

November
2014

*State of
Children's
Rights in
Scotland*

Together



together

Scottish Alliance for
Children's Rights

About Together

Together (formerly known as the Scottish Alliance for Children's Rights) seeks the full implementation of the UN Convention on the Rights of the Child (UNCRC) in Scotland. With over 260 members throughout Scotland, our aims are to:

- Ensure our members are involved, consulted and influence our work to progress children's rights;
- Progress the implementation of children's rights at a local and national level through the provision of support and expertise;
- Provide robust monitoring of UNCRC implementation in Scotland;
- Be recognised by our membership and decision-makers as the informed voice that advocates for children's rights in Scotland.

Glossary of Terms

ASBO – Antisocial Behaviour Order

ASN – Additional Support Needs

CAMHS – Child and Adolescent Mental Health Services

CELCIS – Centre for Excellence for Looked After Children in Scotland

Child/children refers to those under 18 unless otherwise stated

Children's organisations – refers to non-governmental organisations in Scotland unless otherwise stated

CoSLA – Convention of Scottish Local Authorities

CPP – Community Planning Partnerships

CRIA – Child Rights Impact Assessment

CSP – Co-ordinated Support Plan

EACH Charter – European Association for Children in Hospital Charter

ECHR – European Convention on Human Rights

EU – European Union

EYC – Early Years Collaborative

GIRFEC – Getting It Right For Every Child

LGBTI – lesbian, gay, bisexual, transgender and intersex

MEP – member of European Parliament

MSP – member of Scottish Parliament

NGOs refers to non-governmental organisations in Scotland unless otherwise stated

RSHP – Relationships, Sexual Health and Parenthood Education

SCCYP – Scotland's Commissioner for Children and Young People

SCRA – Scotland's Children's Reporter Administration

SCRIMG – Scotland's Children's Rights Implementation Monitoring Group

SGS – Scottish Guardianship Service

SHANARRI – Safe, Healthy, Achieving, Nurtured, Active, Respected, Responsible, Included

SLAB – Scottish Legal Aid Board

SPA – Scottish Policy Authority

SPENS – Strategic Paediatric Educationalists and Nurses Scotland

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

UNCRC – United Nations Convention on the Rights of the Child

UNCRPD – United Nations Convention on the Rights of Persons with Disabilities

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Executive Summary

¹ Together (2013) *State of Children's Rights in Scotland*

² Committee on the Rights of the Child (2008). *Concluding Observations: United Kingdom of Great Britain and Northern Ireland*

³ Scottish Government (2009) *Do the Right Thing*

⁴ Scottish Government (2012) *Do the Right Thing progress report*

⁵ See: <https://www.gov.uk/government/policies/creating-a-fairer-and-more-equal-society/supporting-pages/the-united-nations-convention-on-the-rights-of-the-child-uncrc> (Accessed October 2014)

⁶ Scottish Government (2013). 2014 UNCRC periodic review – Scottish Submission

The *State of Children's Rights* report 2014 provides a non-government perspective on the extent to which children in Scotland are able to enjoy their rights enshrined in the United Nations Convention on the Rights of the Child (UNCRC). It reflects on the past year since the publication of the *State of Children's Rights* report 2013,¹ discussing what progress has been made and where further efforts are needed.

The report was compiled and produced by Together (Scottish Alliance for Children's Rights) following wide consultation with children's organisations across Scotland. This involved gathering evidence, research reports and consultation responses from 25 children's organisations working across a wide range of issues including disability, justice and health. This was followed by a series of thematic focus groups on issues including children affected by imprisonment, disability and mental health, and recreation, culture and play. The *State of Children's Rights* report 2014 is a culmination of the evidence received throughout the consultation alongside further desk research into issues that have been highlighted by Together's members as being of particular priority.

Background

In 2008, the UN Committee on the Rights of the Child examined the UK Government's progress in implementing the UNCRC, making a series of recommendations (known as *Concluding Observations*²) to set out where the UK was falling short. In response, in 2009, the Scottish Government published a UNCRC action plan, *Do the Right Thing*³, which provided a list of twenty one priority actions. This was subsequently followed by a progress report in May 2012.⁴

The UK's next reporting to the UN Committee is imminent. In preparation, the UK Government submitted its 5th report to the UN Committee in May 2014.⁵ This report drew from the Scottish Government's submission to the UK, published in June 2013.⁶ Both reports set out the government's assessment of the progress made to implement the UNCRC since the UN Committee's last examination. The *State of Children's Rights* report will be used by Together as a framework through which to undertake further consultation with children's organisations across Scotland. This will subsequently inform the independent NGO report to the UN Committee which will be submitted in July 2015. The independent NGO report plays an essential role in enabling the UN Committee to hold the Scottish and UK Governments to account in their duty to implement the UNCRC.

Aim

The aim of the *State of Children's Rights* report 2014 is to reflect on the progress made in implementing the UNCRC over the past twelve months and highlight what children's organisations see as being the current key issues. Specifically, the report:

- recommends the next steps that should be taken to improve children's rights in Scotland; and
- provides a point of referral against which future efforts can be assessed.

Key Findings

General Measures of Implementation

There has been widespread disappointment that an opportunity to fully incorporate the UNCRC into Scots law has been missed by the Scottish Government through the *Children and Young People (Scotland) Act*. However, Part 1 of the Act,⁷ which directly relates to the implementation of the UNCRC, has been broadly welcomed. It includes:

- **A duty on Ministers to further the UNCRC:** The strength of this duty is that it raises children's rights across all areas of policy, including those that are not directly related to children (such as transport, housing or the environment);
- **A duty on public bodies to report on their implementation of the UNCRC:** Whilst there is disappointment that this is only a duty to report rather than a duty to implement, it could still provide a real opportunity for public bodies to integrate children's rights into the core of their values and services;
- **A duty on Ministers to promote public awareness and understanding of the UNCRC:** For this duty to achieve its intention, Ministers will need to engage all sectors of society and ensure it is underpinned by a comprehensive strategy for disseminating knowledge of the UNCRC.

Children face substantial barriers to accessing justice. These barriers include a lack of knowledge of their rights and how to enforce them, concerns that they may not be heard or taken seriously and lack of legal assistance following changes to legal aid. Part 2 of the *Children and Young People (Scotland) Act* introduces an individual investigations function to the role of the Children's Commissioner to provide a limited mechanism through which children can seek an investigation into violations of their UNCRC rights. The new Optional Protocol to the UNCRC would give children a specific means through which they could seek a remedy if their rights were breached. However, the UK government has not signed the Optional Protocol and the Scottish Government is yet to make any commitment.

General Principles

There has been some progress in relation to the promotion and implementation of Article 12 through a combination of legislative and policy developments across national and local government. The extension of the voting franchise for the referendum to include 16-17 year-olds has resulted in an unprecedented level of political engagement among children. Young people with care experience continue to report that advocacy provision is inconsistent across Scotland and dependent on decisions made by each local authority.⁸

Children affected by domestic abuse are still not having their views taken into account with regards to decisions on contact with their parents.⁹ More children are being involved in national policy development but concerns remain among many children's organisations that more vulnerable children do not have the opportunity to have their voices and experiences heard. Vulnerable groups of children still face discrimination in many areas of their daily lives including children with a disability, discrimination resulting from gender stereotypes, hate crime affecting LGBT children and negative reporting of Gypsy/Travellers in the media.

Civil Rights and Freedoms

There is a continued need to take forward the UN Committee's recommendations that the Scottish Government ends the use of mosquito devices and conducts an up-to-date independent review of ASBOs. Following a great deal of debate around the use of 'stop and search' powers on children, children's organisations have welcomed the announcement by Police Scotland that it is to end the practice of consensual stop searches on children under the age of 12.¹⁰

⁷ Scottish Government (2014). *Children and Young People (Scotland) Act: Part 1 Rights of Children (Section 1)*

⁸ *Who Cares? Scotland (2013). Independent Advocacy Paper*

⁹ Scotland's Commissioner for Children and Young People (2013). *Child Contact Proceedings for Children Affected by Domestic Abuse (pg 27)*

¹⁰ Scottish Parliament (2014). *Justice Sub-Committee on Policing*

¹¹ <http://withscotland.org/resources/finding-the-balance-childrens-right-to-confidentiality> (Accessed October 2014)

¹² <http://news.scotland.gov.uk/News/500-new-health-visitors-ddc.aspx> (Accessed June 2014)

¹³ <http://www.scotland.gov.uk/Topics/People/Young-People/early-years/parenting-early-learning/family-nurse-partnership/training> (Accessed October 2014)

¹⁴ Scottish Government (2013). *Social Care (Self-Directed Support) (Scotland) Act 2013*

¹⁵ Scottish Government (2014). *Delivering Equality, Human Rights and Independent Living for Disabled People in Scotland: Update of Scottish Government activity and plan for 2014-15*

¹⁶ Action for Sick Children Scotland (2013). *Parental Access & Family Facilities Survey 2012-13 Report*

Concerns remain about the information sharing provisions included in the *Children and Young People (Scotland) Act* and the risk that children could be reluctant to access and engage with confidential services if they feel that information is likely to be shared without their consent.¹¹ There is a need for strong guidance for professionals to outline the circumstances in which information should be shared when consent cannot be obtained.

Scotland is falling behind the majority of European countries in that there is a continued acceptance of hitting children. Children do not have the same level of protection from violence as adults in Scots law and this is detrimental to attempts to protect them from physical abuse. The *Criminal Justice (Scotland) Bill* should be used as a means through which the defence of 'justifiable assault' of children is repealed.

Family Environment and Alternative Care

The *Children and Young People (Scotland) Act* included welcome provisions to provide increased and more flexible early learning and childcare for 3 and 4 year olds and for some vulnerable 2 year olds, and improved support for care leavers.

There is still a lack of consistency in advocacy provision for looked after children, particularly relating to cases whereby their views on contact with family members have been disregarded. Children affected by parental imprisonment remain particularly isolated and vulnerable. There is a need to use CRIAs as a matter of routine within the criminal justice system, and to take forward amendments to the *Criminal Justice (Scotland) Bill* to ensure that the rights of children affected by imprisonment are upheld.

Basic Health and Welfare

There is alarming evidence that child poverty is predicted to increase significantly, largely as a result of welfare changes introduced by the UK Government. Costs that impact on children, such as food, nursery places and school costs have dramatically increased over the past few years. Working families have seen a fall in their income. There are several areas where the Scottish Government needs to take more action to maximise household income, reduce essential outgoings and mitigate the impact that increased child poverty will have on child health and wellbeing.

Children's organisations have welcomed plans to create over 500 new health visitor posts¹² and to roll out the Family Nurse Partnership to every local authority.¹³ It is essential that these moves are accompanied by robust monitoring, evaluation and review mechanisms to guarantee the long-term effectiveness of the programmes in ensuring children's rights are known and evidenced.

There is disappointment that the *Children and Young People (Scotland) Act* did not address the specific needs of children with a disability. The *Social Care (Self-directed Support) (Scotland) Act*¹⁴ has been welcomed but more clarity is needed as to how it will work in practice. Concerns have been raised that the current approach varies considerably across Scotland. Steps taken to develop a Disability Delivery Plan¹⁵ have been welcomed. To be effective in realising children's rights, children should be actively involved and consulted in its development. Children are still treated in adult wards when it is not in their best interests and they face obstacles in accessing education when in hospital or absent from school as a result of ill health.¹⁶

Children's organisations continue to report an increasing number of children with mental health issues struggling to access support and being placed on long waiting lists. In many areas, children accessing services due to a learning disability or mental health issue do not have access to independent advocacy.

¹⁷ Ellis and Sosu (2014) Closing the attainment gap in Scottish Education. Joseph Rowntree Foundation.

¹⁸ Joseph Rowntree Foundation (2014) Closing the Attainment Gap in Scottish Education

¹⁹ ENABLE Scotland (2011). Bridging the Training Gap

²⁰ Scottish Government (2013). Play Strategy for Scotland: Our Vision

²¹ Growing up in Scotland Study (2012). What do we know about play?

²² Scottish Refugee Council (2013). 'She Endures With Me: An Evaluation of the Scottish Guardianship Service Pilot' (pg 43)

²³ In the year ending March 2014, 318 asylum applicants had their age disputed and there were 418 recorded as having completed an age assessment. Of those who completed age assessments in this period, 63% had a date of birth over 18 when the age dispute was raised: <https://www.gov.uk/government/publications/immigration-statistics-january-to-march-2014/immigration-statistics-january-to-march-2014> (Accessed October 2014)

²⁴ UN General Assembly (1989). UN Convention on the Rights of the Child (Article 24)

²⁵ CRC/C/OPSC/UK/Q/4/Add.1

²⁶ UN Committee on the Rights of the Child (2014). Concluding observations on the report submitted by the United Kingdom of Great Britain and Northern Ireland under article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

²⁷ Ibid.

²⁸ Scottish Government Press Release (2014). 'New Human Trafficking Bill for Scotland'. Available at: <http://news.scotland.gov.uk/News/New-human-trafficking-bill-for-Scotland-a76.aspx>

²⁹ Scotland's Commissioner for Children and Young People (2014). Comments on Scottish Government proposals for a Human Trafficking Bill and outline Strategy

³⁰ Scottish Government (2009). Do the Right Thing report

Inadequate sites for Gypsy/Traveller communities have been raised as a particular concern, as have their impact on children's rights to adequate sanitation, health and accommodation.

Education, Leisure and Cultural Activities

There are many good examples of work to involve children in their education, particularly at a national level. Concerns remain that children's participation in school matters at a local level are surface level and heavily dependent on teachers and the ethos of schools.

Children living in poverty are experiencing significant violations of their right to education.¹⁷ Progress in this area is being hampered by a lack of robust data, research and evaluation evidence for schools and local authorities to draw on to inform their approaches to closing the gap.¹⁸ Children with a disability are still being excluded from mainstream education. A lack of understanding and knowledge in the children's workforce can lead to the escalation of behavioural problems and inappropriate support being provided in school for children with a disability.¹⁹

The Scottish Government's Play Strategy²⁰ has been welcomed. Disabled and disadvantaged children continue to face multiple barriers to being able to play in a variety of environments as part of their everyday lives. Many of the barriers to play faced by children are amplified by the intersections between poverty, disadvantage, disability and environment.²¹

Special Protection Measures

Asylum seeking children continue to live in situations of great stress and uncertainty.²² Age disputes continue to be a significant issue.²³ Children's organisations are concerned that age assessment still operates within a culture of disbelief rather than on the 'benefit of the doubt'. Children's organisations have reported a number of cases in which children of parents with an irregular migration status have been unable to access GP services in what is a serious breach of their right to the highest attainable standard of health.²⁴

There are serious concerns about systematic child exploitation. Police Scotland recorded more than 700 offences against young children in 2012/13. A lack of research and difficulty in gathering data makes it hard to assess the full extent of child sexual exploitation. There is a need for overarching strategic thinking in order to align existing legislation, strategies and guidance around child protection, sexual abuse, sexual and reproductive health and rights, internet safety, violence against women and trafficking.

The UK's performance in implementing the Optional Protocol on the Sale of Children was examined by the UN Committee in June 2014.²⁵ The Committee expressed its 'deepest concern' with the scale and nature of child trafficking in the UK and the low level of prosecutions and convictions.²⁶ It outlined a number of areas for improvement, including the need for a systematic mechanism for data collection under all offences.²⁷ A dedicated *Human Trafficking (Scotland) Bill* is to be introduced by Scottish Ministers in 2014.²⁸ The Children's Commissioner has urged the Scottish Government to tackle human trafficking and modern slavery more effectively through a consistent, coordinated and integrated approach.²⁹

The age of criminal responsibility in Scotland currently remains one of the lowest in Europe. The *Criminal Justice (Scotland) Bill* provides a welcome opportunity to consider raising the age of criminal responsibility. Not to do so would be a missed opportunity and would risk the Scottish Government failing to fulfil its commitment made in 2009.³⁰

Introduction

³¹ UK Government (2014). *The Fifth Periodic Report to the UN Committee on the Rights of the Child*

³² Scottish Government (2013). *The 5th UK Government Report to the UN Committee on the Rights of the Child: Scottish Government Submission*

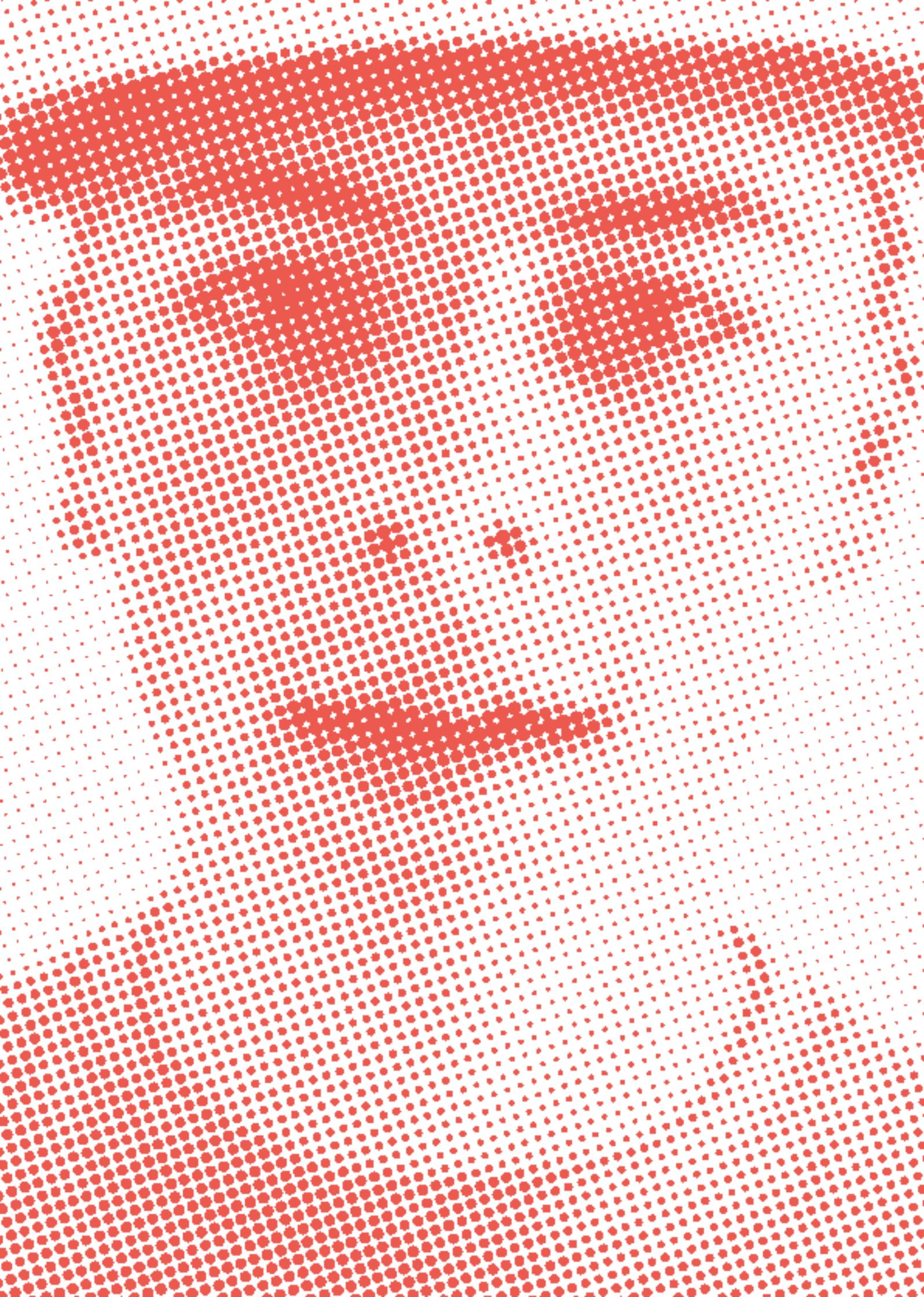
The vision of Together (Scottish Alliance for Children’s Rights) is that the rights of all children in Scotland are protected, respected and fulfilled, as enshrined in the UN Convention on the Rights of the Child (UNCRC) and other human rights conventions. To achieve this, we work with our members, stakeholders and duty bearers to progress and achieve the realisation of children’s rights in all areas of society. Our members range from leading national and international non-governmental organisations to local playgroups and individuals, all sharing a commitment to promote and advocate for children’s rights. In the past year, we have seen our membership increase from 241 to 266 children’s organisations and professionals.

In 2008, the UN Committee on the Rights of the Child made 124 recommendations (concluding observations) as to how the Scottish and UK governments could improve children’s rights in Scotland and across the UK. These recommendations were made after the UN Committee considered evidence submitted by the government, Children’s Commissioners, NGOs and children. In the coming year, the UN Committee is due to review what progress has been made in taking these recommendations forward and where further progress is needed. In May 2014, the UK Government submitted its 5th report to the UN Committee.³¹ This report drew from the Scottish Government’s submission to the UK, published in June 2013.³² Both reports set out the government’s assessment of the progress made to implement the UNCRC since the UN’s last examination. Together will be working with its members and its partner organisations across the UK to submit an alternative report that enables the UN Committee to hold the Scottish and UK governments to account.

The *State of Children’s Rights* report provides a non-governmental perspective on the extent to which implementation of the UNCRC and of the UN’s concluding observations have been taken forward over the past year. It holds the Scottish Government and other duty-bearers to account by highlighting where progress has – and has not – been made. It identifies key recommendations that need to be taken forward to ensure children’s rights are at the heart of policy and practice across Scotland.

As a coalition of 266 members, many of whom work directly with children in Scotland, Together is well placed to develop a report on the *State of Children’s Rights*. Over 50 NGOs and professionals working with and for children contributed to this report by submitting evidence and research reports, case studies and contributing to focus groups. Throughout the report we have included case studies that illustrate how easily children can be left out of decisions that affect them, and how taking a rights-based approach can make a significant difference to their lives.

We are extremely grateful for the involvement of all of our members who have contributed and supported the development of the *State of Children’s Rights* report 2014. We will use this report as a framework for further consultation with our members so that in summer 2015, we can present a full and comprehensive picture to the UN Committee on the *State of Children’s Rights* in Scotland.



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

Article 4:

- Governments must take all appropriate legislative, administrative, and other measures to ensure the implementation of the rights enshrined in the UNCRC. With regard to economic, social and cultural rights, governments should undertake to realise children's rights to the maximum extent of their available resources.

Article 41:

- Governments must respect existing standards in children's rights if they are higher than the standard set by the UNCRC.

Article 42:

- Governments must ensure that the rights enshrined in the UNCRC are widely known by both adults and children.

Article 44.6:

- Governments must make their reports on UNCRC implementation widely available to the public.

Chapter

1

General Measures of Implementation

Case study: *access to legal aid*

Children have a particular need for legal assistance to enable them to navigate complex laws and legal systems that are generally designed for adults. Children's needs are often overlooked and a focus on adults can leave them without the legal support they require. Lack of legal assistance 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 girl of 13 met with a solicitor as she was worried about a court action that had been raised by her Gran to obtain contact with her. She lived with her Dad but visited her Gran when she could, usually every week or two. Her Gran and her Dad did not get on, however her Dad never stopped her going to see her Gran and left the decision of when she visited up to her. She was clear that she did not want the Court to make any order for contact, especially not at the frequency her Gran had asked for.

The court action was raised against her Dad as he had parental rights and responsibilities for her. Her Dad had chosen not to defend the court action or seek legal advice himself as he claimed that he would not qualify for legal assistance and did not want to pay for a solicitor. The girl was incredibly worried that an order would be made by the court against her wishes as her Dad had done nothing to oppose the court action.

Her Dad would not pay for any legal advice for the girl, and so her solicitor applied for Advice and Assistance from the Scottish Legal Aid Board in order to, at the very least, offer her advice about the court action and ensure her views were made known to the court. As it was believed that her Dad did not qualify for legal assistance himself, the girl would only be able to obtain legal assistance if her Dad's resources were not taken into account when assessing her own financial position. For this to happen, the Legal Aid Board would have to be convinced that it would be 'unjust and inequitable' to take account of her Dad's resources.

Unfortunately, as the girl's father was refusing to support her purely due to financial reasons, no legal assistance was made available to the girl to obtain her own advice. This left the girl with no means by which to obtain legal advice or have her own solicitor challenge the court action despite the decision of the court having a direct impact on her.

Measures to bring domestic legislation in line with the provisions of the Convention

UN Concluding Observation

'The Committee remains concerned that the principles of the Convention are not duly taken into account in all pieces of legislation throughout the country and that the State party has not incorporated the Convention into domestic law nor has ensured the compliance of all legislation affecting children with it. The Committee recommends that the State party continue to take measures to bring all legislation in line with the Convention on the Rights of the Child.'³³

Incorporation

The UN Committee on the Rights of the Child explicitly states in its General Comment on the implementation of the UNCRC that it 'welcomes the incorporation of the Convention into domestic law, which is the traditional approach to the implementation of international human rights instruments [...]. Incorporation should mean that the provisions of the Convention can be directly invoked before the courts and applied by national authorities and that the Convention will prevail where there is a conflict with domestic legislation or common practice'.³⁴ The UN Committee's preference for incorporation was reiterated in its Concluding Observations on the UK in both 2002 and 2008.³⁵

There has been widespread disappointment that an opportunity to fully incorporate the UNCRC into Scots law has been missed by the Scottish Government in the passing of the *Children and Young People (Scotland) Act*. This has been particularly frustrating given the wide consensus among children's organisations that incorporation would be a significant step forward for children's rights³⁵ and the Scottish Government's explicit commitment to consider incorporation in its Independence White Paper.³⁷ Children's organisations and many leading academics are clear that incorporation would get Scotland closer to achieving the goal of becoming 'the best place in the world to grow up' and would signal that children's human rights are taken seriously by making them enforceable.³⁸

A widely supported amendment was submitted by Jean Urquhart MSP at Stage 3 of the *Children and Young People (Scotland) Bill* to establish an independent Commission to examine the desirability of incorporating the UNCRC into legislation.⁴⁰ The Commission would have to consider the merits of different approaches to incorporating the UNCRC into law, before reporting back to Ministers and the Parliament as to how the UNCRC could be given legislative effect in Scotland.

Whilst the amendment was not adopted, it is fully within Scottish Ministers' existing powers to establish such a body without a legislative duty to do so. Children's organisations continue to urge Ministers to explore the option of setting up a UNCRC Commission under their existing powers. Such a Commission could play a key role in ensuring all available opportunities are taken in ensuring that children's rights are at the heart of the debate surrounding the constitutional future of Scotland.

Recommendation:

- Scottish Ministers should establish an independent Commission to consider the merits of different approaches to incorporating the UNCRC into law, and report back to Ministers and the Parliament as to how the UNCRC could be given legislative effect in Scotland.

³³ (CRC/C/GBR/CO/4: Para. 11, 12)

³⁴ UN Committee on the Rights of the Child (2003). *General Comment 5: General Measures of Implementation of the Convention on the Rights of the Child*

³⁵ UN Committee on the Rights of the Child (2008). *Consideration of Reports Submitted by States Parties under Article 44 of the Convention: Concluding Observations: United Kingdom of Great Britain and Northern Ireland*

³⁶ Scottish Parliament (2013). *Education and Culture Committee: Stage 1 Report on the Children and Young People (Scotland) Bill*

³⁷ Scottish Government (2013). *Scotland's Future* (pg 357)

³⁸ Elaine Sutherland (2013). *Supplementary Written Evidence to The Education and Culture Committee of the Scottish Parliament in respect of The Children and Young People (Scotland) Bill: incorporation of the United Nations Convention on the Rights of the Child*

³⁹ Scottish Parliament (2014). *Children and Young People (Scotland) Bill: Marshalled List of Amendments selected for Stage 3 (amendment 116, pg 1)*

⁴⁰ Together (2014). *Children & Young People (Scotland) Bill: Stage 3 briefing on amendment 116*

⁴¹ Scottish Government (2013). *Children and Young People (Scotland) Bill: Policy Memorandum*

⁴² Scottish Government (2014). *Children and Young People (Scotland) Act: Part 1 Rights of Children*

⁴³ Scottish Government (2014). *Children and Young People (Scotland) Act 2014*

⁴⁴ *Ibid.*

⁴⁵ Scottish Government (2011). *Consultation on Rights of Children and Young People Bill*

⁴⁶ National Assembly for Wales (2011). *Rights of Children and Young Persons (Wales) Measure*

⁴⁷ Scottish Government (2014). *Children and Young People (Scotland) Act 2014*

⁴⁸ Scottish Government (2014). *Children and Young People (Scotland) Act 2014*

⁴⁹ See: Scottish Government (2014). *Children and Families Directorate: Implementation of the Children and Young People (Scotland) Act 2014* <http://www.scotland.gov.uk/Resource/0045/00452065.pdf>

Children and Young People (Scotland) Act

The *Children and Young (Scotland) Act* was passed in the Scottish Parliament on 19 February 2014 and received Royal Assent on 27 March 2014. The Scottish Government repeatedly states its aspiration for Scotland to be the best place to grow up in. The objective of the Act is to make this ambition real by putting children at the heart of planning and delivery of services and ensuring their rights are respected across the public sector.⁴¹ It covers a variety of areas relating to the rights and wellbeing of children, encouraging Scottish Ministers and public bodies to consider children's rights and how they relate to their work. It also increases the powers of Scotland's Commissioner for Children and Young People (see page 14).

Part 1 of the Act,⁴² which directly relates to the implementation of the UNCRC, has been broadly welcomed by children's organisations. However, there is real concern that the legal provisions it contains may fall short of ensuring the policy intentions are fully met. It introduces a new duty on Scottish Ministers to '*keep under consideration whether there are any steps which they could take which would or might secure better or further effect in Scotland of the UNCRC requirements*'.⁴³ The strength of this duty lies in that it emphasises children's rights across all areas of policy, including those that are not explicitly related to children (such as transport, housing or the environment) and reflects the central principle of the UNCRC that all children's rights are inter-related, interdependent and indivisible. However, even if Ministers recognise that a policy could be changed to better support these rights, there is no obligation for them to make any changes to it unless they think it's '*appropriate to do so*'.⁴⁴ This is a real step back from previous commitments in the *Rights of Children and Young People (Scotland) Bill*⁴⁵ consultation, to give '*due regard*' to the UNCRC in line with legislation already in place in Wales.⁴⁶

Part 1 continues to require that in complying with this duty, the '*Scottish Ministers must take such account as they consider appropriate of any relevant views of children of which the Scottish Ministers are aware*'.⁴⁷

To make sure Ministers follow the new duties, they must submit a report to the Scottish Parliament every three years. This report should talk about what changes and improvements they've made to realising the rights of children over that period, while also setting out what the Ministers plan to do in the next three years.⁴⁸

Children's organisations have concerns about the ambiguity of the duty. A number of children's organisations are working with the Scottish Government through a number of Advisory Groups on the Guidance of the Act to ensure it can be implemented effectively and makes a meaningful difference to the extent to which children are able to realise their rights.⁴⁹

Rec

Recommendation:

- The Scottish Government should take a right-based approach to developing guidance to accompany the *Children and Young People (Scotland) Act* to ensure the UNCRC underpins all elements of the Act's implementation.

⁵⁰ (CRC/C/GBR/CO/4: Para. 13)

⁵¹ Scottish Government (2014), *Children and Young People (Scotland) Act 2014*

⁵² Scottish Government (2014), *Children and Young People (Scotland) Act 2014: Part 3 Children's services planning*

⁵³ Scottish Parliament (2014), *Community Empowerment (Scotland) Bill 2014 (as introduced)*

UN Concluding Observation

'Ensure effective co-ordination of the implementation of the UNCRC throughout the UK, including in local areas where authorities hold significant powers to determine priorities and budget allocation.'⁵⁰

Children and Young People (Scotland) Act

The majority of decision-making that affects the lives of children takes place at a local level through health boards, local authorities, the police, Children's Reporters and other public bodies. Part 1 of the *Children and Young People (Scotland) Act* includes new duties on each public body to report on 'what steps it has taken in that period to secure better or further effect within its areas of responsibility of the UNCRC requirements' every three years.⁵¹ This means that public bodies such as local authorities, Health Boards and Police Scotland must now report every three years on what they have done to improve the rights of children. There is a list of which bodies have to do this in the Act.

Although this duty does not specifically make provision for public bodies to consider children's rights in the planning, implementation or reporting of services, it does still provide a real opportunity for public bodies to integrate children's rights into the very core of their values and services. It is complemented by a further duty in Part 3 of the Act which places a duty on local authorities, health board and other services providers to publish an annual report on the extent to which children's services have improved the wellbeing of children.⁵²

The Scottish Government has stated that, given the common reporting requirements, it is proposing to find ways of combining the implementation duties – for example, through a common reporting format – to ease any administrative burdens. A number of children's organisations are involved in a working group to take forward this work and support the development of guidance and secondary legislation. It is the working group's role to consider and agree the content of guidance linked to the children's rights reporting duty in Part 1 and the children's services planning and reporting arrangements provided for in Part 3. There will need to be clear links made between this guidance and the range of other materials being produced, to support bodies in satisfying their new statutory responsibilities linked to Getting It Right for Every Child.

Rec

Recommendation:

- The guidance relating to the public body reporting duties in the *Children and Young People (Scotland) Act* should ensure that the UNCRC is embedded into the culture, policy and practice of Children's Services Planning and wider services of public bodies.

Community Empowerment (Scotland) Bill

The *Community Empowerment (Scotland) Bill*⁵³ represents an opportunity to consider how the rights of children could be better implemented in public services. The Scottish Youth Parliament submitted evidence to the Local Government and Regeneration Committee recommending that the legislation should ensure that consultation with communities in relation to public service delivery is representative and that the Bill should include minimum standards for community engagement for local authorities, including a duty to report against these standards.

1.3

Child rights impact assessments

UN Concluding Observation

‘Child rights impact assessment should be regularly conducted to evaluate how the allocation of budget is proportionate to the realization of policy developments and the implementation of legislation.’⁵⁴

⁵⁴ (CRC/C/GBR/CO/4: Para. 19)

⁵⁵ Find further details and access all responses here: <http://togetherscotland.org.uk/resources-and-networks/consultations-and-responses/>

The Scottish Government has convened an advisory group that is currently working on guidance around a Child Rights Impact Assessment (CRIA) model. The CRIA model will set out a process for assessing the impact that policy decisions will have on the rights and wellbeing of children. It will also include detailed information regarding the effective participation of children in national policy-making. Children’s organisations have called for the Scottish Government and Scottish Parliament to undertake CRIAs as a matter of routine on all proposals that are likely to impact on children. This would provide a valuable resource with which they can understand and assess the impact the proposals will have on the rights of children and ensure that any unintended consequences of the proposals are identified and mitigated. It will also ensure that the impact of the proposals are fully considered from the perspective of the most vulnerable children including those with a disability, child victims of trafficking, asylum seeking children and children living in poverty.⁵⁵

Rec

Recommendation:

- The Scottish Government should undertake CRIAs as a matter of routine on all proposals that are likely to impact on children.

⁵⁶ (CRC/C/GBR/CO/4: Para. 17)

⁵⁷ Scottish Government (2003). *Commissioner for Children and Young People (Scotland) Act 2003*

UN Concluding Observation

‘Ensure Children’s Commissioners are independent and comply with the UN Paris Principles to receive and investigate complaints from or on behalf of children concerning violations of their rights.’⁵⁶

Scotland’s Commissioner for Children and Young People can currently carry out an investigation where a particular group of children (such as those attending the same school) or a broader group of children (such as all of those with disabilities) report that their rights aren’t being respected.⁵⁷ The Commissioner is able to investigate the extent to which a service provider has regard to the rights, interests and views of children. This includes all those in the voluntary, private and public sector who provide a service to children. To date, this power of investigation has not been used.

The UN Committee advises countries to set up individual investigation functions for children through the Children’s Commissioner’s office. These are seen as being a useful addition to support children’s access to justice. The UN Committee is clear that they should be in addition to access to the courts rather than as an alternative.

Part 2 of the *Children and Young People (Scotland) Act* introduces an individual investigations function to the role of the Commissioner. From 2016, Part 2 of the Act will provide a limited mechanism through which children can seek an investigation into violations of their UNCRC rights. Children, their parents and other adults who support them will be able to ask the Commissioner to investigate the extent to which an individual child’s rights have been upheld. The Commissioner will be able to make recommendations about what should be done to make improvements. He would not have the power to order a service provider to take action and would still be unable to investigate a reserved issue, or duplicate the investigatory functions of another organisation.

The extension of the Commissioner’s investigatory power would necessitate the setting up of a casework service within SCCYP that will be capable of dealing with a significant number of complaints. Although only a small number of these complaints are likely to turn into larger scale investigations, it is important to note that all of these cases would also provide vital evidence, helping to build up a picture of rights issues arising for children across Scotland.

Rec

Recommendation:

- The Children’s Commissioner’s new power to conduct investigations into violations of children’s UNCRC rights (as introduced in Part 2 of the *Children and Young People (Scotland) Act*) should be adequately resourced. Steps should be taken to ensure the power is known about and understood by children (as per 2013 *State of Children’s Rights* report).

⁵⁸ See: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14367&LangID=E> (Accessed September 2014)

⁵⁹ Scottish Children's Reporter Administration (2012). *Hearings Management Practice Guidance*

⁶⁰ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14367&LangID=E> (Accessed September 2014)

⁶¹ United Nations Office on Drugs and Crime (2013). *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*

⁶² Scottish Government (2010). *Advice and Assistance (Scotland) Amendment Regulations and the Civil Legal Aid (Scotland) Amendment Regulations*

Access to justice is an area of considerable concern for children, particularly relating to care leavers and those who are looked after. In March 2014, the Human Rights Council's annual day of the child focussed on access to justice for children.⁵⁸ It was acknowledged that children face substantial barriers to accessing justice. These barriers include lack of knowledge of how to seek justice and concerns from children that they may not be heard or taken seriously. Problems can also arise where there is a conflict of interest between a child and parent. Discussions focussed on the importance of overcoming barriers through access to information and effective legal representation, and ensuring remedies and speedy resolution of cases.

Children's organisations have highlighted specific issues relating to children's access to justice. These include:

- Papers for children's hearings being sent out too late for there to be adequate time to instruct representation and to prepare ahead of the hearing. This has an adverse impact on outcomes for children referred into the hearings system;
- 'Relevant Person' status should be automatically conferred on 'birth' fathers, unless they have had their parental rights removed. However, the Practice Guidance from SCRA,⁵⁹ and children's organisations' experience of representing young fathers, indicates that this does not happen.

Access to legal assistance and aid

The Human Rights Council emphasised that children should have access to free and effective legal representation.⁶⁰ The UN Principles on Access to Legal Aid provide that legal aid should be free of charge, guided by the best interests of the child and available to children when there is a conflict of interest with their parents.⁶¹ Children have a particular need for legal assistance to enable them to navigate complex laws and legal systems that are generally designed for adults. Lack of legal assistance 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.

Lack of legal assistance has been highlighted by children's organisations as an area of particular concern. In January 2011, regulations were amended to change the way that a child is assessed for civil and children's legal assistance.⁶² Previously, a child would be assessed in the same way as an adult, on the basis of their own personal disposable income and capital. Many children would therefore easily qualify for both advice and assistance and legal aid on the basis of being in full time education and being supported financially by their parents.

However, since January 2011, a solicitor assessing a child who applies for any civil or legal assistance must take into account the financial circumstances of anyone who owes a duty of aliment to that child or young person. This duty to aliment a child does not just fall on parents, but can extend to anyone who has accepted the child as a child of their family, such as step-parents, or in some case grandparents, aunts, uncles etc. This could have consequences for children in kinship care arrangements. There is an exception: where it would be '*unjust and inequitable*' to assess the financial circumstances of someone who owes the child a duty of aliment, that person's finances can be disregarded. However, children's organisations report that it is not always straightforward to persuade the Scottish Legal Aid Board (SLAB) that the exception should apply.

⁶³ cl@n childlaw (2013) *Legal Aid for Children and Young People*: <http://clanchildlaw.org/wp/wp-content/uploads/2013/05/clan-childlaw-FOI-Analysis.pdf>

Since the change, the numbers of children applying to SLAB and for legal aid to be granted have fallen considerably. A Freedom of Information request illustrates the extent to which fewer and fewer children are able to obtain legal aid.⁶³ This impacts on the ability of children, including those who are looked after, to obtain legal advice and assistance to ensure a fair hearing.

Children's organisations have raised concerns with SLAB and the Scottish Government about this issue. SLAB has taken account of some of these concerns in redrafting guidelines to include further detail about the application of the 'unjust and inequitable' exception. The Scottish Government is in discussions about the restrictions on children obtaining legal aid. However, fundamental concerns remain. The change to the regulations potentially compromise the child's right to confidentiality, and access to independent legal advice.

Rec

Recommendation:

- The Scottish Government should ensure that all children have access to confidential and independent legal assistance and advice.

⁶⁴ The 10 countries were Albania, Bolivia, Costa Rica, Gabon, Germany, Montenegro, Portugal, Slovakia, Spain and Thailand.

⁶⁵ Scottish Government (2013). *The 5th UK Government Report to the UN Committee on the Rights of the Child Scottish Government Submission and UK Government (2014). The Fifth Periodic Report to the UN Committee on the Rights of the Child*

Optional Protocol to the UNCRC on a Communications Procedure

The Third Optional Protocol to the UNCRC on a Communications Procedure expressly protects the right of children to redress violations of their rights. It entered into force on 14th April 2014 following its ratification by 10 countries.⁶⁴ However, the UK Government has not signed the Optional Protocol and the Scottish Government is yet to make any commitment to encourage the UK Government to sign up.

Both governments state that the UK already has effective laws under which individuals may seek enforceable remedies in the courts or tribunals if their rights have been breached.⁶⁵ However, the failure to incorporate the UNCRC into domestic law means that most of the rights enshrined in the UNCRC cannot be relied on directly in the courts. The Optional Protocol would give children a specific means through which they could seek a remedy if their rights as enshrined in the UNCRC were breached.

Rec

Recommendations:

- The Scottish Government should set out its support for ratifying the Third Optional Protocol to the UNCRC.
- The UK Government should ratify the Third Optional Protocol to the UNCRC with immediate effect (as per 2012 and 2013 *State of Children's Rights* report).

UN Concluding Observation

⁶⁶ (CRC/C/GBR/CO/4: Para. 21)

⁶⁷ UN Committee on the Rights of the Child (2003). General Comment No. 5 General measures of implementation of the Convention on the Rights of the Child, pg 16

⁶⁸ The 8 Child Rights Champions are David Martin MEP, Ian Hudghton MEP, Catherine Stihler MEP, Alyn Smith MEP, Euan Davidson, Maggie Chapman, Tasmira Ahmed-Skeikh and Chris Stephens.

⁶⁹ Eurochild (2014). Child Rights Manifesto

⁷⁰ Scottish Government (2014). Children and Young People (Scotland) Act: Part 1 Rights of children (3)

⁷¹ UN General Assembly (1989). UN Convention on the Rights of the Child (Article 42)

‘...further strengthen efforts, to ensure that all of the provisions of the Convention are widely known and understood by adults and children alike and ensure adequate and systematic training of all professionals working with children, especially law enforcement officials, immigration officials, the media, teachers, health personnel, social workers, and childcare workers.’⁶⁶

The need to raise awareness and understanding of children’s rights has been emphasised by the UN Committee who have stated that:

*‘If the adults around children... do not understand the implications of the Convention, and above all its confirmation of the equal status of children as subjects of rights, it is most unlikely that the rights set out in the Convention will be realized for many children... knowledge of human rights must, of course, be promoted among children themselves...’*⁶⁷

Political awareness and understanding

The European Parliament elections held in late May 2014 were an opportunity to gather increased political commitment to promote children’s rights and well-being from the political spectrum, at national and European level. Alongside Children in Scotland, Together lobbied Members of the European Parliament (MEP) candidates in the 2014 elections to sign up as Child Rights Champions. 8 Scottish MEP candidates (of whom 4 were elected) became Child Rights Champions,⁶⁸ signing up to a pledge to protect and further promote children’s rights in Scotland, across the EU and internationally.⁶⁹

Duty on Ministers to raise awareness and understanding

The *Children and Young People (Scotland) Act* placed a duty on Ministers to promote public awareness and understanding of the UNCRC.⁷⁰ The Scottish Government states that this provision has the effect of incorporating Article 42 of the UNCRC into Scots law. Article 42 states that ‘*State Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.*’⁷¹

⁷² More information: <http://togetherscotland.org.uk/resources-and-networks/resources-library/detail/?resource=408>

⁷³ Scottish Government(2012). *Common Core of Skills, Knowledge & Understanding and Values for the 'Children's Workforce' in Scotland*

Children's organisations welcome the awareness-raising duty and recognise the impact it could have on 'making rights real' to children if properly implemented. For the duty to achieve its purpose, Ministers will need to engage all sectors of society, from government officials, parliamentarians and the judiciary through to teachers, health care workers, the police, the media and parents and carers, with the involvement of children at the core. To support such a duty, the Scottish Government will need to develop a comprehensive strategy for disseminating knowledge of the Convention throughout society, including child-friendly educational resources and learning through the school curriculum. It will also need to include further awareness-raising and competence-building measures, such as ongoing, high-quality training and development programmes for Scottish Government staff, those working for public bodies and other relevant groups of professionals.

In support of this duty, Education Scotland has already produced a national professional development resource for adults working with children, to develop participants' knowledge and understanding of the UNCRC.⁷²

However, no further action has been taken by the Scottish Government to promote or take forward the Common Core of Skills, Understanding, Knowledge and Values for the Children's Workforce.⁷³ The Common Core, was widely welcomed by the children's sector and provides a minimum set of common core skills, knowledge, understanding and values (cross-referenced to the UNCRC) which every worker (paid or unpaid) should have if they work with children and families.



Recommendation:

- The Scottish Government should take the Common Core forward with all those working with and for children and to integrate it into the guidance supporting the implementation of the *Children and Young People (Scotland) Act*.

UN Concluding Observation

⁷⁴ (CRC/C/GBR/CO/4: Para. 23)

‘Encourage the active and systematic involvement of NGOs, youth-led organisations and others in the promotion and implementation of children’s rights, including in the development of policy.’⁷⁴

⁷⁵ See: <http://togetherscotland.org.uk/resources-and-networks/scrimg/>

The recommendations made through the annual *State of Children’s Rights* report are followed up through the Scottish Children’s Rights Implementation Monitoring Group (SCRIMG), a partnership between the Scottish Government, SCCYP and Together which meets three times each year to monitor the implementation of the UNCRC across Scotland.⁷⁵

⁷⁶ Scottish Children’s Rights Implementation and Monitoring Group (2014). Minutes: Tuesday 11th March 2014

It has been recognised that there needs to be greater awareness of SCRIMG to allow greater scrutiny and accountability of the Scottish Government’s implementation of the UNCRC.⁷⁶ The Terms of Reference⁷⁷ are currently being revised to ensure the meetings are more outcomes based. Consideration is being given as to how there can be greater stakeholder engagement in the meetings. Suggestions being explored include setting up two monitoring groups: the first consisting of the existing SCRIMG members and the second including wider Scottish Government departments, public bodies and NGOs with a wider ownership to monitor and promote the implementation of the UNCRC across government departments and at a local level.⁷⁸

⁷⁷ Scottish Children’s Rights Implementation and Monitoring Group (2012). Terms of Reference

⁷⁸ Scottish Children’s Rights Implementation and Monitoring Group (2014). Minutes: Tuesday 2nd September 2014

UN Concluding Observation

⁷⁹ (CRC/C/GBR/CO/4: Para. 15)

‘Adopt comprehensive plans of action for the implementation of the Convention in all parts of the State party, in cooperation with the public and private sectors involved in the promotion and protection of children’s rights and based on a child rights approach’⁷⁹

⁸⁰ Scottish Human Rights Commission (2013). *Scotland’s National Action Plan for Human Rights 2013-2017*

Scottish Government published its UNCRC action plan, *Do the Right Thing*, in September 2008 in response to the UN Committee’s 2008 Concluding Observations. An update was published in May 2012.

In December 2013, the Scottish Human Rights Commission published *Scotland’s National Action Plan* for human rights.⁸⁰ This sets out key commitments from government, civil society and the private sector, all of which aim to improve human rights protection in Scotland and includes many actions that relate directly and indirectly to children.

⁸¹ UK Government (2014). *The Fifth Periodic Report to the UN Committee on the Rights of the Child*

⁸² Scottish Government (2013). *The 5th UK Government Report to the UN Committee on the Rights of the Child: Scottish Government Submission*

⁸³ Together (2014). *Draft Periodic Report to the UN Committee on the Rights of the Child United Kingdom: Response from Together (Scottish Alliance for Children's Rights)*

⁸⁴ Scottish Government (2013). *The 5th UK Government Report to the UN Committee on the Rights of the Child: Scottish Government Submission*

Through the UK as state party, Scotland has an obligation to report to the UN Committee on the Rights of the Child on the extent to which it is meeting its obligations. The extent to which Scotland is involved in reporting – and held to scrutiny at a UN level – can be patchy and is dependent on the will of the UK Government to involve the devolved nations.

The UK Government submitted its fifth periodic report⁸¹ to the UN Committee in May 2014. The Scottish Government made a submission⁸² to the UK government in July 2013 to inform the overall UK report. Children's organisations recognise the significant work that was put into producing a comprehensive report on the implementation of the UNCRC by the UK and devolved governments. However, concerns were raised that the UK report did not take account of many of the significant developments outlined in the Scottish Government's report to the UK.⁸³ In addition, the UK report did not adequately reflect on some of the differences between legislative and administrative mechanisms between Scotland and the UK.

It is often unclear in the UK report whether the steps outlined are of benefit for all children living in the UK or just those living within specific jurisdictions. For example, the report provides examples of where consultations with children have been conducted by the UK Government to inform policy and practice. The report states that these are 'examples of activities through which children and young people have been committed on matter of national significance'.⁸⁴ This statement implies that the activities have been of benefit for children across all nations of the UK. However, the examples stated include work with the Department for Education, an independent Children and Young People's Health Outcomes Forum and work with the Department for Transport. Responsibility for education, health and transport are all devolved to the Scottish Parliament and these activities would not have involved or affected children living in Scotland. The Scottish Government has outlined examples of its own consultations with children and these should be taken into account in the UK report.



Recommendations:

- The Scottish and UK Governments should work together to put in place a formal mechanism to ensure that Scotland is routinely and comprehensively involved in the UNCRC reporting mechanisms at a UK-level.
- The Scottish and UK Governments should ensure clear representation of distinct Scottish issues within the UK reports to the UN Committee.
- The Scottish Government should ensure representatives from Scotland are included in the delegation to the UN Committee for the UK's fifth report.

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

Article 2:

- All rights apply to all children without exception. The government must protect children from any form of discrimination and take positive action to promote their rights.

Article 3:

- All actions concerning the child shall take full account of his or her best interests. The government must provide children with adequate care when parents, or others with that responsibility, fail to do so.

Article 6:

- Every child has the inherent right to life, and the government an obligation to ensure the child's survival and development.

Article 12:

- The child has the right to express his or her opinion freely and to have that opinion taken into account in any matter or procedure affecting him or her.

Chapter

2

General Principles

Case study: *HIV in the family – the effect on children*

⁸⁵ Fewer than 1% of children born to someone living with HIV are now born HIV positive.

In all actions concerning children, the UNCRC requires that the best interests of the child are a primary consideration. In order to fulfil this requirement, it is essential that the needs of children are fully considered when developing policy and support systems and providing services to parents or carers. In many cases however, the needs of children go unnoticed and the best interests principle is unmet.

There have been many positive developments in recent years in connection with HIV. Effective medications mean that those diagnosed with the virus can live long healthy lives with a near normal life expectancy. Thanks to modern treatments, men and women living with HIV can also now have healthy HIV negative children.⁸⁵ Unfortunately though, some aspects of HIV haven't changed and stigma and discrimination continues. Manifesting itself in exclusion, verbal abuse and gossip, HIV stigma and discrimination affects not only those living with the virus but also their families.

Waverley Care take the needs of the children born to families affected by HIV seriously and have dedicated children's services. HIV stigma means children are often unable to be open about their parents' condition amongst their friends or within a school setting. Even though some may have good social networks, this need for secrecy is a burden that can leave them feeling different and isolated. They may also find it difficult to discuss and ask questions about HIV at home if their parent has not come to terms with their own diagnosis.

For some children, HIV is also just one of many issues they may be coping with as Kylie and Clare's story demonstrates:

Kylie (14) and Clare (12) have been in and out of care throughout their young lives. Their mum, who is HIV positive, is a drug user, whose addiction has meant that although she loves her children she is often unable to meet their physical or emotional needs. Their father is also HIV positive and is now extremely unwell, spending lengthy periods of time in respite care and hospital. Kylie and Clare have been witnesses to many difficult, distressing and sometimes violent situations. Kylie also has the added responsibility of being a young carer, looking after her mum, her sister and Adam, their four year old brother.

The burden of keeping their parents' HIV status a secret sits alongside these issues. The children are unable to share their worries with school friends for fear of not being seen as 'normal' and not 'fitting in'. This difficult background manifests itself in Kylie and Clare's poor attendance and performance at school alongside difficult behaviour. The girls have been fortunate to be able to access support from Waverley Care's Children and Families service playschemes. They can get away from their stressful home situation, be relaxed and open about their parent's status' and also just have fun.

Many children affected by HIV in Scotland continue to go unnoticed and remain unsupported. When developing policy and support systems we need to remember to consider the needs of, not just those infected with HIV, but the many children affected by the condition, and the accompanying personal and social implications and stigma that HIV brings.

⁸⁶ (CRC/C/GBR/CO/4: Para. 27)

⁸⁷ Scottish Government (2013). *Criminal Justice (Scotland) Bill*

⁸⁸ UN General Assembly (2012). *Report of the Working Group on the Universal Periodic Review (110.96)*

UN Concluding Observation

‘Take all appropriate measures to ensure that the principle of the best interests of the child is adequately integrated into all legislation and policy affecting children, including in criminal justice and immigration matters.’⁸⁶

Section 42 of the *Criminal Justice (Scotland) Bill* has a policy intention of placing a duty on constables to consider the best interests of the child when holding, arresting, interviewing or charging a child. However, the wording of the duty in section 42 (2) is to ‘*treat the need to safeguard and promote the wellbeing of the child as a primary consideration*’.⁸⁷ Children’s organisations continue to seek assurance that the use of the word ‘wellbeing’ would achieve the policy intention of considering the ‘best interests’ of the child.

The adult criminal justice system can often fail to acknowledge the wider impact that decisions can have on children. Decisions that have a direct impact on children, such as the imprisonment of a parent, often fail to take the child’s best interests into account as a primary consideration. As discussed on page 53, this can have a tremendous impact on a child. In 2012, Slovakia made a recommendation to the UK in the Universal Periodic Review to ‘*ensure that the best interests of the child are taken into account when arresting, detaining, sentencing or considering early release for a sole or primary carer of the child...*’⁸⁸ Children’s organisations have urged the Scottish Government to take the best interests of the child into consideration throughout the *Criminal Justice (Scotland) Bill*, and not only within section 42.

Rec

Recommendation:

- The Justice Committee should ensure that the *Criminal Justice (Scotland) Bill* includes a provision to ensure that the best interests of the child are also taken into consideration when holding, arresting, interviewing or charging a parent.

UN Concluding Observation

‘Through legislation and in practice, promote, facilitate and implement the principle of respect for the views of the child – in the family, in schools, in the community, and in institutions and in administrative and judicial proceedings.’⁸⁹

‘Support forums for children’s participation.’⁹⁰

‘Continue to collaborate with civil society organisation to increase opportunities for children’s meaningful participation, including in the media.’⁹¹

There has been some progress in relation to the promotion and implementation of Article 12 of the UNCRC. This has been through a combination of legislative and policy developments across national and local government. Children’s organisations are keen that future legislative opportunities to promote Article 12 are taken forward through the development of the statutory guidance for the *Children and Young People (Scotland) Act*,⁹² the *Community Empowerment (Scotland) Bill*,⁹³ and future carers’ legislation.⁹⁴

Advocacy

Young people with care experience continue to report that advocacy provision is inconsistent across Scotland and dependent on decisions made by each local authority.⁹⁵ Children’s organisations report that meetings are often arranged at times to suit professionals, young people are often not informed about when or where the meeting is to be held and their views can be completely disregarded. This leads to a feeling of disempowerment, and young people are subsequently less likely to engage and attend meetings. There are feelings from young people that engagement can be a tick box exercise.⁹⁶

In July 2014, the Scottish Government, in collaboration with a number of children’s organisations, published an online advocacy resource to be used as a guide for anyone who advocates for a child or young person. The guide includes an introduction to children’s advocacy, information on good children’s advocacy and understanding advocacy, and advice on confidentiality and systems for supporting children.⁹⁷

⁸⁹ (CRC/C/GBR/CO/4: Para. 33a)

⁹⁰ (CRC/C/GBR/CO/4: Para. 33b)

⁹¹ (CRC/C/GBR/CO/4: Para. 33c)

⁹² Scottish Government (2014). *Children and Young People (Scotland) Act 2014*

⁹³ Scottish Parliament (2014). *Community Empowerment (Scotland) Bill 2014* (as introduced)

⁹⁴ Scottish Government (2014). *Carers Legislation - Consultation on Proposals*

⁹⁵ *Who Cares? Scotland* (2013). *Independent Advocacy Paper*

⁹⁶ Scottish Government (2013). *Children and young people’s experiences of, and views on, issues relating to the implementation of the United Nations Convention on the Rights of the Child*

⁹⁷ <http://www.scotland.gov.uk/Topics/People/Young-People/families/advocacy/introduction> (Accessed October 2014)

Parental contact in cases of domestic abuse

Research shows that more than half (55 per cent) of children whose parents go to court in disputes over contact where there are also allegations of domestic abuse, do not want any contact with their non-resident parent. Research has also suggested that the older children are, the more likely it is that their views would be taken into account with regards to decisions on contact. However, even when children's views in contact cases involving domestic abuse are taken, there is significant variation in the *weight* that is attached to their views. One third of children (34 per cent) had a contact outcome that bore no resemblance to the view they expressed and one fifth (20 per cent) had an outcome that only partially accommodated their view (such as the mid-week visit being dropped if they said they wanted less contact).⁹⁸ Children's organisations support recommendations made by the Children's Commissioner in relation to this research.

Rec

Recommendations:

- All those who take children's views should be trained in the benefits of participation for children and given materials to support participation in practice.
- Improvements to the methods for taking the views of children are needed. Very young children would benefit from a specialist service of professionals with the skills to ascertain their views.

Voting

Children's organisations have welcomed the extension of the voting franchise for the referendum to include 16-17 year-olds. This has resulted in an unprecedented level of political engagement among children. It is important that this momentum is maintained and that children are able to remain meaningfully engaged in the political process and that their views are sought and listened to in the debate about Scotland's constitutional future. Children's organisations have highlighted that vulnerable groups of children face barriers to their participation, particularly children from minority ethnic communities, Gypsy/Traveller children, children with disabilities and children living in rural areas.

Rec

Recommendation:

- The Scottish and UK Governments should harness and encourage the political engagement of children in debates about Scotland's constitutional future. This should include meaningful engagement with children to establish their views and taking the extra steps needed to involve more vulnerable and isolated groups of children.

⁹⁹ *Children's Hearings Scotland (2013). Views and Experiences of the Children's Hearings Systems: Children's Hearings Scotland (2012/13)*

¹⁰⁰ *Scottish Children's Reporter Administration (2013). Corporate Plan 2014-17*

¹⁰¹ *Scottish Government (2011). Children's Hearing (Scotland) Act 2011*

¹⁰² *United Nations (1989). Convention on the Rights of the Child (Article 12)*

¹⁰³ *Children's Hearing Scotland (2014). Views & Experiences of the Children's Hearings System: Research with Children, Young People & Adults*

¹⁰⁴ *Who Cares? Scotland, Aberlour, Barnardos Scotland (2014). Getting it right for young people leaving care*

Scotland's Children's Reporter Administration

Children's views and experiences of the Children's Hearings System have been found to be mostly positive. 99% of young people surveyed stated that they were treated with dignity and respect by Scotland's Children's Reporter Administration (SCRA) staff when they attended a hearing centre and 71% of young people felt that they were the most important person at their last hearing.⁹⁹ This reflects the values of the Children's Hearings System and the principle of Article 12 of the UNCRC.

SCRA has embedded respect for the views of the child into its corporate plan for 2014-17. A key outcome of SCRA's work over this period will be that the views of children will influence their individual cases and influence the delivery of services. This will be achieved by systematically seeking and capturing the views of children before and after their attendance at a children's hearing, and through the use of engagement tools, products and services designed by children.¹⁰⁰

Concerns have been raised that the *Children's Hearings (Scotland) Act 2011*¹⁰¹ may have an adverse impact on children's right to have their views taken into account,¹⁰² particularly relating to identifying a 'relevant person' who can attend the Hearing. Timescales are not always conducive to appeals being made, and children are not always consulted about whom they would wish to have involved. Children can be told that their choice 'does not meet legal requirements', but without an explanation or an understanding of what they are entitled to.¹⁰³

Involving children in policy

The Scottish Government has taken steps to involve children in the development of policy. This tends to involve partnership work between the Scottish Youth Parliament, the Scottish Government and other organisations to run 'discussion days' with young people in relation to specific policy proposals. This type of engagement has been ad-hoc in nature but has taken place on a number of occasions, including the Commission for Developing Scotland's Young Workforce, the Scottish Government's proposals for carers' legislation, and the refresh of the Scottish Government's Youth Employment Strategy. These opportunities are valuable for young people to have their say on the wider policy landscape.

In recent years, increasing numbers of children with experience of the care system have been coming together to seek positive change within the care system. They led a campaign with support from Who Cares? Scotland, Aberlour Childcare Trust and Barnardo's Scotland to secure a better provision of aftercare for Scotland's care leavers.¹⁰⁴ Through the campaign, young people met with MSPs, worked closely with the Scottish Parliament's Education and Culture Committee and fronted a high-profile media campaign. As a result, they succeeded in increasing the care leaving age for young people and widening the eligibility criteria to Aftercare services. This campaign has demonstrated the valuable contribution children can make to developing policy and how their involvement can develop a greater understanding of the issues they face. Some children's organisations have noted that future campaigns need to include children with more diverse and varied experiences of care, for example, children with experiences of kinship and foster care.

¹⁰⁵ *Young Scot (2014). Agents of Change*

¹⁰⁶ *The Scottish Parliament (2013). Equal Opportunities Committee: 1st Report 2013: Where Gypsy/ Travellers Live*

Concerns remain among several children’s organisations that many other vulnerable children do not have the opportunity to have their voices and experiences heard in the development of policy that affects them. This has been particularly highlighted as an issue for children with a disability, minority ethnic children and Gypsy/Traveller children. There have been a number of good examples of work being undertaken to overcome the barriers faced by these groups, including:

- Young Scot’s Agents of Change project, which highlighted the essential role that advocacy can play to enable children with a disability to identify issues and influence service delivery at a local level;¹⁰⁵
- A partnership between Article 12 and Planning Aid Scotland through which a training resource will be produced for planning practitioners and other relevant individuals and organisations around the housing needs of the Gypsy/Traveller community.¹⁰⁶

Despite these pockets of good practice, a great deal more needs to be done to ensure that children – and particularly vulnerable children – are able to have their voices heard and taken into account in the development of policies that affect them.



Recommendation:

- The Scottish Government and public bodies should give further consideration as to how the voices of children are considered and taken into account in the development of policy that affects them in a frequent and systematic manner.

UN Concluding Observation

¹⁰⁷ (CRC/C/GBR/CO/4: Para. 25b)

‘Strengthen anti-discrimination activities, including awareness-raising, and take affirmative action where necessary to benefit vulnerable groups, including Roma and Irish traveller children, migrant, asylum-seeking and refugee children, LGBT children and children belonging to minority groups.’¹⁰⁷

¹⁰⁸ (CRC/C/GBR/CO/4: Para. 25c)

‘Take all necessary measures to ensure that cases of discrimination against children are addressed effectively, including with disciplinary, administrative and penal sanctions.’¹⁰⁸

¹⁰⁹ Education Scotland resources on eliminating discrimination and promoting equality: <http://www.educationscotland.gov.uk/supportinglearners/>

Children’s organisations have highlighted the need to recognise and embrace difference to ensure that all children are given the support they need to have equality of opportunity. Those working with children need to have the skills and confidence to recognise and identify difference and provide flexible services to suit individual needs.¹⁰⁹

¹¹⁰ UN General Assembly (2006). *UN Convention on the Rights of Persons with Disabilities (Article 8)*

Disability

Article 8 of the UN Convention on the Rights of Persons with Disabilities (UNCRPD) requires State Parties to raise awareness and foster respect for the rights and dignity of persons with disabilities and to combat stereotypes and prejudices relating to persons with disabilities including those based on age.¹¹⁰ Inclusion Scotland has recommended that the Scottish Government and Scottish media work to promote a more positive and realistic image of disabled people. This would provide an essential step to overcome the attitudinal barriers, which prevent disabled people from being recognised as human rights holders on an equal basis with non-disabled people.¹¹¹

¹¹¹ Inclusion Scotland (2014). *List of critical issues for disabled people on the United Kingdom’s performance under the UN CRPD*

¹¹² Engender (2014). *Gender Equality and Scotland’s Constitutional Futures*

¹¹³ <http://www.zerotolerance.org.uk/Projects/EarlyYears> (Accessed October 2014)

Gender stereotypes

The questioning of gender stereotypes from a very young age helps to protect children from the negative consequences of inequality and discrimination as they grow into adults. Gender stereotypes perpetuate inequality and reinforce socially constructed difference between men and women. This affects many aspects of life such as educational and occupational choice, income, self-esteem and self-belief. Gender stereotypes encourage ideas of what it means to be a boy or a girl, man or woman, which limit men and women alike.¹¹²

Children’s organisations report a high demand for training from professionals working in early years who are looking to develop strategies to improve gender equality in policy and practice. Zero Tolerance has distributed over 3,000¹¹³ guides since August 2013 – mainly in response to requests from individual workers and a range of agencies across the public and voluntary sectors.

¹¹⁴ Brandi Lee Lough Dennell and Caitlin Logan (2014). *Life in Scotland for LGBT Young People: Safety*. LGBT Youth Scotland (Forthcoming).

Hate Crime

Hate crime is an issue that particularly affects LGBT young people. This was evidenced in a recent report¹¹⁴ by LGBT Youth Scotland which showed, among the LGBT young people surveyed, that:

- 50.2% were aware of their rights under hate crime legislation;
- 53.8% would feel confident in reporting a hate crime they experienced to the police (only 48.2% of transgender young people would feel confident to report);
- Bisexual women were the least likely to feel confident reporting a hate crime (46.3%);
- Just under 49% of all LGBT young people feel safe and supported by the legal system, falling to 40% of transgender young people.

Tackling the negative portrayal of children in the media

UN Concluding Observation

‘Take urgent measures to address the intolerance and inappropriate characterisation of children, especially adolescents, within society, including the media.’¹¹⁵

In the past year, there has been an increase in the negative and victimised reporting of Gypsy/Travellers in mainstream media, in targeted criticism towards the planning for and establishment of private and public sites and the notional impact on house prices.^{116 117} There has been an increase in the use of negative leading words, such as ‘illegal’, ‘rubbish’, ‘eviction’ and ‘fear’. Online media also publishes a disproportionate number of articles about the Gypsy/Travellers, of which nearly two thirds is of an overwhelmingly negative tone.¹¹⁸ Misleading and unbalanced media coverage is a driving force in the discrimination experienced by Gypsy/Travellers.¹¹⁹ Group cases cannot be brought to the Press Complaints Commission, so Gypsy/Travellers are unable to seek redress for discriminatory reporting.

¹¹⁵ (CRC/C/GBR/CO/4: Para. 25a)

¹¹⁶ Article 12 in Scotland (2014). *Young Gypsy Travellers’ Lives [YGTL]: Discrimination and On-Line Media*

¹¹⁷ Scottish Parliament (2013). *Equal Opportunities Committee: 1st Report, 2013 [Session 4]: Where Gypsy/Travellers Live*.

¹¹⁸ Article 12 in Scotland (2014). *Young Gypsy Travellers’ Lives [YGTL]: Discrimination and On-Line Media*

¹¹⁹ Equality and Human Rights Commission [2010 edition]. *Gypsy Travellers in Scotland – a resource for the media*

¹²⁰ (CRC/C/GBR/CO/4: Para. 29)

¹²¹ Vincent, S & Petch, A (2012) *Audit and Analysis of Initial and Significant Case Reviews*, Edinburgh: Scottish Government.

¹²² Centre for Excellence for Looked After Children in Scotland (2013). *Scotland's National Human Rights Action Plan: Getting it Right for Looked After Children, Young People and Care Leavers* (Pg 8)

¹²³ Article 12 in Scotland (2013). *Work with the Gypsy/Traveller community of North Cairntow*, Edinburgh



UN Concluding Observation

‘Use all available resources to protect the child’s right to life, including by reviewing the effectiveness of preventative measures. Introduce automatic, independent and public reviews of any unexpected death or serious injury involving children – whether in care or custody.’¹²⁰

Significant case reviews

The Scottish Government does not require automatic reviews of child deaths or significant incidents. An audit and analysis found that almost one fifth of significant case reviews conducted for children who die or are seriously injured were conducted for children who were looked after or formerly looked after.¹²¹ There are reportedly anomalies in the reporting of deaths of looked after children and care leavers.¹²² Children’s organisations continue to urge the Scottish Government to create a centralised database of significant case reviews of looked after children and care leavers to analyse trends and provide an evidence base through which to influence policy and practice.

Recommendation:

- The Scottish Government should create a centralised database of significant case reviews of looked after children and care leavers to analyse trends and provide an evidence base through which to influence policy and practice (as per *State of Children’s Rights* report 2012).

Gypsy/Travellers

Gypsy/Traveller children can face many issues that adversely impact on their right to development. These include barriers in accessing healthcare and education. Energy prices within Gypsy/Traveller sites tend to be increased by local authorities in the winter which can force more Gypsy/Travellers to move to roadside camps.¹²³



Articles 7, 8, 13-17 and 37

- Civil rights and freedoms enshrine children's rights to freedom of association and to express themselves. They also include the right to not be subject to any punishment that is cruel, inhuman or degrading and to have their privacy protected.

Chapter

3

Civil Rights and Freedoms

Case study: *the time is right for 'Votes at 16'*

¹²⁴ See Eicchorn, J. (2014). *How lowering the voting age to 16 can be an opportunity to improve youth political engagement: lessons learned from the Scottish Independence Referendum*, and Eicchorn, J. (2013). *Will 16 and 17 year olds make a difference in the referendum?*

¹²⁵ <http://www.scottish.parliament.uk/parliamentary/business/28862.aspx?r=9570#.VDoxQxCjKAA>

¹²⁶ See, Scotsman (2014). <http://www.scotsman.com/news/politics/top-stories/majority-back-votes-for-16-and-17-year-olds-1-3563881>

The Scottish independence referendum on 18th September 2014 was the first time that the right to vote was extended to include 16 and 17 year olds in the UK. This has been viewed by many children's organisations as a real culture change towards recognising and respecting children and young people as rights holders and active members of society. The levels of engagement in the debate by children and young people have challenged many adults' preconceptions and shown a real desire to be included in mainstream political debate – an arena in which children and young people have been repeatedly excluded.

The Scottish Youth Parliament (SYP) has been campaigning to lower the voting age from 18 to 16 since its inception in June 1999. It has always viewed young people as active, engaged citizens keen to affect positive change in their local communities. Many of the traditional arguments against lowering the voting age have included reasons such as political apathy among young people, a lack of maturity to make an informed decision and the view that young people would simply vote in the same way as their family. The decision to lower the voting age for the purposes of the referendum on Scotland's constitutional future provided an appropriate test of these arguments.

Through its young voter engagement project, the SYP engaged with more than 15,000 young people face-to-face, engaged with many thousands more online and registered over 3,000 young people to vote. In addition, over 80% of 16 and 17 years olds who were eligible registered to vote in advance of the referendum. Social attitudes research carried out by academics at the University of Edinburgh provide an additional empirical basis on which arguments against lowering the voting age can be disproved. Key findings from the research indicate that young people are at least as politically engaged as adults and that there is no evidence to support the view that young people will simply vote the same way as their families.¹²⁴ Arguments to extend the voting franchise have now received cross-party Parliamentary¹²⁵ and widespread public support.¹²⁶

In light of the experience and evidence of the referendum, the SYP view the lowering of the voting age to 16 as a crucial aspect to the realisation of Article 12 moving forward.

"I think it's paramount that young people have a say in the running of their country and who represents them. We are engaged and interested and despite what people say, we're mature enough to make an informed decision. At 16, we can get married and we can fight for our country, but we're still denied the right to vote, which I think is ludicrous. It's time for the youth to be listened to permanently."

Member of the Scottish Youth Parliament

3.1

Use of mosquito devices

¹²⁷ (CRC/C/GBR/CO/4: Para. 35)

¹²⁸ *Together* (2011,2012). *State of Children's Rights in Scotland*

UN Concluding Observation

'Reconsider other anti-social behaviour measures, such as the mosquito device, as they may violate children's rights to freedom of movement and peaceful assembly.'¹²⁷

Despite the efforts of the Scottish Youth Parliament to end the use of mosquito devices, they continue to be legal in Scotland. Scotland's Commissioner for Children and Young People is continuing to gather information relating to the use of mosquito devices in Scotland, and the views of children with respect to public spaces. The results of this process are expected to be collated at the beginning of 2015 and thereafter the Commissioner will decide how to progress concerns.



Recommendation:

- The Scottish Government should use the review of the *Antisocial Behaviour etc (Scotland) Act 2004* to fulfil its commitment to end the use of mosquito devices (as recommended in *Together's* 2011, 2012 and 2013 *State of Children's Rights* reports).¹²⁸

3.2

Antisocial behaviour orders

¹²⁹ (CRC/C/GBR/CO/4: Para. 35)

¹³⁰ Scottish Government (2013). *Antisocial Behaviour: A Post-Implementation Report on Promoting Positive Outcomes* (2009)

¹³¹ Scottish Government (2009). *Promoting Positive Outcomes: Working Together to Prevent Antisocial Behaviour in Scotland*

¹³² Scottish Government (2014). *The Antisocial Behaviour etc. (Scotland) Act 2004*

¹³³ Scotland's Commissioner for Children and Young People (2014). *Response to The Antisocial Behaviour etc. (Scotland) Act 2004 consultation*

¹³⁴ Barnardo's Scotland (2014). *Response to The Antisocial Behaviour etc. (Scotland) Act 2004 consultation*

UN Concluding Observation

'Reconsider ASBOs as they may violate children's rights.'¹²⁹

In December 2013, the Scottish Government published a report¹³⁰ outlining the work undertaken since the publication of the national strategy on antisocial behaviour, 'Promoting Positive Outcomes'.¹³¹ The report advised the Scottish Government to consider a number of suggestions for legislative change to the *Antisocial Behaviour etc. (Scotland) Act* to help improve the response to antisocial behaviour.

The Scottish Government conducted a public consultation on the technical changes suggested, with the aim of helping practitioners use existing antisocial behaviour legislation and systems more effectively.¹³² In response to the consultation, children's organisations identified the far reaching consequences antisocial behaviour may have on different groups of children.^{133 134}

¹³⁵ Scottish Government (2007). *Use of Antisocial Behaviour Orders in Scotland*

¹³⁶ Together (2014). *Response to The Antisocial Behaviour etc. (Scotland) Act 2004 consultation*

The key points raised include:

- Children may be involved in antisocial behaviour, experience it directly from a parent or carer or live in an unsafe neighbourhood;
- It is not necessarily easy or accurate to make a clear distinction between children who are victims of anti-social behaviour and those who are perpetrators. Some children are both victims and perpetrators;
- The rights as enshrined in the UNCRC must be protected, respected and fulfilled for all children, regardless of their status and whether they are a victim or perpetrator of antisocial behaviour;
- Rights-respecting strategies to address anti-social behaviour must protect victims, whilst ensuring that children who act anti-socially are supported to understand the impact of their behaviour.

A Scottish Government review of the use of ASBOs in 2007 found that with regards to the specific powers to impose ASBOs on young people (aged 12-15) introduced in 2004, only 4 had been granted.¹³⁵ There seems to be little further information on how often ASBOs are used and to whom they are applied. Children's organisations have called for the Scottish Government take into full account the observations and recommendations made by the UN Committee and to conduct an up-to-date independent review of ASBOs.¹³⁶



Recommendation:

- The Scottish Government should conduct an up-to-date independent review of ASBOs.

3.3

Stop and search

¹³⁷ Together (31 January 2014). *Letter to Editors Re: Use of Stop and Search must be fair and proportionate towards Children and Young People*

¹³⁸ Scottish Police Authority (2014). *Scrutiny Review – Police Scotland's Stop and Search Policy and Practice*

¹³⁹ Scottish Parliament (2014). *Justice Sub-Committee on Policing: Official Report: Thursday 19 June 2014*

Over the past year, there has been a great deal of debate around the use of 'stop and search' powers on children. A number of children's organisations raised concerns that the use of stop and search by police on children is disproportionate and based on a desire to meet targets, rather than an intelligence-based assessment of risk.¹³⁷

In June 2014, the Scottish Police Authority (SPA) published a review containing 12 recommendations aimed at improving the targeting, effectiveness and transparency of the use of stop and search tactics by Police Scotland. The review found that young people aged 15-19 years are more likely to be stopped, with 223 children aged 9 or under being recorded as having been stopped and searched between April and December 2013.¹³⁸ It highlighted a number of areas for improvement around targeting, proportionality, training, data gathering, transparency and consent. It specifically called for more research on the long-term impact of stop and search of particular groups and communities, especially young people.

In June, Police Scotland announced that it is to end the practice of consensual stop searches on children under the age of 12. This has been widely welcomed by children's organisations.¹³⁹

¹⁴⁰ (CRC/C/GBR/CO/4: Para. 37 (a))

¹⁴¹ Article 8 of ECHR protects children and adults against arbitrary interference by public authorities and private organisations, covering the four areas of private life, family life, home and correspondence.

¹⁴² Article 16 of the UNCRC outlines that 'no child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence.'

¹⁴³ <http://withscotland.org/resources/finding-the-balance-childrens-right-to-confidentiality> (Accessed October 2014)

¹⁴⁴ Scottish Government (2014). *Children and Young People (Scotland) Act 2014 (Part 4, Section 28)*

¹⁴⁵ (CRC/C/GBR/CO/4: Para. 37 (b))

UN Concluding Observation

'Ensure children are protected against unlawful or arbitrary interference with their privacy in legislation and practice, and introduce stronger regulations for data protection in relation to children.'¹⁴⁰

A number of children's organisations continue to have concerns about the compatibility of the information sharing provisions in the *Children and Young People (Scotland) Act* with Article 8 of the ECHR¹⁴¹ and Article 16 of the UNCRC.¹⁴² There is no requirement on those sharing the information to seek the consent of the child concerned (or their parent if they do not themselves have capacity to consent).

If no attempt is made to seek the child's (or the parent's) consent before sharing confidential information, there is a significant risk that children will be reluctant to access and engage with confidential services, if they feel that confidential information is likely to be shared without their consent and without protection of their right to confidentiality.¹⁴³ Their right to privacy is not respected in the absence of a requirement to seek consent.

Provision is made for guidance under section 28 of the *Children and Young People (Scotland) Act* to include 'guidance on how an information holder should proceed with the sharing of confidential information under section 26 in the event that consent [...] cannot be obtained.'¹⁴⁴

In order to mitigate the risk of violating a child's right to privacy, clear guidance on the circumstances in which information should be shared when consent cannot be obtained is essential. Practitioners will need clear guidance, training and support to give them the confidence to share information appropriately.

Rec

Recommendation:

- Guidance relating to the information sharing provisions included in the *Children and Young People (Scotland) Act* should encourage practitioners to seek the child's consent when sharing information and contain clear guidance on the circumstances in which information should be shared

Protecting children in the media and taking part in public performances

UN Concluding Observation

‘In co-operation with the media, intensify efforts to respect the privacy of children in the media, especially by avoiding messages publicly exposing them to shame.’¹⁴⁵

‘Regulate children’s participation in TV programmes, notably reality shows.’¹⁴⁶

Child performances and appearances in broadcasts are subject to regulation and oversight designed to ensure the well-being and safety of child performers and that their education does not suffer as a result. The Scottish Government undertook a review in June 2014 with the aim of streamlining the regulations and enhancing children’s opportunities to perform whilst continuing to ensure they are safe and that the performance is in their best interests.¹⁴⁷ The submissions to this review were published online in July 2014 and the Scottish Government aims to publish a response to the submissions and the updated regulations by the end of 2014.

3.5

Cruel, inhuman or degrading treatment or punishment

UN Concluding Observation

‘Ensure that restraint against children is used only as a last resort and exclusively to prevent harm to the child and others and abolish all methods of physical restraint for disciplinary purposes.’¹⁴⁸

For young people living in detention, there is uncertainty as to how the Holding Safely guidance¹⁴⁹ (for example, using physical restraint as a ‘last resort’) is being implemented in practice.¹⁵⁰ This reiterates the need to introduce a robust and comprehensive national recording system on the use of restraint across all residential settings to provide consistency in monitoring its use.

Recommendation:

- The Scottish Government should introduce a robust and comprehensive national recording system across all residential settings to provide consistency in monitoring the use of restraint (as per 2011, 2012 and 2013 *State of Children’s Rights* reports).¹⁵¹

¹⁴⁵ (CRC/C/GBR/CO/4: Para. 37 (c))

¹⁴⁷ Scottish Government (2014). *Getting it right for young performers: National consultation on the arrangements for ensuring the wellbeing of children involved in performances*

¹⁴⁸ (CRC/C/GBR/CO/4: Para. 39)

¹⁴⁹ *Holding Safely: A guide for residential child care practitioners and managers in physically restraining children and young people and The National Care Standards: Care homes for children and young people (2005; revised 2008)*

¹⁵⁰ Centre for Excellence for Looked After Children in Scotland (2013). *Scotland’s National Human Rights Action Plan: Getting It Right for Looked After Children and Care Leavers*

¹⁵¹ *Together (2011, 2012, 2013). State of Children’s Rights in Scotland*

Rec

UN Concluding Observation

¹⁵² (CRC/C/GBR/CO/4; Para. 42 (a))

‘Prohibit as a matter of priority all physical punishment in the family, including through the repeal of the legal defence.’¹⁵²

¹⁵³ (CRC/C/GBR/CO/4; Para. 42 (b))

‘Ensure that physical punishment is explicitly prohibited in schools and all other institutions and forms of alternative care.’¹⁵³

¹⁵⁴ (CRC/C/GBR/CO/4; Para. 42 (c))

‘Actively promote positive and non-violent forms of discipline, and respect for children’s equal right to dignity and physical integrity, with a view to raising public awareness of children’s right to protection from all physical punishment.’¹⁵⁴

¹⁵⁵ (CRC/C/GBR/CO/4; Para. 42 (d))

‘Provide parental education and professional training in positive child-rearing.’¹⁵⁵

¹⁵⁶ (CRC/C/GBR/CO/4; Para. 43)

‘Take all necessary measures to implement the recommendations contained in the report of the UN Study on Violence Against Children.’¹⁵⁶

¹⁵⁷ (CRC/C/GBR/CO/4; Para. 43)

‘Use the recommendations from the UN Study on Violence Against Children as a tool to ensure (with civil society and children) that every child is protected from all physical, sexual and mental violence.’¹⁵⁷

¹⁵⁸ Scottish Government (2003). *Criminal Justice (Scotland) Act 2003* (Section 51).

¹⁵⁹ Within the EU, 17 states have banned it completely and another 6 are committed to doing so. Only four countries in the EU have neither achieved this reform nor committed to it: France, Belgium, the UK and Malta.

The continued acceptance of hitting children is detrimental to attempts to protect children from physical abuse. Children do not have the same level of protection from violence as adults in Scots law. There is a provision for ‘justifiable assault’¹⁵⁸ which parents can use as a defence when or if they physically assault a child.

¹⁶⁰ Together (2011, 2012, 2013). *State of Children’s Rights in Scotland*

More than half of the Council of Europe’s 47 member states have either achieved full prohibition or committed themselves to do so soon. Among the 27 EU states, just four – the UK among them – have neither prohibited nor committed themselves to do so.¹⁵⁹

The current ‘justifiable assault’ defence undermines the work that professionals are doing with families on positive parenting. The Scottish Government needs to promote positive approaches to discipline within their ongoing policy programmes and public information campaigns. Parents and carers need to be equipped with alternative forms of behaviour management techniques in order to allow them to support and manage difficult behaviour.

Rec

Recommendation:

- The Justice Committee should use the *Criminal Justice (Scotland) Bill* as a means through which the defence of ‘justifiable assault’ of children can be repealed and children are given equal protection from assault in law (as per 2011, 2012 and 2013 *State of Children’s Rights* reports).¹⁶⁰

Articles:

5, 9-11, 18 paragraphs 1 and 2,
19-21, 25, 27 paragraphs 4,
and 39

- These articles give every child the right to enjoy a supportive, nurturing home environment regardless of their circumstances.

They outline how governments should support parents in providing that home environment.

When it is not in the best interests of a child to remain with their family, governments should provide equal support and allow children to maintain contact with their family and friends consistent with their welfare.

Chapter

4

Family Environment and Alternative Care

Case study: *supporting children with a parent in prison*

Article 3 of the UNCRC requires that in all actions concerning children, the best interests of the child shall be a primary consideration. Yet too often, children with a parent in prison are not identified or recognised and their practical and emotional support needs are overlooked.

Chloe is 10, and when her mother was sentenced to prison, she went to live with her grandmother. Chloe was traumatised by witnessing the arrest. She experienced a range of emotions associated with grief: loss, sadness, loneliness, shock, anger and fear. But unlike a death, when it comes to imprisonment, there is stigma and shame; people don't reach out, ask how you are doing or offer support. Instead, Chloe experienced isolation (she stopped being invited to classmates' parties) and bullying ('Stay away from her, her mum's in prison!'). Her grandmother is struggling; she finds it difficult to manage the financial commitment of caring for Chloe, and the prison visits are costly, not to mention logistically complicated because of the distance.

Chloe has done nothing wrong, but she's being punished in a way that makes it hard to cope day to day; she doesn't want to go to school anymore and is not reaching her potential. In fact, Chloe's grandmother says it feels like they're doing the sentence too.

Chloe is just one of an estimated 27,000 children who each year experience the imprisonment of a parent in Scotland. Unfortunately, decisions to imprison a parent rarely take into account the impact on children: no one asked about Chloe's care when her mother was imprisoned, and her right to the family life she had known was taken from her without the opportunity to express her views.

The Scottish Prison Service has come a long way in recognising that children's rights must be respected. Prison visits are no longer withdrawn as a punishment – an acknowledgement that time with a parent is the right of an innocent child. There's still a long way to go before children are seen as persons in their own right, with their own rights, rather than merely an aid to the rehabilitation of a parent.

So how could things be different for Chloe? Firstly, her right to maintain personal relations and direct contact with her mother could be upheld by ensuring that prison visits are possible (which would include financial support for her grandmother) and meaningful (involving a wide variety of activities which Chloe and her mum can enjoy together). Chloe's right to benefit from the guidance of a parent means that her mother should be involved in her schooling, even from behind bars. This might mean receiving copies of Chloe's school reports and engaging with teachers on the phone or via video conferencing. And Chloe's right to know and be cared for by her mum could involve private family visits, whereby she can spend extended quality time (including overnight stays) with her mum.

Ultimately, it is about ensuring that Chloe's best interests are the primary consideration in all actions concerning her. When it comes to respecting Chloe's rights, and all the other children like her, asking them what is right is a good place to start.

UN Concluding Observation

‘Render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities.’¹⁶¹

Early years and childcare reform

Since 2008, the cost of childcare in the UK has risen by 44%.¹⁶² Currently in Scotland, the average cost of full time childcare for a child under two is £5,514 a year, rising to £8,819 for 40 hours of care.¹⁶³ Given that childcare is a huge expense for families, it is essential that the Scottish Government works with local authorities and childcare providers to increase availability and reduce the cost of flexible, high quality childcare.

The Children and Young People (Scotland) Act provides increased and more flexible early learning and childcare of 600 hours per annum for 3 and 4 year olds and, for around 15% of the most vulnerable 2 year olds from August 2014. From August 2015, this will be expanded to 27% of 2 year olds based on free school meal eligibility. This has been welcomed by children’s organisations who refer to evidence that suggests this measure can directly improve educational outcomes for this group of children (provided these opportunities are delivered through high quality services).¹⁶⁴

The Commission for Childcare Reform¹⁶⁵ has been working to identify the key barriers to delivering and accessing childcare. This is to ensure that children are placed in high quality childcare settings that work well for children and their families. Barriers identified include:

- ensuring the needs of all children are equally matched when in multi-child families. For example, balancing the needs of children of different ages, where one may be in full-time childcare and the others may be in primary school;
- ensuring families are able to cope with the cost of childcare. For example, many parents have to give up their right to free childcare, as it is not offered full-time. This means that they must pay for a full-time private place or adjust their working arrangements (if possible to fit around 3 hours of free provision per day).¹⁶⁶

These barriers reflect research highlighting the views, voices and experiences of parents who stated that childcare costs are too high, it’s not available at the right times or in the right places and can be very inflexible.¹⁶⁷

Free school meals

Children’s organisations have welcomed the Scottish Government’s intention to extend free school meals to all P1-P3 pupils with the aim of improving health and wellbeing and increasing attainment.¹⁶⁸ This will commence in January 2015.

¹⁶¹ (CRC/C/GB/CO/4: Para 45 (a))

¹⁶² *Child Poverty Action Group (2014). Cost of a child 2014*

¹⁶³ *National Audit Office: A literature review of the impact of early years provision on young children, with emphasis given to children from disadvantaged backgrounds*

¹⁶⁴ <http://www.ioe.ac.uk/research/153.html> (Accessed October 2014)

¹⁶⁵ http://www.commissionforchildcarereform.info/?page_id=2 (Accessed October 2014)

¹⁶⁶ https://www.commissionforchildcarereform.info/?page_id=68 (Accessed October 2014)

¹⁶⁷ *Save the Children (2013). Give Us a Hand with Childcare: 10 key messages from parents in Scotland*

¹⁶⁸ <http://news.scotland.gov.uk/News/Supporting-Scotland-s-families-81d.aspx> (Accessed October 2014)

Improving parenting skills and support

Children's organisations report that there is a lack of support for parents with learning disabilities. This can have a detrimental effect on family life. Children's organisations have reported that parenting programmes are not tailored to support parents of disabled children or parents with learning disabilities. There can be a lack of proper assessment into the support needs of families where parents have reduced capacity. Children's organisations would welcome additional support to be made available to parents with learning difficulties to enable more families to stay together.

Fathers

In May 2014, the Scottish Parliament's Equal Opportunities Committee released a report of its inquiry into fathers and parenting.¹⁶⁹ The report looks at the distinct social and practical challenges faced by fathers, and the way in which they may differ from those experienced by mothers, with a view to better understanding how changes in social and employment practices may improve outcomes for children with parents who are together, parents who are separated, and lone parents. The Committee recommends that the Scottish Government sets out how the measures it has put in place to partially mitigate welfare reform are benefitting fathers, and to what extent it can further support fathers with shared custody who are facing financial hardship.

4.2

Young Carers

¹⁷⁰ Scottish Youth Parliament (2014). *A Costly Youth: The Impact of Caring on Young People in Scotland*

¹⁷¹ Scottish Government (2014). *Carers Legislation - Consultation on Proposals*

¹⁷² See responses from Together, Carers Trust Scotland, Scottish Youth Parliament, YouthLink Scotland and Children in Scotland here: <http://www.scotland.gov.uk/Publications/2014/05/8784/downloads> (Accessed October 2014)

¹⁷³ Scotland's Commissioner for Children and Young People (2014). *Promoting and safeguarding the rights of young carers*

Findings from a Scottish Youth Parliament research report¹⁷⁰ highlighted that 74% of young carer respondents experience anxiety or stress due to their financial situation and 80% report that financial pressures have affected their ability to study. Many young carers feel their current and future opportunities are limited due to their caring responsibilities. The report concludes that young carers and young adult carers lack sufficient support and financial assistance during their transition from childhood to adulthood.

The Scottish Government has committed to publish draft legislation for carers.¹⁷¹ Children's organisations have called for a child rights approach to be taken in the development of this legislation and for it to be used as an opportunity to improve the identification of, and assessment and support for young carers.¹⁷² Children's organisations would like to see the current proposals strengthened, specifically around ascertaining the views of young carers about decisions that will affect their lives and the lives of those for whom they care.¹⁷³

Work is underway to develop a Charter of Rights for Young Carers. Some initial consultation took place at the annual Young Carers Festival in July 2014, and young carers will be further involved in the process of development over the next few months. The Charter is being commissioned by the Scottish Government and being taken forward by Carers Trust working in partnership with the Scottish Young Carers Services Alliance. Based on the UNCRC, an initial Charter will be completed in early 2015.

A Young Carers Identification Card has been piloted by local authorities in a number of Health Boards as a way of enabling young carers to be more involved in the care and support of the person whom they care for. Ownership of the card should help to underpin a young carer's right to be listened to, consulted with and treated with respect when a care plan is being put in place and implemented for the family member they are caring for.

¹⁷⁴ Scotland's Commissioner for Children and Young People (2014). *Promoting and safeguarding the rights of young carers*

The Children's Commissioner has made a number of recommendations relating to young carers¹⁷⁴ including that:

- Young carers should be identified at an early stage and their support needs met equitably;
- There should be a statutory requirement for local authorities and Health Boards to produce a Young Carers' Local Strategy;
- Young carers should not be financially disadvantaged by their caring role and should have access to the same educational opportunities as their peers;
- Named Persons, education and medical professionals should receive specialist training and advice in order to ensure that they can correctly identify and support young carers.

4.3

Violence, abuse and neglect

UN Concluding Observation

¹⁷⁵ (CRC/C/GB/CO/4: Para. 51 (a))

'Establish mechanisms for monitoring the number of cases and the extent of violence, sexual abuse, neglect, maltreatment or exploitation, including within the family, in schools and in institutional and other care.'¹⁷⁵

¹⁷⁶ (CRC/C/GB/CO/4: Para. 51 (b))

'Ensure that professionals working with children receive training on their obligation to report and take appropriate action in suspected cases of domestic violence affecting children.'¹⁷⁶

¹⁷⁷ (CRC/C/GB/CO/4: Para. 51 (c))

'Strengthen support for victims of violence, abuse, neglect and maltreatment in order to ensure that they are not victimised once again during legal proceedings.'¹⁷⁷

¹⁷⁸ (CRC/C/GB/CO/4: Para. 51 (d))

'Provide access to adequate services for recovery, counselling and other forms of reintegration.'¹⁷⁸

¹⁷⁹ Scottish Government (2013). *National Statistics Bulletin Crime and Justice Series: Domestic abuse recorded by the police in Scotland, 2012-13*

Domestic abuse

¹⁸⁰ Scottish Children's Reporter Administration (2014). *Online Statistics 2013-14*

In 2012-13, there were 60,080 incidents of domestic abuse recorded by the police in Scotland. Of these, 44,916 (80%) had a female victim and a male perpetrator.¹⁷⁹ Between April 2013 – March 2014, 3275 children were referred to the Scottish Children's Reporter Administration on the grounds of close connection with the person who carried out the domestic abuse.¹⁸⁰ Evidence suggests that adolescent and young women face a higher risk of violence from a partner than older groups. For example, the Scottish Crime and Justice Survey found that younger adults were more likely to have experienced abuse by a partner in the last 12 months, with rates varying from 5% of 16-24 year olds who had contact with a partner or ex-partner in that time to less than 1% of those aged 65 or older.¹⁸¹ A recent study published by the NSPCC highlighted that one in three 13 to 17 year olds reported some form of sexual partner violence.¹⁸²

¹⁸¹ Scottish Government (2013). *National Statistics Bulletin Crime and Justice Series: Domestic abuse recorded by the police in Scotland, 2012-13*

¹⁸² NSPCC (2009). *Partner exploitation and violence in teenage intimate relationships*

Domestic abuse is an incredibly complex issue and it is important that it is addressed in ways which take account of such complexity. An early intervention and holistic approach to providing support to both parents and children is key to ensuring that a child's right to protection and healthy development is not compromised.

¹⁸³ Scottish Government (2014). *Equally Safe: Scotland's strategy for preventing and eradicating violence against women and girls*

Violence against Women and Girls Strategy

Children's organisations broadly welcome 'Equally Safe', the Scottish Government's newly issued strategy for preventing and eradicating violence against women and girls,¹⁸³ and the Scottish Government's continued support for a gender based approach and definition of violence against women. The strategy recognises that women and girls are at risk of violence and abuse precisely *because* they are female, thus aligning Scotland with the UN definition of violence against women that includes the girl child. Such an approach recognises that it is gender, rather than age, which predicts an individual's likelihood of experiencing inequality and violence.

All children growing up in the family setting – boys and girls alike – can be badly affected, whether as victims of violence directly or as witnesses to violence. Children's organisations are disappointed that the strategy does not currently recognise that violence against women and girls can have significant consequences within the wider family. They state that the Equally Safe strategy would have benefited greatly from a formal consultation process rather than the targeted approach taken by the Scottish Government. It would have also benefited from greater involvement of young women and young men – as well as those who are working with young people.



Recommendation:

- The Scottish Government should link the Equally Safe strategy to existing National Strategies and National Action Plans and Frameworks, especially in relation to how it is placed within the Child Protection policy framework. Particular consideration should be given to Child Sexual Exploitation and the forthcoming National Action Plan on Child Sexual Exploitation.

¹⁸⁴ Scottish Government (2014). *National Guidance for Child Protection In Scotland*

Child protection

In May 2014, the National Guidance for Child Protection in Scotland¹⁸⁴ was refreshed with the aim of ensuring it is relevant and up to date for local agencies and practitioners. The refreshed guidance:

- states that the UNCRC should underpin all code and practice in child protection;
- provides a national framework for agencies and practitioners at local level to understand and agree processes for working together to safeguard and promote the wellbeing of children;
- sets out expectations for strategic planning of services to protect children;
- highlights key responsibilities for services and organisations, both individual and shared;
- includes guidance for practitioners on specific areas of practice and key issues in child protection including Child Sexual Exploitation and Internet Safety.

¹⁸⁵ <http://withscotland.org/national-framework-for-child-protection-and-development-in-scotland-2012/story.html> (Accessed October 2014)

Children's organisations have welcomed the introduction of the National Framework for Child Protection Learning and Development online resource.¹⁸⁵ The National Framework sets out a common set of skills and standards for workers to ensure the delivery of a consistently high standard of support to children across the country. The main aim of the online resource is to strengthen the skills and training of professionals and improve the advice and tools available to them in assessing, managing and minimising risks faced by vulnerable children.

UN Concluding Observation

¹⁸⁶ (CRC/C/GB/CO/4: Para 45 (e))

‘Monitor the status of children placed in kinship homes, foster care, pre-adoptive homes and other care institutions, inter alia through regular visitations.’¹⁸⁶

¹⁸⁷ (CRC/C/GB/CO/4: Para 45 (h))

‘Provide training and education programmes to prepare children for adult life.’¹⁸⁷

¹⁸⁸ Centre for Excellence for Looked After Children in Scotland (2013). *Scotland’s National Human Rights Action Plan: Getting It Right for Looked After Children and Care Leavers*

There is a need to recognise the complexity of the rights of looked after children, including the right to family life supported through appropriate services, the right to effective participation in decision making processes and opportunities to challenge decisions and make a complaint.¹⁸⁸

¹⁸⁹ *Who Cares? Scotland (2013). Independent Advocacy Position Paper*

Looked after children can be some of the most marginalised, socially disempowered and stigmatised in Scotland. Due to their experiences, they often do not trust those around them, and many can struggle to make meaningful relationships with peers and adults alike.¹⁸⁹

¹⁹⁰ Scottish Government (2014). *Rights: Information for Young People who are Looked After Away from Home (Scotland)*

Children’s organisations are clear that the realisation of looked after children’s rights is key to improving their life chances. It was stressed that looked after children must know what their rights are before they are able to assert them and seek redress if they are violated. The Scottish Government has published a new booklet for looked after children that clearly outlines their rights.¹⁹⁰ Children’s organisations have welcomed the introduction of a new online corporate parenting resource kit which contains a range of resources and information relating to looked after children and care leavers and the duties on corporate parents and professionals.¹⁹¹

¹⁹¹ <http://www.corporateparenting.co.uk/> (Accessed October 2014)

¹⁹² Scottish Government (2014). *Scottish Budget Draft Budget 2015-16*

Children’s organisations have welcomed the commitment made in the Scottish Government’s Draft Budget 2015 – 2016 to provide a package of throughcare and aftercare for care leavers and a mentoring scheme for Looked After Children.¹⁹²

¹⁹³ *Who Cares? Scotland, Aberlour, Barnardo’s Scotland (2014). Getting it Right for Young People Leaving Care*

Children’s organisations have highlighted specific concerns about the quality, suitability and safety of accommodation being offered to young people leaving care.¹⁹³ CELCIS has noted the specific role of the Care Inspectorate in ensuring looked after children are living in appropriate accommodation to meet their needs. They have encouraged the consideration of a human rights approach to inspection processes and recommended that the Care Inspectorate consider the accountability of Community Planning Partnerships on children’s rights reporting.



The Scottish Government is currently developing a Looked After Children Strategy which they hope to publish in early 2015. Who Cares? Scotland has been commissioned by the Scottish Government to consult on permanency planning and stability in placements to inform the new Strategy. This consultation will work with looked after children to assess how birth families can be best supported and how children can be moved back to the family home when in their best interests. The Scottish Government aim to use findings from this consultation to stimulate discussion at a planned stakeholder event to develop the Strategy, in which they hope young people with care experience will participate.

Recommendation:

- The Scottish Government should monitor the outcomes of looked after children and care leavers. This should specifically include monitoring the rates of request, process of refusal and provision of redress in the right of support to care leavers up until 26 in light of the provisions included in the *Children and Young People (Scotland) Act*.

Children and Young People (Scotland) Act

Children's organisations note there has been a welcome focus on the rights of looked after children and greater public awareness of the issue they face following the introduction of the *Children and Young People (Scotland) Act*.¹⁹⁴ The Act has introduced a number of new measures relating to looked after children:

Part 9 of the Act puts the concept and policy of 'corporate parenting' onto a statutory basis.¹⁹⁵ It establishes a framework of duties and responsibilities for relevant public bodies, requiring them to be systematic and proactive in their efforts to meet the needs of looked after children and care leavers. It also introduces new reporting and accountability structures, with national progress on improving outcomes reported to the Scottish Parliament every three years.¹⁹⁶

Parts 10 and 11 of the Act reflect the philosophy of care set out in the Scottish Government's Staying Put Scotland guidance,¹⁹⁷ in that care planning decisions should be based on meeting the needs of individual care leavers rather than being based on age or legal status. It stresses the importance of positively delaying the age of leaving care, and corporate parents' duty to encourage, enable and empower young people to remain in safe, supported environments for as long they need to.¹⁹⁸ From 2015, all 16 year olds in foster, residential and kinship care will be entitled to stay in their current care setting until the age of 21 before going on to receive appropriate aftercare support. Who Cares? Scotland has been commissioned to consult with children with care experience for the guidance for the *Children and Young People (Scotland) Act*.

Part 12 of the Act relates to services for children 'at risk' of becoming looked after. The 'risk' need not be imminent, as the support is intended to involve early intervention to offset or reduce the risk of the child becoming looked after. The provisions detail which services should be made available for eligible children and qualifying persons and are wide enough to ensure that local authorities can provide a range of services and address varying circumstances. Support can be provided to members of the child's family or the child, and not just parents or those with parental rights. A pregnant woman will be considered eligible if a local authority considers that she will give birth to a child who will be eligible.¹⁹⁹ This has been welcomed by children's organisations.

¹⁹⁴ Scottish Government (2014). *Children and Young People (Scotland) Act 2014*

¹⁹⁵ Scottish Government (2014). *Children and Young People (Scotland) Act 2014 (Part 9)*

¹⁹⁶ Scottish Government (2014). *Children and Young People (Scotland) Act 2014 (Part 9)*

¹⁹⁷ Scottish Government (2013). *Staying Put Scotland: Providing care leavers with connectedness and belonging*

¹⁹⁸ Centre for Excellence for Looked After Children in Scotland (2014). *The Children and Young People (Scotland) Act (Parts 10 and 11)*

¹⁹⁹ Centre for Excellence for Looked After Children in Scotland (2014). *The Children and Young People (Scotland) Act (Parts 10 and 11)*

²⁰⁰ (CRC/C/GB/CO/4: Para 45 (c))

²⁰¹ Ibid.

²⁰² Scottish Independent Advocacy Alliance (2014). *A Map of Advocacy Across Scotland, 2013-2014* edition (pg 8)

²⁰³ CELCIS (2013). *SNAP: Getting It Right for Looked After Children and Care Leavers*



Strengthening the voice of children in care

UN Concluding Observation

‘Take into account in all measures the views of children, and provide them with child-accessible complaint mechanisms.’²⁰⁰

Children’s organisations report that children in residential units do not always trust the staff or social workers to fully listen to them or respect them. Although the UN Concluding Observation refers to ‘child-accessible complaint mechanisms’,²⁰¹ children’s organisations highlight the need for consistent access to high quality advocacy, so that a child or young person has an advocate who they can trust. Although there is advocacy provision for looked after and accommodated children in most local authority areas,²⁰² there is still a lack of consistency in provision and looked after children can still face obstacles in expressing their views.²⁰³ This has been reported to be particularly the case for looked after young people in cases whereby their views on contact with family members have been disregarded.

Recommendations:

- Advocacy should be available as a matter of routine for looked after children.
- Advocacy provision should be independent from service provision wherever possible to minimise any risk of conflict of interest.

Children with disabilities in long-term care

UN Concluding Observation

‘Assess why so many children with disabilities are in long-term institutional care and review their care and treatment in these settings.’²⁰⁴

Looked after disabled children remain a hidden group²⁰⁵ and speak about their experiences of not being heard. There is concern that presumptions are often made about the competency of children who use a range of communication strategies to express their views and they can often be overlooked.²⁰⁶

²⁰⁴ (CRC/C/GB/CO/4: Para 45 (f))

²⁰⁵ Centre for Excellence for Looked After Children in Scotland (2013). *Scotland’s National Human Rights Action Plan: Getting It Right for Looked After Children and Care Leavers*

²⁰⁶ Ibid.

Contact proceedings for all children separated from their parents and siblings

UN Concluding Observation

‘Facilitate the initiation of contact proceedings for all children separated from their parents and siblings, including those in long term residential care.’²⁰⁷

Looked after children raise contact with siblings and parents as one of the most fundamental challenges they face. They highlight their separation from their siblings as being distressing and destructive. During the passage of the *Children and Young People (Scotland) Act*, the Minister for Children and Young People committed to ensuring that there is ‘good quality guidance on enabling contact between siblings’.²⁰⁸ The Scottish Government has set up a working group to look at the guidance on contact. Any guidance should ensure that children are made aware of their right to contact and are able to seek redress if this right is not respected.

²⁰⁷ (CRC/C/GB/CO/4: Para 45 (g))

²⁰⁸ Scottish Parliament (2014). *Meeting of the Parliament: Official Report (27863)*

²⁰⁹ See: *V v Locality Reporter Manager, Stirling 2013 Fam. L.R. 69*, and *Vicki Straiton (2012). Barriers to sibling contact*

There have been a number of successes both in Court and at Childrens Hearings in securing orders for sibling contact for children and young people.²⁰⁹ Cl@n Childlaw has networked with a number of legal firms to ensure that other young people now have an increased chance of having contact with their siblings from whom they are separated.

The Scottish Government should ensure that the guidance on contact stresses the importance of making children aware of their rights to contact and provides them with suitable redress if this right is not respected.

Rec

Recommendation:

- The Scottish Government should ensure that guidance on contact stresses the importance of making children aware of their rights and provides them with suitable means to ensure this right is respected.

4.5

Adoption

UN Concluding Observation

‘Strengthen efforts to ensure that children are adopted as speedily as possible, in line with their best interests and taking into account factors such as cultural background.’²¹⁰

Local Authority Adoption Service Plans have highlighted that a number of local authorities are taking steps to improve permanence planning.²¹¹ Scotland’s Adoption Register was placed on a statutory footing through the *Children and Young People (Scotland) Act*.²¹²

Children’s organisations continue to report ‘revolving door’ scenarios which can exacerbate unhappy and damaging experiences for already traumatised children. Frequently, children ask to have continued input from a trusted worker.

Cl@n Childlaw successfully acted for a child, applying to have the terms of a Permanence Order varied by the Court. Such a variation is rarely done on behalf of the child as it is more usual for variations to be at the instance of Social Work.

Rec

Recommendation:

- The Scottish Government should ensure that continued support is available to children placed in a permanent or adoptive placement, in consistent negotiation with the child and adults involved.

UN Concluding Observation

‘Ensure support to children with one or both parents in prison, in particular to maintain contact with the parent(s) (unless this is contrary to their best interests) and to prevent their stigmatisation and discrimination against them.’²¹³

Each year in the UK, more children experience a parent’s imprisonment than a parent’s divorce.²¹⁴ Children’s experience of a family member’s imprisonment can be similar to experiencing bereavement, and its effects may include the child ‘acting out’ or becoming withdrawn, deterioration in performance at school, being bullied or becoming the bully, and increased risk of substance misuse.²¹⁵ Children affected by imprisonment can suffer from serious mental health issues at three times the rate of other children and are at higher risk of offending and of ending up in prison themselves.²¹⁶ The decision to send a parent to prison clearly has a tremendous impact on a child.

Children’s organisations stress the importance of providing holistic support for families affected by parental imprisonment both within the prison estate and in their community, ensuring relationships are nurtured and sustained during the prison sentence in order to mitigate the negative impact of parental imprisonment for the family. It is important that practical help is provided to help families overcome difficulties such as cost and distance to ensure children are able to visit their parents. Minimum standards have been established for family support within the Scottish Prison Service²¹⁷ so that all children affected by parental imprisonment are supported in a way that is timely, appropriate and proportionate to their needs.

As reported in the *State of Children’s Rights* report 2013, progress is being made with regards to child contact, and prisons are largely no longer using it as a means of controlling prisoner behaviour. Children’s organisations welcome this progress, but note the importance of ensuring that this practice continues consistently in every prison.

There has been a growing awareness of the value of Family Visitors Centres²¹⁸ and this is highlighted by the on-going work of the National Prison Visitors Centre steering group. Visitors Centres can provide practical and emotional support for families with a relative in prison and provide information and advice on a range of issues. Projects that provide opportunities for the whole family to come together are seen as being highly effective, as are those that offer opportunities for prisoners to develop their relationship with their children, such as the Barnardo’s Scotland run Parenting Matters project in Polmont Young Offenders Institution, funded by the Scottish Prison Service. The Scottish Prison Service has indicated they are looking at whether this kind of project could be rolled out in other prisons across Scotland in future. Children’s organisations have given examples of a number of successful projects including those that facilitate children’s visits and Family Learning Sessions, offer mediation and run Family Fun Days within the prison setting.

²¹³ (CRC/C/GB/CO/4: Para. 45 (d))

²¹⁴ *Families Outside* (2009). *Support and Information for children affected by imprisonment. In Brief 4.*

²¹⁵ Robertson Trust (2013) *Good Practice in Working with Families Affected by Imprisonment*

²¹⁶ Loucks, N. (2004) *Prison without bars: the experiences of families affected by imprisonment. Edinburgh and Dundee: Families Outside and Tayside Criminal Justice Partnership*

²¹⁷ <http://www.sps.gov.uk/nmsruntime/saveasdialog.aspx?IID=1955&SID=1255> (Accessed Sept 2014)

²¹⁸ Robertson Trust (2013) *Good Practice in Working with Families Affected by Imprisonment*

The sustainability of support for children affected by imprisonment remains paramount. Children's organisations welcome a new partnership between Families Outside and Fife Council education authority which means that children with a family member in prison will be recognised and supported through the school system. Joint funding commitments such as these are key to ensuring that children's rights are respected and their needs met.

There is recognition within the Scottish Prison Service that staff need to be supported to develop skills and understanding to work effectively with prisoners' families and children. Children's organisations have welcomed the commitment given by Colin McConnell, Chief Executive of the Scottish Prison Service, that he intends to put this support in place.²¹⁹

Children's organisations have called for the Justice Committee to ensure the *Criminal Justice (Scotland) Bill* is amended to ensure that the best interests of the child are taken into consideration when holding, arresting, interviewing or charging a parent, and that a child's Named Person is notified when someone who has responsibility for a child is arrested.

Rec

Recommendations:

- The *Criminal Justice (Scotland) Bill* should include provisions to ensure:
 - The best interests of the child is taken into consideration when holding, arresting, interviewing or charging a family member or carer (as per 2013 *State of Children's Rights* report);
 - Police have to notify the Named Person when they arrest someone who has responsibility for a child;
 - National government and local authorities should have a duty to highlight the specific needs of children affected by parental imprisonment with partners and other agencies, to ensure everyone understands the impact of the criminal justice system on families.
- Appropriate training should be delivered for all agencies that have contact with families of prisoners including health professionals and teachers. All prison staff should receive advanced training in how to support children and families, in line with the wellbeing principles contained within the GIRFEC (Getting it Right for Every Child) framework.

Child's Rights Impact Assessment

Children's organisations report that the focus given to how families can help to prevent reoffending can sometimes be at the expense of a focus on the impact of offending on children and their families. There needs to be a wider acknowledgment that families affected by imprisonment, and especially children, are rights holding individuals. They should not be viewed merely as vehicles to reduce parental reoffending, rather they should be seen as individuals in their own right and receive support which is child-centred and focused on their individual wellbeing needs, in line with GIRFEC principles. A Child Rights Impact Assessment would provide an overview of the possible impact a parent being sent into custody might have on a child. It would give children the opportunity to have their views considered and taken into account. Whilst the impact assessment could be used to ensure the Sheriff is aware of the child's needs and experiences, it would have a wider use in terms of ensuring the child and its family have the support they need after a sentencing decision has been made, and regardless of what this decision is.

Families Outside has carried out research into and developed a draft CRIA for use within the criminal justice system.²²⁰ Further work needs to be conducted by children's organisations and social work (both criminal justice and children and families) to pilot the CRIA. This needs to include identifying who should have responsibility for carrying out the CRIA and at what stage it should be carried out. Any pilot needs to be child-centred and include the involvement of children in its development and evaluation. It has been suggested that responsibility for undertaking a CRIA could be given to NGOs working in partnership with the statutory sector.



Recommendation:

- The Scottish Government should initiate a pilot of the use of Child Rights Impact Assessments within the criminal justice system to ensure that children affected by imprisonment are taken into account at all stages.

Articles:

6, 18 paragraph 3, 23, 24,
26 and 27 paragraphs 1-3

- These articles give every child the right to health and health services and benefits and an adequate standard of living, and ensure that that special consideration is given to children with a disability.

Chapter

5

Basic Health and Welfare

Case study: *supporting siblings of children with a disability*

Article 23 of the UNCRC is clear that children with a disability have the right to live a full and decent life with dignity and independence, and to play an active part in the community. It requires governments to do all they can to provide support for children with a disability. However, it is also important to recognise the rights of siblings of children with a disability. Their lives can be profoundly affected by their sibling and they may face their own challenges and difficulties. Siblings of children with a disability may need extra support and attention to ensure their voices are heard and their needs are met, as this case study illustrates:

Our family consists of mum, dad, two boys (10 and 13) and a dog. In many ways we are fortunate but every aspect of our lives (from the house we live in to the light bulbs we use) is dictated by our eldest son's autism and, to a lesser extent, hearing loss. As adults, we can forgo such things as a social life, family holidays, regular sleep but our youngest owes no such duty to surrender the things that others may take for granted. As parents, you try and be even handed but the cards just haven't been dealt that way – it's the eldest who holds the trump cards and the youngest who suffers as a consequence of the compromises needed to get us through everyday life.

Doing anything, going anywhere requires almost military planning and contingencies for when it all goes off the rails – spontaneity is not an option. A friend of our youngest coming over to play (a comparatively recent progression) requires all sorts of explanations to parents and the friend about some of the more unusual behaviours and their background. Although these have been generally well-received and expose way more personal family information than the norm but you get used to having your family's lives open to scrutiny – we have no secrets any more.

These are choices we, as adults, have made in order to support our eldest child but our youngest had no choice. No choice but to try and sleep when 'Santa Claus is Coming to Town' is played endlessly on a toy keyboard in the night, no choice when we cut short our last attempt at a family holiday a few years ago – no choice in having his life planned around his brother's and it being a matter for the scrutiny of strangers.

One night, a few years ago I heard our youngest crying in his room and found him kneeling on his bed, his face in his forearm and pressed to the wall. All attempts to console him or discover the reason just led to ever more anguished, body-wracking sobs before he eventually turned to me and wailed 'I don't know.' At that point I knew all right and realised that, until that point, I hadn't appreciated just how big the impact was.

We learned that you have to ask questions to which there are no right or wrong answers, to listen without judgement and to answer any question with complete openness and honesty. It's scary and the future's uncertain for them too.

UN Concluding Observation

‘The Committee recommends that inequalities in access to health services be addressed through a coordinated approach across all government departments and greater coordination between health policies and those aimed at reducing income inequality and poverty.’²²¹

²²¹ (CRC/C/GBR/CO/4: Para. 55)

²²² UN General Assembly (1989). *UN Convention on the Rights of the Child (Article 24)*

²²³ <http://www.each-for-sick-children.org> (Accessed August 2014)

²²⁴ West Lothian Council: *Special Education Needs Transport Training (SENTT)*

²²⁵ <http://www.nowhearme.co.uk> (Accessed October 2014)

Training

Article 24 of the UNCRC is clear that all children have a right to the best health care possible.²²² For this to be fulfilled, there is a need to ensure that all professionals working with children are appropriately trained. The EACH Charter – the 10 health care rights for children – states that children in hospital should be cared for by staff trained to understand and meet their physical, emotional and developmental needs.²²³ However, children’s organisations report that the majority of staff in adult wards – where many children are treated – are not trained in the very specific needs of children.

There are concerns that GP training in Paediatric and Child Health is not as effective as it should be. Children’s organisations recommend that patients and their families should be informed as to which GP practices in their area have at least one GP with training in paediatrics of at least six months at a postgraduate level.

Some children’s organisations have raised reports of school escorts and drivers who have not been trained to be receptive to the needs of children with additional support needs. Examples were given such as the importance of continuity for autistic children – of the driver and/or the route taken to school. Whilst such issues might be regarded as minor, they can be extremely important to that particular child. Children’s organisations welcomed some of the training that has been conducted in some local authority areas but would like to see this rolled out across all escorts and drivers.²²⁴

Children’s organisations have welcomed a new NHS Education for Scotland campaign in October 2014 entitled ‘Now hear me: It’s my right to speak’,²²⁵ to help professionals develop a better understanding of the needs of individuals who may have difficulties as a result of impaired or no speech and who use Augmentative and Alternative communications. It is targeted at professionals in areas such as health, social care, social work and education but is equally relevant to the wider community across Scotland including shops, banks, public transport operators and leisure services.

²²⁶ Action for Sick Children Scotland (2013). *Parental Access and Family Facilities Survey 2012-13*

²²⁷ Scottish Government (2005). *Building a health Service Fit for the Future*

Hospitals

A comprehensive survey of Scottish hospitals admitting children found many examples of good practice, although this can be uneven within health boards and across the system.²²⁶ Despite a Scottish Government recommendation in 2005²²⁷ that the NHS Scotland should allow children up to the age of 16 to access acute care in paediatric facilities, a high number are still being looked after in adult wards. 43% of the wards surveyed did not accommodate children aged 12 and above on the children's wards.

Action for Sick Children Scotland has heard evidence of young people under the age of 18 years being regularly treated in adult psychiatric hospitals when there are no beds available in teenage units. In these cases, young people are followed by a nurse at all times (even when they go to the toilet) because of their age and for child protection reasons. Action for Sick Children Scotland is working with SPENS (Strategic Paediatric Educationalists and Nurses Scotland) to develop guidance and a suite of documents that can be adapted locally for adult wards admitting young people.

²²⁸ Action for Sick Children Scotland (2013). *Parental Access & Family Facilities Survey 2012-13 Report*

²²⁹ Education Scotland (2013). *Supporting Learners: Children too ill to attend school: a conversation*

Access to education

Children's organisations report that staff in adult wards are not aware of the right of children to be provided with education in hospital. None of the 22 adult wards who responded to a recent Action for Sick Children Scotland survey provided education for children in their wards.²²⁸

Children's organisations are aware of many cases whereby children are absent from school due to ill health and experience difficulties accessing education. This is a particular issue for children affected by mental health issues and is compounded by a lack of access to specialist CAMHS services and diagnosis.²²⁹

The Scottish Government has convened a stakeholder group to review the 2001 guidance on the Education of Children Absent from School through Ill-health. The new guidance will be published in 2015. Children's organisations are clear that the guidance needs to be widely promoted among teachers and parents to ensure that the child's right to education when absent from school is fulfilled.

UN Concluding Observation

‘Develop early identification programmes.’²³⁰

²³⁰ (CRC/C/GBR/CO/4; Para. 53 (b))

²³¹ Scottish Government (2014). *Children and Young People (Scotland) Act 2014 (Section 4)*

²³² <http://news.scotland.gov.uk/News/500-new-health-visitors-ddc.aspx> (Accessed June 2014)

²³³ *Putting the Baby in the Bathwater* is a coalition coordinated by Wave Trust Scotland. It was formed during the passage of the *Children and Young People (Scotland) Bill 2013*, and supports a robust statutory foundation for primary prevention and positive action from pre-birth to age 2.

²³⁴ Wave Trust (2013). *Putting the Baby in the Bathwater: Give priority to prevention and the first 1,001 days*

²³⁵ <http://www.sccyp.org.uk/news/in-the-news/commissioner-welcomes-scottish-governments-health-visitors-pledge> (Accessed June 2014)

²³⁶ <http://www.scotland.gov.uk/Topics/People/Young-People/early-years/parenting-early-learning/family-nurse-partnership/training> (Accessed October 2014)

²³⁷ Lothian, Tayside, Fife, Greater Glasgow and Clyde, Ayrshire and Arran, Highland and Lanarkshire

The Early Years Collaborative aims to improve outcomes and reduce inequalities for all children in Scotland, in particular in relation to reducing rates of infant mortality and achievement of early development milestones.

Health visitors play a key role in early intervention, promoting social inclusion, reducing health inequalities and supporting families through the provision of universal services. They support and advise families from the birth of their child until the age of five.

If a family needs extra support, health visitors can signpost them to appropriate agencies. Health visitors will fulfil the role of Named Person included in *Children and Young People (Scotland) Act*²³¹ with the role of acting as a single point of contact for information and to provide appropriate support in navigating services that some parents and children sometimes want or need. Children’s organisations have welcomed the plans announced by the Scottish Government to create over 500 new health visitor posts over the next four years and to invest in health visitor education.²³² This development takes forward a key recommendation of the ‘Putting the Baby in the Bathwater’²³³ coalition to ‘reinvent and reinvigorate the health visiting profession as an indispensable part of the early years workforce’²³⁴ as referred to in the 2013 State of Children’s Rights report. Children’s organisations note that challenges remain in terms of ensuring sufficient numbers of health visitors are in place in time to meet the demands of the Named Person provisions when they come into effect in August 2016. The Children’s Commissioner has called for the robust monitoring of the numbers of properly trained health visitors to ensure the commitment is met.²³⁵

Children’s organisations have also welcomed the Scottish Government’s intention to roll out the Family Nurse Partnership to every local authority.²³⁶ The Family Nurse Partnership aims to improve outcomes for young first time mothers and their children through a programme of home visits delivered by specially trained Family Nurses from pregnancy until the child is two years-old. It is already in place across seven health boards.²³⁷ The roll out of the Family Nurse Partnership should be accompanied by robust monitoring, evaluation and review mechanisms that are used to assess and evidence the long-term effectiveness of the programme. This is the only way to ensure that future policy interventions are evidence-based and effective.

UN Concluding Observation

²³⁸ (CRC/C/GBR/CO/4:
Para. 53 (a))

‘Take all necessary measures to ensure that legislation providing protection for persons with disabilities, as well as programmes and services for children with disabilities, are effectively implemented.’²³⁸

²³⁹ (CRC/C/GBR/CO/4:
Para. 53 (b))

‘Develop early identification programmes.’²³⁹

²⁴⁰ (CRC/C/GBR/CO/4:
Para. 53 (c))

‘Provide training for professional staff working with children with disabilities.’²⁴⁰

²⁴¹ (CRC/C/GBR/CO/4:
Para. 53 (e))

‘Undertake awareness-raising campaigns on the rights and special needs of children with disabilities, encourage their inclusion in society and prevent discrimination and institutionalisation.’²⁴¹

²⁴² (CRC/C/GBR/CO/4:
Para. 53 (f))

‘Consider ratifying the International Convention on the Rights of Persons with Disabilities and its Optional Protocol.’²⁴²

A number of children’s organisations have raised concerns that the *Children and Young People (Scotland) Act* does not address the specific needs of children with a disability as distinct from those of non-disabled children. Concerns have included a view that the Act does not take into account the unique perspective of children with a disability, has not been ‘disability proofed’ and questions have been raised regarding the applicability of the SHANARRI wellbeing indicators to children with disabilities.

Learning disabilities

The Scottish Government estimates that there are approximately 16,000 school aged children with additional support needs due to learning disabilities.²⁴³ However, data is patchy and is not necessarily wholly representative of the actual numbers.²⁴⁴

For parents, the initial experiences of having a child diagnosed with a learning disability and the manner in which the diagnosis is delivered can have a major and long lasting influence on their ability to cope. For certain learning disabilities, the length of time between the first referral and diagnosis can be more than a year. Parents repeatedly suggest that the health and care system focuses on the deficits of the child. Following a child’s diagnosis, it is important for parents that the emphasis is placed on their child’s potential rather than their disability.²⁴⁵

Children’s organisations have welcomed the Scottish Government’s new Keys to Life strategy which aims to improve the quality of life of people with a learning disability. The strategy explicitly takes a human rights approach to ensuring that the rights of people with learning disabilities are respected and upheld.²⁴⁶

Self-directed support

The *Social Care (Self-directed Support) (Scotland) Act*²⁴⁷ concentrates on the provision of choice to children and families during their social care assessment. It provides a variety of options for the provision of their support and requires the statutory bodies to ‘give effect’ to their choice.

²⁴³ Scottish Government (2013). *The Keys to Life: Improving quality of life for people with learning disabilities*

²⁴⁴ ENABLE Scotland (2014). *Getting it Right from the Start: a scoping exercise exploring issues around early stages of a learning disability diagnosis*

²⁴⁵ ENABLE Scotland (2014). *Getting it Right from the Start: a scoping exercise exploring issues around early stages of a learning disability diagnosis*

²⁴⁶ Scottish Government (2013). *The keys to life: improving quality of life for people with learning disabilities*

²⁴⁷ Scottish Government (2013). *Social Care (Self-Directed Support) (Scotland) Act 2013*

²⁴⁸ <http://www.open.edu/openlearn/health/sports-psychology/foundations-self-directed-support-scotland/content-section-overview> (Accessed October 2014)

In general, children's organisations are in favour of the principles of self-directed support and the ambition for more choice, control and freedom. Implementation of the legislation is still in its infancy. However, there is currently a lack of clarity on whether it will work in practice and concerns that the approach taken varies considerably across Scotland. Children's organisations have raised concerns that no timescale is being given to families for the approval of their applications. This can cause great uncertainty and means that families have no way of seeking help if they experience unacceptable delays.

In order for self-directed support to be effective, there needs to be appropriate and accessible information widely available for children and families. This should include greater support to enable self-determination rather than a prescriptive list of what is available. Children's organisations have highlighted the need to effectively recognise eligibility in the first place and provide a reasonable timescale in which children and families can expect access to an assessment and approval of their support.²⁴⁸

Children's organisations have welcomed a free Open University module which enables both professionals and parents to learn more about the principles and practice of self-directed support.

Action Plan

UN Concluding Observation

'Develop a comprehensive national strategy for the inclusion of children with disability in the society.'²⁴⁹

²⁴⁹ (CRC/C/GBR/CO/4: Para. 53 (d))

²⁵⁰ Scottish Government (2014). *Delivering Equality, Human Rights and Independent Living for Disabled People in Scotland: Update of Scottish Government activity and plan for 2014-15*

²⁵¹ The UN Committee's Concluding Observations for the UK were to be published in spring 2015, but have been postponed to a later date, as yet unknown.

²⁵² Scottish Government (2010). *Scottish Government's Contribution to the UK Government's Report to the UN Committee*

²⁵³ Scottish Government (2013). *Rights to Reality: a framework of action for independent living in Scotland 2013-2015*

The Scottish Government is developing a Disability Delivery Plan.²⁵⁰ This will demonstrate a commitment to disability equality through a long-term vision, strategic commitments and a set of actions with the aim of long term change. It will consider the UK Concluding Observations of the UN Committee on the Rights of Persons with Disabilities (UNCRPD).²⁵¹

A draft delivery plan will be published for consultation at a 'Disability Summit' in Spring 2015. The Summit and consultation will also:

- consider key issues raised in the Scottish Government's report on implementation of the UNCRPD;²⁵²
- reflect on the outcome of the referendum and discuss what this means for disability equality;
- be framed around the seven outcomes identified in Rights to Reality²⁵³ produced by the Independent Living Partnership Board.



Recommendations:

- The Scottish Government should ensure that children with a disability are actively involved and consulted in the development of the Disability Delivery Plan.
- The Scottish Government should undertake a CRIA on the draft Disability Delivery Plan to ensure it proactively considers and promotes the rights of children with disabilities.

²⁵⁴ <http://www.scotland.gov.uk/Topics/Statistics/Browse/School-Education/TrendSpecialEducation> (Accessed October 2014)

Data

Discrepancies have been reported in data regarding the numbers of children with disabilities in Scotland. According to the Scottish Government, there were 15,510 children assessed or declared disabled in 2013. However, the latest census figures show that there are over 50,000 children aged up to 17 years old for whom day to day activities are limited a lot or a little. This suggests that there may be significantly more children with disabilities than official statistics record. Children's organisations have recommended that the Scottish Government addresses this discrepancy by including disaggregated data on disability and other characteristics in the Scottish Household Survey.



Recommendation:

- The Scottish Government should ensure disaggregated data on disability and other characteristics is included the Scottish Household Survey to help address the discrepancy in data regarding the number of children with additional support needs.

5.4

Children with mental health needs

UN Concluding Observation

'Provide additional resources and support for children with mental health difficulties, with particular attention to those at greater risk, including children deprived of parental care, children affected by conflict, those living in poverty and those in conflict with the law.'²⁵⁵

²⁵⁵ (CRC/C/GBR/CO/4: Para. 57)

²⁵⁶ Scottish Government (2012). *Mental Health Strategy for Scotland: 2012-2015*

²⁵⁷ Scottish Children's Services Coalition (2014). *New waiting time figures back coalition call for urgent action to address child and adolescent mental health services*

²⁵⁸ Together (2012). *State of Children's Rights in Scotland*

²⁵⁹ The Scottish Independent Advocacy Alliance (2014). *A map of Advocacy Across Scotland 2013-2014 edition (pg 8)*

A mental health strategy was launched in 2012 which identified child and adolescent mental health as one of its four Key Change Areas.²⁵⁶ This work builds on progress made over the last three years to improve access to specialist Child and Adolescent Mental Health Services (CAMHS). Children's organisations continue to report an increasing number of children struggling to access support and being placed on long waiting lists. Parents and carers can be left with very little or no advice regarding how to support their son or daughter whilst waiting to see a specialist and feel very alone.²⁵⁷

Access to advocacy for children with a mental health disorder is a statutory right. However, in most areas of Scotland, children requiring services due to a learning disability or mental health issue do not have access to independent advocacy. Children's organisations are reporting that increasingly they are being required to prioritise adults facing compulsory measures, but children are being detained and receiving treatment without access to independent advocacy. There are concerns that children with a legal right to access independent advocacy still do not have the same level of access as adults. This gap has been highlighted in previous *State of Children's Rights*²⁵⁸ reports and there is still no evidence of it being addressed in all NHS Health Board and local authority areas. In 10 of the 32 local authority areas there is no independent advocacy provision for children with mental health problems or learning disabilities.²⁵⁹

²⁶⁰ CELCIS (2013). *Scotland's National Human Rights Action Plan: Getting it Right for Looked After Children, Young People and Care Leavers*

²⁶¹ LGBT Youth Scotland (2013). *Life in Scotland for LGBT Young People: Health Report*

²⁶² National Deaf Children's Society Scotland (2013). *Campaign Report: Mental health services for deaf children*

²⁶³ *Ibid.*

Whilst there has been recognition of the poor mental health of looked after children in comparison to their peers, there is still considerable work to be done to ensure that all looked after children and care leavers have their mental health needs met. There are specific challenges for looked after children accessing CAMHS, such as a lack of clarity about which Health Board is responsible for their health care, the delivery of services to successfully facilitate the transition between CAMHS and adult mental health services and ensuring continuity of mental health care when there are changes in placements (including the discontinuation of a service because a child has moved out with a specific health board area).²⁶⁰

Children's organisations have reported a high prevalence of mental health problems including depression in children with additional support needs. This can often stem from feelings of isolation and bullying and is often a result of a lack of early identification and primary needs not being met.

Concerns have also been raised regarding the high prevalence of mental health problems among LGBT young people, with over 40% of respondents to a recent survey stating that they considered themselves to have mental health problems. There are considerable variations in the numbers of young people living with mental health problems between groups under the LGBT umbrella.²⁶¹

Children's organisations have recommended that the Scottish Government build on the precedent set by the development of the Scottish Mental Health Service for Deaf People and commit to the creation of a similar national specialist service for deaf children.²⁶² This should follow the example from England, which is seen as a model of good practice.²⁶³



Recommendation:

- The Scottish Government should ensure that looked after children and care leavers have access to low intensity, relationship based counselling in combination with high intensity CAMHS intervention.

UN Concluding Observation

²⁶⁴ (CRC/C/GBR/CO/4; Para. 61)

‘Provide appropriate reproductive health services for young people.’²⁶⁴

²⁶⁵ (CRC/C/GBR/CO/4; Para. 61)

‘Increase provision of appropriate sex and relationships education in schools.’²⁶⁵

²⁶⁶ Scottish Government (2013). *Draft Guidance on the Conduct of Relationships, Sexual Health and Parenthood Education in Scottish Schools*

Children are provided with sex and relationship education in school and parents are given support to discuss relationships and sexual health with their children. The Scottish Government is in the process of revising the guidance on Relationships, Sexual Health and Parenthood Education (RSHPE) in schools.²⁶⁶

²⁶⁷ Zero Tolerance (2014). *‘He’s the stud and she’s the slut’: Young people’s attitudes to pornography, sex and relationships*

Many children do not feel that they receive enough relationship and sex education in schools, and it does not cover all of the issues that are important to them. Instead, children are turning to other sources – including friends, sexual partners and pornography – to find information.²⁶⁷

These alternative sources of information often reinforce myths and damaging attitudes about sex and relationships, so access to appropriate accurate information is essential for young people.

²⁶⁸ Zero Tolerance (2014). *‘He’s the stud and she’s the slut’: Young people’s attitudes to pornography, sex and relationships*

Research²⁶⁸ finds that:

- 49% of survey participants said there is not enough information available for young people on sex and relationships;
- Only 28% of heterosexual participants and 15% of gay, lesbian, bisexual and ‘questioning’ participants said their main source of learning about sex was school;
- 15% of boys said that pornography was the most common way that boys their age learned about sex;
- Only 1% of survey participants selected ‘mums or female carers’ as the most common source of learning about sex. No participants chose ‘dads or male carers’.

²⁶⁹ Scottish Consortium for Learning Disability (2014). *Parallel Report to the United Nations Committee on the Rights of Persons with Disabilities on the Progress of Implementation of the UNCRPD in the United Kingdom (Scotland)*

All children should receive relationships and sex education that is inclusive, evidence-based, and responsive to their needs. Relationships and sex education is as important to children’s health, wellbeing and potential as Mathematics or English. It should be invested in and monitored accordingly. Children’s organisations raise serious concerns about the rights of parents to remove children from lessons, particularly if this is against the child’s wishes. The Scottish Government should give serious consideration to the potential for such a policy to increase the vulnerability of children who are at risk of, for example, female genital mutilation or other forms of child abuse.

²⁷⁰ *Ibid.*

²⁷¹ Scotland’s Commissioner for Children and Young People (2013). *Response to Draft Guidance on the Conduct of Relationships, Sexual Health and Parenthood Education (RSHPE) in Scottish Schools*.

Children’s organisations are concerned that children with learning disabilities are not given appropriate education on sex and relationships, and that this increases their vulnerability to abuse.²⁶⁹ They recommend that the Scottish Government reviews its education strategy for children with additional learning needs in this area.²⁷⁰



The Children’s Commissioner called for the guidance on RSHPE Guidance to enable all schools to equip children with full, accurate and evidence-based information. It should promote respectful and compassionate attitudes and support safe, informed, responsible and healthy choices about their relationships and emotional and sexual health and wellbeing.²⁷¹

Recommendation:

- The Scottish Government should ensure that the guidance on Relationships, Sexual Health and Parenthood Education equips children with full, accurate and evidence-based information. It should promote respectful and compassionate attitudes and support safe, informed, responsible and healthy choices about their relationships and emotional and sexual health and wellbeing.

5.6

Health inequalities

UN Concluding Observation

‘Address inequalities in access to health services through a co-ordinated approach across all government departments.’²⁷²

‘Better co-ordinate health policies with those aiming to reduce income inequality and poverty.’²⁷³

Child poverty is associated with a higher risk of illness and premature death.²⁷⁴ Poverty has an important bearing on the likelihood that children will survive and flourish and research confirms the marked social inequalities in death rates of children in the UK.²⁷⁵

Addressing child poverty and reducing income inequality will reduce the health inequalities that lead to premature death.²⁷⁶ The Early Years Collaborative and other early years’ forums have been established to address these inequalities and ensure children are given the best possible start in life. Children’s organisations hugely value the role of universal services such as health visiting in the early years to engage family in health care services.²⁷⁷

Research with LGBT young people on their experiences of healthcare shows that less than half of LGBT women and transgender young people feel safe and supported by the NHS.²⁷⁸ When young people are not out to their doctors about their sexual orientation or gender identity, they may miss out on important health care provision, particularly related to sexual health or reproductive health screenings. With less than 40% of survey respondents stating that they have not come out to their doctor, there is a real concern that many LGBT young people do not have equal access to primary healthcare.

²⁷² (CRC/C/GBR/CO/4: Para. 55)

²⁷³ (CRC/C/GBR/CO/4: Para. 55)

²⁷⁴ <http://www.cpag.org.uk/content/impact-poverty> (Accessed October 2014)

²⁷⁵ Royal College of Paediatrics and Child Health (2014). *Why children die: death in infants, children and young people in the UK - Part A*

²⁷⁶ Royal College of Paediatrics and Child Health Scotland (2014). *A Policy Response for Scotland to the Report, and Why Children Die: Death In Infants, Children And Young People In The Uk - Part A*

²⁷⁷ <http://www.parentin.gacrossscotland.org/policy-research/good-practice/early-years/babies-and-bathwater-valuing-the-early-years.aspx> (Accessed October 2014)

²⁷⁸ LGBT Youth Scotland (2013). *Life in Scotland for LGBT Young People: Health Report*

²⁷⁹ (CRC/C/GBR/CO/4: Para. 65 (d))

²⁸⁰ Article 12 in Scotland (2013). *Work with the Gypsy/Traveller community of North Cairntow, Edinburgh*

UN Concluding Observation

‘Reintroduce a statutory duty for local authorities to provide safe and adequate sites for Travellers.’²⁷⁹

The Gypsy/Traveller community remains one of the most disenfranchised in its access to and realisation of fundamental rights (such as access to adequate sanitation, health and accommodation and a voice in decision making processes). They face discrimination at multiple levels including relating to accommodation status. Children’s organisations report that there is a distinct lack of culturally sensitive accommodation to meet with the need of a growing population. Gypsy/Travellers report a high degree of environmental degradation and there are concerns among children’s organisations about the resulting hazards to health and particularly for children as they play. There is a lack of services on many Gypsy/Traveller sites and poor access to local amenities. This results in an inequality between standards of housing for those in fixed accommodation and those who are living on sites, despite the fact that Gypsy/Travellers pay equivalent council tax. Local authorities possess a great deal of power in decision making processes on behalf of the community. There are few opportunities for Gypsy/Travellers to participate in planning processes and consultation with the community can be tokenistic.²⁸⁰

Rec

Recommendations:

- The Scottish Government, CoSLA and the Gypsy/Traveller community must work together to ensure that Gypsy/Travellers can access their fundamental rights.
- The Scottish Government should enshrine any actions included in government strategies into local and national law, policy and practice.
- The Scottish Government and local authorities should provide Gypsy/Traveller communities with what is needed to enable them to meaningfully participate in decision making processes.

UN Concluding Observation

‘Adopt and adequately implement the legislation aimed at achieving the target of ending child poverty by 2020, including by establishing measurable indicators.’²⁸¹

‘Prioritise children and families in most need of support in such legislation and in the follow-up actions.’²⁸²

‘Extend material assistance and support programmes for children living in poverty, particularly with regard to nutrition, clothing and housing.’²⁸³

The UNCRC is clear that children have a right to live their lives free from poverty. Articles 27 and 28 of the Convention assert that children have the right to a standard of living adequate to meet their physical and mental needs and detail the government’s duty to assist those who are ‘poor or in need’.²⁸⁴

However, more than one in five (220,000) of Scotland’s children are officially recognised as living in poverty,²⁸⁵ a level that is significantly higher than in other European countries.²⁸⁶ 30,000 more children were experiencing poverty in 2012/13 than the previous year (2011/12).²⁸⁷ This worrying early sign of rising child poverty in Scotland (compared to the rest of the UK) is a cause for concern, as set out in the Social Mobility and Child Poverty Commission’s State of the Nation 2014 report.²⁸⁸ Evidence shows that child poverty is predicted to increase at an alarming rate – to nearly 1 in 3 by 2020.²⁸⁹ It would constitute a complete reversal of the progress that has been made to date in tackling child poverty.²⁹⁰

This alarming picture presents a considerable challenge for progressing children’s rights. Children’s organisations are concerned about the impact of poverty on the realisation of individual children’s rights and the collective implications these trends will have on the ability for all children to secure decent living standards and access to education. This is particularly the case for young children. Half of all children living in poverty in 2012/13 were under five years old and a further quarter were aged between five and ten years.²⁹¹

Costs for families

Costs that impact on children have dramatically increased over the past few years. This includes a rise in the price of food by 19 percentage points more than the general price level between 2005 and 2014²⁹² and an increase in the cost of a nursery place for a child over two in Scotland of 31% between 2009 and 2014 and by 26% for a child under two over the same period.²⁹³ The poverty premium – the additional cost of services and goods for poorer families – had risen to £1,639 a year at the end of 2013.²⁹⁴ These trends make it incredibly challenging for some families to be able to afford the material resources and services children need.

²⁸¹ (CRC/C/GBR/CO/4: Para. 65 (a))

²⁸² (CRC/C/GBR/CO/4: Para. 65 (b))

²⁸³ (CRC/C/GBR/CO/4: Para. 65 (c))

²⁸⁴ UN General Assembly (1989). *UN Convention on the Rights of the Child (Articles 27 and 28)*

²⁸⁵ Scottish Government (2014). *Poverty and income inequality in Scotland: 2012/13 (Table A1)*

²⁸⁶ International comparisons are for 2008 on a before housing costs basis under which 21% of Scotland’s children live in poverty. See (CPAG, 2011). *Poverty in Scotland (pg 70 & pg 74)*

²⁸⁷ Scottish Government (2014) *Poverty and Income Inequality Scotland: 2012-13.*

²⁸⁸ *Social Mobility and Child Poverty Commission (2014). State of the Nation 2014: Social Mobility and Child Poverty in Great Britain*

²⁸⁹ Scottish Government (2014) *Poverty and Income Inequality Scotland: 2012-13.*

²⁹⁰ In the ten years prior to 2011/12 the proportion of children living in poverty fell ten percentage points.

²⁹¹ Department for Work and Pension (2013) *Households Below Average Income 2012/13.*

²⁹² *Save the Children Scotland (2014). A Fair Start for Every Child: Why we must act now to tackle child poverty in Scotland*

²⁹³ *Family and Daycare Trust (2014) The 2014 Scottish Childcare Report.*

²⁹⁴ *Save the Children’s new modelling of the ‘poverty premium’.* See: *Save the Children (2011). The UK Poverty Rip-Off: The poverty premium 2010, and Save the Children (2007). The Poverty Premium: How poor households pay more for essential goods and services, for detailed discussion of methodology.*

²⁹⁵ For more information see <http://www.savethechildren.org.uk/resources/online-library/learning-lessons> (Accessed October 2014)

²⁹⁶ Scottish Government (2014). *Children and Young People (Scotland) Bill 2013 as passed (Section 71AA)*

²⁹⁷ Scottish Government (2014) *Poverty and Income Inequality Scotland 2012-13*.

²⁹⁸ Child Poverty Action Group (2014). *Cost of a child 2014*

²⁹⁹ *Welfare Reform Impact Research Programme*, Rachelle Pascoe-Deslauriers, Communities Analytical Service Division, 24th July 2014.

³⁰⁰ Scottish Government (2014). *Poverty and income inequality in Scotland: 2012/13*

³⁰¹ Scottish Government (2014). *The Impact of Welfare Reform, Tracking Study*

³⁰² Child Poverty Action Group in Scotland (2014). *Policy Bulletin on Benefit Delays*

³⁰³ Scottish Parliament (2014) *Welfare Reform Committee 2nd Report, 2013 (Session 4) Food Banks and Welfare Reform*.

³⁰⁴ Child Poverty Action Group in Scotland (2014). *Policy Bulletin 1A: Sanctions*

More should be done to reduce the cost of living for families at risk of poverty. In particular, action should be taken to reduce those costs which can constitute financial barriers to education such as the cost of school meals, school trips and school uniforms.²⁹⁵ Children's organisations have welcomed the Scottish Government's decision to invest £13 million in 2014/15 for the provision of free school lunches for all children in P1-P3 and the inclusion of an enabling provision in the *Children and Young People (Scotland) Act*, which gives the Scottish Government the power to introduce regulations requiring local authorities to provide universal free school lunches.²⁹⁶ Children's organisations strongly urge the Scottish Government to use this power as soon as possible and ensure that secondary legislation is in place by January 2015 at the very latest.

Working families

Much of the increase in child poverty seen between 2012/13 is the result of falling incomes for many working families with children. The prevalence of low pay, low skilled work (in Scotland and across the UK) – combined with a lack of middle-skilled jobs – mean that work is not an adequate solution to poverty for many families and that routes to higher incomes are often blocked. Reduced spending and conditionality on working tax credits for low paid workers has created particular challenges for parents with young children who are typically less able to replace incomes lost with increased working hours. This is borne out by the trend towards an increasing proportion of children in poverty living in working families – 6 in 10 children living in poverty now live in families where at least one adult is in employment.²⁹⁷ Families working full time at the national minimum wage and receiving all entitled in-work benefit and tax credit support are 18 per cent short of the basic amount needed to provide themselves a minimum standard of living.²⁹⁸

Welfare reform

Much of the projected increase in child poverty levels is a direct result of welfare changes introduced by the UK Government. Starting in 2013-14, the UK Government is making real term cuts in benefit and tax credit levels by limiting increases to just 1% a year in cash terms. The reforms include real term cuts,²⁹⁹ reduced entitlement to tax credits,³⁰⁰ reduced value of child benefits³⁰¹ and sanctions and benefits delays.³⁰²

The benefit cap is a limit on the total amount of certain benefits that households can receive. There are an increasing number of cases of families with children whose housing benefit has been reduced as a result of the cap. The Scottish Government has estimated that approximately 4,600 households across Scotland will be affected, 85% of whom will be families with children.

The 'bedroom tax' is a reduction in the amount of housing benefit a household can claim in relation to their social sector tenancy. It is applied to those deemed to be under occupying their homes. It has been agreed that powers will be transferred from Westminster to the Scottish Government to allow it to allocate sufficient funds to local authorities to pay discretionary housing payments to the majority of people affected by the 'bedroom tax'. Despite this, children's organisations report that the tax is causing ongoing difficulties for some households.

It is clear that welfare reform is preventing increasing numbers of parents from meeting their children's basic subsistence needs. 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.³⁰³ In addition, findings from the Child Poverty Action Group in Scotland this year 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.³⁰⁴

³⁰⁵ <http://news.scotland.gov.uk/News/Supporting-Scotland-s-families-81d.aspx> (Accessed January 2014)

³⁰⁶ Scottish Government (2014). *Child Poverty Strategy for Scotland - Our Approach - 2014-2017*

³⁰⁷ Scottish Government (2014). *Scottish Budget Draft Budget 2015-16* (pg 124)

³⁰⁸ <http://www.scotland.gov.uk/News/Releases/2013/03/social-welfare10032013> (Accessed March 2013)

³⁰⁹ Scottish Government (2014). *Scottish Budget Draft Budget 2015-16* (pg 124)

³¹⁰ *Ibid.* (pg 9)

³¹¹ *Contact a Family* (2014). *Counting the Cost*

³¹² Scotland's Commissioner for Children and Young People (2012). *Social work services for disabled children and young people and their families: assessment and eligibility*

³¹³ *Inclusion Scotland* (2014). *List of critical issues for disabled people on the United Kingdom's performance under the UN CRPD*

³¹⁴ Scotland's Commissioner for Children and Young People (2013). *It Always Comes Down To Money: recent changes in service provision to disabled children, young people and their families in Scotland*

³¹⁵ Scottish Government (2010). *Child Poverty in Scotland: a brief overview of the evidence*

³¹⁶ *Capability Scotland* (2010). *Should disabled parents have to rely on the Big Society?*

Scottish Government action

While many of the policies causing an increase in child poverty have been introduced at UK level, this does not absolve the Scottish Government of its ongoing responsibility to utilise its maximum available resources to protect the rights and entitlements of children in Scotland. The Scottish Government has taken several steps which will contribute to the protection of the socio-economic rights of children in Scotland. These include:

- the investment of £13 million in the provision of free school lunches for all children in P1-P3;³⁰⁵
- the revised Child Poverty Strategy actions (under the pockets, prospects and places strands);³⁰⁶
- additional investment in advice and information services, including £5.4 million between 2012-13 and 2014-15;³⁰⁷
- the investment of £22.5 million to address the implications of the bedroom tax through discretionary housing payments;³⁰⁸
- maintenance of investment in the Scottish Welfare Fund at £33 million;³⁰⁹
- supplementing funds available for the council tax reduction scheme by £23 million.³¹⁰

There are, however, several areas the Scottish Government has not taken sufficient action to protect the rights of children by maximising household income, reducing essential outgoings and mitigating the impact that increased child poverty will have on child health and wellbeing.

Recommendation:

- The Scottish Government should examine what more can be done within the scope of existing powers to ensure access to welfare support for families in times of need, to reduce essential costs for families and how measures can be 'future proofed' against rising levels of family poverty.

Children with a disability

Children's organisations report that disabled children are more likely to be living in poverty than non-disabled children³¹¹ and that variations in social care charges across Scotland for services received by families of disabled children can contribute to financial hardship.³¹² Under Universal Credit, families with a disabled child could lose around £1,500 a year.³¹³ Services for children with a disability and their families have declined markedly as a consequence of public sector cuts. This has resulted in reductions in services alongside tighter eligibility criteria, support being removed without review or reassessment, and a lack of consultation. This has resulted in great stress, disappointment and frustration for disabled children and their families. The Children's Commissioner has called for local authorities, health boards and voluntary organisations to ensure they are observing the legislative rights and entitlements of children with a disability.³¹⁴

Poverty also disproportionately affects children with a parent with a disability. One in every three children who live with a disabled adult live in poverty, in comparison with one in five children who do not live with a disabled adult.³¹⁵ Organisations supporting parents with a disability have found that those in need of support often struggle to get a coherent or adequate response from local authorities.³¹⁶



³¹⁷ Scottish Government (2010). *Child Poverty (Scotland) Act 2010 (Section 11)*

³¹⁸ UK Government (2014). *Child Poverty Strategy: 2014-2017*

³¹⁹ Scottish Government (2014). *Child Poverty Strategy for Scotland – Our Approach – 2014 – 2017*

³²⁰ Scottish Government (2014). *Child Poverty Annual Report 2014*

³²¹ Together (2013). *State of Children's Rights in Scotland (pg 59)*

³²² Save the Children (2012). *Local Action to Tackle Child Poverty*

Child Poverty Act

The *Child Poverty (Scotland) Act* obliges the Scottish Government to create a Child Poverty Strategy for Scotland every three years and to report on its progress annually.³¹⁷ In the past year, the UK and Scottish Governments have introduced revised national child poverty strategies.^{318 319} Children's organisations have raised concerns that the UK Government's strategy does not articulate a comprehensive plan to support family incomes and that what is set out is insufficient to respond to rising levels of child poverty.

The Child Poverty Strategy for Scotland 2014-17 contains a number of specific measures that have the potential to advance responses to the root causes and consequences of poverty in the next three years. Children's organisations welcome and support the overall vision, strategic approach to tackling child poverty and outcomes it promotes (focusing on three strands of activity to increase and protect family incomes, improve children's life chances and strengthen communities). Many of the measures in the 'pockets' strand, if implemented consistently and robustly, could help to improve the living standards of children in poverty. However, children's organisations report that the strategy should go further in this area, by for example, taking additional steps to increasing access to affordable childcare.

The annual report on progress in delivering the child poverty strategy was published in August 2014 and points to areas of activity and success.³²⁰ For the first time, the strategy is supported by a measurement framework, as called for in the 2013 *State of Children's Rights* report.³²¹ Children's organisations welcome this development, which should enable more effective tracking of progress over time as well as supporting a deeper understanding of the impact of specific policies and actions. There is hope that this will support a more systematic consideration of child poverty across departments and in relation to planning and budgetary decisions.

There are still concerns that the lack of a delivery mechanism to accompany the strategy presents an immediate obstacle to effective implementation of this framework at national and local level. Previous research has highlighted inconsistencies in local action and it remains difficult to assess how far its delivery is prioritised.³²² A sign of progress has been the emergence of local child poverty strategies setting out what action will be taken to meet the outcomes in the strategy. It is hoped that this will help to join up the vision in the strategy with local service planning and budgets.

Rec

Recommendations:

- The Scottish Government should develop an action plan (such as currently accompanies the Play Strategy for Scotland) to support delivery of the Child Poverty Strategy, setting out clear measures, timescales and lines of accountability. This should be developed in partnership with key actors (including children and their families).
- The Scottish Government should evaluate the extent to which tackling child poverty is being prioritised at local level and examine options, including a legislative duty on local authorities, for improving delivery and accountability (e.g. a duty to prioritise child poverty and to produce their own child poverty strategies – such as local authorities are obliged to do in England and Wales).

UN Concluding Observation

‘When necessary, besides giving full support to parents or others responsible for the child, intensify its efforts to provide material assistance and support programmes for children, particularly with regard to nutrition, clothing and housing.’³²³

Children growing up in poverty in Scotland are materially deprived, living in poor quality and cold housing and lacking an adequate diet. Children’s organisations highlight that such multiple deprivation threatens a child’s physical health and can lead to a higher prevalence of short and long term nutrition-related illnesses such as diabetes and obesity.³²⁵

Half of children in the poorest income quintile (and nearly one third in the second quintile) are materially deprived.³²⁶ In the last year, the number of children living in material deprivation has increased by 20,000 to 110,000 children.³²⁷ Further, 13% of children are living in families where their parent(s) or carer(s) earn below the living wage.³²⁸ 31% of children living in the lowest income decile live in a home that is not considered to be in a good state of repair compared to 6% in the highest income decile.³²⁹ More than 200,000 children live in homes that are damp and around 350,000 children live in cold homes in winter; 50,000 children live in households that cannot afford to heat their home.³³⁰ 30,000 children live in families who cannot afford regular healthy meals³³¹ and 22,000 children accessed food banks in the past twelve months.³³²

³²³ (CRC/C/GB/CO/4: Para. 65 (c))

³²⁴ It is important to note that limitations of existing data collection make it difficult to assess (on a year-by-year basis) the full impact of poverty on children’s day to day lives.

³²⁵ Save the Children (2014) *A Fair Start for Every Child in Scotland*

³²⁶ *Ibid.*

³²⁷ Scottish Government (2014) *Poverty and Income Inequality Scotland: 2012-13.*

³²⁸ Save the Children (2014) *A Fair Start for Every Child in Scotland*

³²⁹ *Ibid.*

³³⁰ Save the Children (2014) *A Fair Start for Every Child in Scotland.*

³³¹ Gordon et. al. (2014) *‘The Impoverishment of the UK’ PSE UK first results: Living Standards*

³³² <http://www.trusselltrust.org/stats> (Accessed October 2014)

Articles 28, 29 and 31

- These articles give every child the right to an education that meets their needs and improves their attainment, and the right to leisure, cultural and play activities.



Education, Leisure and Cultural Activities

Case study: *young people as Young Placemakers*

³³³ UN Committee on the Rights of the Child (2013). General Comment No. 17 on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art. 31)

Article 31 of the UNCRC outlines the right of all children to rest and leisure, to engage in play and recreational activities and to participate freely in cultural life and the arts. Children's use of public space for play, recreation and cultural activities can be impeded by the increasing commercialisation of public areas, from which children are sometimes excluded. The UN Committee has underlined the importance of providing opportunities for children to be involved in urban planning and design, with their feedback sought on opportunities to realise their rights under Article 31 to the optimum extent. ³³³

Planning Aid Scotland (PAS) is an independent organisation that helps people to understand and engage with the places they live in through advice, training and education.

The planning system is a vital public service in which everyone can participate. Evidence shows that not all ages or groups in society are equally aware of – or confident to – take part in this process. It is vital that children understand the issues and participate in the decision-making about their environment and communities.

Following an initial pilot project with one primary and two secondary schools, PAS has worked with schools to equip children with the knowledge, skills and confidence necessary to be more involved in local civic engagement and helping to shape their places.

Loch Lomond and the Trossachs National Park and TAYplan (the strategic planning authority for the Perth and Dundee City Region) both committed to proactively engage children in preparation of their new Development Plans in 2014. PAS worked with them to design and deliver an interactive youth engagement programme to enable children's views to inform the decision-making process.

TAYplan is a strategic planning authority that covers a wide geographic area. In a bid to involve children from all the different areas, PAS worked with TAYplan to design and deliver a number of cluster sessions for primary schools, encouraging pupils to think about how places change over time and solicit their ideas for the future. Secondary schools also participated in a youth visioning day that brought schools together from four local authority areas. Capitalising on the enthusiasm from this process, TAYplan has now put in place on-going initiatives.

TAYplan employed the Young Placemaker initiative, launched by PAS last year, to recruit eight 16-25 year olds keen to shape their places. Supported by PAS buddies and TAYplan staff, the Young Placemakers undertook their own research projects on the key issues facing the region and submitted their finished work to planners, councillors – and even presented them to the Scottish Government's Planning Minister. The young people involved particularly highlighted health and transport issues as being important to them, which led TAYplan to raise the importance of these key issues in the development of the new plan.

The commitment by Loch Lomond and the Trossachs National Park and TAYplan to change how we involve children in the big decisions that affect our communities demonstrates that children's participation in planning is no longer an optional extra, but a key part of how to go about making inclusive decisions.

UN Concluding Observation

'Strengthen children's participation in all matters of school, classroom and learning which affect them.'³³⁴

³³⁴ (CRC/C/GBR/CO/4; Para. 67 (g))

³³⁵ *Children in Scotland (2014). Final report on the Leaders Of Learning project*

³³⁶ See: <http://bexcellent.org.uk/>

³³⁷ More information: <http://www.childrenscotland.org.uk/project/access-all-areas-a-project-to-help-schools-become-more-inclusive>

At a policy level, young peoples' views on education have been gathered through a project called 'Leaders of Learning'. The Scottish Government-funded project aimed to support the voice of young people being heard by those making key decisions about the Curriculum for Excellence and built on engagement focusing on the experiences of young people both in and out of school. The project has found that positive relationships are key to successful learning. Relationships with teachers, or adults who have a teaching role in their life, are a central factor of successful learning for children. They value relationships that are based on mutual respect and allow them to engage with adults in an equal and honest manner. They want to play a more active role in planning their learning. The project also confirmed the view of many children's organisations that children's understanding of their rights to education, learning and development is inconsistent.³³⁵

The BeXcellent website,³³⁶ funded by the Scottish Government, is completely run by children from the website development to its content. It enables children to discuss and address their experiences, successes and frustrations in participating in their education. Children have taken a number of steps to ensure the website is accessible to a broad range of children by including features such as Google Translate, a blue background for those with dyslexia and the ability to increase the size of text. The project is now in its second phase and the children involved would like to take their website format on a roadshow to showcase to other schools and promote it to other children.

Work continues on the Children in Scotland 'Access All Areas' project to support schools to become more inclusive through the promotion of pupil voice and pupil participation. This project involves working with children to develop and lead an audit of their school. The process of undertaking an audit aims to enable children to develop a valuable insight into how they perceive their school environment and seeks to encourage them to speak up and feel valued within their school community.³³⁷

Despite areas of good practice, there remains concern among children's organisations that children's participation in school matters can still be at only a surface level and is heavily dependent on teachers and the ethos of schools. The effectiveness of pupil councils and parent participation is reliant on the commitment and encouragement of staff, and support and guidance for pupils remains varied.

Reducing the effects of the social background of children on their achievement in school

UN Concluding Observation

‘Continue and strengthen its efforts to reduce the effects of the social background of children on their achievement in school.’³³⁸

Children’s organisations remain concerned that children living in poverty are experiencing significant violations of their rights to education. There is a considerable and stubborn gap in educational achievement between children living in poverty and their peers and inequalities in access to educational and learning opportunities – in and out of school. The attainment gap between children living in poverty and their peers emerges early in a child’s life and is present at every stage of children’s learning:³³⁹

- Children living in poverty are twice as likely to experience developmental difficulties compared to their peers before starting school (across cognitive, social, emotional, physical and linguistic skills);
- 1 in 4 pupils from deprived areas are underperforming in reading and almost 1 in 2 are underperforming in writing by early secondary school;
- On leaving school, the gap in performance between children living in poverty and their peers remains significant. Whilst there is evidence of progress emerging in some areas,³⁴⁰ the headline figures remain broadly unchanged since 2007/8.³⁴¹

New evidence suggests that the cost of attending school is prohibitive to children living in poverty. This applies, in particular, to the costs of essential equipment at school such as uniforms, trips, pens and pencils and extra materials for certain subjects. At the same time, evidence continues to suggest that children from low income households typically receive less support for their learning outside of school.³⁴² Research has highlighted over 1,000 young people’s views on the way in which poverty impacts on education and opportunities for learning.³⁴³ 71% of young people in this study felt that growing up in poverty made a difference to the number of school trips they could attend. 81% also stated that poverty reduced access to resources for learning within the home (such as access to the internet, books and digital technology).

³³⁸ (CRC/C/GBR/CO/4: Para. 67 (a))

³³⁹ Ellis and Sosu (2014) *Closing the attainment gap in Scottish Education*. Joseph Rowntree Foundation.

³⁴⁰ Data from the Organisation for Economic Cooperation and Development (OECD)’s PISA survey in 2013 showed a ten point reduction in the performance gap between disadvantaged and less advantaged pupils at age 15 across reading maths and science since 2009

³⁴¹ Scottish Government (2014) *Attainment and Leaver Destinations Supplementary Data*.

³⁴² Save the Children and Scotland’s Commissioner for Children and Young People (2014) *Learning Lessons: Young People’s Views on Poverty and Education*

³⁴³ *Ibid.*

³⁴⁴ This builds on models piloted through the Early Years Collaborative and is testing whether quality improvement methodology can support teachers and schools to better target and respond to educational inequalities and close the attainment gap

³⁴⁵ http://www.educationscotland.gov.uk/newsandevents/educationnews/2014/education/august/news_tcm4837144.asp

³⁴⁶ Joseph Rowntree Foundation (2014) *Closing the Attainment Gap in Scottish Education*

In addition, children believe that poverty creates pressures for families that limit the support parents are able to provide with their education (such as practical help with homework). This is particularly the case where parents have to work long days or atypical work patterns to provide for their families. Children's organisations are concerned that poverty causes some children to feel excluded or be bullied and that they can be stigmatised by their peers on the basis of their socio-economic status. Further attention is needed to address how these qualitative differences in children's experiences of education are impacting on their education rights and their long-term outcomes at school.

Over the past twelve months there has been increased recognition of the impact of poverty on children's educational outcomes and experiences in Scotland – as reflected by a new strategic focus within the Child Poverty Strategy on reducing educational inequalities and closing the attainment gap. Children's organisations believe this is an area where the Scottish Government has the leverage to provide leadership on improving routes out of poverty for children.

Children's organisations have welcomed a number of non-legislative developments designed to close the gap and reduce barriers to learning for pupils from disadvantaged backgrounds. This includes the Raising Attainment for All programme³⁴⁴ and a £1.5m Access to Education fund.³⁴⁵

Despite these advances, however, Scotland lacks a high level commitment to closing the education gap and a clear strategic approach at national level to drive progress. It is unclear at present where responsibility lies in relation to addressing many of the specific inequalities facing children living in poverty. Whilst the Scottish Government has a key role to play, many decisions about education policy, delivery and implementation are taken locally through powers devolved to education authorities and in schools themselves. In the absence of an explicit plan to join-up activity between national and local government and individual schools, children's organisations are concerned that there will be wide variations in progress depending on local priorities and resource allocation. Whilst teachers and school leaders have a clear role to play, there are concerns that measures are not being matched by a coherent strategy to address the educational inequalities children are experiencing within their homes and communities. It is suggested that progress in this area is being hampered by a lack of robust data, research and evaluation evidence for schools and local authorities to draw on to inform their approaches to closing the gap.³⁴⁶



Recommendations:

- The Scottish Government should establish a national target to close the educational achievement gap.
- National and local approaches to improving education outcomes for children living in poverty should prioritise action to remove financial barriers to school and improve access to support for families (with a robust evidence base), alongside in-school approaches.

UN Concluding Observation

³⁴⁷ (CRC/C/GBR/CO/4: Para. 67 (b))

‘Invest considerable additional resources to ensure the right of all children to a truly inclusive education, in particular children from disadvantaged, marginalised and school-distant groups.’ ³⁴⁷

³⁴⁸ (CRC/C/GBR/CO/4: Para. 67 (c))

‘Ensure that all children out of school get alternative quality education.’ ³⁴⁸

³⁴⁹ (CRC/C/GBR/CO/4: Para. 67 (e))

‘Make sure that children without parental care have a representative who actively defends their best interests.’ ³⁴⁹

³⁵⁰ Scottish Government (2013). *Statistical Bulletin Education Series: A National Statistics Publication for Scotland*

Children’s organisations are concerned that children with a disability are still being excluded from mainstream education. Almost 7,000 children with additional support needs (ASN) do not attend mainstream schools.³⁵⁰ In 2013, 15,510 children with ASN in mainstream schools were assessed as having a disability. Children’s organisations estimate that over a third of children with a disability do not attend mainstream schools.³⁵¹

³⁵¹ *Inclusion Scotland (2014). List of critical issues for disabled people on the United Kingdom’s performance under the UN CRPD*

Children’s organisations report there is inadequate training in inclusive education for teachers and support staff. There is a need for more investment in leadership and training. A lack of understanding and knowledge in the children’s workforce can lead to the escalation of behavioural problems and inappropriate support being provided in school to children with a disability.³⁵²

³⁵² *ENABLE Scotland (2011). Bridging the Training Gap*

³⁵³ *NDCS Scotland (2014). Close the Gap: Promoting positive post-school transitions for deaf young people in Scotland*

New research highlights that deaf children in Scotland are regularly falling behind at school and missing out on higher education and employment opportunities.³⁵³ In response, the National Deaf Children’s Society (NDCS) is providing ‘Healthy Minds’ training among professionals working to raise awareness of the health and wellbeing of deaf children. It is hoped that this will be rolled out across all mainstream schools, where 90% of deaf children are educated.

Rec

Recommendation:

- The Scottish Government should conduct a comprehensive review into the extent to which children with additional support needs are able to access a full and inclusive education.

³⁵⁴ (CRC/C/GBR/CO/4; Para. 67 (f))

³⁵⁵ Scottish Government (2010). *A National Approach to Anti-Bullying for Scotland's Children and Young People*

³⁵⁶ Find out more here: <http://www.respectme.org.uk> (Accessed October 2014)

³⁵⁷ LGBT Youth Scotland (2013). *Life in Scotland for LGBT Young People: Health Report*

³⁵⁸ Find out more: <http://www.enable.org.uk/openyourmind/> (Accessed October 2014)

UN Concluding Observation

'Intensify its efforts to tackle bullying and violence in schools, including through teaching human rights, peace and tolerance.'³⁵⁴

The Scottish Government's '*A National Approach to Anti-Bullying for Scotland's Children and Young People*' was published in 2010 with the aim of ensuring all relevant agencies are taking a coherent and holistic approach to anti-bullying.³⁵⁵ respectme, the Scottish Government's delivery arm for anti-bullying work, was launched in 2007 and helps to build adults' confidence and skills for recognising and dealing with all kinds of bullying.³⁵⁶

respectme has undertaken research about where bullying takes place. While many people are concerned about online bullying, it still predominately takes place face to face. The research involved a survey for young people and is the first of its kind in Scotland in terms of looking at bullying online and face-to-face.

Particular groups of children are especially vulnerable to being bullied. This can have a significant impact on their mental health. Over 43% of LGBT young people who experienced homophobic or biphobic bullying in education consider themselves to have mental health issues.³⁵⁷

Children's organisations would like to see greater acknowledgement of prejudices faced by minority ethnic children and a recognition of diversity. They report incidences where children have been excluded from school as a result of being bullied rather than schools confronting the bullying behaviour itself.

There is a need to challenge people's understanding of learning disabilities in order to tackle bullying behaviour. ENABLE Scotland will be launching a lesson plan around anti-bullying, social inclusion and inclusive education in Anti-bullying Week 2014. This is part of the 'Open your Mind' campaign³⁵⁸ which focuses on language and what is or is not acceptable. It will also encourage the recognition and celebration of difference.

Rec

Recommendation:

- The Scottish Government should ensure the good practice already taking place to tackle bullying is further targeted at vulnerable groups, including LGBT, minority ethnic and children with learning disabilities.

UN Concluding Observation

³⁵⁹ (CRC/C/GBR/CO/4: Para. 67 (d))

‘Use the disciplinary measure of permanent or temporary exclusion as a means of last resort only, reduce the number of exclusions...’ ³⁵⁹

³⁶⁰ (CRC/C/GBR/CO/4: Para. 67 (d))

‘Get social workers and educational psychologists in school in order to help children in conflict with school.’ ³⁶⁰

³⁶¹ (CRC/C/GBR/CO/4: Para. 67 (h))

‘Ensure that children have the right to appeal against their exclusion as well as the right, in particular for those in alternative care, to appeal to special educational need tribunals.’ ³⁶¹

³⁶² Scottish Government (2011). *Included, engaged and involved part 2: a positive approach to managing school exclusions* (pg 62)

The Scottish Government’s guidance on exclusions notes that the duty to provide education does not stop when a pupil is excluded (either temporarily or permanently) and that it is reasonable to expect alternative provision to be in place within 3 days of the decision to exclude.³⁶² However, children’s organisations continue to be concerned at the number of children excluded from school and the impact this has on the child’s development and on family functioning. There are also concerns about the lack of data on informal exclusions and the effects of informal exclusion on vulnerable children including those with additional support needs or from disadvantaged social backgrounds.

³⁶³ Further information: <http://togetherscotland.org.uk/news-and-events/news/detail/?news=747>

New evidence suggests that banning pupils from class increases the risk of them leaving school early and going on to serve time in prison when they are older. The Children’s Commissioner has subsequently backed demands to abolish exclusions.³⁶³

Children’s organisations report that teacher training and support for teachers is key to ensure they have the skills and understanding needed to find alternatives to exclusion. However, there is limited teaching training in alternatives to exclusion and teachers can be prevented from attending additional training as a result of the expense and difficulty in finding cover for their classes.


Rec
Recommendation:

- The Scottish Government should ensure that teacher training provides the skills, knowledge and understanding needed to find alternatives to exclusion.

³⁶⁴ Scottish Transitions Forum (2013). *Response to Children and Young People's Bill consultation*: <http://www.scotland.gov.uk/Resource/0040/00406572.pdf>

³⁶⁵ Scottish Transitions Forum (2014). *Principles of Good Transitions 2*. Resource / 0040/ 00406572.pdf

The transition from children to adult services is a key event in the lives of many young people. It is essential that young people are supported through this period to enable them to make the right choices and have a successful, fulfilling and meaningful experience in their early adult life. Without a positive transition process, young people's lives can be negatively impacted, leading to lost opportunities and unfulfilled potential.

Children's organisations representing children with a disability or other additional support needs have identified problems and inconsistent practice where young people with additional support needs transition from school to employment or from pre to post 16 education. Case transfer between children and adult social care and from paediatric to adult health services further complicates this transition time for this demographic of young people. A number of children's organisations called for the transition stage to be taken into account in the *Children and Young People (Scotland) Act*. They recommended that the Scottish Government reflected on the strategic commissioning of services to provide support to young people leaving school and entering into independent living.³⁶⁴ There was disappointment that this recommendation was not taken forward.

The Scottish Transitions Forum (ARC Scotland) has published 'Principles of Good Transitions 2' with the objective to improve the quality of care and support for young people with additional support needs who are making the transition to young adult life. The document includes guidance to support smooth transitions to be shared by all professionals, focusing on seven principles of good transition.³⁶⁵

Children's organisations urge the Scottish Government to reflect the need for good transitional practice and support local authorities, community health care partnerships and further education establishments in implementing the seven principles.



Rec

Recommendation:

- The Scottish Government should publish accessible briefings to clarify how health, education, social care and other areas should interlink through the transitions process. These should clarify the values, principles and recommendations that underpin legislation and policy. The briefings should be accessible to all, including those undergoing the transitions process, and relevant to all professionals.

UN Concluding Observation

‘Guarantee the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.’³⁶⁶

‘Provide children, including those with disabilities, with adequate and accessible playground spaces to exercise their play and leisure activities.’³⁶⁷

Children’s organisations have welcomed the recent focus on Article 31, partly prompted by the new General Comment no.17 published by the UN Committee in 2013.³⁶⁸ The Children’s Commissioner has recognised the renewed vigour in the policy arena yet suggests there is more to be done to provide a consistent, comprehensive and inclusive approach to implementation.³⁶⁹ As noted by the UN Committee, each element of Article 31 is mutually linked and reinforcing, and when realised, serves to enrich the lives of children.³⁷⁰

Children’s organisations have highlighted the plethora of strategies relating to Article 31 including the National Play Strategy,³⁷¹ Youth Work Strategy,³⁷² Time To Shine: Scotland’s Youth Arts Strategy³⁷³ and Youth Sports Strategy.³⁷⁴ While these strategies have been recognised for their contribution to implementation of Article 31, they have been developed independently. As indicated by a recent review of the implementation of Article 31 in Scotland, there is little indication of the relationship between them or the ways in which play, culture and the arts enhance and support each other and realisation of other rights in the Convention.³⁷⁵

Play

The Human Rights Council concluded its twenty-seventh session in September 2014 after adopting 32 resolutions, including a resolution on the right of the child to engage in play and recreational activities. The Council encouraged States to take specific measures to respect, protect, promote and fulfil the right of the child to engage in play and recreational activities.³⁷⁶ The resolution encourages States to strengthen the evidence base of data and information on how play and recreational activities are critical elements that support the development and wellbeing of the child; to position play and recreation as both a right of the child and a means to secure children’s entitlement to optimum development, and to affirm the importance of the right of the child to engage in self-directed and non-compulsory play, initiated by children themselves.³⁷⁷

Environments for play

The *Children and Families (Wales) Measure 2010* places a statutory duty on local authorities in Wales to assess and secure sufficient play opportunities for children in their area.³⁷⁸ The Play Sufficiency Duty comes as part of the Welsh Government’s anti-poverty agenda which recognises that children can have a poverty of experience, opportunity and aspiration, and that this kind of poverty can affect children from all social, cultural and economic backgrounds. The Welsh Government has produced Statutory Guidance to support local authorities to complete their Play Sufficiency Assessments, which sets out the matters to be taken into account.³⁷⁹ Children’s organisations recognise this as good practice and would like to encourage the Scottish Government to follow the Welsh Government’s lead.

³⁶⁶ (CRC/C/GBR/CO/4: Para. 69)

³⁶⁷ (CRC/C/GBR/CO/4: Para. 69)

³⁶⁸ UN Committee on the Rights of the Child (2013). *General Comment 17 on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (article 31)*

³⁶⁹ Scotland’s Commissioner for Children and Young People (2014). *Children’s right to play, culture and arts: A review of Article 31 in Scotland*

³⁷⁰ UN Committee on the Rights of the Child (2013). *General Comment 17 on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (article 31)*

³⁷¹ Scottish Government (2013). *Play Strategy for Scotland: Our Action Plan*

³⁷² Education Scotland (2014). *National Youth Work Strategy: 2014-2019*

³⁷³ Creative Scotland (2013). *Time To Shine: Scotland’s Youth Arts Strategy: for ages 0-25*

³⁷⁴ Scottish Government (2014). *Giving Children and Young People a Sporting Chance*

³⁷⁵ Scotland’s Commissioner for Children and Young People (2014). *Children’s right to play, culture and arts: A review of Article 31 in Scotland*

³⁷⁶ Scottish Independent Advocacy Alliance (2014). *A Map of Advocacy Across Scotland, 2013-2014 edition*

³⁷⁷ UN General Assembly (2014). *The right of the child to engage in play and recreational activities (A/HRC/27/L.28)*

³⁷⁸ Welsh Government (2010). *Children and Families (Wales) Measure 2010 Section 11*

³⁷⁹ Welsh Government (2014). *Wales - A Play Friendly Country: Statutory Guidance*

³⁸⁰ http://www.sportscotland.org.uk/about_us/what_we_do/places/ (Accessed October 2014)

³⁸¹ *Play Scotland (2013). Scottish Planning Policy: Consultation Response*

³⁸² *Ibid.*

³⁸³ <http://www.healthscotland.com/resources/cpps/local/placestandard.aspx> (Accessed October 2014)

³⁸⁴ *Scottish Government (2011). Good Places Better Health for Scotland's Children*

³⁸⁵ Find out more: <http://creatingplacesscotland.org/> (Accessed September 2014)

³⁸⁶ *Scotland's Commissioner for Children and Young People (2013). It's all about the money*

³⁸⁷ *Growing up in Scotland Study (2012). What do we know about play?*

There is a need for a designated organisation with Statutory Consultee status for the proposed removal of parks, informal recreation spaces and play spaces (sportscotland carries out this function for formal sport spaces).³⁸⁰ The continued absence of a Statutory Consultee for informal pitches and playing fields is a major gap recognised by many MSPs which has not as yet been addressed in the planning review, or in the National Play Strategy.³⁸¹ Statutory consultation arrangements, while positive for sport, remain weak in relation to open space more generally.³⁸²

Health Scotland is currently working in partnership with the Scottish Government and Architecture and Design Scotland to create a Place Standard for Scotland.³⁸³ The purpose of the Place Standard is to support the delivery of high quality places in Scotland and to maximise the potential of the physical and social environment in supporting health, wellbeing and a high quality of life. It will provide a framework to support public and private sectors and communities to work together to deliver high quality places, highlighting the critical role community planning partnerships play in this process. The Standard will build on key recommendations from Good Places Better Health³⁸⁴ and from Creating Places³⁸⁵ and be applicable to new and existing places.

Children's organisations recognise the potential the Place Standard has to influence wider departments including transport and environment. It could have a big impact on children's lives and their rights under Article 31 of the UNCRC. The Place Standard would be voluntary guidance and may need to be given more weight in order to be fully and consistently implemented.



Recommendations:

- Community Planning Partnerships and communities should use the Place Standard to improve the quality of places and support the Play Strategy vision.
- The Place Standard should be taken into account in reporting on the new duties to report on progress on children's rights and wellbeing included in parts 1 and 3 of the *Children and Young People (Scotland) Act 2014*.

Equality in play

Research has found that disabled and disadvantaged children continue to face multiple barriers to being able to play at home, at nursery, school, early learning and childcare and in the community, as part of their everyday lives. Access to out of school care and mainstream activities has been reported to be limited for children with disabilities compared to that accessed by non-disabled children. It is a concern that children with disabilities are often denied opportunities to participate in activities of their own choosing, and that their play and recreation opportunities are limited.³⁸⁶

Many of the barriers to play faced by children are amplified by the intersections between the experiences of poverty, disadvantage, disability and environment. Children from disadvantaged backgrounds have less play at home and less perceived access to safe outdoor play space.³⁸⁷ The multiple barriers to play need to be seriously considered: play is a fundamental part of childhood, and a significant number of children are not able to exercise their right to play.

These barriers impact on children's rights in relation to health and wellbeing, optimum development, inclusion in society and their right to enjoy their childhood. Positive play experiences are now well understood to have long term benefits and to nourish us as adults. The impact of negative experiences – in local neighbourhoods, communities, schools – remains and can provoke powerful memories and feelings which impact on the way both children and adults see themselves.

Rec

Recommendations:

- Local authorities should develop Community Play Policies, Strategies and accompanying Action Plans including explicit aims, objectives and actions that make tangible progress towards inclusive practices, programmes and environments.
- The Scottish Government should give a positive lead to the development of a network of 'play champions' underpinned by the principles set out in the Play Strategy for Scotland and the UN Convention article 31, with explicit reference to progress on inclusion – non-discrimination, equality of opportunity, participation – as integral to the role.

³⁸⁸ Scottish Government (2013). *Play Strategy for Scotland: Our Vision*

National Play Strategy

Children's organisations welcome the fact that the Scottish Government's Play Strategy³⁸⁸ takes the issue of children's play seriously and is concerned about inclusion in relation to play. While research, some aspects of baseline information, and guidance are being prioritised, a communications strategy is also being developed that should ensure that there is a greater awareness about the benefits of play amongst policy makers and commissioners of children's services across the public sector. All this progress is welcome and will gradually support increased play opportunities for all our children and their involvement in the play planning processes.

The strategy is ambitious and will take time and resources to fully implement. Many children's organisation note concern that the lack of a mainstreaming approach towards the inclusion of gender equality (and other protected characteristics) in this strategy needs to be addressed in order to fully realise equal rights to play.

³⁸⁹ Creative Scotland (2013). *Time To Shine: Scotland's Youth Arts Strategy: for ages 0-25*

Culture

Published in November 2013, Scotland's National Youth Arts Strategy 'Time to Shine' is a 10 year strategy for Scotland developed by Creative Scotland for aged 0-25 years.³⁸⁹ An objective of the strategy is to create nine regional 'hubs' across Scotland to act as focal points for arts.

Children's organisations have welcomed the strategy and see it as a positive and useful starting point. There is concern that funding for the strategy is only for two years, which may limit its success. It has been suggested that work on the strategy should focus more on the 0-4 age group as the most focus is 14+ years. Understanding the needs of children from 0-13 in the work carried out alongside the strategy and ensuring their voice is not forgotten (and also clarified in this process) has also been suggested.

Rec

Recommendation:

- The Scottish Government should ensure that the National Youth Arts Strategy is properly resourced for long term sustainability and put in place a systematic monitoring and evaluation mechanism, which includes assessment against article 31 indicators, to assess its success.

Recreation and leisure

A Youth Sports Strategy was launched in June 2014 ³⁹⁰ with the aim of helping to fulfil the vision of lifelong participation in sport for all children. The strategy is supported by funding of £5.8 million over the next two years to continue to help schools deliver high quality PE and extend competitive sport in and between schools. In terms of promoting and delivering access to recreation activity in Scotland, children’s organisations have raised concern that the focus needs to broaden beyond sport alone. A broader and more creative understanding of recreation and leisure activity is necessary to ensure that all children have access to all of their rights under Article 31.

Articles: 22, 30, 32-36, 38, 39, 40, 37 (b-d)

- This cluster of articles lays down the rights of children who are in custody or detention, who are migrants, refugees or asylum seekers or who are victims of torture, trafficking, sexual exploitation, drug abuse and child labour.
- These children require special protection because of their particular vulnerabilities. Their best interests and wellbeing can only be tackled through special measures.

Chapter

7

Special Protection Measures

Case study: *asylum seeking and refugee children*

Asylum seeking and refugee children face particular barriers to ensuring that their rights are recognised and protected. These barriers arise from the fact that they often suffer trauma, having fled persecution, torture or other form of abuse, and that they face linguistic and cultural barriers in their new country.

These barriers can be even more challenging for separated children, who arrive in the UK alone, separated from their parents or any other caregiver, and who do not have a responsible adult to help them navigate the complex legal processes that are involved in seeking protection and support.

The key provisions of the UNCRC require States to guarantee equal treatment to asylum seeking and refugee children, as compared to native children, in the provision of services, and to ensure that State agencies act in their best interests. Article 22 of the UNCRC specifically addresses the obligation of State parties to ensure that these children receive the same standard of care and support as would be made available to native children in the same circumstances.

In Scotland, the process of securing the rights of asylum seeking and refugee children still faces practical challenges – for example, when local services are not familiar with the particular needs or circumstances of separated children – but are supported by the good practice in the form of close and effective multi-agency working, following “best interests” principles, and specialist independent advocacy and legal representation services, in the form of the Scottish Guardianship Service (SGS) and the Legal Services Agency, who support these particularly vulnerable children to understand and realise their rights to protection and support.

Maryam was a 13 year old girl who had been orphaned and was living as a street child in a west African country. She had suffered rape and beatings, by soldiers and police in her country. She met a man who offered to look after her, and promised that she could live in his house in safety and go to school like other children.

The man brought her to Manchester, where he locked her in a house with two other girls, and told her that he expected Maryam to become a prostitute, in exchange for which he would not send her back to Africa.

Maryam managed to escape this house, and made her way to Glasgow where, by chance, she was reunited with her long-lost older brother who had lived there for some years. Maryam's brother had a large family of his own, but was willing to look after her. He did not know, however, how to get help for Maryam, who was thin, frail, tearful and frightened. She also struggled to adapt to living with a family, after so many years of fending for herself on the streets.

Maryam had no official identification documents, and did not have the right to live in the UK. Her brother could not help her to access NHS services for her physical or mental health needs, or enroll her in school.

Maryam's brother took her to see a specialist lawyer, who made an immediate referral to the child protection team of the local authority with respect to concerns that Maryam had been trafficked to the UK. The lawyer also made a referral to the Scottish Guardianship Service, for independent advocacy and support as a potentially trafficked child in Scotland.

A social worker met with Maryam and her brother to assess Maryam's immediate needs, including her safety in his care. A Vulnerable Young Person's case conference was convened, attended by her social worker, her guardian, the police and a representative from the Home Office, which identified a range of issues that required to be resolved.

Maryam's guardian took her to a specialist clinic for sexual health checks and counseling, and took her along to a participation group to meet other children newly arrived in Scotland. Maryam's social worker referred her to the National Referral Mechanism (NRM) as a potential child victim of trafficking and continuously liaised with the police and the Home Office about her safety and immigration status. Maryam's lawyer gave her advice on her immigration position, including her right to claim asylum, and about the process of identification as a child victim of trafficking. Her lawyer also wrote letters to the local GP and school about their responsibilities under the law to ensure that Maryam is able to access health care and education.

Maryam was later conclusively identified as a child victim of trafficking and granted refugee status. She is receiving regular counseling and doing well in full-time education. She continues to live with her brother, who receives extra financial assistance so that he can continue to support her.

As illustrated in the above case study, asylum seeking and trafficked children are able to access international humanitarian protection, and the support they require to safeguard and promote their welfare in Scotland, but key to this process is a culture of close multi-agency working and the establishment of specialist independent advocacy and legal representation services, which have both been nationally and internationally recognised as models of best practice in their fields, and crucial to ensuring the rights of this particular group of children.

UN Concluding Observation

³⁹¹ (CRC/C/GBR/CO/4: Para.71 (b))

‘Ensure that the United Kingdom Border Agency (UKBA) appoints specially-trained staff to conduct screening interviews of children.’³⁹¹

³⁹² (CRC/C/GBR/CO/4: Para.71 (g))

‘Consider amending section 2 of the 2004 Asylum and Immigration (Treatment of Claimants etc.) Act to allow for a guaranteed defence for unaccompanied children who enter the United Kingdom without valid immigration documents.’³⁹²

³⁹³ (CRC/C/GBR/CO/4: Para.71 (f))

‘Ensure there are adequate safeguards in place when children are returned to their originating country, including an independent assessment of the conditions upon return, and of the family environment awaiting the child.’³⁹³

³⁹⁴ Scottish Refugee Council (2013). *‘She Endures With Me: An Evaluation of the Scottish Guardianship Service Pilot’* (pg 43)

³⁹⁵ Scottish Refugee Council (2014). *Women and Children First? Refused asylum seekers’ access to and experiences of maternity care in Glasgow* (pg 15)

Asylum seeking families continue to live on very low incomes and are forced to move accommodation regularly. This can prevent children from settling into their local school and community or may necessitate long commutes which are unaffordable for asylum seeking families. Decision-making within the asylum process can still take many years. Even within the initial stages of the process there can be significant delays. As a result, asylum seeking children often live in situations of great stress and uncertainty.³⁹⁴

³⁹⁶ Gillespie (2012) *Trapped: destitution and asylum in Scotland* Scottish Poverty Information Unit, Glasgow Caledonian University (pg 46, Chapter 5)

Refused asylum seeking women are not entitled to receive any financial support during the first 34 weeks of their pregnancy.³⁹⁵ This places them at great risk of destitution. Children’s organisations report working with a number of destitute women who have faced extreme barriers to staying mentally and physically healthy during pregnancy which has an effect on the health of their unborn child.

³⁹⁷ Scottish Government (1995). *Children (Scotland) Act 1995* (Section 22)

Studies note that it is difficult to estimate the number of destitute asylum seekers and migrants living in Scotland. The evidence available indicates that there are hundreds of people living in Scotland who have been forced into destitution, either because they have been denied a legitimate means of support by the government or because of errors and delays in the administration of a complex and inefficient asylum support system.³⁹⁶ It is unclear how many of these people are children. Section 22 of the *Children (Scotland) Act* imposes a duty on local authorities to provide a range of services for ‘children in need’.³⁹⁷ However, this includes no category or plan for families. There is a need to obtain a more comprehensive picture of the extent to which destitution affects asylum-seeking and migrant children.

Rec

Recommendation:

- A clearer assessment of the number of destitute asylum seekers and migrants should be obtained by requesting local authority immigration social work teams to report on the number and situation of the destitute children and families they support.

³⁹⁸ Scottish Refugee Council (2013). *In Search of Normality: Refugee Integration in Scotland*

³⁹⁹ UN General Assembly (1989). *UN Convention on the Rights of the Child (Article 24)*



Children of parents that do not have leave to remain or have an irregular migration status are not always able to access further education.³⁹⁸ They may also not have access to primary or secondary healthcare (only emergency healthcare). Although there is Scottish Government guidance relating to primary healthcare and immigration, GPs are under no legal obligation to register anyone. Children's organisations have reported a number of cases in which children of parents with an irregular migration status have been unable to access GP services as it can be difficult for them to demonstrate their status. This is a serious breach of their right to the highest attainable standard of health.³⁹⁹

Recommendation:

- The Scottish Government should redraft guidance relating to primary healthcare and immigration to ensure all children – regardless of their or their parents' immigration status – have equal access to primary and secondary healthcare.

Child detention

UN Concluding Observation

'Intensify efforts to ensure that detention of asylum-seeking and migrant children is always used as a measure of last resort and for the shortest appropriate period of time.'⁴⁰⁰

⁴⁰⁰ (CRC/C/GBR/CO/4: Para.71 (a))

⁴⁰¹ Statistics released by the Home Office in September 2013 revealed that more than 444 immigrant children have been detained since the end of 2010. Full article: <http://www.independent.co.uk/news/uk/politics/britain-still-detaining-hundreds-of-refugee-children-8793013.html?origin=internal> Search (Accessed October 2014)

Children in the decision and removal phase of the asylum process are increasingly being detained in the UK. Recent UK-wide figures demonstrate that the number of detained immigrant children almost doubled from 127 in 2011 to 242 in 2012. A total of 444 children have been detained since 2010 despite several UK Government statements this year proclaiming that child detention is no longer a reality in the UK.⁴⁰¹ Although detention does not take place specifically in Scotland, asylum-seeking children living in Scotland may be detained elsewhere in the UK.

Scottish Guardianship Service

UN Concluding Observation

'Consider the appointment of guardians for unaccompanied asylum-seekers and migrant children.'⁴⁰²

⁴⁰² (CRC/C/GBR/CO/4: Para.71 (c))

Targeted and intensive support is provided for asylum seeking children through the Scottish Guardianship Service (SGS). The SGS works with children who arrive in Scotland separated from their families and who may have been trafficked from outside the European Union.

⁴⁰³ Accommodated under Section 22 of the Children (Scotland) Act 1995 rather than Section 25.

⁴⁰⁴ Legal Services Agency (2014). *Legal issues in the accommodation and support of asylum seeking and trafficked children under the Children (Scotland) Act 1995*



16 and 17 year-old unaccompanied asylum seekers often continue to be accommodated as ‘children in need’ rather than as looked after children⁴⁰³ and practice is inconsistent across local authorities.⁴⁰⁴ Children’s organisations report that some local authorities are unfamiliar with working with trafficked children. As a result, social workers can miss indicators and are unaware of the risks facing the child, which can lead to delays and inappropriate support for trafficked children. The Scottish Government should encourage local authorities to refer to the SGS. This could be included in the guidance for public bodies accompanying the *Children and Young People (Scotland) Act*.

Recommendations:

- Consider whether and how access to independent advocates, in the form of Scottish Guardianship Service guardians, could be enshrined in legislation, including, potentially, the *Human Trafficking Bill*.
- Consider how to guarantee that unaccompanied asylum seeking and trafficked children continue to enjoy early and effective access to specialist legal representation.
- Encourage all relevant statutory partners to proactively engage with the Scottish Guardianship Service and make early referrals to the service, and to provide specialist legal representation on behalf of vulnerable asylum seeking and trafficked children.

Age disputed cases

UN Concluding Observation

‘Provide disaggregated statistical data in its next report on the number of children seeking asylum, including those whose age is disputed.’⁴⁰⁵

‘Give the benefit of the doubt in age-disputed cases of unaccompanied minors seeking asylum, and seek experts’ guidance on how to determine age.’⁴⁰⁶

Age disputes continue to be a significant issue across the UK.⁴⁰⁷ Children’s organisations are concerned that age assessment still operates within a culture of disbelief rather than on the ‘benefit of the doubt’. Young people who have had their age disputed elsewhere in the UK and are dispersed to Scotland as ‘adult’ asylum seekers have disclosed experiences of trauma, violence, torture and exploitation. These children are unable to access age-appropriate support and are treated as adults with regards to housing, the asylum process and the risk of being subject to detention. A number of these vulnerable children have later been recognised and supported as children by their local authority.⁴⁰⁸ However, children’s organisations are concerned that there are more vulnerable children in this situation.

⁴⁰⁵ (CRC/C/GBR/CO/4: Para.71 (d))

⁴⁰⁶ (CRC/C/GBR/CO/4: Para.71 (e))

⁴⁰⁷ In the year ending March 2014, 318 asylum applicants had their age disputed and there were 418 recorded as having completed an age assessment. Of those who completed age assessments in this period, 63% had a date of birth over 18 when the age dispute was raised. <https://www.gov.uk/government/publications/immigration-statistics-january-to-march-2014/immigration-statistics-january-to-march-2014> (Accessed October 2014)

⁴⁰⁸ Scottish Refugee Council (2013). *Practice Framework: April 2013* (Appendix 1)

UN Concluding Observation

⁴⁰⁹ (CRC/C/GBR/CO/4; Para. 74)

‘Do more to collect data on the extent of sexual exploitation and abuse of children, in order to prepare adequate responses to these issues.’⁴⁰⁹

⁴¹⁰ (CRC/C/GBR/CO/4; Para. 74)

‘Ensure that, in both legislation and practice, children involved in sexual exploitation and abuse (including as child prostitutes) are always considered as victims of crime in need of support, not as offenders.’⁴¹⁰

⁴¹¹ (CRC/C/GBR/CO/4; Para. 74)

‘Ratify the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.’⁴¹¹

⁴¹² <http://www.scotland.police.uk/whats-happening/news/2014/october/police-scotland-set-up-national-child-abuse-investigation-unit> (Accessed October 2014)

Children’s organisations report many concerns about systematic child exploitation, such as the recent cases uncovered in Rotherham. Police Scotland recorded more than 700 offences against young children in 2012/13. Since April 2013, 283 people have been charged with offences linked to online activity.⁴¹²

⁴¹³ Scottish Government (2012). *Exploring the Scale and Nature of Child Sexual Exploitation in Scotland*

A recent social research report from the Scottish Government⁴¹³ highlighted the difficulty of assessing the full extent of child sexual exploitation. This is largely due to a lack of research and also, importantly, the difficulty of gathering data on child sexual exploitation. The Scottish Child Sexual Exploitation Ministerial Working Group is looking into what steps should be taken to improve understanding of the prevalence of child sexual exploitation and how best to support child victims.⁴¹⁴

⁴¹⁴ Scottish Government (2013). *Report of the Child Sexual Exploitation Short-Life Ministerial Working Group: December 2013*

Earlier this year, the Scottish Parliament produced a report as a result of an inquiry into child sexual exploitation⁴¹⁵ which made a series of recommendations – a key one being that the Scottish Government develop a National Strategy for tackling child sexual exploitation.

⁴¹⁵ Scottish Parliament (2014). *Report on tackling child sexual exploitation in Scotland. 1st Report, 2014 (Session 4)*

New guidance has been issued to police officers and staff to ensure a consistent response to children who may be vulnerable to child sexual exploitation⁴¹⁶ and a new national task force is to be set up to tackle child sexual exploitation. The Police Scotland National Child Abuse Investigation Unit will aim to improve co-ordination and intelligence gathering. The Unit will lead and co-ordinate complex inquiries, develop good practice and improve police links with NGOs and local authorities in order to proactively identify such cases.

⁴¹⁶ Scottish Government (2010). *National Guidance for Child Protection in Scotland*

Scotland’s Commissioner for Children and Young People has highlighted the need for cohesion in the complex policy environment and has called for over-arching strategic thinking in order to align existing legislation, strategies and guidance around child protection, sexual abuse, sexual and reproductive health and rights, internet safety, violence against women and trafficking.

Rec

Recommendation:

- The Scottish Government should clearly link initiatives to tackle child sexual exploitation, trafficking, violence against women, child protection and other related areas to ensure there are coherent routes through which children can be identified and supported.

UN Concluding Observation

⁴¹⁷ (CRC/C/GB/CO/4: Para. 76)

‘Provide the necessary resources for an effective implementation of the Anti-trafficking Action Plan.’⁴¹⁷

⁴¹⁸ (CRC/C/GB/CO/4: Para. 76)

‘Ratify the Council of Europe Convention on Action against Trafficking in Human Beings.’⁴¹⁸

⁴¹⁹ (CRC/C/GB/CO/4: Para. 76)

‘Ensure that child protection standards for trafficked children meet international standards.’⁴¹⁹

⁴²⁰ UN Committee on the Rights of the Child (2014). *Optional Protocol to the Convention on the Rights of the Child on the sale of children*

In February 2009, the UK Government signed the Optional Protocol to the UNCRC on the sale of children, child prostitution and child pornography. The protocol creates obligations to criminalise and punish activities related to these offences; protects the rights and interests of child victims by requiring States to provide legal services and provide necessary medical, psychological, logistical and financial support and stresses the value of international cooperation and public education as a means of combating these activities.

⁴²¹ UN Committee on the Rights of the Child (2014). *Concluding Observations of the Optional Protocol to the Convention on the Rights of the Child on the sale of children*

The UK’s performance in implementing the Protocol was examined by the UN Committee June 2014.⁴²⁰ The UN Committee identified and welcomed progress in a number of areas. However, it also outlined a number of areas for improvement, including the need for a systematic mechanism for data collection under all offences under the Optional Protocol throughout the UK, including in Scotland.⁴²¹ The Committee expressed its ‘deepest concern’ with the scale and nature of child trafficking in the UK and the low level of prosecutions and convictions. It urged the UK to strengthen the capacity of law-enforcement authorities and the judiciary to detect and prosecute the trafficking of children and recommended that the UK enacts specific legislation on child trafficking in accordance with the Optional Protocol and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (the Palermo Protocol).⁴²²

⁴²² UN Committee on the Rights of the Child (2014). *Concluding Observations of the Optional Protocol to the Convention on the Rights of the Child on the sale of children*

The SGS has identified nearly a third of the children it works with as having indicators of trafficking. The Children’s Commissioner has urged the Scottish Government to tackle human trafficking and modern slavery more effectively through a consistent, coordinated and integrated manner.⁴²³

⁴²³ Scotland’s Commissioner for Children and Young People (2014). *Comments on Scottish Government proposals for a Human Trafficking Bill and outline Strategy*

A dedicated *Human Trafficking (Scotland) Bill* is to be introduced by Scottish Ministers in 2014⁴²⁴ in order to:

⁴²⁴ Scottish Government Press Release (2014). ‘New Human Trafficking Bill for Scotland’. Available at: <http://news.scotland.gov.uk/News/New-human-trafficking-bill-for-Scotland-a76.aspx>

- Consolidate and strengthen existing criminal law against human trafficking;
- Enhance the status of and support for the victims of trafficking;
- Give statutory responsibility to relevant agencies to work with the Scottish Government to develop and implement a Scottish Anti-Trafficking Strategy.

⁴²⁵ More information here: <http://www.scotland.gov.uk/Topics/Justice/policies/reducing-crime/human-trafficking> (Accessed October 2014)

⁴²⁶ Scottish Human Rights Commission (2013). *Scotland's National Action Plan for Human Rights 2013-2017*

The Scottish Government has stated that given the number of reports already available to inform the Bill, they do not intend to issue a further consultation. This is seen as a missed opportunity by many children's organisations who believe further consultation is essential as the Bill contains different elements to those already consulted on, and would benefit from input from those in the children's sector with practical experience in working with victims of child trafficking.

Despite some progress and positive examples of good practice, there are concerns that child trafficking can be viewed as a 'subcategory' of human trafficking and specific responses for children can be lost amongst the focus on adult victims. Children's organisations are clear that a *Human Trafficking (Scotland) Bill* must:

- fully embed a child-rights approach and have the best interests of children affected by trafficking at its core;
- comply with international standards including the UNCRC and its Optional Protocol on the sale of children and the EU Human Trafficking Directive;
- meet the Scottish Government's commitments to combat human trafficking arising from the on-going Summit process⁴²⁵ and in the SNAP action plan.⁴²⁶

There are many different strategies and work streams in place that relate directly or indirectly to child trafficking. These include child sexual exploitation, children missing from care, looked after children, relationships, sexual health and parenthood education guidance and child poverty. At present it is uncertain how the nuances and complexities of these can be brought together to ensure a multi-sectoral and coordinated approach. Further consideration is needed as to how the Bill and Strategy can recognise child trafficking as a key concern in its own right, and how support for and identification of child victims of trafficking can be incorporated into child protection practice.



Recommendations:

- *The Human Trafficking (Scotland) Bill* and accompanying strategy should be underpinned by the UNCRC and the Optional Protocol on the Sale of Children. It should take into account the similarities and differences between child and adult trafficking.
- The Scottish Government should fully embed the identification and support for child trafficking victims into existing child protection processes.
- The Scottish Government should consult widely on the Trafficking Bill and Strategy to include those in the children's sector with practical experience in working with child trafficking victims.

UN Concluding Observation

'Raise the minimum age of criminal responsibility'⁴²⁷

⁴²⁷ (CRC/C/GBR/CO/4; Para. 78 (a))

⁴²⁸ Committee on the Rights of the Child (2008). *Concluding Observations: United Kingdom (CRC/C/GBR/CO/4)*. No 78a-h.

⁴²⁹ Scottish Government (2012). *Do the Right Thing Progress Report 2012* (pg 55). Available at: <http://www.scotland.gov.uk/Resource/0039/00392997.pdf>

⁴³⁰ Witnesses include Scottish Human Rights Commission, Scottish Child Law Centre, Scotland's Commissioner for Children and Young People.

⁴³¹ Scottish Parliament Justice Committee. *Official Report, 7 January 2014*, Col 4067.

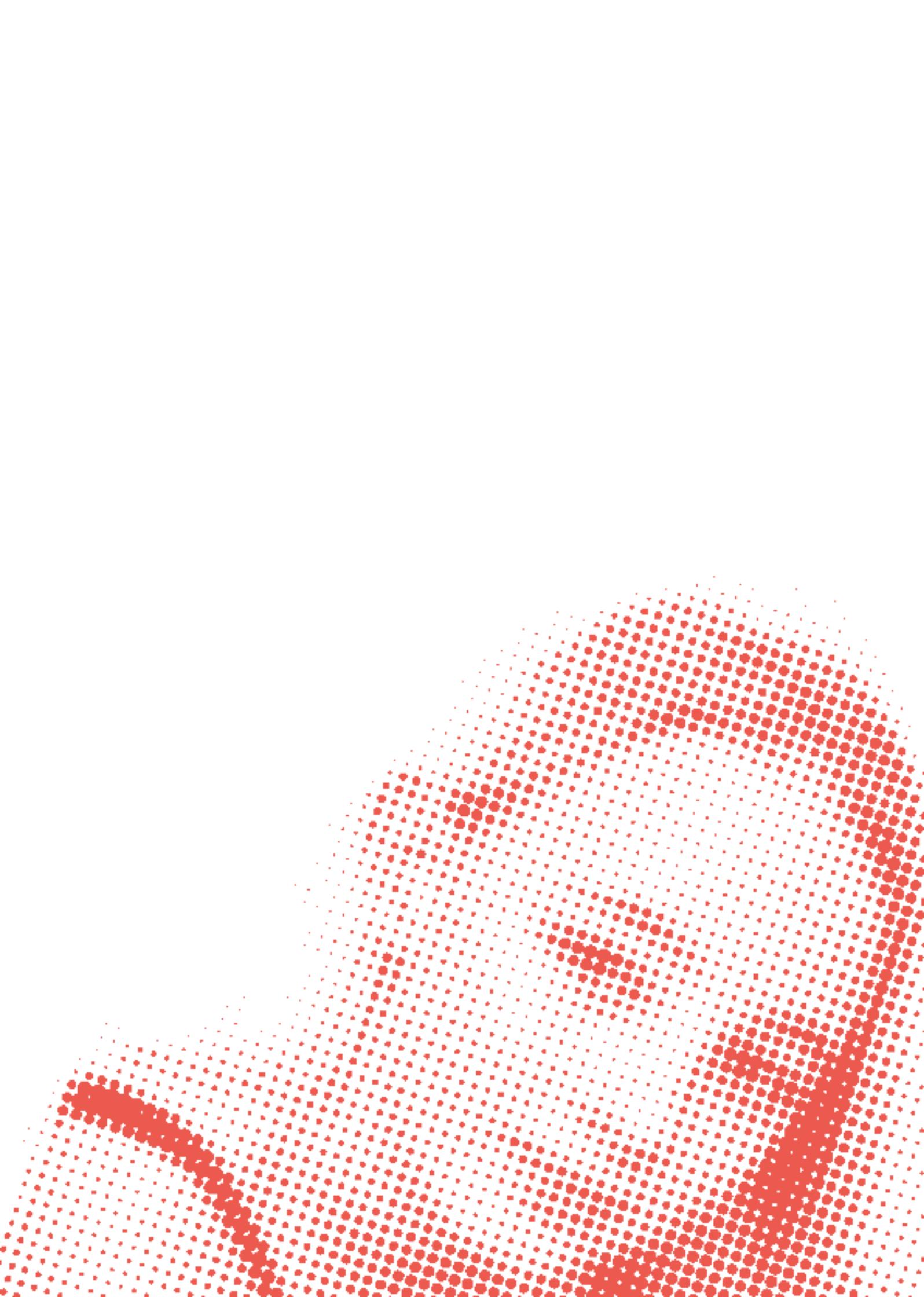
The age of criminal responsibility in Scotland currently remains one of the lowest in Europe. The UN Committee has recommended that age of criminal responsibility is raised in line with international best practice.⁴²⁸ This recommendation has been strongly supported by children's organisations. An increase in the age of criminal responsibility would lead to an increased emphasis on addressing the specific needs of children within the justice system which can often include issues such as neglect or abusive treatment. It would support the GIRFEC child-centred approach promoted through the *Children and Young People (Scotland) Act*.

The *Criminal Justice (Scotland) Bill* provides a welcome opportunity to consider raising the age of criminal responsibility in line with the Scottish Government's commitment in the 'Do the Right Thing' Progress Report 2012.⁴²⁹ As the Stage 1 report notes, a number of witnesses giving evidence to the Justice Committee noted this opportunity.⁴³⁰ Children's organisations have welcomed the Cabinet Secretary's commitment to 'see *what they can do*' to raise the age of criminal responsibility in the lifetime of this session of Parliament, and the Justice Committee's request for regular updates on this work.⁴³¹

Rec

Recommendation:

- *The Criminal Justice (Scotland) Bill* should be used as the legislative vehicle to take forward the Scottish Government obligation to consider raising the age of criminal responsibility within the lifetime of this Parliament. Not to do so would be a missed opportunity and would risk the Scottish Government failing to fulfil its commitment.



Appendices

1-3

Appendices

Appendix 1

UN Concluding Observations 2008

The following list contains the *Concluding Observations* from the UN Committee on the Rights of the Child in 2008 relating to the areas identified by Together members and supporters as areas of priority. Only *Concluding Observations* referred to in this report are included in this appendix. For the full list of *Concluding Observations* for the UK, please visit <http://www.togetherscotland.org.uk/about-childrens-rights/un-convention-on-the-rights-of-the-child/>

General Measures of Implementation

UN Concluding Observations 11 and 12 –

Incorporation of the UNCRC into UK and Scots law

- The Committee remains concerned that the principles of the Convention are not duly taken into account in all pieces of legislation throughout the country and that the State party has not incorporated the Convention into domestic law nor has ensured the compliance of all legislation affecting children with it. The Committee recommends that the State party continue to take measures to bring all legislation in line with the Convention on the Rights of the Child.

UN Concluding Observation 13 – Local implementation

- Ensure effective co-ordination of the implementation of the UNCRC throughout the UK, including in local areas where authorities hold significant powers to determine priorities and budget allocation.

UN Concluding Observation 19 – Child rights impact assessments

- Child rights impact assessment should be regularly conducted to evaluate how the allocation of budget is proportionate to the realization of policy developments and the implementation of legislation.

UN Concluding Observation 17 – Independent monitoring structures

- Ensure Children's Commissioners are independent and comply with the UN Paris Principles to receive and investigate complaints from or on behalf of children concerning violations of their rights.

UN Concluding Observation 21 – Knowledge and understanding

- ...further strengthen efforts, to ensure that all of the provisions of the Convention are widely known and understood by adults and children alike and ensure adequate and systematic training of all professionals working with children, especially law enforcement officials, immigration officials, the media, teachers, health personnel, social workers, and childcare workers.

UN Concluding Observation 23 – Cooperation with civil society

- Encourage the active and systematic involvement of NGOs, youth-led organisations and others in the promotion and implementation of children's rights, including in the development of policy.

UN Concluding Observation 15 – UNCRC strategies and plans

- Adopt comprehensive plans of action for the implementation of the Convention in all parts of the State party, in cooperation with the public and private sectors involved in the promotion and protection of children’s rights and based on a child right approach.

General Principles

UN Concluding Observation 27 – Promoting the best interests of the child

- Take all appropriate measures to ensure that the principle of the best interests of the child is adequately integrated into all legislation and policy affecting children, including in criminal justice and immigration matters.

UN Concluding Observation 33 – Respect for the views of the child

- Through legislation and in practice, promote, facilitate and implement the principle of respect for the views of the child – in the family, in schools, in the community, and in institutions and in administrative and judicial proceedings.
- Support forums for children’s participation.
- Continue to collaborate with civil society organisations to increase opportunities for children’s meaningful participation, including in the media.

UN Concluding Observation 25 – Protecting children from discrimination

- Strengthen anti-discrimination activities, including awareness-raising, and take affirmative action where necessary to benefit vulnerable groups, including Roma and Irish traveller children: migrant, asylum-seeking and refugee children: LGBT children; and children belonging to minority groups.
- Take all necessary measures to ensure that cases of discrimination against children are addressed effectively, including with disciplinary, administrative and penal sanctions.
- Take urgent measures to address the intolerance and inappropriate characterisation of children, especially adolescents, within society, including the media.

UN Concluding Observation 29 – Right to life, survival and development

- Use all available resources to protect the child’s right to life, including by reviewing the effectiveness of preventative measures. Introduce automatic, independent and public reviews of any unexpected death or serious injury involving children – whether in care or custody.

Civil Rights and Freedoms

UN Concluding Observation 35 – Use of mosquito devices

- Reconsider other anti-social behaviour measures, such as the mosquito device, as they may violate children’s rights to freedom of movement and peaceful assembly.

UN Concluding Observation 35 – Antisocial behaviour orders

- Reconsider ASBOs as they may violate children’s rights.

UN Concluding Observation 37 – Protection of privacy

- Ensure children are protected against unlawful or arbitrary interference with their privacy in legislation and practice, and introduce stronger regulations for data protection in relation to children.
- In co-operation with the media, intensify efforts to respect the privacy of children in the media, especially by avoiding messages publicly exposing them to shame.
- Regulate children’s participation in TV programmes, notably reality shows.

UN Concluding Observation 39 –

Cruel, inhuman or degrading treatment or punishment

- Ensure that restraint against children is used only as a last resort and exclusively to prevent harm to the child and others and abolish all methods of physical restraint for disciplinary purposes.

UN Concluding Observation 42 and 43 – Corporal punishment

- Prohibit as a matter of priority all physical punishment in the family, including through the repeal of the legal defence.
- Ensure that physical punishment is explicitly prohibited in schools and all other institutions and forms of alternative care.
- Actively promote positive and non-violent forms of discipline, and respect for children's equal right to dignity and physical integrity, with a view to raising public awareness of children's right to protection from all physical punishment.
- Provide parental education and professional training in positive child-rearing.
- Take all necessary measures to implement the recommendations contained in the report of the UN Study on Violence Against Children.
- Use the recommendations from the UN Study on Violence Against Children as a tool to ensure (with civil society and children) that every child is protected from all physical, sexual and mental violence.

Family Environment and Alternative Care

UN Concluding Observation 45 – Support for parents and families

- Render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities.

UN Concluding Observation 51 – Violence, abuse and neglect

- Establish mechanisms for monitoring the number of cases and the extent of violence, sexual abuse, neglect, maltreatment or exploitation, including within the family, in schools and in institutional and other care.
- Ensure that professionals working with children receive training on their obligation to report and take appropriate action in suspected cases of domestic violence affecting children.
- Strengthen support for victims of violence, abuse, neglect and maltreatment in order to ensure that they are not victimised once again during legal proceedings.
- Provide access to adequate services for recovery, counselling and other forms of reintegration.

UN Concluding Observation 45 – Looked after children

- Monitor the status of children placed in kinship homes, foster care, pre-adoptive homes and other care institutions, inter alia through regular visitations.
- Provide training and education programmes to prepare children for adult life.
- Take into account in all measures the views of children, and provide them with child-accessible complaint mechanisms.
- Assess why so many children with disabilities are in long-term institutional care and review their care and treatment in these settings.
- Facilitate the initiation of contact proceedings for all children separated from their parents and siblings, including those in long term residential care.

UN Concluding Observation 47 – Adoption

- Strengthen efforts to ensure that children are adopted as speedily as possible, in line with their best interests and taking into account factors such as cultural background.

UN Concluding Observation 45 – Children who have a parent in prison

- Ensure support to children with one or both parents in prison, in particular to maintain contact with the parent(s) (unless this is contrary to their best interests) and to prevent their stigmatization and discrimination against them.

Basic Health and Welfare

UN Concluding Observation 55 – Health services

- The Committee recommends that inequalities in access to health services be addressed through a coordinated approach across all government departments and greater coordination between health policies and those aimed at reducing income inequality and poverty.

UN Concluding Observation 53 – Early identification programmes

- Develop early identification programmes.

UN Concluding Observation 53 – Children with disabilities

- Take all necessary measures to ensure that legislation providing protection for persons with disabilities, as well as programmes and services for children with disabilities, are effectively implemented.
- Develop early identification programmes.
- Provide training for professional staff working with children with disabilities.
- Undertake awareness-raising campaigns on the rights and special needs of children with disabilities, encourage their inclusion in society and prevent discrimination and institutionalisation.
- Consider ratifying the International Convention on the Rights of Persons with Disabilities and its Optional Protocol.

UN Concluding Observation 57 – Children with mental health needs

- Provide additional resources and support for children with mental health difficulties, with particular attention to those at greater risk, including children deprived of parental care, children affected by conflict, those living in poverty and those in conflict with the law.

UN Concluding Observation 61 – Adolescent health

- Provide appropriate reproductive health services for young people.
- Increase provision of appropriate sex and relationships education in schools.

UN Concluding Observation 55 – Health inequalities

- Address inequalities in access to health services through a co-ordinated approach across all government departments.
- Better co-ordinate health policies with those aiming to reduce income inequality and poverty.

UN Concluding Observation 65 – Sites for Gypsy/Traveller families

- Reintroduce a statutory duty for local authorities to provide safe and adequate sites for Travellers.

UN Concluding Observation 65 – Tackling child poverty

- Adopt and adequately implement the legislation aimed at achieving the target of ending child poverty by 2020, including by establishing measurable indicators.
- Prioritise children and families in most need of support in such legislation and in the follow-up actions.
- Extend material assistance and support programmes for children living in poverty, particularly with regard to nutrition, clothing and housing.

UN Concluding Observation 65 – Standard of living

- When necessary, besides giving full support to parents or others responsible for the child, intensify its efforts to provide material assistance and support programmes for children, particularly with regard to nutrition, clothing and housing.

Education, Leisure and Cultural Activities

UN Concluding Observation 67 – Children’s participation in school matters

- Strengthen children’s participation in all matters of school, classroom and learning which affect them.

UN Concluding Observation 67 – Reducing the effects of the social background of children on their achievement in school

- Continue and strengthen its efforts to reduce the effects of the social background of children on their achievement in school.

UN Concluding Observation 67 – Inclusive education

- Invest considerable additional resources to ensure the right of all children to a truly inclusive education, in particular children from disadvantaged, marginalised and school-distant groups.
- Ensure that all children out of school get alternative quality education.
- Make sure that children without parental care have a representative who actively defends their best interests.

UN Concluding Observation 67 – Tackling bullying and violence in schools

- Intensify its efforts to tackle bullying and violence in schools, including through teaching human rights, peace and tolerance.

UN Concluding Observation 67 – School exclusions

- Use the disciplinary measure of permanent or temporary exclusion as a means of last resort only, reduce the number of exclusions.
- Get social workers and educational psychologists in school in order to help children in conflict with school.
- Ensure that children have the right to appeal against their exclusion as well as the right, in particular for those in alternative care, to appeal to special educational need tribunals.

UN Concluding Observation 69 – Right to recreation, leisure and play

- Guarantee the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.
- Provide children, including those with disabilities, with adequate and accessible playground spaces to exercise their play and leisure activities.

Special Protection Measures

UN Concluding Observation 71 – Asylum-seeking and migrant children

- Ensure that the United Kingdom Border Agency (UKBA) appoints specially-trained staff to conduct screening interviews of children.
- Consider amending section 2 of the 2004 *Asylum and Immigration (Treatment of Claimants etc.) Act* to allow for a guaranteed defence for unaccompanied children who enter the United Kingdom without valid immigration documents.
- Ensure there are adequate safeguards in place when children are returned to their originating country, including an independent assessment of the conditions upon return, and of the family environment awaiting the child.
- Intensify efforts to ensure that detention of asylum-seeking and migrant children is always used as a measure of last resort and for the shortest appropriate period of time.
- Consider the appointment of guardians for unaccompanied asylum-seekers and migrant children.
- Provide disaggregated statistical data in its next report on the number of children seeking asylum, including those whose age is disputed.
- Give the benefit of the doubt in age-disputed cases of unaccompanied minors seeking asylum, and seek experts' guidance on how to determine age.

UN Concluding Observation 74 – Sexual exploitation and abuse

- Do more to collect data on the extent of sexual exploitation and abuse of children, in order to prepare adequate responses to these issues.
- Ensure that, in both legislation and practice, children involved in sexual exploitation and abuse (including as child prostitutes) are always considered as victims of crime in need of support, not as offenders.
- Ratify the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.

UN Concluding Observation 76 – Sale, trafficking and abduction of children

- Provide the necessary resources for an effective implementation of the Anti-trafficking Action Plan.
- Ratify the Council of Europe Convention on Action against Trafficking in Human Beings.
- Ensure that child protection standards for trafficked children meet international standards.

UN Concluding Observation 78 – Age of criminal responsibility

- Raise the minimum age of criminal responsibility.

Appendix 2: Summary of *Do the Right Thing* actions

Do the Right Thing is the Scottish Government's UNCRC action plan, published in September 2009 in response to the UN Committee's *Concluding Observations* of 2008. In May 2012, the Scottish Government published the *Do the Right Thing* progress report, outlining what progress had been made since September 2009 against each action. A summary of each action area is below. For more details on each action, refer to *Do the Right Thing* (<http://www.scotland.gov.uk/Publications/2009/08/27111754/25>) or the *Do the Right Thing* progress report (<http://www.scotland.gov.uk/Resource/0039/00392997.pdf>).

- Action 1** Ongoing monitoring of the UNCRC in Scotland and development of UK-wide work
- Action 2** Promoting children's rights in the Scottish Government
- Action 3** Promotion and awareness raising of UNCRC, including training of professionals who work with children
- Action 4** Tackling negative perceptions of children and young people
- Action 5** Gypsy and Traveller children and young people
- Action 6** Advocacy services for children and young people
- Action 7** Participation of children and young people in schools
- Action 8** Mosquito devices
- Action 9** Promote positive forms of parenting
- Action 10** Young carers
- Action 11** Improve outcomes for looked after children and young people
- Action 12** Children of prisoners
- Action 13** Private fostering
- Action 14** Children with disabilities
- Action 15** Improve outcomes for teen parents
- Action 16** Support the delivery of the Curriculum for Excellence education and wellbeing experiences and outcomes
- Action 17** Child poverty
- Action 18** Play
- Action 19** Better support for unaccompanied asylum seekers
- Action 20** Child trafficking and sexual exploitation
- Action 21** 16 and 17 year-olds in the youth justice system

Appendix 3: Credits

The *State of Children's Rights* report 2014 represents an overall consensus of opinion within Together's membership. It does not necessarily represent in all respects or detail the views of every member of Together, nor every organisation that has contributed to this report. Views expressed separately by Together's members should also be taken into account. Thanks go to the following organisations for sharing their experiences to inform the preparation of this report:

Contributing Organisations

Aberlour Children's Trust	International Play Association
Action for Sick Children Scotland	Legal Services Agency
Article 12 Scotland	LGBT Youth Scotland
Barnardo's Scotland	Mindroom
BEMIS	National Deaf Children's Society Scotland
British Red Cross	NHS Lothian
Capability Scotland	NSPCC
CELCIS	Planning Aid Scotland
Child Poverty Action Group Scotland	Play Scotland
Children in Scotland	respectme
Children's Parliament	Save the Children
Circle Scotland	Scottish Association of Social Workers
Cl@n Childlaw	Scottish Refugee Council
Disability Agenda Scotland	Scottish Transitions Forum
Eighteen and Under	Scottish Women's Aid
ENABLE Scotland	Scottish Youth Parliament
Enquire	Starcatchers
Families Outside	TYKES (The Young Karers East Sutherland)
Family Fund	Waverley Care
Gathered Together	Who Cares? Scotland
Glasgow City Council	Zero Tolerance
Inclusion Scotland	

Thanks

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‘Working to promote
the full implementation
of the UN Convention
on the Rights of the
Child in Scotland’
November 2014



together

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