



## **Submission to the UK Parliamentary Joint Committee on Human Rights Inquiry into the UK's compliance with the UN Convention on the Rights of the Child**

### **About Together**

Together (Scottish Alliance for Children's Rights) is an alliance of children's organisations that works to improve the awareness, understanding and implementation of the UN Convention on the Rights of the Child (UNCRC) in Scotland. We have 263 members including large international and national non-governmental organisations through to volunteer-led playgroups and after school clubs. We also work closely with equivalent organisations across England, Wales and Northern Ireland, and are a member of the Rights of the Child UK coalition. Together consults widely with its membership through seminars, meetings and other ongoing communications. Every year, we research and publish an annual *State of Children's Rights* report to set out the progress made to implement the UNCRC in Scotland.

### **Introduction**

Together welcomes the opportunity to comment on the Joint Committee for Human Rights inquiry into the UK's compliance with the UNCRC. In our response, we will particularly highlight the need for a mechanism to be put in place to ensure that the UK Government's exercise of reserved powers is assessed for its impact on the human rights of children in Scotland and the other devolved nations. This is a matter that could be given consideration by members of the JCHR in the next Parliamentary term. We will also focus our response on the differences in the legislative and administrative mechanisms between Scotland and the rest of the UK and the impact this has on compliance with the UNCRC.

### **The context for scrutinising UNCRC compliance in Scotland**

In ratifying the UNCRC, the UK Government made a commitment in international law to put in place measures and legislation that comply with its obligations. The UK Government maintains powers in relation to international obligations to ensure that Scotland does not fall below the standards it sets. The Scotland Act empowers the Scottish Government and Scottish Parliament to observe and implement international human rights obligations in relation to devolved matters.

Whilst part of the UK, Scotland has a very different policy and legislative landscape and has considerable devolved powers over issues that affect the fulfilment of children's rights. For example, Scotland's education system, legal and justice system, NHS and local government are fundamentally distinct from the rest of the UK. Although the Scottish Government has legislative

responsibility over these devolved matters, reserved decisions made by the UK government on matters such as benefits and social security, immigration and employment can still have a profound effect. The interaction between reserved and devolved powers significantly impacts on the implementation of the UNCRC in Scotland and across the devolved nations.

As such, a gap exists in the scrutiny of the UK's UNCRC compliance: No mechanism currently exists that takes account of the impact of the exercise of reserved powers on the human rights of children in Scotland.

### **Children's human rights in Scotland**

The Scottish Government's approach to human rights is distinct from that of the UK Government. Political and public opinion in Scotland is generally supportive of human rights. In response to the potential repeal of the Human Rights Act, the Scottish Government delivered a strong statement supporting human rights, stating that it is *"strongly opposed to any attempt by a future UK Government to repeal the Human Rights Act or to withdraw from the European Convention on Human Rights."*<sup>1</sup> The Scottish Government has reaffirmed its commitment to human rights, with the Cabinet Secretary recently stating that *"In Scotland we are rightly proud of our stance on human rights, and have taken a distinctive approach in how we meet our international human rights commitments... The Human Rights Act is hardwired into our DNA and we find any attempts to undermine it in any way to be abhorrent."*<sup>2</sup>

Scotland's National Action Plan (SNAP) for human rights was launched in December 2013 in line with UN guidance on National Action Plans for human rights. It commits the Scottish Government, public bodies and civil society to take action towards the progressive realisation of international human rights, including children's rights. It has been widely welcomed by children's organisations who recognise its potential in terms of ensuring the rights of children are protected, respected and fulfilled.

The *Children and Young People (Scotland) Act 2014* places duties on Scottish Ministers and public bodies that specifically relate to the UNCRC.<sup>3</sup> The Act also enhances the powers of Scotland's Commissioner for Children and Young People.<sup>4</sup> The duties relating to the rights of children are due to commence in April 2015.

### **Issues raised by the oral evidence given to the JCHR to date**

Measures taken to further the UNCRC differ across the UK and as such, consideration must be given in UK-wide reports as to how children within particular jurisdictions are affected differently.<sup>5</sup> A number of issues have been raised in the evidence given to the JCHR to date which would have benefited from the insight and perspective of a representative from the devolved nations. These include:

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<sup>1</sup> <http://news.scotland.gov.uk/News/Human-Rights-Act-must-stay-10d4.aspx>

<sup>2</sup> <http://news.scotland.gov.uk/News/Shared-commitment-to-Human-Rights-Act-1562.aspx>

<sup>3</sup> <http://www.legislation.gov.uk/asp/2014/8/contents/enacted>

<sup>4</sup> [http://togetherscotland.org.uk/pdfs/Smith\\_Commission\\_v3.pdf](http://togetherscotland.org.uk/pdfs/Smith_Commission_v3.pdf)

<sup>5</sup> [http://www.togetherscotland.org.uk/pdfs/UK\\_Report\\_to\\_UNCRC\\_v2.pdf](http://www.togetherscotland.org.uk/pdfs/UK_Report_to_UNCRC_v2.pdf)

- Matters have been raised in relation to the UK Government's 5<sup>th</sup> periodic report to the UN Committee. Together welcomes the breadth of information included in the UK Government report. However, we share the concerns expressed by CRAE on the lack of focus given to how the many legislative developments referred to specifically impact on the outcomes of children and young people. In our response to the UK Government on the draft report, we noted the lack of consideration given to the implementation of the UNCRC in Scotland and the misrepresentation of specific England and Wales matters being UK-wide. For example, the UK periodic report refers to consultation with children by the Department for Education, the Department for Transport and an independent Children and Young People's Health Outcomes Forum. These developments were referred to as national developments, however do not reflect the very different experience of children living in Scotland.
- During oral evidence to the Joint Committee on 11<sup>th</sup> February 2015, developments across the UK in carrying out Child Rights Impact Assessments (CRIA) were discussed in the context of devolution.<sup>6</sup> Both the new CRIA template being established in Scotland, and the duty on Welsh Ministers to carry out CRIs in Wales, were cited as positive examples for England to learn from. It is important to note that only one CRIA has been carried out by the Scottish Government to date. However, to support the implementation of the Ministerial duty included in the *Children & Young People (Scotland) Act*<sup>7</sup>, a working group has been established to support the Scottish Government on developing and implementing a child rights and wellbeing impact assessment model (CRWIA) on Scottish Government legislation and policy. The implementation of this model was due to go live in April 2015 although is now likely to commence in June. Together is pressing the Scottish Government to develop a training and development programme to support the roll-out of the CRWIA in order to ensure its effectiveness in taking forward the consideration of children's rights in governmental decision-making.
- As part of the evidence session with Edward Timpson MP on 25<sup>th</sup> February 2015, it was stated that "*a public sector duty to have regard to the UNCRC has already been introduced in Wales and is coming into Scotland.*"<sup>8</sup> The *Children and Young People (Scotland) Act* does not place a duty on the public sector in Scotland to have regard to the UNCRC. Rather, it places a duty on public authorities to report on what steps have been taken to secure better or further effect the UNCRC requirements.<sup>9</sup> Whilst children's organisations have welcomed this reporting duty, it does not have the same weight as a duty to have regard to the UNCRC. A duty of 'due regard' was advocated for by Together during scrutiny of the Bill but this was not taken forward.
- During the evidence session with Dr Maggie Atkinson on 4<sup>th</sup> February 2015, reference was made to children's commissioner offices in the devolved counterparts and their power to undertake individual investigations.<sup>10</sup> Although the *Children and Young People (Scotland)*

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<sup>6</sup> [http://www.parliament.uk/documents/joint-committees/human-rights/TRANSCRIPT\\_JCHR\\_HC1016\\_110215.pdf](http://www.parliament.uk/documents/joint-committees/human-rights/TRANSCRIPT_JCHR_HC1016_110215.pdf) (pg 11)

<sup>7</sup> [http://www.legislation.gov.uk/asp/2014/8/pdfs/asp\\_20140008\\_en.pdf](http://www.legislation.gov.uk/asp/2014/8/pdfs/asp_20140008_en.pdf)

<sup>8</sup> [http://www.parliament.uk/documents/joint-committees/human-rights/TRANSCRIPT\\_JCHR\\_HC1016\\_25-02-15\\_Timpson.pdf](http://www.parliament.uk/documents/joint-committees/human-rights/TRANSCRIPT_JCHR_HC1016_25-02-15_Timpson.pdf) (pg 20)

<sup>9</sup> <http://www.legislation.gov.uk/asp/2014/8/section/2/enacted>

<sup>10</sup> [http://www.parliament.uk/documents/joint-committees/human-rights/TRANSCRIPT\\_JCHR\\_HC1016\\_04-02-15.pdf](http://www.parliament.uk/documents/joint-committees/human-rights/TRANSCRIPT_JCHR_HC1016_04-02-15.pdf) (pg 16)

Act will extend the powers of Scotland's Commissioner for Children and Young People to undertake individual investigations, this is not currently in place and the enactment date is set as April 2016. It is currently unclear as to whether this new power will be accompanied the resources needed to ensure it can be implemented effectively.

- During oral evidence to the Joint Committee on 11<sup>th</sup> February 2015, Dragan Nastic from UNICEF UK referred to incorporation of the UNCRC into UK law as the '*overarching issue*.'<sup>11</sup> Together supports Dragan's statement that incorporation of the UNCRC into domestic law would help to coordinate UNCRC implementation across the UK and ensure there is a synergy in the way in which children's rights are realised across the UK.<sup>12</sup>

Reflecting on evidence given by Together and other organisations to the Scottish Parliament's Education and Culture Committee regarding scrutiny of the *Children and Young People (Scotland) Bill* in 2013, the Committee stated that it was "*not persuaded of the case for full incorporation of the UNCRC into Scots law.*" However the Committee expressed that the Bill could be improved by incorporating specific Articles of the UNCRC into legislation, and requested the Scottish Government's response to Scotland's Children's Commissioner's suggestion that Articles 3 and 12 be included.<sup>13</sup> The Scottish Government rejected this suggestion, however the debates which took place provide an important context through which to understand how opinions relating to incorporation of the UNCRC are progressing across the UK.

## Further matters for the attention of the JCHR

### *Child poverty*

Scotland can exercise considerable autonomy when it comes to tackling poverty: for instance, major areas of budget allocation, economic development and housing policy are the responsibility of the devolved nations across the UK.<sup>14</sup> Yet at present it is the UK government that largely determines the social welfare landscape of Scotland. It has been widely reported that child poverty in Scotland will rise significantly as a direct result of the current UK coalition government's tax and benefit policies: in Scotland alone, forecast trends suggest around 65,000 more children will be pushed into poverty by 2020.<sup>15</sup>

Findings from the Child Poverty Action Group in Scotland have identified implications of reduced social security support on children's wellbeing, access to food and support for their development such as books and toys.<sup>16</sup> A 2014 report from the Scottish Parliament's Welfare Reform Committee concluded that the UK Government's welfare reforms were a 'significant cause' for increasing numbers of people needing food bank support.<sup>17</sup>

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<sup>11</sup> [http://www.parliament.uk/documents/joint-committees/human-rights/TRANSCRIPT\\_JCHR\\_HC1016\\_110215.pdf](http://www.parliament.uk/documents/joint-committees/human-rights/TRANSCRIPT_JCHR_HC1016_110215.pdf) (pg 24)

<sup>12</sup> [http://www.parliament.uk/documents/joint-committees/human-rights/TRANSCRIPT\\_JCHR\\_HC1016\\_110215.pdf](http://www.parliament.uk/documents/joint-committees/human-rights/TRANSCRIPT_JCHR_HC1016_110215.pdf)

<sup>13</sup> [http://www.scottish.parliament.uk/S4\\_EducationandCultureCommittee/Reports/edR-13-11w.pdf](http://www.scottish.parliament.uk/S4_EducationandCultureCommittee/Reports/edR-13-11w.pdf)

<sup>14</sup> [http://www.ippr.org/assets/media/publications/pdf/poverty-and-devolution\\_Jan2015.pdf](http://www.ippr.org/assets/media/publications/pdf/poverty-and-devolution_Jan2015.pdf)

<sup>15</sup> <http://www.cpaq.org.uk/sites/default/files/CPAG-PovertyinScotland2014-sample-chapter.pdf> (pg 5)

<sup>16</sup> *Child Poverty Action Group in Scotland (2014). Policy Bulletin 1A: Sanctions*

<sup>17</sup> *Scottish Parliament (2014) Welfare Reform Committee 2nd Report, 2013 (Session 4) Food Banks and Welfare Reform.*

Claims in the 5<sup>th</sup> UK periodic report to the UN Committee in 2014 that the UK government welfare reforms will help lift youngsters out of poverty raised concern in Scotland, and the then Minister for Children and Young People Aileen Campbell MSP stated *“The report does not reflect the Scottish Government’s position on a key issue which continues to have a significant impact on the lives of children in Scotland; it describes the UK Government’s approach to welfare reform but does not reflect our concerns about the impact that those reforms are having.”*<sup>18 19</sup>

Together is clear that any discussion on child poverty in the UK must acknowledge from the outset the effect of the policy-making agenda that takes place at Westminster on the patterns, distribution and depth of poverty across the devolved nations.

#### *Access to legal aid*

Austerity policies being enacted by the UK Government directly affect the Scottish Government’s ability to fund welfare and public services: It has been estimated that since 2009/10, Scotland’s budget has been cut by £3 billion.<sup>20</sup> The impact is a cut to available resources to support services such as legal aid, which can leave children in a position of being unable to claim essential rights or services, seek redress for rights violations, or ensure that their rights are protected in criminal justice or other judicial or administrative processes.

A lack of access to legal aid and assistance for children has been highlighted by children’s organisations as area of considerable concern, particularly relating to care leavers and those who are looked after.<sup>21</sup> In January 2011, regulations were amended in Scotland to change the way that a child is assessed for civil and children’s legal assistance. Changes to assessment now means that it is unlikely that a child is able to qualify independent of parents or carers.<sup>22</sup> This adds an additional substantial barrier for children in accessing justice, on top of challenges such as a lack of accessible information of how to seek justice and concerns of not being taken seriously and facing complex laws and legal systems designed for adults.

#### *International representation*

Through the UK as state party, Scotland has an obligation to report to the UN on the extent to which it is meeting its human rights obligations. This reporting relates to both UN Treaty Committees, such as the UN Committee on the Rights of the Child, and the Human Rights Council through the Universal Periodic Review. The extent to which Scotland is involved in reporting – and held to scrutiny at a UN level – can be patchy and is very dependent on the will to involve the devolved nations at a UK level. There is a considerable need for the UK and devolved governments to agree a process through which there is full and robust scrutiny of the progress made to meet international human rights obligations across the England, Wales, Scotland and Northern Ireland. This process must include governments, national human rights institutions and civil society across the devolved nations.

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<sup>18</sup> <http://news.scotland.gov.uk/News/Child-Poverty-and-welfare-reform-d21.aspx>

<sup>19</sup> <http://www.snp.org/media-centre/news/2014/jun/westminster-suppressed-scottish-child-poverty-view>

<sup>20</sup> [http://www.unison-scotland.org.uk/publicworks/TheCutsDontWork\\_UNISONScotlandReport\\_June2014.pdf](http://www.unison-scotland.org.uk/publicworks/TheCutsDontWork_UNISONScotlandReport_June2014.pdf)

<sup>21</sup> <http://www.togetherscotland.org.uk/pdfs/SOCRRTogetherReport2014.pdf>

<sup>22</sup> <http://www.togetherscotland.org.uk/pdfs/SOCRRTogetherReport2014.pdf> (pg 17)

## Conclusion

As part of the JCHR's current inquiry on UNCRC compliance and its commitment to prepare a UK-wide report, Together recommends that the Joint Committee proactively involved the devolved nations in its enquiry and takes account of evidence presented.

Together recommends that the following two areas should be key priorities for the future Joint Committee on Human Rights:

- Consideration of the incorporation of the UNCRC into UK law. Incorporation would ensure a clear and robust way of ensuring all UK nations comply with the UNCRC. It would provide a lead to the devolved nations to encourage incorporation of the UNCRC in relation to devolved matters. The UN Committee on the Rights of the Child recommended that the UK incorporate the UNCRC in its Concluding Observations to the UK in both 2002 and 2008, and are likely to reiterate this in the forthcoming UK review due in 2016.<sup>23</sup>
- Consideration of a formal mechanism to be put in place at a UK level that ensures Scotland and the devolved nations are routinely and comprehensively involved in international human rights reporting mechanisms. Together recommended to the Smith Commission that such a mechanism should be created. This should include clear representation of distinct Scottish issues within the UK reports to treaty bodies and representatives from Scotland being included in delegations to the UN as a matter of routine.

Furthermore, Together is keen to draw attention to its annual *State of Children's Rights in Scotland* reports<sup>24</sup>, which provide a non-government perspective on the extent to which children in Scotland are able to enjoy their rights enshrined in the UNCRC, and provides further content to the points raised in this document.

### **For more information, please contact:**

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<sup>23</sup> <http://www.togetherscotland.org.uk/pdfs/SOCRRTTogetherReport2014.pdf> (pg 11)

<sup>24</sup> Access the *State of Children's Rights in Scotland* reports here: <http://www.togetherscotland.org.uk/resources-and-networks/state-of-childrens-rights-reports/>