



## Universal Periodic Review

### *Children's rights recommendations: Priorities for Government*

26<sup>th</sup> July 2013

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#### About Together

Together (Scottish Alliance for Children's Rights) is an alliance of children's charities that works to improve the awareness, understanding and implementation of the UN Convention on the Rights of the Child (UNCRC) in Scotland. We have 233 members ranging from large international and national non-governmental organisations (NGOs) including UNICEF UK, Save the Children, Barnardo's and CHILDREN 1st through to small volunteer-led playgroups and after school clubs.

#### Introduction

During the UK UPR review in 2012, Together worked with other children's rights alliances across the UK to co-ordinate advocacy efforts around children's rights. Together were pleased to see that specific issues were raised around children's rights and welcome the UK Government's decision to accept many of these recommendations.

However we are extremely disappointed that some recommendations relating to children and young people have been rejected. These include Slovakia's call for full incorporation on the UNCRC<sup>i</sup>; Sweden<sup>ii</sup>, Norway<sup>iii</sup> and Finland's<sup>iv</sup> call to reconsider the legality of corporal punishment of children and the recommendation put forward by Slovenia to raise the armed forces minimum recruitment age to 18<sup>v</sup>.

This document is to inform the Scottish and UK governments' mid-term report on the 2012 UPR recommendations. It highlights where UPR recommendations were made to highlight children's rights issues, particularly concentrating on those recommendations accepted by the UK Government. It suggests the 'next steps' that Together believes the Scottish and UK Government should take to progress each recommendation effectively.

#### Contact

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# 1. Full implementation of the UNCRC

## UPR Recommendation:

- *Take all measures necessary to fully implement the CRC.<sup>vi</sup> (France)*

**Scottish Government response:** A commitment to enshrining the principles of the Convention into domestic law and policy wherever possible was assured. However it was stated that at present, wholesale incorporation of the UNCRC into domestic law is not the best approach to progress children's rights and that a 'case by case' basis would be preferable.<sup>vii</sup>

**Next steps:** The Scottish Government must:

- Use the upcoming Children and Young People (Scotland) Bill as a crucial opportunity to ensure that the principles of the UNCRC become a reality for all children and young people in Scotland. Together is clear that the Scottish Government's policy intentions to 'make rights real' would be best realised through the full incorporation of the UNCRC into Scots Law.<sup>viii</sup>
- Seize the opportunity through the Children and Young People (Scotland) Bill to establish Child Rights Impact Assessments, promoting a systematic approach to considering the UNCRC throughout Government, in all legislation and decision-making.

# 2. Optional Protocol 3 of the UNCRC: Communications Procedure

## UPR Recommendation:

- *Consider an early ratification of the newest international human right instrument – the third Optional Protocol to the Convention on the Rights of the Child on a communication procedure.<sup>ix</sup> (Slovakia)*

**UK Government response:** The UK Government is considering the merits of the new Optional Protocol for the whole of the UK, taking account of the views of the Devolved Administrations and in light of how it will be applied in practice. The Government will consider signing the Optional Protocol when it has fully evaluated its merits.

**Next steps:** The Scottish Government should urge the UK Government to ratify Optional Protocol 3 at the earliest opportunity and provide a roadmap indicating the timescale and process involved with regards to its ratification.

### 3. Child Poverty

#### UPR Recommendation:

- *Set out a clear pathway to meet the goal of ending child poverty in the UK by 2020 as stated in the Coalition's programme for government.<sup>x</sup> (Norway)*

**Scottish Government response:** Annual reports are produced by the Government to monitor progress towards the four UK child poverty targets and on actions under the main aims (maximising household resources and improving children's wellbeing and life chances) of the Child Poverty Strategy.<sup>xi</sup>

**Next steps:** Together recommend that the Scottish Government set a clear pathway and investment programme to meet their commitment to eradicate child poverty by 2020.

In particular, we urge the Scottish Government to:

- Invest in Child Tax Credits and benefits so that levels of child poverty do not increase;
- Reduce in-work poverty and ensure employment is an effective route out of poverty by allocating the resources needed to create clear work incentives for parents so that they keep more of their earnings, and
- Make public their plans to reduce the effects of the current welfare reforms on children and young people and complete a thorough assessment of the impact of austerity on children's services, ensuring that the UNCRC is a key consideration in all decisions regarding welfare reform.

### 4. Children of Prisoners

#### UPR Recommendation:

- *Ensure that the best interests of the child are taken into account when arresting, detaining, sentencing or considering early release for a sole or primary carer of the child, bearing in mind that visits of a parent in prison are primarily a right of the child rather than a privilege of the prisoner that can be withdrawn as a disciplinary measure<sup>xii</sup>. (Slovakia)*

**Scottish Government response:** The welfare of the child of a parent in the criminal justice system is of paramount importance and in some cases, there will be a need for a multi-agency approach, involving the police, social work and childcare professionals to carefully consider the child's needs, any views expressed by the child, and if required, consider and put in place suitable measures in order to protect the child.

**Next steps:** Improve support for children with a parent in prison across the Scottish Government, including by:

- Using child and family impact assessments, which should be conducted and acted upon throughout the criminal justice process, starting with arrest and continuing through the release of a prisoner (including impact assessments for non-custodial penalties), which

would further SCCYP's recommendations from the 2008 and 2011 reports *'Not Seen, Not Heard, Not Guilty'*<sup>xiii</sup>;

- Supporting the Scottish Prison Service to continue the growing momentum to establish good quality, independently staffed prison visitors' centres at every prison in Scotland to support children and families of prisoners;
- Ensure that Children's Visits (which are in high demand) are available for *all* prisoners, and
- Raise awareness throughout the statutory and voluntary sector of the impact of imprisonment on children and their roles and responsibility for addressing this, including amongst adult-focused services.

## 5. Child Trafficking

### UPR Recommendations:

- *Increase efforts to combat trafficking in persons, particularly to protect women and children.*<sup>xiv</sup> (Spain)
- *Standardize anti-trafficking responses across the UK insofar as possible given the devolution of law enforcement powers, and appoint a rapporteur in each devolved authority to make critical assessments and improve the UK's overall anti-trafficking response.*<sup>xv</sup> (United States of America)

**UK Government response:** The UK Government has a human trafficking strategy (which covers only England and Wales) and is implementing the EU Directive on trafficking in human beings. This is done in partnership with the Devolved Administrations and others.

As the USA recommendation recognises, it is not possible to standardise anti-trafficking responses across the UK, as immigration policy is the responsibility of the UK Government, but justice and policing policy is devolved. The UK Government has announced that the Inter-Departmental Ministerial Group on Human Trafficking will be the UK's equivalent national rapporteur mechanism to comply with the EU Directive on trafficking in human beings. Ministers from the Scottish and Welsh Governments and the Northern Ireland Executive attend the Inter-Departmental Ministerial Group (IDMG) on Human Trafficking and officials from the Devolved Administrations are represented on the Human Trafficking Strategy Board.

**Scottish Government response:** We have changed the law and provided resources to meet European standards and assist enforcement and prosecution and are supportive of opting into and implementing the EU Directive on trafficking in human beings. We are not convinced that the appointment of a Rapporteur would add value to the UK's fight against human trafficking and are concerned that it would add an additional layer of bureaucracy that may actually hamper our efforts to combat this crime. An IDMG is in place to coordinate and oversee our progress.<sup>xvi</sup>

**Next steps:** The Scottish Government should:

- Take forward its commitment to host a summit to refresh the strategic direction on trafficking before the end of 2013;

- Actively look for trends and learning in the Scottish Guardianship Service and Legal Services Agency project and utilise this to create better identification and protection systems for trafficked children;
- Keep abreast of discussions held at the Cross Party Group and consider the group as a useful vehicle to push forward many of the unresolved and complicated issues;
- Fully consider all of the responses to the consultation for the Human Trafficking (Scotland) Bill and build on any consensus;
- Update its guidance '*Safeguarding Children in Scotland who may have been Trafficked*'<sup>xvii</sup>, and
- Ensure that Scotland is in full compliance with the provisions of the EU Directive.

## 6. Refugee, Asylum Seeking and Migrant Children

### UPR Recommendations:

- *Withdraw its reservations to the CRC concerning detained and asylum seeking children.*<sup>xviii</sup> (Islamic republic of Iran)
- A number of states (including Nepal, Bangladesh, Paraguay, Viet Nam and Iran) recommended further measures to ensure the rights of migrants and asylum seekers are respected. For example: *Take further measures for the promotion and protection of human rights, including those of migrants*<sup>xix</sup>. (Nepal)

**Scottish Government response:** The Scottish Government is broadly supportive, yet stated that many of the levers in relation to race and refugee integration are reserved to the UK and that they would differ with the UK Government on some aspects of their approach (for example, refraining from detaining asylum seekers during the process of determining their refugee status).<sup>xx</sup>

Integration of migrants and asylum seekers is encouraged from "Day 1" of their arrival but there remain challenges in realising the aspirations of the recommendations fully. The majority of asylum seekers are dispersed in and around the Glasgow area, although there are a significant minority in the east of Scotland. Support services are therefore concentrated in these areas, limiting the extent to which integration can be supported across all of Scotland.<sup>xxi</sup>

**Next steps:** The Scottish Government should:

- Work with COSLA to continue to support the roll-out of the new age assessment guidance and monitor and evaluate its use;
- Take steps to ensure that sufficient high quality specialised legal representation is in place for children seeking asylum and for protecting and representing the victims of child trafficking, and
- Ensure that the guidance on age assessment introduced by the Scottish Refugee Council is adequately funded and resourced.

## 7. Age of Criminal Responsibility

### UPR Recommendations:

- *Consider the possibility of raising the minimum criminal age and refrain from the practice of keeping children in custody<sup>xxii</sup>. (Belarus)*
- *Consider the possibility of raising the age of criminal responsibility for minors.<sup>xxiii</sup> (Chile)*

**Scottish Government response:** Scottish Ministers have committed to give fresh consideration to the age of criminal responsibility with a view to bringing forward further potential legislative changes during the current session of the Scottish Parliament (2011-16). On the issue of custody, the Criminal Justice and Licensing (Scotland) Act 2011 introduced provisions to end the very rare practice of remanding 14 and 15 year olds in prison. Accordingly, no legal mechanism exists for the courts to either remand or sentence a young person under age 16 to custody in prison.

**Next steps:** The Scottish Government should uphold their commitment to raise the age of criminal responsibility in line with the UN Committee's General Comment No. 10.

## 8. Children in the Education System

### UPR Recommendation:

- *Adopt a strategy so that children of vulnerable groups are not excluded from the education system.<sup>xxiv</sup> (Costa Rica)*

**Scottish Government response:** The Scottish Government are committed to supporting the implementation of the provisions of the Equality Act 2010 and recognise that vulnerable children and young people may require support to enable them to realise their full potential.

The Additional Support for Learning legislation provides the framework for children and young people who need additional support, for any reason, short or long term, to receive it to overcome barriers to their learning. Scottish education authorities must identify, provide for and keep under review the additional support needs for all children and young people for whose education they are responsible. The framework includes provisions for planning for learning, with support from other agencies, including health and social work services.

**Next steps:** The Scottish Government should use the *Curriculum for Excellence, Children and Young People Bill* and *National Parenting Strategy* to:

- Support parents in deprived areas to engage in their child's education;
- Provide affordable, high quality and extensive early education and care provision for all children in poverty from a young age, and
- Make sure that The Partnership Group set up to implement the recommendations of Teaching Scotland's Future should take into account the Common Core to ensure that any changes to teacher education are underpinned by children's rights.

With reference to Additional Support for Learning, the Scottish Government should:

- Ensure that the long-term plan to support the implementation of the *Additional Support for Learning* legislation:
  - (1). addresses the need for specialist and adequate support for teachers in terms of learning support teachers, classroom assistants and links to other professionals;
  - (2). includes an extensive monitoring and evaluation framework to build a national picture of the provision of additional support for learning to feed back into improving provision and developing practice, and
- Promote Local authorities to ensure that all looked after children are considered for a CSP and that significantly more are given a CSP to support their learning.

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<sup>i</sup> United Nation Human Rights Council (2012). Annex one: 110.9. Universal Periodic Review. United Kingdom of Great Britain and Northern Ireland.

<sup>ii</sup> United Nation Human Rights Council (2012). Annex one: 110.78. Universal Periodic Review. United Kingdom of Great Britain and Northern Ireland.

<sup>iii</sup> United Nation Human Rights Council (2012). Annex one: 110.79. Universal Periodic Review. United Kingdom of Great Britain and Northern Ireland.

<sup>iv</sup> United Nation Human Rights Council (2012). Annex one: 110.80. Universal Periodic Review. United Kingdom of Great Britain and Northern Ireland.

<sup>v</sup> United Nation Human Rights Council (2012). Annex one: 110.6. Universal Periodic Review. United Kingdom of Great Britain and Northern Ireland.

<sup>vi</sup> United Nation Human Rights Council (2012). Annex one: 110.10. Universal Periodic Review. United Kingdom of Great Britain and Northern Ireland.

<sup>vii</sup> <http://www.togetherscotland.org.uk/pdfs/Scottish%20Government%20UPR%20response%2029-08-2012.pdf>

<sup>viii</sup> <http://www.togetherscotland.org.uk/news-and-events/news/detail/?news=600>

<sup>ix</sup> United Nation Human Rights Council (2012). Annex one: 110.5. Universal Periodic Review. United Kingdom of Great Britain and Northern Ireland.

<sup>x</sup> United Nation Human Rights Council (2012). Annex one: 110.41. Universal Periodic Review. United Kingdom of Great Britain and Northern Ireland.

<sup>xi</sup> United Nation Human Rights Council (2012). Annex one. Universal Periodic Review. United Kingdom of Great Britain and Northern Ireland.

<sup>xii</sup> United Nation Human Rights Council (2012). Annex one: 110.96. Universal Periodic Review. United Kingdom of Great Britain and Northern Ireland.

<sup>xiii</sup> SCCYP (2011) Not Seen. Not Heard. Not Guilty. The Rights and Status of the Children of Prisoners in Scotland: Review 2011

<sup>xiv</sup> United Nation Human Rights Council (2012). Annex one: 110.72. Universal Periodic Review. United Kingdom of Great Britain and Northern Ireland.

<sup>xv</sup> United Nation Human Rights Council (2012). Annex one: 110.75. Universal Periodic Review. United Kingdom of Great Britain and Northern Ireland.

<sup>xvi</sup> <http://www.togetherscotland.org.uk/pdfs/Scottish%20Government%20UPR%20response%2029-08-2012.pdf>

<sup>xvii</sup> Scottish Government (2008). Safeguarding Children in Scotland who may have been Trafficked.

<sup>xviii</sup> United Nation Human Rights Council (2012). Annex one: 110.7. Universal Periodic Review. United Kingdom of Great Britain and Northern Ireland.

<sup>xix</sup> United Nation Human Rights Council (2012). Annex one: 110.44. Universal Periodic Review. United Kingdom of Great Britain and Northern Ireland.

<sup>xx</sup> United Nation Human Rights Council (2012). Annex one: 110.7. Universal Periodic Review. United Kingdom of Great Britain and Northern Ireland.

<sup>xxi</sup> <http://www.togetherscotland.org.uk/pdfs/Scottish%20Government%20UPR%20response%2029-08-2012.pdf>

<sup>xxii</sup> United Nation Human Rights Council (2012). Annex one: 110.94. Universal Periodic Review. United Kingdom of Great Britain and Northern Ireland.

<sup>xxiii</sup> United Nation Human Rights Council (2012). Annex one: 110.95. Universal Periodic Review. United Kingdom of Great Britain and Northern Ireland.

<sup>xxiv</sup> United Nation Human Rights Council (2012). Annex one: 110.106. Universal Periodic Review. United Kingdom of Great Britain and Northern Ireland.