



## Together (Scottish Alliance for Human Rights) Submission to the United Nations Committee Against Torture

For consideration in relation to the United Kingdom's Sixth Periodic Report during its 66th Session (23<sup>rd</sup> April-17th May 2019)

Together (Scottish Alliance for Children's Rights) is an alliance that works to improve the awareness, understanding and implementation of the UN Convention on the Rights of the Child (UNCRC) and other international human rights treaties across Scotland. We have over 380 members ranging from large international and national non-governmental organisations (NGOs) through to small volunteer-led after school clubs. Our activities include collating an annual *State of Children's Rights* report to set out the progress made to implement the UNCRC in Scotland. The views expressed in this submission are based on wide consultation with our members but may not necessarily reflect the specific views of every one of our member organisations.

### Introduction

This report provides an update to the United Nations Committee against Torture (the Committee) on the challenges to the implementation of the Convention against Torture (the Convention) in Scotland.

As an alliance of charities, academics and professionals with a focus on children's human rights, our response centres on children and young people's right to be free from torture, cruel or degrading treatment. We explore the Scottish context and draw on the views of our member organisations. Rather than try to address all issues for children and young people under the Convention, we highlight key areas of concern, and recommendations the Committee could make to address these.

### Articles 1, 2, 4: Legislative Framework for the Prevention of Torture

#### Brexit and Human Rights

Children and young people's right to be free from torture, cruel, inhuman or degrading treatment is set out in the Convention against Torture, the UN Convention on the Rights of the Child (particularly Articles 19, 37 and 39), the European Convention of Human Rights (ECHR, Article 3) and the EU Charter of Fundamental Rights (Article 4). Domestic protection derives primarily from the Human Rights Act 1998 (HRA), incorporating the ECHR; and the Scotland Act 1998, which provides that the Scottish Parliament cannot legislate incompatibly with EU law or HRA.<sup>1</sup>

The Committee asks for information on the status of HRA.<sup>2</sup> Together acknowledges that the UK Government's position is that there are no current plans to repeal HRA. However, the 2017 Conservative Party Manifesto notes that reform of the UK's human rights framework may be considered once the process of leaving the EU is completed.<sup>3</sup> This was echoed in the rewording of the UK-EU Political Declaration which removed the UK's "commitment" to the ECHR after Brexit, and was confirmed by ministerial letter in January 2019.<sup>4</sup> Accordingly, Together is concerned for the future of the HRA after

<sup>1</sup> Section 29, Scotland Act 1998.

<sup>2</sup> [CAT/C/GBR/QPR/6](#), para 3.

<sup>3</sup> Conservative Party (2017), '[Forward Together: The Conservative Manifesto](#)', p.37

<sup>4</sup> Edward Argar MP, [Letter to House of Lords European Union Committee](#), 4<sup>th</sup> January 2019.

Brexit and believes that replacing it with a UK Bill of Rights could result in weaker protection and accountability. Brexit also impacts domestic protection of rights by removing the EU Charter from the scope of 'retained EU law'.<sup>5</sup> The Charter includes important protections for children's human rights under Article 24.

To mitigate against the impact of a potential regression of human rights protections at UK level, there is an urgent need to ensure that international human rights obligations are incorporated into domestic law – at a UK and Scottish level - and are fully enforceable. In December 2018, the First Minister's Advisory Group on Human Rights Leadership (FMAG) recommended the creation of a new Act of the Scottish Parliament incorporating international human rights treaties into Scots law. Whilst the Scottish Government has accepted the 'overall vision' of the FMAG recommendations, it has only committed to one of them - establishing a task force to oversee implementation.<sup>6</sup> Scottish Government should firmly commit to the recommendations around incorporation, and ensure that implementation of the FMAG recommendations does not inhibit or delay the existing commitment to incorporate the principles of the UNCRC into Scots law.<sup>7</sup> The Scottish Government must progress this latter commitment as a matter of urgency,<sup>8</sup> within the current parliamentary term.<sup>9</sup>

Together regrets that the UK has not accepted the right of individual petition under the Convention against Torture or the UNCRC, and urges the UK to accept these.

**Recommendation 1: The UK and Scottish Governments should incorporate the Convention against Torture into domestic law and make a declaration to permit individual petitions under the Convention.**

**Recommendation 2: Scottish Government must progress its commitment to incorporate the principles of the UNCRC as a matter of urgency, within the current parliamentary term.**

## **Article 10, 12 and 13: Investigations, Protection of Victims, and Training for Officials**

### Domestic abuse

The Committee asks for updated information on the elimination of all forms of violence against women, including domestic abuse.<sup>10</sup> The Scottish Government and Scottish Parliament have made several commitments to better recognise the impact of domestic abuse on children and young people. These include commitments through the Equally Safe strategy<sup>11</sup> and the Domestic Abuse (Scotland) Act 2018. The 2018 Act, due to enter into force on 1<sup>st</sup> April 2019, creates a specific offence of domestic abuse. The definition of domestic abuse under the Act includes psychological abuse, coercive and controlling behaviour which can be difficult to prosecute under the current law. The Act also creates a statutory aggravation in cases involving children and provides for reforms to criminal procedure with the intention of preventing abuse of the Complainant through the Court process.

Whilst acknowledging these positive developments, some members note that more needs to be done. Scottish Women's Aid is concerned by the potential for ongoing abuse of children and their mothers

---

<sup>5</sup> Section 5(4), European Union (Withdrawal) Act 2018.

<sup>6</sup> Scottish Government (2018). [Enhancing human rights – Announcement from the First Minister](#).

<sup>7</sup> Scottish Government (2018). [Delivering for today, investing for tomorrow: the Government's programme for Scotland 2018-2019](#), pp.75 and 83.

<sup>8</sup> There is currently majority political party support for UNCRC incorporation in the Scottish Parliament. This provides a possibly unique opportunity to progress incorporation before the 2021 Scottish Parliament elections. For more details see CYPSC and Together (2018). [Briefing Paper – Incorporation in Context](#).

<sup>9</sup> The next Scottish Parliament elections are scheduled for May 2021.

<sup>10</sup> [CAT/C/GBR/QPR/6](#), para 11.

<sup>11</sup> Scottish Government (2016), [Equally Safe: Scotland's Strategy to prevent and eradicate violence against women and girls](#).

through unsafe child contact with a domestic abuse perpetrator,<sup>12</sup> and around the provision of support workers for children experiencing domestic abuse. Scottish Women's Aid notes that demand for Women's Aid support services is increasing at a time when public funding is increasingly being restricted. This impacts on children and young people's right to recover from trauma and abuse under Article 39 UNCRC.

**Recommendation 3: Scottish Government should ensure effective implementation of the Domestic Abuse (Scotland) Act 2018. This should include ongoing training for police officers and staff, monitoring, comprehensive data recording and routine publication.**

**Recommendations 4: Scottish Government should conduct a rights-based review into ongoing abuse through unsafe child contact with a domestic abuse perpetrator.**

**Recommendation 5: Scottish Government should ensure sufficient resources for the provision of support workers for children with experience of domestic abuse.**

#### Asylum seeking and refugee children

The Committee seeks updated information on human trafficking, including victims' access to support, effective remedies and reparation.<sup>13</sup>

Positive developments include the Human Trafficking and Exploitation (Scotland) Act 2015<sup>14</sup> which placed the Scottish Guardianship Service on a statutory footing.<sup>15</sup> The Scottish Guardianship Service supports all unaccompanied asylum seeking and refugee children in Scotland, many of whom are trafficking victims.<sup>16</sup> It provides advice, guidance, advocacy and one-to-one support services to help these children and young people recover from their experiences and trauma. It helps them access appropriate support services, in turn promoting their rights under Article 3 (best interests) and Article 39 (right to recovery) UNCRC.

Some members have concerns around how certain functions and duties relating to trafficked children are recognised and supported in the UK-wide context, noting competing policy priorities between the Scottish authorities and UK Home Office. Aberlour has expressed concerns over the National Referral Mechanism (NRM).<sup>17</sup> This is the process through which the UK Home Office determines the trafficked status of individuals. Our members report that Home Office decisions often conflict with what professionals and specialists have identified. Aberlour has voiced concerns that children and young people's lack of consent to the NRM violates their rights, that the process is not child-centred, that children and young people suffer from a lack of support, and that decisions take a long time to be made. These delays directly impact on children and young people's asylum applications, as these can only be assessed once the Home Office has established the child's trafficked status. Aberlour is aware of a young person who was referred through the NRM in 2016 and waited nearly three years for Home Office determination of their trafficked status. These delays severely impact on the mental health and wellbeing of children and young people. It is very difficult for a child or young person to feel safe, secure and to start the process of recovery until their status is determined. Aberlour notes that the current

---

<sup>12</sup> Scottish Women's Aid. [Briefing: Domestic Abuse and Child Contact](#).

<sup>13</sup> [CAT/C/GBR/QPR/6](#), para 12.

<sup>14</sup> [Human Trafficking and Exploitation \(Scotland\) Act 2015](#).

<sup>15</sup> Section 11, Human Trafficking and Exploitation (Scotland) Act 2015.

<sup>16</sup> The Scottish Guardianship Service is delivered in partnership by Aberlour and the Scottish Refugee Council. For more information see Aberlour (2019), [Scottish Guardianship Service](#) and Scottish Refugee Council (2019), [Scottish Guardianship Service](#).

<sup>17</sup> UK Government, [National Referral Mechanism](#)

system prioritises immigration status over child protection and welfare concerns. This risks further traumatising highly vulnerable children and young people.

**Recommendation 6: Scottish Government should ensure support to victims of child trafficking, noting internal trafficking within the UK often for the purposes of child sexual exploitation.**

**Recommendation 7: Scottish Government should establish its own system for assessing the trafficked status of children and young people in Scotland insofar as is possible within current legislative competence,<sup>18</sup> or under s.63<sup>19</sup> or s.30<sup>20</sup> of the Scotland Act 1998.**

### **Article 11: data in relation to all forms of detention**

Conditions of detention: strip searches, restraint, suicides and mental health

The Committee asks for information around detention settings including: data recording, use of force, strip searches, mental health care and deaths in custody.<sup>21</sup>

#### *Strip searches*

A 2018 Freedom of Information request to Police Scotland found that there were 788 strip searches of children following arrest between 31<sup>st</sup> July 2017 and 31<sup>st</sup> July 2018.<sup>22</sup> Only 35 (4%) of these were positive. Three intimate searches were conducted, zero of these positive. Members are gravely concerned at the number of strip searches being carried out on children and young people, with few finding anything, and the lack of publicly available data. The Centre for Youth and Criminal Justice (CYCJ) has noted that strip searching can be particularly distressing and traumatic for children given their age, stage of development and the power imbalance between children and police personnel. Many of these children will have experienced adversity and victimisation, including experiences of physical and sexual abuse<sup>23</sup> and the process could re-traumatise them. Whilst guidance and codes of practice exist, our members note inconsistencies in practice highlighted by recent inspections.<sup>24</sup>

**Recommendation 8: Scottish Government should ensure data on the use of strip searches is made routinely and publicly available.**

**Recommendation 9: Scottish Government should undertake a review of Police Scotland's use of strip searching and what information is given to parents and children in relation to why the search is being carried out and their rights throughout the process.**

The above review should include hearing from children and young people on their experiences of this practice; partners who have expertise in child protection, safeguarding and trauma-informed practice; those with experience of utilising alternative means of searching; and exploring the role of the Scottish Police Authority and/or Her Majesty's Inspectorate of Constabulary in Scotland within this.

---

<sup>18</sup> The powers of the Scottish Government and Scottish Parliament are limited by the devolution settlement, see [Scotland Act 1998, Schedule 5, Part II, B6](#). Immigration (including asylum) is a matter reserved to the UK Government and UK Parliament.

<sup>19</sup> Section 63 sets out the power to transfer functions to Scottish Ministers, so that they are exercised by Scottish Minister instead of UK Ministers, or so that the exercise of these functions is shared between Scottish and UK Ministers.

<sup>20</sup> Section 30(2) allows for the devolution of additional powers to the Scottish Parliament and Scottish Government.

<sup>21</sup> [CAT/C/GBR/QPR/6](#), para 22-31.

<sup>22</sup> Police Scotland (2018). [Freedom of Information \(Scotland\) Act 2002, IM-FOI-2018-1865](#).

<sup>23</sup> Vaswani (2018). [Adverse Childhood Experiences in children at high risk of harm to others. A gendered perspective](#).

<sup>24</sup> HM Inspectorate of Constabulary In Scotland. (2018). [Inspection of custody centres across Scotland](#)

### *Restraint and pain compliance*

Similar concerns have been raised around the use of spit hoods.<sup>25</sup> CYCJ notes how traumatising their use may be and reports a lack of publicly available data on how often and in what circumstances the hoods are used. The lack of publicly available data is a concern repeated around the use of pain compliance techniques in Young Offenders Institutions (YOIs). It is unclear how such techniques are being measured and monitored outwith the Scottish Prison Service (SPS). Pain compliance techniques have the potential to be traumatic and harmful to children in YOIs, who are likely to be vulnerable.<sup>26</sup>

**Recommendation 10: Scottish Government should ensure data on the use of spit hoods is made routinely and publicly available.**

**Recommendation 11: Scottish Government should prohibit the use of pain inducing restraint on children and young people in YOIs.**

### *Suicides, mental health:*

Available SPS data shows that from 2014-2018, 134 people died in SPS custody, with many of the causes of death unclear (awaiting determination).<sup>27</sup> Seven of the 134 deaths are listed as having been individuals aged under 21. Our members are seriously concerned by the apparent increase in the number of deaths by suicide and the lack of publicly available information on instances of attempted suicide, self-harm, and learning taken from reviews of these. The CYCJ evaluation of Barnardo's Scotland Here and Now service in Polmont, which supports young people with issues around trauma, bereavement and loss, found that young men referred to Here & Now had experienced a wide range of loss, bereavement and other adverse childhood experiences.<sup>28</sup> Members have noted the importance of considering the impact of trauma on young people in prison in the context of support for their mental health and wellbeing.

Deaths in custodial settings (YOIs and prisons) may lead to a Fatal Accident Inquiry (FAI) under the Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016. However, many recent reviews have taken years before the report is published, leading to concerns that there are missed opportunities for putting learning into practice timeously. CYCJ notes that there is no statutory time limit to the FAI process, that high numbers are currently outstanding, that few FAIs make recommendations for improving systems, and that there is an apparent lack of coordination of the findings from FAIs.

Whilst the Scottish Government's independent expert review<sup>29</sup> of mental health and other support for young people entering prisons and YOIs is welcomed, some members believe more could be done, identifying broader issues around access to continuous mental health care. Recent research shows that two thirds of referrals to Child and Adolescent Mental Health Services (CAMHS) were rejected prior to a face-to-face meeting.<sup>30</sup> The justification for 62% of these rejections was that the referral was 'unsuitable', in 23% of such cases this was on the grounds that no mental health/illness was identified. This is concerning given that CAMHS information states that it is for children and young people with emotional, behavioural or mental health difficulties. Many children with behavioural problems (including offending), often as a result of trauma in childhood, are therefore unable to access appropriate support. Additionally, where CAMHS is obtained in the community, there can be difficulties for continuing access

---

<sup>25</sup> A spit hood is a mesh mask which is placed over an individual's head. They are intended to protect officers from spitting and/or biting.

<sup>26</sup> CYCJ (2016). [Key messages from the Centre for Youth & Criminal Justice.](#)

<sup>27</sup> Scottish Prison Service, [Prisoner Deaths.](#)

<sup>28</sup> CYCJ (2016). [Our Lives with Others – Evaluation](#)

<sup>29</sup> Scottish Government (2018). [Support for young people in custody.](#)

<sup>30</sup> Scottish Government (2018). [Rejected referrals to child and adolescent mental health services: audit.](#)

upon moving to a different health board area (such as a placement in custody or secure care in another area, even for a short period of time). These issues were highlighted by Barnardo's Scotland in their 2018 report on rejected referrals to CAMHS.<sup>31</sup> They highlighted five key reasons why a referral to CAMHS might be rejected which included symptoms not being severe enough, lack of stability, and lack of clarity around referral criteria. They recommended that consistent referral criteria should be established nationally; the role and scope of CAMHS be clarified; and that consideration should be given to alternative services to CAMHS for children experiencing emotional distress, which is often linked to early trauma and adversity.

**Recommendation 12: Scottish Government should ensure that young people in detention have access to appropriate mental health support services.**

**Recommendation 13: Scottish Government should undertake an overarching review of mental health support in the criminal justice system and across SPS establishments, including in respect of suicide prevention.**

**Recommendation 14: Scottish Government should ensure the development of a workforce that can meet the needs of children who present with complex mental health difficulties that are often displayed through offending.**

**Recommendation 15: Scottish Government should ensure continuity for children and young people working with CAMHS when they move between authorities and change the eligibility criteria to ensure that those who need a service receive one.**

#### [Inappropriate placement of children and young people](#)

The Committee asks for information on the inappropriate placement of children in detention settings.<sup>32</sup>

The Scottish Government's Whole System Approach advocates that secure care should be used where possible rather than YOIs.<sup>33</sup> Whilst both facilities deprive children of their liberty, secure care establishments are deemed more age-appropriate, being more relationship-based, providing therapeutic trauma-informed support, and with stricter limits on the use of restraint.<sup>34</sup> However, CYCJ has identified financial and legislative barriers to the increased use of secure care, and notes that there are numerous times more children on remand or sentenced in YOIs rather than placed in secure care.<sup>35</sup>

Since 2015 there has been a significant increase in cross-border placements from England. This is due to a reduction in secure places in England and Wales, and Scottish Government giving legislative consent to enable cross-border placements through the Children and Social Work Act 2017.<sup>36</sup> English councils are the third highest user of Scottish secure care (after Edinburgh and Glasgow city councils), purchasing 12% of Scottish places between 2012-2018.<sup>37</sup> 2016-2017 figures show that 30% of all placements in

---

<sup>31</sup> Barnardo's Scotland (2018). [Audit of rejected referrals to CAMHS in Scotland](#)

<sup>32</sup> [CAT/C/GBR/QPR/6](#), para 24.

<sup>33</sup> Scottish Government (2011). [Reintegration and Transitions – Guidance for Local Authorities, Community Planning Partnerships and Service Providers.](#); see also Gough (2016), [Secure Care in Scotland: Looking Ahead: Key messages and call for action.](#)

<sup>34</sup> Recognised by Scottish Government in its UPR response, see Scottish Government (2017). [Universal periodic review of human rights in the United Kingdom 2017: response to recommendations.](#)

<sup>35</sup> Gough, A. and Lightowler, C. (2018). Children's Lives, Education and Secure Care in Scotland. In Gallard, D., Evans, K. and Millington, J. (eds.) *Children and Their Education in Secure Accommodation: Interdisciplinary Perspectives of Education, Health and Youth Justice*. London: Routledge.

<sup>36</sup> Gough (2018). [Secure Care in Scotland: Cross border placements.](#)

<sup>37</sup> Gough (2018). [Secure Care in Scotland: Cross border placements.](#)

Scotland were cross-border,<sup>38</sup> and it is predicted that this figure will be almost 50% in the 2017-2018 figures.<sup>39</sup> Whilst cross-border placements may be necessary due to lack of local support, they raise significant concerns around safeguarding, governance and accountability, as well as placing children in an area where they have no local support from family or friends. Moreover, there has been an increase in cases where Scottish centres have been at full capacity, raising questions around how the needs of highly vulnerable children in Scotland will be met in such instances.<sup>40</sup>

**Recommendation 16: Scottish Government should ensure removal of disincentives and barriers to the use of secure care for children who are deprived of their liberty in Scotland.**

**Recommendation 17: Scottish Government should introduce a policy that all children under 18 sentenced or on remand go to secure care, rather than YOIs.**

**Recommendation 18: Scottish Government should ensure that there are always secure care placements available for Scottish children with extreme risks and vulnerabilities in their lives in Scotland**

**Recommendation 19: Scottish Government should establish a routine mechanism for collating information on cross-border placements across all health and care settings and reporting this information**

**Recommendation 20: Scottish Government should instruct further examination of the impact of cross-border placements on the children concerned.**

## **Article 16: prevention of cruel, inhuman or degrading treatment or punishment which does not amount to torture**

### **Restraint and seclusion**

The Committee asks for information on any new legislation or measures adopted in relation to the use of restraint, particularly in health and social care settings.<sup>41</sup>

### **Schools**

A 2018 investigation by the Children and Young People's Commissioner Scotland (CYPCS)<sup>42</sup> found widespread inconsistencies in policy, practice and recording around the use of restraint and seclusion in Scottish schools. The investigation highlighted the absence of adequate national policy and guidance on the use of restraint and seclusion in schools, pointing out that the limited guidance that did exist failed to recognise issues of safeguarding. At local authority level, four out of 32 local authorities had no policy or guidance in place.<sup>43</sup> Policies which did exist were found to be inconsistent, with some allowing the use of restraint to protect property whilst only 18 made clear it was solely to be used as a 'last resort' to protect the child and others from harm.<sup>44</sup> Children and young people were rarely, if ever, directly involved in the development of existing local authority policies and guidance and children's rights were not embedded into practice.<sup>45</sup>

The investigation highlighted that the Scottish Government does not record national data on the use of restraint and seclusion in schools, despite calls from the UN to do so. At local level, only 18 of 32 local

---

<sup>38</sup> Scottish Government (2017). [Children's Social Work Statistics Scotland](#).

<sup>39</sup> Gough (2018). [Secure Care in Scotland: Cross border placements](#).

<sup>40</sup> Gough (2018). [Secure Care in Scotland: Cross border placements](#).

<sup>41</sup> [CAT/C/GBR/QPR/6](#), para 31.

<sup>42</sup> CYPCS (2018). [No Safe Place: Restraint and Seclusion in Scotland's Schools](#).

<sup>43</sup> CYPCS (2018). [No Safe Place: Restraint and Seclusion in Scotland's Schools](#), p. 14.

<sup>44</sup> CYPCS (2018). [No Safe Place: Restraint and Seclusion in Scotland's Schools](#), p.30.

<sup>45</sup> CYPCS (2018). [No Safe Place: Restraint and Seclusion in Scotland's Schools](#), p. 20.

authorities recorded all incidents and four did not record incidents at all.<sup>46</sup> Children and young people's views were not routinely recorded, nor was data on injuries caused by restraint, or the number of children with disabilities or other additional support needs who had been the subject of restraint or seclusion.

The investigation concluded that without consistent national policy, guidance and data recording, there is potential for significant variation in practice across local authorities, some of which may be unlawful and which may place children and young people's rights to bodily integrity and liberty at risk.

**Recommendation 21: Scottish Government should publish a rights-based national policy and guidance on the use of restraint and seclusion in schools, involving children and young people in its development.**

**Recommendation 22: Scottish Government should ensure that restraint and seclusion are not used in the absence of clear and consistent policy and procedures at local authority level.**

**Recommendation 23: Scottish Government should ensure appropriate, rights-based training for staff.**

### *Care Settings*

Concerns around restraint have also been raised by our members working with Care Experienced children and young people. Who Cares? Scotland reports that over the past 40 years of their work, children and young people have consistently told them of the negative effects of restraint.<sup>47</sup> Children and young people have told Aberlour that the use of restraint makes them feel anxious and unsafe.<sup>48</sup>

The current framework consists of the Regulation of Care (Requirements as to Care Services) (Scotland) Regulations 2002 and guidance on restraint in residential settings, *Holding Safely* (updated in 2013).<sup>49</sup> The 2002 regulations provide that no-one should be subject to restraint unless it is the *only* practicable means of securing their welfare (or the welfare of others) and that there are exceptional circumstances.<sup>50</sup> However, Who Cares? Scotland reports that restraint is also being used as a form of behaviour management.<sup>51</sup>

Who Cares? Scotland has also expressed concerns that the practical application of the *Holding Safely* guidance varies and that the test for the use of restraint within the guidance ('last resort') can be open to interpretation and can conflict with the wording of the 2002 regulations.

Who Cares? Scotland highlights that debate around the use of restraint in care settings comes at a time when the Children (Equal Protection from Assault) Bill is at Stage 1 before the Scottish Parliament. The organisation fully supports the Bill's aims to protect children in Scotland from physical punishment by parents and carers. The public debate that has resulted from the Bill is extremely important and Who Cares? Scotland want to see a separate discussion around restraint in care result from discussing the use of physical punishment as behaviour management for children.<sup>52</sup>

---

<sup>46</sup> CYPCS (2018). [No Safe Place: Restraint and Seclusion in Scotland's Schools](#). pp.16-17.

<sup>47</sup> Who Cares? Scotland (2019). [Submission to Equalities and Human Rights Committee on the Children \(Equal Protection from Assault\) \(Scotland\) Bill](#).

<sup>48</sup> Aberlour (2018). Rethinking the use of restraint.

<sup>49</sup> Scottish Executive (2005, updated 2013). [Holding Safely](#).

<sup>50</sup> Regulation 4(1)(c).

<sup>51</sup> Who Cares? Scotland (2019). [Submission to Equalities and Human Rights Committee on the Children \(Equal Protection from Assault\) \(Scotland\) Bill](#).

<sup>52</sup> Who Cares? Scotland (2019). [Submission to Equalities and Human Rights Committee on the Children \(Equal Protection from Assault\) \(Scotland\) Bill](#).

Who Cares? Scotland and Aberlour both note that restraint risks further traumatising vulnerable children and young people. Both organisations promote the development of alternative, trauma-informed practices, which take better account of the child or young person's history.

**Recommendation 24: Scottish Government should commission research and conduct a full review into restraint practices in care settings, linking this with the work of the Independent Care Review.**

**Recommendation 25: Scottish Government should promote alternative solutions to using restraint and work to change the culture in which restraint is applied to manage behaviours of children in care.**

#### Physical punishment of children by parents/carers

The Committee asks for information on the measures taken to ensure that physical punishment of children is explicitly prohibited in all settings, including at home and in alternative care settings.

The Children (Equal Protection from Assault) (Scotland) Bill aims to end the physical punishment of children by parents and carers by removing the defence of 'justifiable assault'. This is a members' Bill, supported by the Scottish Government, which is currently at Stage 1 before the Scottish Parliament.<sup>53</sup>

More detailed information on the Bill can be found in our [response](#) from January 2019.

**Recommendation 26: Scottish Government should continue to support the Children (Equal Protection from Assault) (Scotland) Bill to ensure the removal of current legal defences to assault.**

**Recommendation 27: Scottish Government should establish an awareness and information campaign related to the Bill, to promote positive parenting strategies.**

#### Minimum Age of Criminal Responsibility

The Committee asks for updated information on the minimum age of criminal responsibility, asking whether this will be increased in line with international standards.

The Age of Criminal Responsibility (Scotland) Bill proposes raising the minimum age of criminal responsibility in Scotland from 8 to 12 years old. This is a Scottish Government Bill and is currently at Stage 3 before the Scottish Parliament.

Whilst raising the minimum age from 8 to 12, the Bill still falls short of internationally acceptable standards. The UN Committee on the Rights of the Child is due to publish updated guidance stating that the lowest acceptable age of criminal responsibility is 14 years old.<sup>54</sup> This reflects existing practice across the EU, with the majority of EU member states having a minimum age of 14 years or above. We note the intervention of the Council of Europe Commissioner for Human Rights during Stage 2 of the Bill, calling for the age to be increased to at least 14,<sup>55</sup> and the supportive evidence given by Professor Ann Skelton (member of the UN Committee on the Rights of the Child) before the Scottish Parliament's Equalities and Human Rights Committee.<sup>56</sup>

For more detailed information on the Bill, see our [response](#) from January 2019.

**Recommendation 28: Scottish Government should raise the minimum age of criminal responsibility to at least 14.**

---

<sup>53</sup> Scottish Parliament Equalities and Human Rights Committee, [Children \(Equal Protection from Assault\) Bill](#).

<sup>54</sup> Committee on the Rights of the Child (2018). [Draft revised General Comment No. 10 \(2007\) on children's rights in juvenile justice: Call for comments](#).

<sup>55</sup> Council of Europe Commissioner for Human Rights, [Letter of 6<sup>th</sup> December 2018 to Minister for Children and Young People](#), [Letter of 10<sup>th</sup> January 2019 to Scottish Parliament Equalities and Human Rights Committee](#).

<sup>56</sup> Scottish Parliament, Equalities and Human Rights Committee (2019), [Evidence from Professor Ann Skelton, 17<sup>th</sup> January 2019](#).

## Mosquito Devices

Mosquito devices emit an unpleasant high-pitched sound, audible only to under-25s. They are used as a method of dispersing groups of children and young people from public spaces and have been found outside shops, bus stations, in town centres, outside schools and private residences.

The Scottish Youth Parliament (SYP) is leading a campaign and petition for the ban of these devices in Scotland.<sup>57</sup> SYP notes the discomfort and distress these devices can cause, particularly for children and young people with additional support needs. The National Autistic Society has noted that the sudden high-pitched noise can be very painful for children and young people with autism, and that it can further increase their social isolation by making them feel unable to access public spaces.<sup>58</sup> SYP also notes comments from the Irish Department of Justice that the use of mosquito devices may constitute an ‘assault’.<sup>59</sup> Whilst SYP have been successful in encouraging some local authorities and organisations to remove the devices,<sup>60</sup> the Scottish Government is yet to commit to a wider prohibition.

**Recommendation 29: Scottish Government should prohibit the use (not sale) of mosquito devices, through their devolved powers for justice and health.**

## Summary of recommendations

**Recommendation 1: The UK and Scottish Governments should incorporate the Convention against Torture into domestic law and make a declaration to permit individual petitions under the Convention.**

**Recommendation 2: Scottish Government must progress its commitment to incorporate the principles of the UNCRC as a matter of urgency, within the current parliamentary term.**

**Recommendation 3: Scottish Government should ensure effective implementation of the Domestic Abuse (Scotland) Act 2018. This should include ongoing training for police officers and staff, monitoring, comprehensive data recording and routine publication.**

**Recommendations 4: Scottish Government should conduct a rights-based review into ongoing abuse through unsafe child contact with a domestic abuse perpetrator.**

**Recommendation 5: Scottish Government should ensure sufficient resources for the provision of support workers for children with experience of domestic abuse.**

**Recommendation 6: Scottish Government should ensure support to victims of child trafficking, noting internal trafficking within the UK often for the purposes of child sexual exploitation.**

**Recommendation 7: Scottish Government should establish its own system for assessing the trafficked status of children and young people in Scotland insofar as is possible within current legislative competence, or under s.63 or s.30 of the Scotland Act 1998.**

**Recommendation 8: Scottish Government should ensure data on the use of strip searches is made routinely and publicly available.**

**Recommendation 9: Scottish Government should undertake a review of Police Scotland’s use of strip searching and what information is given to parents and children in relation to why the search is being carried out and their rights throughout the process.**

---

<sup>57</sup> See Petition [PE01713: Ban the use of ‘Mosquito Devices’ in Scotland.](#)

<sup>58</sup> Petition [PE01713: Ban the use of ‘Mosquito Devices’ in Scotland.](#)

<sup>59</sup> Irish Times (2018). [Alarms to repel teens removed from Dublin City Council flats.](#)

<sup>60</sup> Fife Council, Perth and Kinross Council, Scotrail – see Petition [PE01713: Ban the use of ‘Mosquito Devices’ in Scotland.](#)

**Recommendation 10: Scottish Government should ensure data on the use of spit hoods is made routinely and publicly available.**

**Recommendation 11: Scottish Government should prohibit the use of pain inducing restraint on children and young people in YOIs.**

**Recommendation 12: Scottish Government should ensure that young people in detention have access to appropriate mental health support services.**

**Recommendation 13: Scottish Government should undertake an overarching review of mental health support in the criminal justice system and across SPS establishments, including in respect of suicide prevention.**

**Recommendation 14: Scottish Government should ensure the development of a workforce that can meet the needs of children who present with complex mental health difficulties that are often displayed through offending.**

**Recommendation 15: Scottish Government should ensure continuity for children and young people working with CAMHS when they move between authorities and change the eligibility criteria to ensure that those who need a service receive one.**

**Recommendation 16: Scottish Government should ensure removal of disincentives and barriers to the use of secure care for children who are deprived of their liberty in Scotland.**

**Recommendation 17: Scottish Government should introduce a policy that all children under 18 sentenced or on remand go to secure care, rather than YOIs.**

**Recommendation 18: Scottish Government should ensure that there are always secure care placements available for Scottish children with extreme risks and vulnerabilities in their lives in Scotland**

**Recommendation 19: Scottish Government should establish a routine mechanism for collating information on cross-border placements across all health and care settings and reporting this information**

**Recommendation 20: Scottish Government should instruct further examination of the impact of cross-border placements on the children concerned.**

**Recommendation 21: Scottish Government should publish a rights-based national policy and guidance on the use of restraint and seclusion in schools, involving children and young people in its development.**

**Recommendation 22: Scottish Government should ensure that restraint and seclusion are not used in the absence of clear and consistent policy and procedures at local authority level.**

**Recommendation 23: Scottish Government should ensure appropriate, rights-based training for staff.**

**Recommendation 24: Scottish Government should commission research and conduct a full review into restraint practices in care settings, linking this with the work of the Independent Care Review.**

**Recommendation 25: Scottish Government should promote alternative solutions to using restraint and work to change the culture in which restraint is applied to manage behaviours of children in care.**

**Recommendation 26: Scottish Government should continue to support the Children (Equal Protection from Assault) (Scotland) Bill to ensure the removal of current legal defences to assault.**

**Recommendation 27: Scottish Government should establish an awareness and information campaign related to the Bill, to promote positive parenting strategies.**

**Recommendation 28: Scottish Government should raise the minimum age of criminal responsibility to at least 14.**

**Recommendation 29: Scottish Government should prohibit the use (not sale) of mosquito devices, insofar as is possible within devolved competence.**

*Maria Doyle, Legal Researcher, Together (Scottish Alliance for Children's Rights)  
March 2019*

**Supported by**



For further information, please contact Maria Doyle, Legal Research Officer

**Together (Scottish Alliance for Children's Rights)**

Tel: 0131 337 9015 Email: [maria@togetherscotland.org.uk](mailto:maria@togetherscotland.org.uk)

Web: [www.togetherscotland.org.uk](http://www.togetherscotland.org.uk) Twitter: [@together\\_sacr](https://twitter.com/together_sacr)

Level 1 Rosebery House, 9 Haymarket Terrace Edinburgh, EH12 5EZ