

**Submission to the
United Nations Universal Periodic Review**

**Thirteenth Session of the Working Group
on the UPR Human Rights Council 2012**

**Lead stakeholder**

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About Together

Together (formerly known as the Scottish Alliance for Children’s Rights) was set up in 1996 to seek the full implementation of the UN Convention on the Rights of the Child (UNCRC) in Scotland. It began as a small, informal network drawn from Scottish children’s organisations and has grown to have over 160 members and registered supporters, providing a focal point for non-governmental organisations in Scotland on children’s rights issues. In consultation with our members, Together prepares NGO alternative reports to the UN Committee on the Rights of the Child on Scottish and UK government progress in implementing in the UNCRC. Much of the evidence included in this submission is drawn from Together’s *State of Children’s Rights* report 2011¹ which provides a non-governmental perspective on the progress made in Scotland towards implementing the UNCRC. The following members and supporters contributed to the *State of Children’s Rights* report 2011.

Aberdeen Council of Voluntary Organisations

Aberlour

Action for Children

Action for Sick Children (Scotland)

Amnesty International

Article 12 in Scotland

British Red Cross

Caledonia Youth

CHILDREN 1ST

Children in Scotland

Children’s Parliament

Corner Young People’s Health and Information Service

Dyslexia Ayrshire

ENABLE Scotland

Engender

Families Outside

Freedom from Torture Scotland (Medical Foundation)

Glasgow Association for Mental Health

Highland Children’s Forum

Inclusion Scotland

International Play Association

IPA Scotland (International Play Association: Scotland Branch)

Kidz Stop Nursery and Out of School Clubs

National Autistic Society Scotland

National Deaf Children’s Society (NDCS) Scotland

PEACE Childcare

Play Scotland

Quarriers

Rathbone

respectme, Scotland’s Anti-Bullying Service

Save the Children UK

Scottish Refugee Council

Scottish Women’s Aid

Shakti Women’s Aid

Shelter Scotland

Skye and Lochalsh Community Care Forum - Young Carers

The Place 2B

UNICEF UK

YouthLink Scotland

I. BACKGROUND AND FRAMEWORK

1. This submission to the United Nations Universal Periodic Review is drawn from feedback and evidence provided by NGO members of Together. Together has a membership and registered supporter base of over 160 children’s organisations, academics and professionals with an interest in children’s rights and provides a focal point for non-governmental organisations in Scotland on children’s rights issues
2. Much of the evidence included in this submission is drawn from Together’s *State of Children’s Rights* reports for 2010 and 2011.ⁱⁱ This report provides a non-governmental perspective on the progress made in Scotland towards implementing the UNCRC. The *State of Children’s Rights* report was compiled and produced by Together following wide consultation with children’s organisations across Scotland. The consultation involved gathering views and opinions from over 250 professionals working with and for children through seminars held in Ayr, Inverness, Aberdeen, the Scottish Borders and Edinburgh. This was followed by an online survey completed by 61 children’s organisations working across a wide range of issues including mental health and wellbeing, disability, additional support needs, asylum and domestic abuse.
3. Together’s submission reflects on the progress made since the recommendations made to the UK Government in 2008 through the first session of the Universal Periodic Review. It also highlights additional key issues raised through the Together’s annual *State of Children’s Rights* reports .

II. PROMOTION AND PROTECTION OF CHILDREN’S HUMAN RIGHTS

A. Cooperation with human rights mechanisms

Scope of international obligations

4. Much progress has been made with regard to the UK increasing its obligations under international treaties as per recommendations 25 and 26 of the UK’s first session Universal Periodic Review.ⁱⁱⁱ In September 2008, the UK lifted its remaining reservations to the UNCRC on immigration and citizenship, meaning that children who are subject to immigration control are now entitled to the fundamental human rights set out in the CRC. In February 2009 the UK Government ratified the Optional Protocol on the sale of children, child prostitution and child pornography. The UK ratified the UNCRPD in June 2009. Despite such progress, Together is concerned by current negative discourse around human rights in the UK and its potential impact on further progress.

Constitutional and legal reforms aimed at protecting human rights

UK Bill of Rights

5. In March 2011, the UK Government established an independent commission on a Bill of Rights to investigate the creation of a UK Bill of Rights. The Commission’s remit to incorporate and build on the UK’s obligations under the European Convention on Human Rights. The commission is currently consulting about the need for a Bill of Rights and aims to report back to the UK

Government no later than by the end of 2012. Together is concerned that the commission’s terms of reference refers only to the European Convention on Human Rights and not to the Human Rights Act 1998 (HRA). It is essential that any new Bill of Rights builds and strengthens the rights afforded by the HRA and does not seek to dilute or undermine the legal protection and opportunities for redress that it currently provides for people of all ages living in the UK.

6. The Bill of Rights could offer real opportunities for embedding and mainstreaming children’s rights in the UK’s constitutional arrangements. The UN Committee on the Rights of the Child sees the development of a UK Bill of Rights as an opportunity to incorporate the principles and provisions of the UNCRC, including a ‘special section’ on children’s rights.^{iv} The parliamentary Joint Committee on Human Rights came to a similar conclusion in its 2008 inquiry which stated that there was a “strong case for any Bill of Rights to include detailed rights for certain vulnerable groups such as children...”^v
7. Together, as part of the ROCK coalition^{vi} has written to the Bill of Rights Commission to state the case for strengthening children’s rights in the UK, urging the Commission to ensure that the needs and rights of children and young people are explicitly considered throughout all their investigations and strongly advocating that a UK Bill of Rights builds on and strengthens the existing HRA .

Recommendations:

- *The UK Government should ensure that a UK Bill of Rights builds on and strengthens the existing Human Rights Act*
 - *A UK Bill of Rights must incorporate the principles and provisions of the UNCRC throughout and include a dedicated section on children’s rights.*
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Incorporation of the UN treaties into law

8. None of the UN human rights treaties ratified by the UK have been incorporated into UK or Scots law. The UK Government applies a piecemeal approach to the implementation of UN human rights treaties and as a result, many of the rights enshrined in these conventions have not been given legal effect in the UK. There is much evidence that not all children living in the UK are able to fully realise their rights as enshrined in the UNCRC. Together’s members report great variation across Scotland in terms of children accessing and experiencing many of the rights enshrined in the UNCRC. Particular concerns have been raised on behalf of children with a disability, children affected by domestic violence and children affected by mental health issues, alongside refugee and asylum-seeking children and those living in poverty.^{vii}
9. The UN Committee is clear that it expects governments to take all appropriate measures to give the UNCRC legal effect and has twice called for the UK Government to incorporate the rights, principles and provisions of the UNCRC into domestic law.^{viii} The committee is clear that incorporation “should mean that the provisions of the Convention can be directly invoked before the courts and applied by national authorities”^{ix} and states that “for rights to have meaning, effective remedies must be available to redress violations”.^x In the UK, the UNCRC has not been incorporated into domestic law and there are very few channels of redress for children facing violations of their rights.

10. In early 2011, the National Assembly for Wales unanimously passed the Rights of Children and Young Persons (Wales) Measure, demonstrating its commitment to strengthening rights protection for children in Wales. From 2014, the Measure will impose a duty upon Welsh Ministers to have due regard to the rights and obligations set out in the UNCRC and its Optional Protocols when exercising any of their functions. This will have the effect of embedding children’s rights in the strategic and day-to-day work of the Welsh Assembly Government. However, the measure does not amount to direct incorporation and opportunities for redress for children living in Wales are limited.
11. The Scottish Government has recently launched a consultation into a Rights of Children and Young People bill, similar to the Welsh measure, which will require Scottish Ministers to have due regard to the rights and obligations set out in the UNCRC and its Optional Protocols when exercising any of their functions. Together welcomes the bill but is clear that it is not an alternative to incorporation of the UNCRC into Scots law. Together urges the Scottish Government to strengthen the bill by extending it to public bodies, ensuring it gives children a means of redress and clearly setting out how the Scottish Government intends to show its compliance with the UNCRC. For the bill to be effective, the Scottish Government needs to accompany its introduction with a systematic and rigorous effort to promote knowledge and understanding of the UNCRC. This must engage all sectors of society, from government officials, parliamentarians and the judiciary through to teachers, healthcare workers, the police and the media. It must ensure that all professionals working with and for children have a clear understanding of the UNCRC and how it relates to their role. Together urges the Scottish Government to include a duty in the Rights of Children and Young People bill to promote awareness and understanding of the UNCRC.

Recommendations:

- *The UK Government should adopt as a matter of urgency appropriate legislative measures to give legal effect to human rights conventions in domestic law.*
 - *The UK and Scottish Government should seek to incorporate the UNCRC into domestic law at the earliest opportunity.*
 - *The Scottish Government should ensure that the Rights of Children and Young People Bill is extended to include public bodies, provides children with a means of redress and sets out how Government intends to show its compliance with the UNCRC. It must also include a duty to promote knowledge and understanding of the UNCRC.*
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Institutional and human rights infrastructure

12. The Scottish Human Rights Commission was established by the Scottish Commission for Human Rights Act 2006 and started work in 2008. The Commission is independent of Government, and the Scottish and Westminster Parliaments. A 2003 Act established Scotland’s Commissioner for Children and Young People (SCCYP) with 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 reserved to the Westminster Parliament, such as immigration, asylum,

tax and welfare benefits. As a result, SCCYP cannot be said to fully comply with the Paris Principles. The UN Committee on the Rights of the Child specifically called on the UK in 2008 to “ensure that all four established commissioners are independent in compliance with the Paris Principles and mandated, inter alia, to receive and investigate complaints from or on behalf of children concerning violations of their rights”.^{xi} Dr John Dunford’s independent review of the Children’s Commissioner for England^{xii} also recommended to UK Government that Children’s Commissioners across the UK should have the freedom to promote and protect all the rights of all children who live in their countries. Together would urge the UK Government to take this recommendation forward.

Recommendation

- *The UK and Scottish Governments should ensure legislation relating to the duties and powers of Children’s Commissioners across the UK are compliant with the Paris Principles.*
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B. Implementation of Human Rights Obligations in Relation to Children

13. Analysis of Government action on the UPR recommendations of 2008 relating to children and young people has shown that there has been mixed progress in taking forward the recommendations. Further concerns have been identified through the UN Committee on the Rights of the Child’s 2008 Concluding Observations to the UK Government^{xiii} and through Together’s ongoing work with children’s organisations across Scotland.

Equality and non-discrimination

14. In 2008, the UN Committee on the Rights of the Child raised a concern that “children with disabilities continue to face barriers in the enjoyment of their rights guaranteed by the Convention, including in the right to access to health services, leisure and play.”^{xiv} There is continued concern among children’s organisations in Scotland about the lack of support and resources available to enable children with disabilities to enjoy their rights under the UNCRC.

15. For example, training for teachers and support staff in mainstream schools on additional support for learning, equalities and inclusion is not adequate in Scotland. Only five local authorities provide mandatory training on equalities and inclusion, and none provide mandatory training on specific learning disability topics, e.g. autism or dyslexia.^{xv} In addition, the rights of children who are absent from school due to ill health are not protected in the same way across all areas in Scotland.^{xvi} As a result, children not being properly supported to learn in mainstream education, with the result that many parents are choosing to educate their child in specialist settings.

Recommendation

- *The Scottish Government should co-ordinate a national child rights training programme for professionals working with children with disabilities.*
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Right to life, liberty, and security of the person

Corporal punishment

16. In the first session of the UPR, the UK accepted to “*consider further measures in order to address the problem of violence against children, including corporal punishment.*”^{xxvii} The UK did not respond to the further recommendation to “*reconsider its position about the continued legality of corporal punishment against children.*” In 2008, the UN Committee on the Rights of the Child reiterated its earlier recommendation that Scotland “*fully prohibit the physical discipline of children as a matter of priority, and actively promote the non-violent discipline of children.*”^{xxviii}
17. Despite such pressure, neither the UK nor Scottish Government has passed legislation to make all physical assault unlawful. A recent large-scale NSPCC research study showed that 41.6% of the parents or guardians interviewed said that they had physically punished or ‘smacked’ their child in the past year.^{xxix} Between 1st April 2010 and 31st March 2011, ChildLine carried out a total of 265,458 counselling interactions with children and young people who had contacted the service with a range of concerns. 8,540 of these counselling interactions had a primary concern of physical abuse which represents 7% of the total counselling interactions that took place during that period. Physical abuse is *consistently* amongst the most common five problems that children and young people contact the ChildLine service about since its inception over two decades ago. Children talk to ChildLine about a range of abuse, from smacking and slapping to being ‘battered’, ‘beaten’ and hit with implements. A 2006 ChildLine study showed that one in three children talked about being bruised, wounded or hit with an implement, clearly indicating that the current law in Scotland is not protecting children and young people.
18. There will continue to be confusion between what is lawful and unlawful in relation to physical discipline within the family until clear legislation is passed. The Scottish Government must challenge public perceptions about what constitutes normal or acceptable behaviour and encourage individuals to take responsibility for helping to protect vulnerable children in their school, street and community. There is a need to remove the barriers that continue to stop people from acting on concerns they might have about a child, enabling society as a whole to challenge negative behaviour towards children, report suspected maltreatment, and ensure professionals act when concerns are raised.

Recommendation

- *The UK and Scottish Governments should make any form of physical violence against a person under the age of 18 a criminal offence.*
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Children affected by domestic violence

19. In the first session of the UPR, the UK accepted to “*set up a strategic oversight body, such as a commission on violence against women, to ensure greater coherence and more effective protection for women.*”^{xxx} Although no such strategic oversight body has been set up, Scottish Government has made noticeable progress in ensuring “*greater coherence and more effective protection*” for women and have paid particular attention to the needs of children affected by domestic violence as recommended by the UN Committee on the Rights of the Child in 2008.^{xxxi}

20. The Scottish Government’s *National Domestic Abuse Delivery Plan for Children and Young People*, published in 2008, included the provision of significant funding for specialist children’s workers in each local authority area.^{xxii} They have proved essential in helping children who have experienced domestic abuse make sense of their experiences and recover from the trauma of domestic abuse. Now the funding for implementing the plan has ended, there is increasing concern about the continuity of these posts, particularly in light of the removal of ring-fenced funding.
21. There is concern that the children who come into contact with services are the “tip of the iceberg” and that there is a significant hidden population of children living with domestic abuse in Scotland.^{xxiii} The outreach services provide by Women’s Aid groups through the Children’s Service Women’s Aid Fund have gone some way to reaching out to these children. The *Delivery Plan* has undoubtedly gone a long way to meeting the support needs of children experiencing domestic abuse. The Scottish Government is urged to consider how tackling domestic abuse and ensuring the provision of specialist services can remain a priority now that the *Delivery Plan* has ended.

Recommendation

- *The UK and Scottish Governments should ensure that tackling domestic abuse remains high on the policy and funding agenda.*
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Right to social security and to an adequate standard of living

Child poverty

22. In the first session of the UPR, the UK accepted to “provide further information with regard to efforts to reduce poverty among children in half by 2010.”^{xxiv} However, there has been no progress in reducing the number of children living in severe poverty since 2004/05.^{xxv} Children’s organisations work with a wide range of children trapped in the cycle of poverty and recognise a wide range of contributing factors, the primary factor being the poverty of children living in workless households. Although there is a range of activity aimed at helping parents access the labour market, childcare is a serious barrier for many parents in terms of affordability, availability and quality.
23. Despite overall levels of homelessness falling by six per cent in Scotland over the last five years, there has been a seven per cent rise in the number of families with children who are being made homeless. More than one in 10 (128,000) children live in fuel poverty in Scotland. The number of fuel-poor households with children rose by 23% in the last year because fuel costs rose faster than incomes.^{xxvi}
24. In March 2011, the Scottish Government produced the first *Child Poverty Strategy for Scotland*^{xxvii} to set out its commitment to tackling poverty and the socio-economic disadvantage of children. Children’s organisations welcome much of the strategy, particularly the focus on tackling the causes of poverty over the long-term. However, children’s organisations have raised a number of concerns including the lack of specific actions and timescales; ineffective monitoring and evaluation processes (and indicators) and the lack of a gender focus.

25. Despite efforts being made to tackle child poverty at the Scottish level, there are serious concerns that the Welfare Reform Bill currently going through UK Parliament will disproportionately impact children and families. Modelling by the Institute of Fiscal Studies predicts that child poverty will increase in the next few years.^{xxviii} The welfare reform proposals also single out disabled people with an estimated £9.2 billion out of £18 billion in benefit savings coming from households containing a disabled adult or child. The premium paid to families with a disabled child will be cut by 50% when the proposed new Universal Credit replaces existing benefits.^{xxix} Children’s organisations are concerned that the reforms to the UK welfare system, alongside cuts in public spending, will both increase the numbers living in poverty and the depth of poverty they experience.

Recommendation

- *The UK and Scottish Governments should allocate the additional funds needed to meet the target of halving child poverty by 2010 as a matter of urgency.*
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Mental health

26. In 2008, the UN Committee on the Rights of the Child recommended that additional resources and improved capacities should be employed to meet the needs of children with mental health problems.^{xxx} The Scottish Government has committed that by March 2013 no one will wait longer than 26 weeks from referral to treatment for specialist child and adolescent services (CAMHS)^{xxxi}. However, there is an overwhelming opinion among children’s organisations that the current provision of CAMHS is inadequate.^{xxxii} Although the quality of CAMHS is generally thought to be good, it is hugely under-resourced, leading to long waiting lists that can cause more damage to the child as well as longer, and ultimately more expensive, treatment.
27. The numbers of children admitted to adult psychiatric wards in Scotland has increased despite a specific target to reduce this.^{xxxiii} This is due to a lack of sufficient beds in appropriate settings and a lack of clinicians trained in the care of adolescents; it is also likely to vary depending on the child’s age and where they live. Children’s organisations report that a child in an adult ward is less likely to receive specialist services or take part in social activities and may often have their education disrupted. Particular concerns have been raised about the lack of CAMHS services for vulnerable children including asylum seeking children, children of prisoners and children from ethnic minorities.

Recommendation

- *The Scottish Government should ensure that sufficient resources and capacities are employed to meet the needs of children with mental health problems with particular attention given to services for vulnerable groups such as asylum-seeking children, children of prisoners and children from ethnic minority communities.*
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Migrants, refugees, and asylum-seekers

28. In the first session of the UPR, the UK accepted to “*protect the children and families of migrants and refugees.*”^{xxxiv} However, there is great concern among children’s organisations with regard to

violations of the rights of asylum-seeking children, specifically relating to the training of staff and the availability of legal representation.

Training of case owners

29. UKBA’s new guidance for caseworkers, *Processing Asylum Applications from a Child*^{xxxv}, is to be commended for its explicit and detailed references to the principles of the UNCRC and reference to recent case law on children’s best interests. However, evidence from children’s organisations in Scotland shows that the principles of UKBA policy and guidance are yet to be realised in UKBA practice. They recommend that the UKBA involves organisations such as the Scottish Refugee Council, British Red Cross and Freedom From Torture in the training of case owners, including real-life scenarios facing children, to ensure that the case owners fully understand specific issues and considerations in cases involving children.

Availability of legal representation

30. There are significant concerns about the availability of legal representation to asylum-seeking children. Only one law firm in Scotland has specific funding to work with children which is partly subsidised through independent trust funding. There was a call for specific funding to be made available by the Scottish Government to provide legal representation for asylum-seeking children, along with a call for the Law Society Scotland to introduce an accreditation scheme similar to the Immigration and Asylum Accreditation scheme run by the Law Society in England, in order to ensure a quality standard among legal professionals.^{xxxvi}

Recommendations

- *The UK Government should ensure guidance for those working with refugee and asylum seeking children around the best interests of the child is followed in practice.*
 - *The UK and Scottish Governments should take steps to ensure that adequate high quality specialised legal representation is in place for children seeking asylum and for protecting and representing the victims of child trafficking.*
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- ⁱ Together (2010). State of Children’s Rights report. Together (2011). State of Children’s Rights report.
- ⁱⁱ Together (2010). State of Children’s Rights report. Together (2011). State of Children’s Rights report.
- ⁱⁱⁱ Human Rights Council (2008) Report of the Working Group on the Universal Periodic Review United Kingdom of Great Britain and Northern Ireland
- ^{iv} Committee on the Rights of the Child (2008). Concluding Observations: United Kingdom of Great Britain and Northern Ireland (CRC/C/GBR/CO/4).
- ^v Joint Committee on Human Rights (2008) A Bill of Rights for the UK? Twenty-ninth report of session 2007-08.
- ^{vi} The ‘Rights of the Child UK’ (ROCK) is a coalition of voluntary organisations and individuals from across the UK pushing for the full incorporation of the United Nations Convention on the Rights of the Child (UNCRC) into UK law.
- ^{vii} Together (2011). State of Children’s Rights report.
- ^{viii} UN Committee on the Rights of the Child (2008) and (2002) Concluding Observations on the UK of Great Britain and Northern Ireland.
- ^{ix} Paragraph 11, General Comment No 5, UN Committee on the Rights of the Child 2003
- ^x Paragraph 24, General Comment No 5, UN Committee on the Rights of the Child 2003
- ^{xi} Committee on the Rights of the Child (2008). Concluding Observations: United Kingdom of Great Britain and Northern Ireland (CRC/C/GBR/CO/4).
- ^{xii} Dunford (2010) Review of the Office of the Children’s Commissioner (England)
- ^{xiii} Committee on the Rights of the Child (2008). Concluding Observations: United Kingdom of Great Britain and Northern Ireland (CRC/C/GBR/CO/4).
- ^{xiv} Committee on the Rights of the Child (2008). Concluding Observations: United Kingdom of Great Britain and Northern Ireland (CRC/C/GBR/CO/4). No 52b.
- ^{xv} Enable Scotland (2011). Bridging the Training Gap
- ^{xvi} Action for Sick Children Scotland (2011). Petition to Scottish Parliament
- ^{xvii} Human Rights Council (2008) Report of the Working Group on the Universal Periodic Review United Kingdom of Great Britain and Northern Ireland
- ^{xviii} Committee on the Rights of the Child (2008) Concluding Observations: United Kingdom of Great Britain and Northern Ireland (CRC/C/GBR/CO/4). No 42
- ^{xix} Radford et al (2011) Child abuse and neglect in the UK today, NSPCC
- ^{xx} Human Rights Council (2008) Report of the Working Group on the Universal Periodic Review United Kingdom of Great Britain and Northern Ireland
- ^{xxi} Committee on the Rights of the Child (2008). Concluding Observations: United Kingdom of Great Britain and Northern Ireland (CRC/C/GBR/CO/4). No 51.
- ^{xxii} The Scottish Government (2008). National Domestic Abuse Delivery Plan for Children and Young People
- ^{xxiii} Together (2011). State of Children’s Rights report.
- ^{xxiv} Human Rights Council (2008) Report of the Working Group on the Universal Periodic Review United Kingdom of Great Britain and Northern Ireland
- ^{xxv} Save the Children (2011). Severe Child Poverty in Scotland
- ^{xxvi} The Scottish Government (2010) Scottish House Condition Survey: Key Findings for 2009
- ^{xxvii} The Scottish Government (2011) Child Poverty Strategy
- ^{xxviii} Institute for Fiscal Studies (2010) Child and Working-Age Poverty to 2013-14
- ^{xxix} Scottish Campaign for Welfare Reform (2011)
- ^{xxx} Committee on the Rights of the Child (2008). Concluding Observations: United Kingdom of Great Britain and Northern Ireland (CRC/C/GBR/CO/4). No 53.
- ^{xxxi} The Scottish Government (2005). Mental Health of Children and Young People: A Framework for Promotion, Prevention and Care
- ^{xxxii} Together (2011). State of Children’s Rights report.
- ^{xxxiii} Mental Welfare Commission for Scotland (2010). Review of Mental Welfare Services in Scotland 2009-10
- ^{xxxiv} Human Rights Council (2008) Report of the Working Group on the Universal Periodic Review United Kingdom of Great Britain and Northern Ireland
- ^{xxxv} UKBA (2011). Processing Asylum Applications from a Child
- ^{xxxvi} www.lawsociety.org.uk/productsandservices/accreditation/accreditationimmigrationasylum.page