregnancies and sexual health strategies

The Scottish Government should ensure that:

- All children have access to quality sex and relationship education that is appropriate for their needs and age: the right of a child who wishes to have information on sexual health issues, should over-ride the wishes of parents who wish to withdraw them from sex education classes, or the wishes of teachers who have religious objections to the subject matter;

- All children have a choice of sexual health services that they can freely access locally and confidentially;
- Sexual health services monitor use by ethnic group, have processes to arrange translation of written information and access to interpreters where required;
- All sexual health services staff should receive basic equality and diversity training as a minimum, and appropriate staff training should be provided where client groups have specific needs;
- Local authorities and health boards work with NGOs and consult with young people to design the best possible provision of services.

5.4 Mental Health

The Scottish Government must:

- Improve access to mental health services for children, and ensure that services are local, accessible, and child friendly;
- Improve delivery of child and adolescent mental health services with more training for front line staff, and use of social support, peer support and the broadening of mentoring or befriending services.

5.5 Substance Abuse

The Scottish Government must:

- Ensure greater long term and sustainable funding of services for children affected by all kinds of substance abuse with children having a say in the design and delivery of services;
- Facilitate expansion of adult services to include giving consideration to the rights and needs of children affected by substance abuse;
- Ensure that current services are improved by better information sharing and co-ordinated action between agencies and services; regular multi-disciplinary training and development to help staff understand the effects on children of parental substance abuse; and more emphasis on early intervention and services based in non-stigmatised settings.

CHAPTER 6 – EDUCATION, LEISURE AND CULTURAL ACTIVITIES

6.1 Education

6.1.1 Participation

The Scottish Government should:

- Ensure that the UNCRC and ECHR is reflected in the overall ethos and management of schools; training of staff and incorporating the UNCRC and ECHR into the curricula would go some way towards achieving this;
- Develop guidance for all schools on pupil participation to ensure consistent working standards across Scotland;
- Put in place a co-ordinated, strategic plan for the delivery of communication aids for every child with communication impairment to ensure that all children in Scotland have the right to express their views on their school and participate in decisions that affect them;

APPENDIX 1 – SUMMARY OF NGO RECOMMENDATIONS

6.1.2 School Exclusions

- The **Scottish Government** must look at further ways of reducing exclusions in schools and pilot alternative methods of engaging excluded children in the education system.

6.1.3 Inequalities in educational attainment

- The **Scottish Government** must target resources to address inequalities in the educational attainment of the poorest children, looked after children, Gypsy / Traveller children, disabled children / those with additional support needs and asylum seeker / refugee children;

6.1.4 Bullying

- The **Scottish Government** must ensure that effective anti-bullying policies are in place in every school, and that staff in all schools, including denominational ones, are properly trained in equality and diversity issues, in order to reduce the likelihood of bullying incidents and ensure that **all** young people regardless of ethnicity, gender, sexual orientation, religion or ability experience a healthy, fulfilling and safe education.

6.2 Cultural and Leisure Activities

The Scottish Government must:

- Develop a National Play Strategy in consultation with children, SCCYP and the voluntary sector as soon as practicable: the strategy should include public awareness raising on the importance of play in children's development;
- Make available additional resources to enable children and young people with additional support needs to play outside;
- Improve participation of children in planning processes, and ensure that there is a presumption against development of open spaces especially in areas lacking in play spaces;
- Recognise the value of effective play-workers and ensure that this is reflected in professional salaries and resources.

CHAPTER 7 – SPECIAL PROTECTION MEASURES

7.1 Asylum seeker and refugee children

The UK Government must:

- Withdraw its general reservation on immigration and asylum as a matter of urgency and bring its immigration and asylum policies and practices into line with the UNCRC;
- Ensure that consideration is given to devolved arrangements in Scotland such as the Children (Scotland) Act 1995, when implementing policy that affects asylum-seeking children in Scotland.

The Scottish Government should:

- Press the UK Government to withdraw its reservation on asylum and immigration and bring its immigration and asylum policies and practices into line with the UNCRC.

7.1.1 Detention of Asylum-Seeking Children

The UK Government must:

- End the detention of asylum-seeking children;
- In any review of legacy cases the presumption that families with children who have integrated well into communities will be granted leave to stay in the UK should be applied, and the onus shifted onto the Borders and Immigration Agency to show that there are compelling reasons why these families should be deported.

The Scottish Government should:

- Press the UK Government to end the detention of asylum-seeking children and support the development of alternatives to detention.

7.1.2 Access to Basic Services and Benefits Entitlements

The UK Government must:

- Revoke Section 9 of the Nationality, Immigration & Asylum Act (Treatment of Claimants, etc.) 2004 so that families continue to be supported while they remain in the UK.

The Scottish Government must:

- Ensure the recommendations of the HMIE report are implemented;
- In discussion with the UK Government, clarify the role and responsibility of local authorities in Scotland for supporting destitute asylum-seeking families to ensure that children are not made destitute, or forced to rely on charitable support.

7.1.3 Guardianship scheme for unaccompanied asylum seeker and refugee children

The UK Government must:

- Introduce a statutory guardianship scheme for all separated children, and any reform to the care of separated children must be formulated within the context of the obligations enshrined in the UNCRC and its optional protocols;
- Provide adequate levels of funding to local authorities, including the proposed new 'specialist' authorities, to ensure high quality care is available for all separated children, including for those with specific needs, for example, those with HIV: Specialist authorities must be developed, not with reduction of costs as the main objective, but with the aim of improving the quality of care for separated children.

The Scottish Government should:

- Consult with key stakeholders on the selection of specialist authorities, and establish mechanisms to ensure shared learning and best practice between authorities;
- Ensure that adequate resources are in place to ensure that all separated children can be allocated a social worker and appropriate accommodation to meet the specific needs of children;
- Press the UK Government to introduce a guardianship scheme for separated children and, as the Scottish Government has devolved responsibility for the care and welfare of all children in Scotland, should pilot such a scheme as a matter of urgency.

7.1.4 Availability and effectiveness of legal representation

The UK Government must:

- Enter into joint discussions at the earliest opportunity with the Scottish Government, the Law Society of Scotland, Convention of Scottish Local Authorities (CoSLA), Strategic Migration Partnership and the Scottish Legal Aid Board to ensure the availability of, and adequate funding for, appropriately trained legal practitioners, before selecting any specialist authority.

The Scottish Government must:

- Ensure that any authority selected in Scotland as a “dispersal area” is able to meet the demands for good quality children’s immigration advice.

7.2 Sexual Exploitation and trafficking

- The **Scottish Government** should develop appropriate mechanisms and ensure high quality training of professionals for the identification and support of child victims of trafficking
- The **UK Government** must fully resource the UK anti-trafficking action plan and ensure that all child victims of trafficking are protected in line with international human rights standards.

7.3 Children in conflict with the law – Administration of juvenile justice

The Scottish Government should ensure that:

- The minimum age of criminal responsibility in Scotland should be raised considerably;
- No child under the age of 18 is tried as an adult in Scotland, irrespective of the circumstances or the gravity of his/her offence, and the Children’s Hearing System should be allocated such resources as are required to extend the system to 16 and 17 year olds; at the very least Sheriffs in all criminal courts should be required to refer a child to the Children’s Hearings System for advice and/or disposal following a guilty plea or conviction of a person under 18;
- Children aged under 18 and certified by the court as unruly and depraved are not remanded in prison or in a remand centre, but placed in a specialised secure unit with staff trained to address mental health issues and the specific needs of vulnerable children;
- Enshrine in law the right to independent advocacy for all looked after and accommodated children including those in secure accommodation.

7.4 Antisocial Behaviour Act etc. (Scotland) 2004

The Scottish Government must:

- Amend the Antisocial Behaviour etc. Scotland Act 2004 to ensure that the ‘best interests’ of the child is always paramount in any proceedings affecting that child;
- Tackle unduly negative public and media images of young people, and promote ways of involving them in initiatives to improve communities.

APPENDIX 2 – LIST OF SUPPORTERS

Aberlour Childcare Trust
 Amnesty International
 Article 12 in Scotland
 Barnardos Hear 4 U Project
 Barnardos Scotland
 Barnardos Fife Children’s Rights Services
 British Association for Adoption and Fostering
 Broxburn Family Centre
 Caledonia Youth
 Central Scotland Rape Crisis & Sexual Abuse Centre
 Childhood and Families Research and Development Centre
 Childline Scotland
 Children 1st
 Children in Scotland
 Children’s Parliament
 Cornerstone Community Care
 Crossreach
 Alison Davies
 Drumchapel Children’s Rights Project
 Edinburgh Young Carers Project
 Enable Scotland
 Ethnic Minorities Law Centre
 Carole Ewart
 Family Mediation, Lothian
 First4Kids
 Foster Care Associates
 Fostering Network Scotland
 International Play Association
 Legal Services Agency
 LGBT Youth Scotland
 Mental Health Foundation
 NCH Scotland
 Parent to Parent
 Penumbra
 Zoë Picton Howell, Solicitor (England and Wales)
 Play Scotland
 Project Ability
 Quarriers
 Roshni
 SACRO
 SAMH
 Save the Children
 Scotland Yard Adventure Centre
 Scottish Child Law Centre
 Scottish Consumer Council
 Scottish Institute for Residential Child Care
 Scottish Out of School Care Network
 Scottish Refugee Council
 Seamab School
 The Big Step Project, Glasgow
 The Haven Project, Leith
 Unicef Scotland
 Westgap, Glasgow
 Who Cares? Scotland
 Youth Scotland
 18 and Under, Dundee

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