

November

2016



# State of Children's Rights in Scotland

by Together

## About Together

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Together (Scottish Alliance for Children's Rights) is an alliance of over 340 children's organisations, academics and interested professionals. Our vision is that the rights of all children in Scotland are protected, respected and fulfilled, as enshrined in the UNCRC and other human rights conventions. To achieve this, we work with our membership, stakeholders and duty bearers to progress and achieve the realisation of children's rights in all areas of society.

## Glossary of Terms

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<b>ADCS</b> – Association of Directors of Children's Services	<b>ICT</b> – Information and Communication Technology
<b>ADHD</b> – Attention-Deficit Hyperactivity Disorder	<b>IGM</b> – Intersex Genital Mutilation
<b>AHRC</b> – Arts & Humanities Research Council	<b>ILPA</b> – Immigration Law Practitioners' Association
<b>ARE</b> – Appeal Rights Exhausted	<b>ISD</b> – Information Services Division
<b>ASBO</b> – Antisocial Behaviour Order	<b>JCHR</b> – Joint Committee on Human Rights
<b>ASN</b> – Additional Support Needs	<b>LEZ</b> – Low Emission Zone
<b>AST</b> – Asylum Support Tribunal	<b>LGBTI</b> – Lesbian, Gay, Bisexual, Transgender and Intersex
<b>BME</b> – Black and Minority Ethnic	<b>LGBTQ</b> – Lesbian, Gay, Bisexual, Transgender and Queer
<b>BSL</b> – British Sign Language	<b>ME</b> – Minority Ethnic
<b>CAMH</b> – Child and Adolescent Health	<b>MSYP</b> – Member of the Scottish Youth Parliament
<b>CAPSM</b> – Children Affected by Parental Substance Misuse Group	<b>MVP</b> – Mentors in Violence Prevention Programme
<b>CEDAW</b> – Convention on the Elimination of All Forms of Discrimination Against Women	<b>NAP</b> – National Action Plan
<b>CELCIS</b> – Centre of Excellence for Looked After Children in Scotland	<b>NGO</b> – refers to non-governmental organisations in Scotland unless otherwise stated
<b>CERD</b> – Committee on the Elimination of Racial Discrimination	<b>NHS</b> – National Health Service
<b>CESCR</b> – Committee on Economic, Social and Cultural Rights	<b>NMF</b> – National Modelling Framework
<b>Child/children</b> – refers to those under 18 unless otherwise stated	<b>NPVCSG</b> – National Prison Visitor Centre Steering Group
<b>Children's organisations</b> – refers to non-governmental organisations in Scotland unless otherwise stated	<b>NSPCC</b> – National Society for the Prevention of Cruelty to Children
<b>CHS</b> – Children's Hearing System	<b>OECD</b> – Organisation for Economic Co-operation and Development
<b>CoSLA</b> – Convention of Scottish Local Authorities	<b>OPAC</b> – UNCRC Optional Protocol on the Involvement of Children in Armed Conflict
<b>CPC</b> – Child Protection Committee	<b>PIP</b> – Personal Independence Payments
<b>CRIA</b> – Children's Rights Impact Assessment	<b>PVG</b> – Protection of Vulnerable Groups
<b>CRWIA</b> – Child Rights and Wellbeing Impact Assessment	<b>RCET</b> – Royal Caledonian Education Trust
<b>CSO</b> – Compulsory Supervision Order	<b>RCPC</b> – Royal College of Paediatrics and Child Health
<b>CYCJ</b> – Centre for Youth & Criminal Justice	<b>RSPH</b> – Relationships, Sexual Health and Parenthood
<b>CYPCS</b> – Children and Young People's Commissioner for Scotland	<b>SALSUS</b> – Scottish Schools Adolescent Lifestyle and Substance Use Survey
<b>DLA</b> – Disability Living Allowance	<b>SCCJR</b> – Scottish Centre for Crime and Justice Research
<b>ECHR</b> – European Convention on Human Rights	<b>SCJC</b> – Scottish Civil Justice Council
<b>EHRC</b> – Equality and Human Rights Commission	<b>SCLC</b> – Scottish Child Law Centre
<b>EQIA</b> – Equality Impact Assessment	<b>SCQF</b> – Scottish Credit and Qualifications Framework
<b>EU</b> – European Union	<b>SCRA</b> – Scottish Children's Reporter Administration
<b>FGM</b> – Female Genital Mutilation	<b>SEPA</b> – Scottish Environment Protection Agency
<b>FMPO</b> – Forced Marriage Protection Order	<b>SHRC</b> – Scottish Human Rights Commission
<b>FMU</b> – Forced Marriage Unit	<b>SIMD</b> – Scottish Index of Multiple Deprivation
<b>FOI</b> – Freedom of Information	<b>SNAP</b> – Scotland's National Action Plan on Human Rights
<b>GIRFEC</b> – Getting It Right For Every Child	<b>SOP</b> – Standard Operating Procedure
<b>HBSC</b> – Health Behaviour in School Aged Children	<b>SPA</b> – Scottish Police Authority
<b>HBV</b> – Honour-Based Violence	<b>SSGCIS</b> – Scottish Stakeholder Group on Child Internet Safety
<b>HCF</b> – Highland Children's Forum	<b>SSSC</b> – Scottish Social Services Council
<b>HKD</b> – Hyperkinetic Disorder	<b>SSTA</b> – Scottish Secondary Teachers' Association
<b>HMP &amp; YOI</b> – Her Majesty's Prison and Young Offender Institution	<b>STERG</b> – Scottish Traveller Education Review Group
<b>HMYOI</b> – Her Majesty's Young Offender Institution	<b>SYP</b> – Scottish Youth Parliament
<b>HRA</b> – Human Rights Act 1998	<b>TIE</b> – Time for Inclusive Education
<b>HRE</b> – Human Rights Education	<b>UASC</b> – Unaccompanied Asylum Seeking Children
<b>HSS</b> – Humanist Society Scotland	<b>The UN Committee</b> – United Nations Committee on the Rights of the Child
<b>Human Rights Committee</b> – the Committee that monitors implementation of the International Covenant on Civil and Political Rights	<b>UNCRC</b> – United Nations Convention on the Rights of the Child
<b>ICERD</b> – International Convention on the Elimination of All Forms of Racial Discrimination	<b>UNCRPD</b> – United Nations Convention on the Rights of Persons with Disabilities
<b>ICESCR</b> – International Covenant on Economic, Social and Cultural Rights	<b>UNICEF</b> – United Nations Children's Fund
<b>ICRMW</b> – International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families	<b>UPR</b> – Universal Periodic Review
	<b>YEA</b> – Young Edinburgh Action

## Artwork

The artwork used throughout this report was created by members of the Children's Parliament through the Fairer Fife, Imagining Aberdeen, Active Children and StreetsAhead Trantort projects. We would like to thank all the children involved.

## Authors

Juliet Harris, Liz Millership, Nick Moodie and Joanna Shepherd

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HELP PEOPLE WITH SPECIAL NEEDS TO DO MORE SPORTS!!

# SUPPORT

RUNNING MAKES MY HEART BEAT FASTER!

A MESSAGE TO ALL ADULTS! **LET'S GO!**

Support girls to play Foot ball!

It is FUN to play Foot ball together.

IF YOU GET SUPPORT YOU ACHIEVE BIGGER THINGS!

IT FEELS GREAT WHEN PEOPLE SUPPORT AND ENCOURAGE ME. IT HELPS ME TO CARRY ON AND IMPROVE.

I'm the caretaker and I'll make sure that the people in this park will be very happy!

HELP US BE FREE

FANTASTIC YOU'RE REALLY IMPROVING!

Playing big and other games keep us fit and we have fun too.

FIND FRIENDS PLAYING

She's having lots of fun.

I feel supported when my dad plays footy with me.

Well Done!

It is FUN to play Foot ball together.

I feel supported when my dad plays footy with me.

Swimming Makes Me Happy

I LOVE FREE KIDS PLAYING THE ENTIRE DAY!

Well done you can do it yourself

Thanks dad!

GO SANYA

YOU CAN DO THIS!

SOME PEOPLE ARE REACH FOR...

Waving  
Kebab!! I've!!!

# Executive Summary

## Background

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The *State of Children's Rights* report 2016 looks at whether enough is being done to fulfil the human rights of children living in Scotland. Specifically, it provides a non-government perspective on the extent to which children in Scotland are able to enjoy the human rights enshrined in the United Nations Convention on the Rights of the Child (UNCRC) and other international treaties. It offers a baseline against which progress in implementing recommendations made by the UN Committee on the Rights of the Child (UN Committee)<sup>1</sup> and other international treaty bodies can be measured. It also reflects on areas where progress is being made and identifies where further efforts are needed.

The report was compiled and produced by Together following wide consultation with our members across Scotland. As in previous years, the research process has been rigorous, starting with our *State of Children's Rights* seminars in spring 2016. These seminars identified areas for further desk research, through which we drew from official statistics, published research and additional material gathered through Freedom of Information requests. The desk research also drew from evidence submitted throughout the year by our membership, published in our online resource library and e-newsletter. Further consultation took place throughout the summer through our annual *State of Children's Rights* survey, and with specific member organisations who helped to draft and edit the final report.

### The UN Convention on the Rights of the Child

The UK Government ratified the UNCRC in 1991. The UNCRC is an international treaty that sets out specific human rights for children up to the age of 18 years-old. It reflects the particular needs, vulnerabilities and potential of children and includes a broad range of rights from the right to play, the right to be listened to and take part in decisions, through to the right not to be separated from their parents, unless it is in a child's best interests. The UNCRC is clear that all children should enjoy all of their rights without discrimination on grounds such as disability, sex, ethnicity, age, religion or sexual orientation.

In ratifying the UNCRC, the UK committed all areas of government to do all they can to fulfil children's human rights. This includes UK and Scottish Government through to public bodies including local authorities, health services, criminal justice institutions and schools. The UN Committee has responsibility for overseeing compliance with the UNCRC and takes evidence regarding implementation in the UK approximately every five years. Over the past year, the UN Committee has been examining the progress made by the UK. The UNCRC is the only international human rights treaty which specifically gives non-governmental organisations (NGOs) such as Together a role in monitoring its implementation, and as such, the *State of Children's Rights* report plays an essential role in enabling the UN Committee to hold the Scottish and UK Government to account.

### UNCRC reporting and the 2016 Concluding Observations

The previous *State of Children's Rights* report published by Together was submitted to the UN Committee in July 2015 to inform their examination of the UK. Soon afterwards, at the invitation of the Children and Young People's Commissioner for Scotland, the Scottish Youth Parliament hosted a visit to Scotland from Amal Aldoseri, the vice-chair of the UN Committee. This offered an exciting and important opportunity for children, young people and a number of Together's members to talk to Ms Aldoseri about the day-to-day realities of children's lives and their experience of growing up in Scotland. Further meetings were held in Geneva between the UN Committee, Together, members of the Scottish Youth Parliament, the Children and Young People's Commissioner for Scotland and the Scottish Human Rights Commission.

In May 2016, the UN Committee examined the UK Government's progress in implementing the UNCRC. An official from the Scottish Government was included in the delegation and was able to offer a Scottish perspective on many of the Committee's questions. Following on from this examination, the UN Committee made a series of 150 recommendations (known as Concluding Observations) to set out where the UK – including Scotland – was falling short. Each of these recommendations are examined in detail in this *State of Children's Rights* report.

### Other treaty bodies and the Universal Periodic Review

The UK is also signatory to six other United Nations human rights treaties, including the International Covenants on Civil and Political Rights (ICCPR)<sup>2</sup> and Economic, Social and Cultural Rights (ICESCR),<sup>3</sup> as well as conventions against torture (CAT),<sup>4</sup> racial discrimination (ICERD),<sup>5</sup> discrimination against women (CEDAW)<sup>6</sup> and the rights of persons with disabilities (UNCRPD).<sup>7</sup>

Approximately every six years, the UK Government submits reports to the relevant UN Committee on its implementation of each treaty. These reports address both reserved and devolved matters and include contributions from the Scottish Government. After considering evidence from a range of sources, including a verbal examination of representatives from the UK, the Committee issues a set of recommendations (known as Concluding Observations) as to how the UK and devolved governments can make progress in implementing the particular Convention.

In addition to reviews from specific treaty bodies, an overarching review of the UK's human rights record takes place every five years through the Universal Periodic Review (UPR). Through this process, UN member states make recommendations relating to the UK's human rights record, many of which concern children's rights. Recommendations from the last UPR cycle in 2012 are included throughout this report. The UK Government is due to report again in 2017.

## Scotland's National Action Plan for Human Rights

Scotland's National Action Plan for Human Rights (SNAP) was launched in December 2013 as a roadmap for the progressive realisation of international human rights. SNAP adopts a three pillar approach: the creation of a better culture, better lives and a better world. With coordination from the Scottish Human Rights Commission and a strong commitment from the Scottish Government, SNAP involves a range of partners across the public, private and third sector – including Together and many of our members – to take forward actions across the three pillars.<sup>8</sup> The second SNAP Annual Report<sup>9</sup> was published in December 2015, maintaining a focus on how human rights can tackle and overcome barriers to everyone accessing and realising their human rights. The 'better world' pillar has increasingly focused on improving accountability for human rights, specifically holding Scotland accountable for its international human rights obligations; reviewing domestic laws against human rights standards; improving human rights monitoring; and developing a system to ensure accountability for commitments made through SNAP.

## Report structure

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There is no specific list of indicators against which progress in implementing the UNCRC can be measured. However, through its reporting structure, Concluding Observations and General Comments,<sup>10</sup> the UN Committee has set out what is required by the UNCRC and what human rights mean for different areas of children's lives. As such, this report is grouped according to the cluster areas of the UNCRC which are: general measures of implementation; general principles; civil rights and freedoms; violence against children; family environment and alternative care; disability, basic health and welfare; education, leisure and cultural activities; and special protection measures. Recommendations from other treaty bodies and the Universal Periodic Review have been mapped against these cluster areas and are listed in full in Appendix 1.

## Key Findings

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### General measures of implementation

There have been longstanding calls at an international level for the incorporation of the UNCRC into domestic law.<sup>11 12 13</sup> Most recently, the UN Committee urged the UK to 'expedite bringing its domestic legislation in line with the Convention to ensure that the principles and provisions are directly applicable and justiciable under domestic law'.<sup>14</sup>

There is real concern about UK Government plans to repeal the Human Rights Act 1998 (HRA) and replace it with a 'British Bill of Rights'. Alongside many children's organisations, the Scottish Parliament<sup>15</sup> and Scottish Government strongly oppose the repeal of the HRA.<sup>16</sup>

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 2014 (the 2014 Act). Part 1 of the 2014 Act,<sup>17</sup> which directly relates to the implementation of the UNCRC, has been broadly welcomed. However, there remains no specific legal redress for children in Scotland whose UNCRC rights are violated. Together's members continue to advocate for the full incorporation of the UNCRC into Scots law. Scotland's First Minister has recently stated that she is open to 'exploring implementing and incorporating into Scots law some of the key international human rights treaties', including the UNCRC.<sup>18</sup>

Concerns have been raised by Together and its members regarding the impact that the UK's proposed withdrawal from the European Union will have on the protection of children's human rights in the UK.<sup>19</sup> The First Minister has established a Standing Council on Europe to consider the impact of the UK's proposed withdrawal from the EU.<sup>20</sup> Together urges the Standing Council to give additional scrutiny to all legislative and policy areas that impact on children.

The UN Committee called for the adoption of 'comprehensive action plans' for the implementation of the UNCRC.<sup>21</sup> Together's members urge Scottish Government to put in place an action plan for children's rights to set out how Concluding Observations from all UN Treaty Bodies and the UPR relevant to children and young people will be taken forward. This would help to support and coordinate the implementation and reporting duties on Scottish Ministers enshrined in the 2014 Act.<sup>22</sup>

In terms of legislative and policy development, the UN Committee called for a 'statutory obligation' to 'systematically conduct a child rights impact assessment' (CRIA).<sup>23</sup> CRIs are only conducted at a UK-level on an ad-hoc basis. The Committee raises 'serious concerns' at the effect of recent fiscal policies and allocation of resources on inequality in children's enjoyment of their rights.<sup>24</sup> The use of child rights and wellbeing impact assessments (CRWIA) is now widespread at a Scottish Government level and has been widely welcomed. In Wales, an independent evaluation of CRIs has recently been undertaken.<sup>25</sup> A similar approach should be adopted and developed across Scotland.

The UN Committee also makes recommendations around ensuring the Children and Young People's Commissioner for Scotland is able to start fulfilling his mandate to conduct investigations on behalf of individual children,<sup>26</sup> and that businesses are required to comply with the UNCRC.<sup>27</sup>

## General principles

The UN Committee noted the extension of the voting age in Scotland to 16 and 17-year-olds in local and Scottish Parliament elections.<sup>28</sup> It raised concerns, however, around the failure to take account of children's views in decisions that affect them at a national and local level. It repeated a previous recommendation to take urgent action to address 'intolerance of childhood' and 'negative public attitudes' towards children<sup>29</sup> and concluded that 'many children feel that they are often not listened to'<sup>30</sup> and that 'particular attention should be paid to younger children'.<sup>31</sup> Together's members report that there has been some progress in relation to the promotion and implementation of children's participation at the national level through a combination of legislative and policy developments.<sup>32</sup> A number of areas of good practice have been identified, with examples given of the Scottish Government involving care leavers, and members of the Scottish Youth Parliament and Children's Parliament in consultations. Concerns are raised that this is still on an ad-hoc basis and that particular groups of children continue to be left out, particularly children with disabilities and younger children. A number of Together's members have called for a participation strategy, including systematic and sustainable measures to ensure that younger children are able to have their voices heard and taken into account. A number of international treaty bodies have raised concerns about counter-terrorism measures having a discriminatory impact on some children.<sup>33 34</sup> This view is shared by many of Together's members who are concerned that rights to privacy, freedom of belief and freedom of movement are being infringed directly by counter-extremism policies.<sup>35</sup>

## Civil rights and freedoms

The UN Committee noted with concern that in Scotland 'children do not have the right to withdraw from collective worship without parental permission'.<sup>36</sup> This position is currently subject to a judicial review brought by the Humanist Society Scotland.<sup>37</sup> A 2008 recommendation to prohibit the use of Mosquito devices<sup>38</sup> was repeated by the UN Committee,<sup>39</sup> echoing calls from Together's members.<sup>40</sup> Whilst FOI requests from Together revealed that only a few Scottish councils used the devices themselves, a survey of children and young people reveals that their use is still widespread. A number of international treaty bodies have raised concerns about the use of stop and search on children.<sup>41 42 43 44</sup> Together's members have been involved in a number of initiatives to reform the use of stop and search in Scotland.<sup>45 46 47</sup>

## Violence against children

A number of treaty bodies have made recommendations relating to the use of restraint on children.<sup>48 49</sup> Many of Together's members share these concerns, particularly that there is still no guidance in place on the use of restraint within non-residential educational settings.<sup>50</sup> There have been a plethora of treaty body and UPR recommendations calling for children to be given equal protection from violence in law.<sup>51 52 53 54 55 56 57</sup> There is strong and consistent evidence that physical punishment damages children's wellbeing and carries the risk of escalation into physical abuse.<sup>58</sup> Scotland is one of the few countries within Europe not to give children equal protection from violence. Together's members continue to call on the Scottish Government to take these recommendations forward as a matter of urgency.

The UN Committee raised concern about the 'high prevalence of domestic violence and gender-based violence' and the 'negative impact that those forms of violence have on children, whether as victims or witnesses'.<sup>59</sup> It made a number of recommendations relating to tackling violence and abuse including domestic abuse,<sup>60</sup> sexual exploitation<sup>61</sup> including pornography and trafficking,<sup>62</sup> and so-called 'honour based' violence, including female genital mutilation (FGM), forced marriages and 'honour' crimes.<sup>63</sup>

Whilst some indicators of child abuse have decreased in Scotland in recent years,<sup>64</sup> others have increased including recorded sexual assaults against children,<sup>65</sup> and the number of children on the child protection register.<sup>66 67</sup> Particular concerns have been raised in relation to systematic child exploitation online.<sup>68</sup>

Scottish Government has put in place a number of strategies to tackle violence and abuse against children. These include Equally Safe, Scotland's strategy for preventing and eradicating violence against women and girls;<sup>69</sup> a 'Cyber Resilience Strategy for Scotland';<sup>70</sup> an update to Scotland's National Action Plan to Prevent and Tackle Child Sexual Exploitation;<sup>71</sup> and a National Action Plan to Tackle FGM.<sup>72</sup> In March 2016, the Scottish Parliament passed the Abusive Behaviour and Sexual Harm (Scotland) Act 2016,<sup>73</sup> and the 2016-17 Programme for Government includes a Domestic Abuse Bill.<sup>74</sup> These measures have been broadly welcomed and have widespread support among Together's members. More needs to be done to ensure that children who have experienced abuse have equitable access to high-quality therapeutic abuse and trauma recovery services and that funding for these services is sustainable.

The need to give due weight to the views of children affected by violence and abuse in court proceedings was also highlighted by a number of treaty bodies.<sup>75 76</sup> Research shows that even when children's views are taken into account in cases involving domestic abuse, there is significant variation in the weight that is attached to their views.

## Family environment and alternative care

The UN Committee acknowledged the steps taken to provide childcare to those who need it, but expressed concern at the high cost of childcare.<sup>77</sup> Recommendations relating to the affordability, availability and accessibility of childcare have been made by a number of treaty bodies.<sup>78 79 80</sup> Scotland has some of the highest childcare costs in the UK,<sup>81</sup> which in turn are among the highest costs in the world.<sup>82</sup> The funding of extra childcare introduced by Scottish Government in 2014 has been widely welcomed by Together's members<sup>83</sup> yet many challenges remain around the complexity of funding,<sup>84</sup> the lack of flexibility<sup>85</sup> and the need to maintain and enhance quality of childcare.<sup>86</sup>

Although Together's members have welcomed provisions in the 2014 Act to put corporate parenting on a statutory footing,<sup>87</sup> looked after children and care leavers continue to face multiple barriers to realising their rights, including numerous placement moves against their wishes,<sup>88</sup> a lack of caring and lasting relationships,<sup>89</sup> poor facilitation of sibling contact<sup>90</sup> and a lack of consistency in access to advocacy support.<sup>91</sup> The UN Committee recommends an intensification of efforts to render appropriate assistance to parents and legal guardians, including informal kinship carers.<sup>92</sup>

The UN Committee<sup>93</sup> and UPR recommendations<sup>94</sup> address children of incarcerated parents and recommended that their needs are taken into account when sentencing parents in order to avoid separation. Together's members have raised concerns regarding the absence of a recording system to determine how many children are affected by parental imprisonment and a lack of training for those working with children on the effects of having a family member in prison.<sup>95</sup>

Neither children in armed forces families or young carers are reflected as a group in the Committee's recommendations. There is emerging evidence that the particular vulnerabilities of children in armed forces families are increasingly being identified and supported in some local authorities.<sup>96</sup> The exact number of young carers living in Scotland is not recorded or established. Positive steps taken in recent years by Scottish Government to support young carers include the commitment to develop a Young Carers Rights Charter,<sup>97</sup> the production of local strategies to support young carers,<sup>98</sup> and the passing of the Carers (Scotland) Act 2016.<sup>99</sup> However, young carers continue to face multiple barriers in school,<sup>100</sup> when socialising<sup>101</sup> and in consistently provisioned access to young carers' groups across Scotland.<sup>102</sup>

## Disability, basic health and welfare

The UN Committee emphasised the importance of ensuring that the views of children with disabilities are 'given due weight in all decision-making that affects them'.<sup>103</sup> Together's members have highlighted several areas where the views of children with disabilities are not given adequate consideration<sup>104</sup> and young people themselves have echoed this. The Committee also made recommendations on relationship, sexual health and parenthood (RSHP) education in schools.<sup>105</sup> Scottish Government issued revised RSHP education guidance in 2014<sup>106</sup> which explicitly references the UNCRC. Concerns have been raised by Together's members that, when opting out of RSHP education, the views of parents can still override those of children.<sup>107</sup> Child and adolescent mental health (CAMH) was also addressed at length by the UN Committee with particular emphasis placed on investing in and developing CAMH services. The number of children and young people accessing CAMH services continues to increase, yet waiting time targets are not being met by Scottish health boards. Scottish Government has asked the Mental Health Access Improvement Team to work with the lowest performing health boards in an effort to overcome this.<sup>108</sup>

The UN Committee also made recommendations with regards to the stark health inequalities that continue to exist in Scotland<sup>109</sup> as well as issues that have been affected by recent austerity measures in the UK. These include food insecurity,<sup>110</sup> welfare reform,<sup>111</sup> poverty<sup>112</sup> and homelessness.<sup>113</sup>

## Education, leisure and cultural activities

Numerous UN Committees have raised concerns around the continued impact of social background or disabilities of children on educational achievement.<sup>114 115 116 117 118 119 120</sup> The UN Committee urged access to quality early childhood development services with a focus on the most vulnerable children as a matter of priority.<sup>121</sup>

Scottish Government's commitment to close the educational attainment gap has been widely welcomed by Together's members, as have the subsequent legislative and policy measures such as the Education (Scotland) Act 2016,<sup>122</sup> the introduction of a National Improvement Framework for Education<sup>123</sup> and an Education Delivery Plan.<sup>124</sup> Disproportionately high exclusion rates persist in respect of vulnerable groups and despite calls from a number of treaty bodies<sup>125 126</sup> to abolish informal exclusions altogether, it continues to be used in schools.<sup>127</sup> Similarly, the UN Committee calls for abolishment of the use of seclusion in educational settings.<sup>128</sup> A comparison of the most recent evidence shows that whilst the use of what is referred to as 'time out' has declined in schools, it is still used frequently.<sup>129</sup> A number of treaty bodies<sup>130 131</sup> have called for mandatory or strengthening of rights-based education. Although some progress has been made in Scotland with aspects of human rights education, there is still much work to be done to avoid an ad-hoc approach<sup>132</sup> and to ensure all children are able to participate in decisions that affect their learning.<sup>133</sup>

The UN Committee has recommended strengthening efforts to ensure children's right to play, leisure and cultural activities,<sup>134</sup> including those with disabilities and children in marginalised and disadvantaged situations.<sup>135</sup> Despite the introduction of a Play Strategy<sup>136</sup> and the growing body of evidence supporting the benefits of play,<sup>137 138</sup> Together's members report that access to suitable funding has reduced annually.<sup>139</sup> Although examples of good practise exist, children are not strategically involved in planning, designing and monitoring the implementation of play policies and activities as called for by the UN Committee.<sup>140</sup>

### **Special protection measures**

The UN Committee raised concerns about the regression of asylum seeking and refugee children's rights in several areas.<sup>141</sup> It raised concern about the changes brought in by the UK Government's Immigration Act 2016 and strongly recommended these changes be examined against the rights in the UNCRC.<sup>142</sup> Concerns raised by the UN Committee around age assessments, detention of children, access to services and asylum support all echo issues raised by a number of Together's members.

The UN Committee noted that the Scottish Government is open to raising the minimum age of criminal responsibility but raised concern that it continues to be set at an age of 8 years-old in Scotland.<sup>143</sup> There is a strong consensus across Together's members, children's organisations, children and young people and through international treaty bodies<sup>144 145</sup> and the UPR<sup>146 147</sup> that the age of criminal responsibility should be increased to a minimum of 12 years-old with immediate effect. This should be seen as a starting point on a journey to remove all children from the criminal justice system.

The UN Committee welcomed a number of positive steps taken to tackle trafficking, including the introduction of the Human Trafficking (Scotland) Act 2015.<sup>148</sup> In line with concerns from some of Together's members, the Committee also labelled the system for identifying and supporting victims as 'weak'<sup>149</sup> and recommended it be strengthened and 'embedded in existing child protection procedures'.<sup>150</sup>

The UN Committee also raised concern that the minimum age for voluntary recruitment to the Armed Forces remains at 16 years-old and that child recruits make up 20 per cent of the recent annual intake of UK Armed Forces. It raised further concerns that children who come from vulnerable groups are disproportionately represented among recruits.<sup>151</sup> These concerns are shared by some of Together's members who provided evidence highlighting specific issues around recruitment practices, consent and length of service.<sup>152</sup>

Adults Come See  
What we think is  
important for all  
children

Pay attention  
to all our ideas  
and what we  
care about

Tell children you  
love them.

Be kind to us.  
Give us support  
when we need it.

All children need  
enough to eat.  
School should be a  
joyful place.

Families should spend  
time together.

There should be trees  
and flowers everywhere.

Everyone needs to be  
respected.

Remember WE LOVE TO PLAY.

We all need to have our say  
at home and at school.

No one should be  
left out or feel  
unwanted.

All playgrounds and parks  
should be dog-poo free.

All families need to live in  
a lovely street with  
nice neighbours.

## Introduction

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Together (Scottish Alliance for Children's Rights) works to ensure the rights of all children are protected, respected and fulfilled, as enshrined in the UN Convention on the Rights of the Child (UNCRC) and other human rights conventions. Our members range from leading national and international non-governmental organisations (NGOs) to local playgroups and individuals. All of our members share a commitment to progress and achieving the realisation of children's human rights across Scotland, from schools and hospitals through to community planning, transport and the environment. In the past year, we have seen our membership increase from 280 to 342 children's organisations and professionals.

*The 2016 State of Children's Rights* report is the seventh in our series. With such a wide range of members, many of whom work directly with children, Together is well placed to create this report. Over 380 NGOs and professionals working with and for children contributed to the process by submitting evidence and research reports, attending seminars, and reviewing chapters. Throughout the report we have included case studies from our members that illustrate in practice how taking a rights-based approach can make a significant difference to children's lives.

As such, our annual *State of Children's Rights* reports provide a non-governmental perspective on the extent to which children's human rights are being upheld and progressed in Scotland. The reports are an established monitoring tool for Together and our members, as well as an important information resource for politicians, policy makers, practitioners and academics. Each report scrutinises the legislative, policy and practical steps that the Scottish and UK Government have taken to implement children's rights, and holds government to account by highlighting where progress is – and isn't – being made.

In June 2016, the UN Committee on the Rights of the Child (UN Committee) examined the extent to which the UK and devolved governments are meeting obligations to children as enshrined in the UNCRC. The UN Committee recognised that some progress has been made since the previous examination in 2008. However, it also identified many areas where both the UK and Scottish Government need to improve and made 150 recommendations to be taken forward.

For the first time, we have also included recommendations made by other international human rights treaty bodies and through the Universal Periodic Review which are of particular relevance for children's rights. As a result, this is a landmark report – it establishes a detailed baseline against which Scotland's progress in taking forward international human rights obligations for children can be assessed. Particular effort has been made to draw from research that evidences children's views and experiences. The endnotes contain a vast range of evidence to underpin our commentary, which we encourage policy makers, practitioners and our members to draw from to inform their approach to implementing children's rights.

Throughout the report, we identify steps that can be taken in Scotland to progress the UN recommendations and ensure children's rights are at the heart of legislation, policy and practice. We recognise that there will be many challenges in taking these forward. Although the Scottish Government has legislative responsibility over devolved matters such as education, health and the justice system, reserved decisions made by the UK Government on issues such as welfare, immigration and employment can have a profound effect. Furthermore, the UK-wide decision to withdraw from the European Union will have significant implications for children and young people in Scotland and across the UK, and clearly goes against the views of the majority of people living in Scotland, and particularly those of children and young people. Children and young people, especially the most vulnerable, are continuing to be affected by the impact of austerity on public services. To overcome these challenges, there needs to be a genuine commitment to children's rights from the UK and Scottish Government.

As the UN Committee recognised in its examination of the UK, real progress has been made to improve the realisation of children's rights across Scotland. However, much more still needs to be done. This *State of Children's Rights* report sets out our starting point and identifies specific sets of recommendations. It should be used as a roadmap for government, parliament and practitioners as to what must happen next to ensure the rights of all children in Scotland are protected, respected and fulfilled, all of the time.



Go Back and Try Harder

please I can't do this

THE WARDROBE WITH VERY FEW CLOTHES

Miss Nice

Thumbs up if you understand Guys

Looked after Loved and respected

I never get listened to NOT LISTENING

Now that is NOT Fair!

I've just had an amazing idea

and now that idea is MINE!

That's a great idea - well done!

Thank you

It's so much better to have my own space to think

FAIRNESS IS SEVEN HUGS

Chapter

# 1

# General measures of implementation

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## (Articles 4, 41, 42 and 44(6))

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 within spending decisions. The UN Committee is clear that responsibility for realising children's rights should be co-ordinated 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:** implementation of the UNCRC.

**Article 41:** respect for higher national standards.

**Article 42:** knowledge of rights.

**Article 44(6):** reporting on UNCRC implementation.

## Case study:

### *Using a child rights and wellbeing impact assessment*

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A Children's Rights and Wellbeing Impact Assessment or CRWIA is a tool that allows you to look at any proposal, policy or piece of legislation from a children's rights perspective.

Earlier this year, the Children and Young People's Commissioner Scotland was part of an Independent Advisory Group tasked with looking at how the age of criminal responsibility could be raised from 8 to 12 years old in Scotland. Alongside others, we strongly advocated for a Children's Rights and Wellbeing Impact Assessment to be carried out to help inform the Advisory Group's work. Working with Together (Scottish Alliance for Children's Rights), the Centre for Youth and Criminal Justice, Victim Support Scotland and the other Advisory Group members, we produced a CRWIA that was published alongside the Advisory Group's final report and recommendations.

We began the CRWIA by looking at the impact the current age of criminal responsibility was having on children's lives. We knew that some children, for example, were having difficulty when they applied for a college or university course, or when they entered employment, as a result of an incident that took place in early childhood. The CRWIA allowed us to analyse why that was the case by looking at the way incidents were recorded for Disclosure and Protecting Vulnerable Groups Scheme purposes; the impact non-conviction information held by Police Scotland could have on children's future life chances; the reasons why children might demonstrate harmful behaviour at an early age; and to consider the support required to help children move on from such behaviour. This helped to ensure that the Advisory Group's recommendations were appropriate.

A CRWIA takes a systematic and wide-ranging approach towards examining how a proposal is likely to affect children. It looks at which children's rights are likely to be affected. It examines links to wider human rights obligations. This might include, for example, recommendations made by the UN Committee on the Rights of the Child. The CRWIA also requires consideration of relevant research and identification of where any gaps in knowledge or understanding exist.

One key part of the CRWIA process is identifying the views of children and young people. We struggled to find any evidence that meaningful consultation with children and young people about the age of criminal responsibility had taken place. The CRWIA allowed us to highlight this and the Children's Parliament and the Scottish Youth Parliament were subsequently commissioned by the Scottish Government to seek the views of children and young people.

The CRWIA was particularly helpful in highlighting the potential impact an increase in the age of criminal responsibility might have on different groups of children and young people (e.g. looked after children or children with additional support needs). It also helped reconcile competing rights. For example, if the Advisory Group recommended something that would benefit children demonstrating harmful behaviour, then we also had to think carefully about how this would impact on children that were victims, and what else might need to be done to mitigate any harm.

Raising the age of criminal responsibility has previously been considered a controversial move. The CRWIA allowed difficult discussions to take place and concerns to be addressed head-on. This was particularly true in relation to risk. As an Advisory Group we needed to ensure that what we were recommending would benefit the vast majority of younger children involved in low level harmful behaviour. At the same time, we needed to recognise that some children would continue to pose a risk to others and to themselves, and that measures would need to be put in place to address that. The CRWIA enabled us to set out our reasoning.

The role of the CRWIA in influencing the Advisory Group's work and recommendations was significant. It ensured that, right from the start, and throughout the whole process, the Advisory Group remained focused on seeking the very best outcomes for every child.

## 1.1 Legislation

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### UNCRC Concluding Observation

Expedite bringing in line with the Convention its domestic legislation, at the national and devolved levels [...] in order to ensure that the principles and provisions of the Convention are directly applicable and justiciable under domestic law.<sup>1</sup>

### Other treaty bodies and UPR recommendations

Similar recommendations have been made by the Human Rights Committee in its 2015 Concluding Observations (paragraph 5(c))<sup>2</sup> and by Slovakia (paragraph 110.9),<sup>3</sup> France (paragraph 110.10)<sup>4</sup> and Qatar (paragraph 110.32)<sup>5</sup> in the United Kingdom's 2012 Universal Periodic Review.

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### UK-wide

There is real concern about UK Government plans to repeal the Human Rights Act 1998 (HRA) and replace it with a 'British Bill of Rights'. The HRA provides the only mechanism through which children can seek redress for breaches of their human rights (rights under the European Convention on Human Rights (ECHR) rather than the broader rights protected by the UNCRC). A recent UN report warned that repealing the HRA could lead to decreased levels of human rights protection.<sup>6</sup> The UK Government wrongly asserts that the HRA has led to 'abuse'.<sup>7</sup> There is ample evidence of its positive effect on children's rights. Through the HRA, courts use the UNCRC as an aid to interpret the ECHR.<sup>8</sup> The duty on public authorities to comply with the ECHR has led to positive changes to children's rights protection without the need to go to court.<sup>9</sup>

Contrary to assertions from the UK Government, it does not have a 'mandate to reform the human rights framework' for Scotland.<sup>10</sup> Alongside the Scottish Parliament<sup>11</sup>, the Scottish Government strongly opposes the repeal of the HRA.<sup>12</sup>

The Human Rights Committee<sup>13</sup> has emphasised that any legislation passed in lieu of the HRA should strengthen the status of international human rights in domestic law and provide effective protection of those rights across all jurisdictions.<sup>14</sup> UN Committee on the Rights of the Child (UN Committee) does not specifically mention the HRA. However, it makes clear that there should be no diminution of children's rights protection in law. Furthermore, it recommends that all new laws and policies should be developed with meaningful contribution from children and young people.<sup>15</sup>

### Recommendation

- Any changes to human rights legislation in the UK must be underpinned by the following principles: all the protections in the Human Rights Act must be retained; any new British Bill of Rights should build upon, rather than reduce, the protection of the fundamental rights of all children in the jurisdiction without discrimination; it should also provide effective judicial remedies including through the European Court of Human Rights; the UK Government should ensure that any new proposals are developed through a consultative and democratic process in which children's Article 12 rights are fully respected and the devolved nations are fully involved.

### Scotland

There remains no specific legal redress for children in Scotland whose UNCRC rights are violated. Children's organisations continue to advocate for the full incorporation of the UNCRC into Scots law. Although this is not yet the case, the Scottish Parliament has passed a general legislative measure of implementation, namely the Children & Young People (Scotland) Act 2014 (the 2014 Act) which requires Scottish Ministers to give due consideration to ways in which the UNCRC can be better implemented in Scotland. Whilst this is a welcome step, it does not 'ensure that the principles and provisions of the Convention are directly applicable and justiciable'.<sup>16</sup> The 2014 Act leaves it to Ministerial discretion as to whether it is considered 'appropriate' to further the UNCRC.<sup>17</sup> Reporting duties on public bodies and Ministers under Part 1 of the 2014 Act<sup>18</sup> do provide a welcome and useful opportunity to mainstream children's rights into decision-making, but fall short of requiring any action to implement the UNCRC.

Scotland's First Minister has recently stated that she is open to 'exploring implementing and incorporating into Scots law some of the key international human rights treaties', including the UNCRC.<sup>19</sup> The current absence of comprehensive measures to incorporate the UNCRC into Scots law is a matter of political choice. Further steps can and should be taken to give legal effect to the UNCRC at both UK and devolved levels.

## Recommendations

- UK and Scottish Government should take measures to bring its legislation in line with the UNCRC, through systematically reviewing existing legislation to determine whether it should be amended to ensure compliance. Furthermore, UK and Scottish Governments should fully incorporate the UNCRC and its protocols into domestic legislation at the earliest opportunity and work towards the incorporation of other Conventions, such as the UNCRPD, CEDAW and ICESCR, given their relevance to children.
- Scottish Government should ensure the UNCRC is embedded into legislation, as well as the culture, policy and practice of all those working with and for children. The extent to which provisions relating to the UNCRC make a meaningful difference to children's experiences of their rights should be monitored and evaluated on an ongoing basis.

## Public bodies

Whilst it is the CEDAW Committee that stresses that its recommendations are 'binding on all branches of government', this is equally true of recommendations made by all treaty bodies, including the UN Committee on the Rights of the Child.<sup>20</sup> As such, it is essential that mechanisms are put into place to ensure the effective implementation of international human rights standards within public bodies.

Part 1 of the 2014 Act<sup>21</sup> places a duty on a range of public bodies to report, as soon as practicable after the end of each three-year period, on the steps they have taken to better secure, or give further effect to, the 'requirements' under the UNCRC. Part 3 of the 2014 Act relates to children's services planning, placing duties on a range of public bodies to ensure that the local planning and delivery of services is integrated and dedicated to safeguarding, supporting, and promoting child wellbeing. The guidance to accompany the Part 1 duties is advisory only (indicating expected practice), whereas the Part 3 guidance is statutory, meaning that it sets out a legal framework for children's services planning, including its scope and aims. In spring 2016, in response to a Scottish Government consultation on the draft guidance,<sup>22</sup> Together's members raised a number of ways in which it could be strengthened.<sup>23</sup> This includes the need for the guidance to:

- Ensure accurate comprehensive baseline data and minimum standards are developed and gathered against which public bodies can understand population needs, plan services effectively and assess progress;
- Set out how training and development in line with the Common Core<sup>24</sup> can promote a rights-based approach across all services;
- Ensure the participation of children from more vulnerable groups to inform the implementation of the guidance.

These sections of the 2014 Act are due to be commenced on 1 April 2017, with the first set of reports due by 31 March 2020. If implemented well, the duties offer a significant opportunity to embed children's rights into the delivery of public services. However, they fall far short of incorporating the UNCRC into Scots law in that they only require public bodies to report on UNCRC implementation and provide no means of enforcement nor redress if children's rights are violated.

## Recommendations

- UK and Scottish Government should introduce legislation that will require all public bodies to have due regard to the UNCRC.
- In the meantime, public bodies with duties under the Children and Young People (Scotland) Act 2014 should ensure robust monitoring and evaluation of steps taken to progress the UNCRC through establishing an initial baseline against which progress can be assessed, embedding the UNCRC into children's services plans and taking an evidence-based approach to reporting on UNCRC implementation.

## Europe

Concerns have been raised by Together and its members around the impact the UK's proposed withdrawal from the European Union (EU) will have on the human rights framework, and on the subsequent protection of children's human rights in the UK.<sup>25</sup> EU law and policy protects children on a myriad of issues: ensuring toys are safe and beaches are clean, safeguarding children from harmful media, protecting them from discrimination, assisting with family reunification and combatting child trafficking. Recent EU initiatives have also benefitted children through their focus on internet safety, reducing child poverty, implementing child-friendly justice, and addressing childhood obesity. EU protections to maternity leave, parental leave and breastfeeding rights have also benefitted babies and young children.

The EU has also taken strides to reference children's rights in its founding objectives and principles. Article 3 of the Lisbon Treaty outlined the EU's commitment to promote 'the protection of the rights of the child'. Article 24 of the Charter of Fundamental Rights guarantees the protection of children's rights by EU institutions, as well as by EU countries when they implement EU law. In recent years, children's rights have also gained increased visibility in the EU. For example, the establishment of the European Parliament's intergroup on children's rights<sup>26</sup> and the European Commission's revised guidelines<sup>27</sup> have helped ensure that EU policy and legislative proposals are assessed against their impact on children's rights. Whilst there have been some developments on mainstreaming children's rights at the domestic level,<sup>28</sup> progress remains limited. It is crucial we learn from positive European initiatives and take them forward in the context of UK and Scottish policy and decision-making regardless of Brexit.

It is clear that the overall vote for the UK to leave the EU went against the views of the majority of children and young people. Throughout the UK, it has been estimated that 73% of voters aged 18-24 voted to remain in the EU.<sup>29</sup> In Scotland, only 11% of the 72,744 responses from young people aged 12-25 to the Scottish Youth Parliament's recent Lead the Way Manifesto wanted to leave the EU.<sup>30</sup> As such, it is essential that children and young people's rights are central to any further discussions relating to Scotland's place in Europe.

The First Minister has established a Standing Council on Europe to consider the impact of the UK's proposed withdrawal from the EU on Scottish interests and advise Ministers throughout forthcoming negotiations.<sup>31</sup> The Standing Council should ensure that additional scrutiny is given to all legislative and policy areas that have a significant impact on children and young people. Furthermore, it should take steps to actively seek and take account of the views of children and young people.

## Recommendations

- UK and Scottish Government should ensure that all existing and proposed EU legislative and policy frameworks for children's rights are protected in negotiations around Scotland's place in Europe. The views of children and young people should be actively sought and taken into account to inform all decisions made.

## 1.2 Ratification of the international human rights instruments

### *Optional Protocol on a communications procedure*

#### UNCRC Concluding Observation

The Committee recommends that the State party, in order to further strengthen the fulfilment of children's rights, ratify the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.<sup>32</sup>

#### Other treaty bodies and UPR recommendations

A similar recommendation was made by Slovakia (paragraph 110.5)<sup>33</sup> in the United Kingdom's 2012 Universal Periodic Review.

The Third Optional Protocol to the UNCRC sets out an international complaints procedure for child rights violations. It entered into force in April 2014, allowing children from states that have ratified the Optional Protocol to bring complaints about violations of their rights directly to the UN Committee if they have not found a solution at the national level. The UK Government currently has no plans to sign up to this Optional Protocol, stating that 'the UK already has strong and effective laws under which individuals may seek enforceable remedies in the courts or tribunals.'<sup>34</sup> Despite this, the UK Government has ratified the equivalent Protocols with regard to the UN Convention on the Rights of Persons with Disabilities (UNCRPD) and the Convention for the Elimination of Discrimination Against Women (CEDAW). The UK Government has stated that it is 'still considering how this Optional Protocol [to the UNCRC] might add practical value for people in the UK' and will 'keep the matter under review in light of emerging information about procedures and practice'.<sup>35</sup> It has also stated that it is assessing the effects of the UK's ratification of the Optional Protocols to the UNCRPD and CEDAW, a position which the Joint Committee on Human Rights concludes 'holds no water'.<sup>36</sup>

The Scottish Government has welcomed the Optional Protocol in principle and has indicated that while it 'would be minded to offer [...] measured support for its signature and ratification in the future', it believes that 'before doing so [...] it is important to better understand exactly how the UN Committee on the Rights of the Child intends to apply the Protocol'.<sup>37</sup>

Ratifying the Optional Protocol on a Communications Procedure would provide additional scrutiny for ensuring the rights of individual children are protected.

## Recommendation

- UK Government should sign and ratify the Third Optional Protocol to the Convention on a Communications Procedure.<sup>38</sup>

## Reservations

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### UNCRC Concluding Observation

The Committee, in the light of the 1993 Vienna Declaration and Programme of Action, recommends that the governments of the said overseas territories and Crown dependencies consider the withdrawal of all their reservations to the Convention.<sup>39</sup>

### Other treaty bodies and UPR recommendations

Similar recommendations have been made by the Human Rights Committee in its 2015 Concluding Observations (paragraph 6)<sup>40</sup> and by CEDAW in its 2013 Concluding Observations (paragraph 11),<sup>41</sup> regarding their respective conventions. Similar recommendations have also been made by multiple countries in the United Kingdom's 2012 Universal Periodic Review (paragraphs 110.4, 110.11, 110.30 and 110.31).<sup>42</sup>

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The purpose of the UNCRC Optional Protocol on the Involvement of Children in Armed Conflict (OPAC) is to clarify the obligations on State Parties to the UNCRC in relation to protecting children involved in armed conflict, whether as child soldiers or as children who come into contact with armed groups (including military). This includes provisions about the recruitment age and the deployment of children. On ratifying OPAC,<sup>43</sup> the UK Government entered a Declaration setting out circumstances when it might not be possible to prevent deployment of under-18s in hostilities. An outstanding recommendation from the UN Committee's 2008 Concluding Observations was to review the UK's declaration to ensure that children are not exposed to the risk of taking direct part in hostilities, and that policy and practice are in conformity with Article 1 of OPAC.<sup>44</sup> Despite this recommendation, at least seven children have been deployed to war zones (Iraq and Afghanistan) 'in error' since 2007.<sup>45</sup> In light of these cases, it is evident that the policy of recruiting children is not be practically compatible with the policy not to deploy them to war zones.

### Recommendation

- The UK Government should revise its OPAC Declaration at the earliest opportunity. A revised Declaration should ensure that in no circumstances can children in the armed forces be exposed to hostilities, as required by Article 1 of OPAC.

## Ratification of international human rights instruments

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### UNCRC Concluding Observation

The Committee recommends that the State party, in order to further strengthen the fulfilment of children's rights, ratify the core human rights instruments to which it is not yet a party, namely, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, the International Convention for the Protection of All Persons from Enforced Disappearance, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, and the Optional Protocol to the International Covenant on Civil and Political Rights.<sup>46</sup>

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All international human rights instruments are relevant to the realisation of children's human rights, reflecting the fact that all human rights are indivisible, interrelated and interdependent. The international human rights treaties that are yet to be ratified by the UK Government would provide additional, important tools to hold the UK and Scottish Governments to account for the respect for, protection of and realisation of children's rights.

### International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families

As of July 2014, the UK Government reported that it remains 'unconvinced' of the need to ratify the ICRMW, as it considers the rights of migrant workers to be protected by domestic legislation, including the HRA, the Equality Act 2010, employment law and health and safety legislation. The UK Government also noted the low number of countries around the world who are States Parties to the Convention, as well as the lack of EU Member signatories.<sup>47</sup>

The recommendation to sign this convention was also made by Chile, Ecuador, Honduras, Morocco, Egypt, Guatemala, Sudan, Uruguay, Iran and the Philippines in the UK's 2012 Universal Periodic Review.<sup>48</sup>

## International Convention for the Protection of All Persons from Enforced Disappearance

As of July 2014, the UK Government reported that it was unwilling to sign the Convention because of ongoing inquiries into practical implications of its implementation. Further discussion is envisioned in the next UK report under the UPR in 2017.<sup>49</sup>

The recommendation to sign this convention was also made by France and Iraq in the UK's 2012 Universal Periodic Review.<sup>50</sup>

## Optional Protocol to the International Covenant on Economic, Social and Cultural Rights

As of 2016, the UK Government considered that the protection of ICESCR-based rights is already afforded by domestic law including the HRA and the Equality Act 2010. The UK Government also expressed doubts as to the practical benefits of petitions to UN bodies for individuals, since those bodies don't have the power to award damages or make legal rulings.<sup>51</sup> 21 countries throughout the world have ratified the Optional Protocol, including France, Spain and Finland. A further 26 countries are signatory to the Protocol.<sup>52</sup> In the absence of the UK ratifying the Protocol, children and adults in the UK do not have the right to raise complaints before the ICESCR Committee.

The ICESCR Committee also recommended that the UK ratify this Protocol in its 2016 Concluding Observations.<sup>53</sup>

## Optional Protocol to the International Covenant on Civil and Political Rights

As of July 2014, the UK Government stated that the practical benefits of ratifying the Optional Protocol were unclear. It argued that the UK already has a strong legal framework for protecting human rights, that there have been very few cases brought against the UK through petition mechanisms under other conventions, and that in any case the UN Committees are not able to hand down enforceable remedies.<sup>54</sup> 115 countries throughout the world have ratified the Optional Protocol, including France, Ireland and Australia.<sup>55</sup> However, in the absence of the UK ratifying the Protocol, children and adults in the UK do not have the right to raise complaints before the Human Rights Committee.

## 1.3 Comprehensive policy and strategy

### *Action Plan for Children's Rights*

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#### UNCRC Concluding Observation

In Scotland, ensure the full implementation of the action plan *Do the Right Thing* (2009) and the *National Action Plan for Human Rights* (2013-2017).<sup>56</sup>

In doing so, the Committee recommends that the State party allocate sufficient human, technical and financial resources, set up clear timelines as well as a monitoring and evaluation framework for the implementation of the strategy and the action plans, and pay special attention to children belonging to the most vulnerable groups.<sup>57</sup>

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Whilst the UN Committee's focus on the need for an action plan for children's rights is welcome, Together's members do not believe that full implementation of *Do the Right Thing* would result in the outcomes that the Committee is looking for. In previous State of Children's Rights reports, concerns have been raised around the lack of specificity in both the 2009 action plan and subsequent progress report.<sup>58</sup>

Implementation of children's rights across Scotland would be best served through the production of a new action plan which sets out how Concluding Observations from all UN Treaty Bodies and the UPR relevant to children and young people can be taken forward. An action plan on children's rights would provide a means through which Ministers can set out their plans to secure better or further effect of the UNCRC and raise awareness and understanding of its provisions, in line with the Ministerial duties under Part 1 of the 2014 Act.<sup>59</sup> It would provide a framework for the report to the Scottish Parliament, due in 2017, on the steps taken by Scottish Ministers to further the UNCRC and the plans for the next three years to take forward the UNCRC.

Furthermore, an action plan would also provide a means through which Scottish Government can focus efforts to raise awareness and understanding of the UNCRC. Children and young people feel strongly that they need to learn more about the UNCRC and how it affects their lives.<sup>60</sup> Together has previously called for Scottish Government to commit to an awareness-raising strategy that engages 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.<sup>61</sup> Whilst progress has been made with the introduction of Child Rights and Wellbeing Impact Assessment at a national level, and the introduction of the Common Core of Skills, Understanding, Knowledge and Value for the Children's Workforce,<sup>62</sup> much more needs to be done.

## Recommendations

- Scottish Government should develop an action plan for children’s rights, in consultation with stakeholders. This should set out how recommendations from UN Committee on the Rights of the Child, other international treaty bodies and the Universal Periodic Review will be addressed. It should include clear, resourced, time-bound actions and a monitoring framework. Progress should be reviewed on an annual basis, and through the Ministerial Report to the Scottish Parliament on UNCRC implementation due in 2017.
- The action plan should encompass and co-ordinate activities that all of the provisions of the UNCRC are widely known and understood by adults and children, across government, local authorities, public bodies, businesses and at a local community level.

## Child Rights Impact Assessment

### UNCRC Concluding Observation

Introduce a statutory obligation at national and devolved levels to systematically conduct a child rights impact assessment when developing laws and policies affecting children, including in international development cooperation;

Publish the results of such assessments and demonstrate how they have been taken into consideration in the proposed laws and policies.<sup>63</sup>

The UN Committee makes a number of recommendations relating to the use of child rights impacts assessments throughout the Concluding Observations. These include recommendations to systematically conduct a child rights impact assessment when developing laws and policies affecting children,<sup>64</sup> and to specifically conduct child rights impact assessment in relation to international development co-operation,<sup>65</sup> budget and economic decision-making processes,<sup>66</sup> reforms on legal aid,<sup>67</sup> and funding for childcare and family support.<sup>68</sup> The UN Committee is clear about the need for transparency and robust scrutiny and calls for the results of impact assessments to be published, for government to demonstrate how they have influenced the development of legislation and policy.<sup>69</sup>

The 2014 Act has resulted in the use of child rights and wellbeing impact assessments (CRWIA) within the Scottish Government. Scottish Government’s CRWIA model has been welcomed by Together’s members and provides a robust process through which officials can identify, research, analyse and record the anticipated impact of any proposed law and policy on children’s human rights and wellbeing. Scottish Government guidance is clear that the CRWIA should be used on all legislation and policy that impacts on children, not just children’s services. The CRWIA model involves an initial screening exercise, through which officials can conduct a preliminary check to help determine whether a CRWIA is required, and provide a record of that decision. Since their introduction in July 2015, Scottish Government has published five initial screenings in which it was decided that a full CRWIA was not needed, four full CRWIAs and one joint equality impact assessment (EQIA) /CRWIA (see table 1). A further CRWIA on Part 1 of the 2014 Act is in progress at the time of writing.

Table 1: Child Rights and Wellbeing Impact Assessments published by Scottish Government (as at October 2016)<sup>70</sup>

Subject Area	Specific policy/legislation	Date	Screening/Full CRWIA	Points of interest
Children and Young People (Scotland) Act 2014	Children and Young People (Scotland) Act 2014 (Part 1)	March 2016	Full CRWIA	CRWIA in progress; no recommendations made to date.
Freedom of Information	Extension of coverage of Freedom of Information (Scotland) Act 2002	January 2016	Screening only	Decision not to undertake full CRWIA as policy assessed to have a fairly limited (but positive) impact on a relatively small number of children.
Freedom of Information	Freedom of Information (Scotland) Act- Time for Compliance Regulations	May 2016	Screening only	Decision not to undertake full CRWIA as regulations assessed have only a very limited impact on a relatively small number of children.

Carers (Scotland) Act 2016	Carers (Scotland) Act 2016	March 2016	Full CRWIA	No changes to Carers (Scotland) Act 2016 proposed as a result of CRWIA. Assessed impact on children is expected to be neutral or positive. Government will continue to consider the views/experiences of young people as Act is implemented.
Tobacco, nicotine and care	Health (Tobacco, Nicotine and Care etc.) (Scotland) Bill – Communication aids	March 2016	Full CRWIA	No changes proposed as a result of CRWIA. Assessed impact on children is expected to be positive as Bill ensures provision of Augmentative and Alternative Communication equipment to everyone that needs it.  Recommendation made that further CRWIA carried out when the duty of candour procedure is being developed so that the different ways in which children of varying ages and maturity levels are capable of processing information can be taken into account.
Tobacco, nicotine and care	Health (Tobacco, Nicotine and Care etc.) (Scotland) Bill – Tobacco, nicotine and smoking / Duty of candour	March 2016	Full CRWIA	No changes proposed as result of CRWIA. Legislation assessed as having positive or neutral effect on children.
Secure accommodation	Secure Accommodation (Scotland) Amendment (No.2) Regulations	March 2016	Full CRWIA	Assessed that regulations have positive impact on small number of children affected. Noted that there was no specific engagement with children in the process.
Environmental quality	Making things last – Circular economy	February 2016	Screening only	Decision not to undertake full CRWIA as assessed that any impacts should only be through education programmes already provided.
Adoption	Adoption – Care and Permanence – Adoption Register	December 2015	Screening only	Decision not to undertake full CRWIA as assessed that the Register itself will remain unchanged and policy follows GIRFEC.
Welfare funds	Welfare Funds (Scotland) Regulations 2016	December 2015	Joint EQIA and CRWIA	Majority of recommendations relate to EQIA and will indirectly affect children as dependents. One recommendation explicitly addresses children which states that limits on crisis grants should not be altered and limits on community grants should not be introduced as these changes may have a disproportionately negative effect on groups such as women, children, and ethnic minorities.
Safeguarders	CRWIA Safeguarders	December 2015	Screening only	Decision not to undertake full CRWIA as assessed it is an amendment to a 2011 policy regarding the use of safeguarders for children in the Children’s Hearing and will allow for further protection for children.
National Transport Strategy	National Transport Strategy Refresh	November 2015	Screening only	Decision not to undertake full CRWIA as policy is refresh of 2006 NTS, is broad in scope and does not contain any new policies that will have an impact on children. As themes within the policy are developed independently into more specific plans, CRWIAs may need to be carried at that point.
Burial and cremation	Burial and Cremation (Scotland) Bill	July 2015	Screening only	Decision not to undertake full CRWIA as assessed that bill will not affect children directly or indirectly.

A CRWIA was also carried out by the Advisory Group on the Minimum Age of Criminal Responsibility, using the Scottish Government’s model. This is discussed in more detail in the case study included on page 14.

The use of CRWIA at a national level has been strongly welcomed by Together’s members. This should be progressed to include the use of CRWIA at a local level, particularly to inform the development of Children’s Services Plans in line with Parts 1 and 3 of the 2014 Act. There is a need for widespread training to ensure that officials across national and local government have the skills, knowledge and understanding needed to undertake CRWIA, for the publication of full CRWIAs to enable civil society scrutiny, and for a quality assurance framework to be put in place to ensure their effectiveness. In Wales, an independent evaluation of Children Right’s Impact Assessments (CRIAs) has recently been undertaken, with officials now tasked with progressing the resulting recommendations,<sup>71</sup> and a programme for children based on the UNCRC principles has been published.<sup>72</sup> A similar approach should be adopted and developed across Scotland.

## Recommendation

- A transparent system of CRWIA for all new policy, legislation and budgetary decision-making should be mandatory across local and national government; widespread training must be implemented to ensure that officials have the necessary skills, knowledge and understanding to undertake CRIA; all CRIAs must be published.

## Co-ordination

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### UNCRC Concluding Observation

In each of the devolved administrations [...] establish an appropriate statutory body at a high inter-ministerial level with a clear mandate and sufficient authority to coordinate all activities across relevant sectors related to the implementation of the Convention;

Allocate sufficient human, technical and financial resources to the said coordinating bodies for their effective operation;

Strengthen coordination and evaluation of the implementation of the Convention at the national level.<sup>73</sup>

### Other treaty bodies and UPR recommendations

A similar recommendation was made by Iran in the United Kingdom's 2012 Universal Periodic Review (paragraph 110.46).<sup>74</sup>

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### Ministerial co-ordination

The UN Committee's recommendation makes a broad reference to the need for inter-ministerial statutory bodies to ensure effective implementation of the Convention. More needs to be done to ensure adequate co-ordination of UNCRC implementation at UK and Scottish level. Inadequate political leadership on children's rights at a UK level has led to their invisibility across UK government.

Following Scottish Parliamentary elections in May 2016, the Deputy First Minister was appointed Cabinet Secretary for Education and Skills to reflect a commitment to tackle the educational attainment gap. The Minister for Children and Young People was replaced with a Minister for Childcare and Early Years. This refocus of Ministerial roles is seen to have left a gap with no overt responsibility for co-ordinating UNCRC implementation at Ministerial level, particularly in relation to older children.

### Scotland's National Action Plan for Human Rights

Scotland's National Action Plan for Human Rights (SNAP) was launched in December 2013, and widely welcomed as an ambitious roadmap to make human rights real for everyone across Scotland. The vision for SNAP is of a 'Scotland where everyone can live with human dignity.' This means that children and adults will understand and assert their human rights with confidence, and that those with duties to protect human rights will have the skills and resources needed to do it effectively. Around 50 organisations – including many of Together's members – participate in five Action Groups to identify and progress priorities for action. These Action Groups each involve the Scottish Human Rights Commission, Scottish Government, relevant public bodies and civil society organisations. These groups have provided a conduit through which actions relating to children's rights can be taken forward, from demonstrating the value of incorporating international human rights treaties at a roundtable event in December 2015 through to facilitating action-focused discussions on issues such as hate crime, trafficking and the minimum age of criminal responsibility. Children's and human rights organisations have welcomed the positive approach taken by Scottish Government towards the SNAP and see it as a key conduit through which further actions relating to children's human rights can be taken forward. Further work needs to be put into ensuring that children are involved in SNAP, in both identifying priorities and taking actions forward.

## Recommendation

- Further work should be progressed to involve children in taking forward Scotland's National Action Plan for Children's Rights.

## Allocation of resources

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### UNCRC Concluding Observation

In accordance with article 4 of the Convention and Sustainable Development Goal 10, Targets 10.2 and 10.4, the Committee urges the State party to allocate the maximum extent of available resources for the implementation of children's rights, with a special focus on eradicating child poverty and reducing inequalities within and across all jurisdictions. In this endeavour, the Committee recommends that the State party:

Utilize a child-rights approach in the elaboration of the State budget, by implementing a tracking system for the allocation and use of resources for children throughout the budget;

Ensure transparent and participatory budgeting through public dialogue, including with children;

Define budgetary lines for children in disadvantaged or vulnerable situations that may require affirmative social measures and make sure that those budgetary lines are protected even in situations of economic recessions;

Regularly conduct child rights impact assessments of budget and economic decision-making processes and outcomes, including austerity measures, in areas that are directly or indirectly related to children's rights;

Establish mechanisms to monitor and evaluate the adequacy, efficacy and equitability of the distribution of resources allocated to the implementation of the Convention.<sup>75</sup>

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The UN Committee raises 'serious concerns' at the effect of recent fiscal policies and allocation of resources on inequality in children's enjoyment of their rights, and that their impact is disproportionately affecting children in disadvantaged situations.<sup>76</sup>

As Together reported in 2015,<sup>77</sup> the way in which budgets are currently constructed in Scotland makes it very difficult to identify what is actually spent on children – at national and local level – and also on particular groups of vulnerable or disadvantaged children.<sup>78 79</sup>

The vast majority of funding for children's services at a local level is provided for by a block grant from national to local government. An agreement between Scottish and local government allows local authorities to allocate financial resources on the basis of local needs and priorities once it has fulfilled statutory obligations, including the set of national and local priorities agreed with Scottish Government.<sup>80</sup> From July 2013 local authorities have had to demonstrate how the total resources available have been deployed in support of the agreed outcomes.<sup>81</sup> It remains unclear as to what level of resources are specifically allocated to children and children's services, which prevents the effective monitoring and any move towards child rights budgeting.

### Recommendation

- UK and Scottish Government should ensure all local and national decisions on resource allocation are carried out so as to prioritise the rights of children. Particular attention must be given to children living in poverty or at risk of social exclusion.<sup>82</sup>

## 1.4 Independent monitoring

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### UNCRC Concluding Observation

Further strengthen the independence of established Children’s Commissioners, in line with the Paris Principles, and enable them, inter alia, to receive and investigate complaints from or on behalf of children concerning violations of their rights;

Allocate to the Commissioners in all jurisdictions the necessary human and financial resources in order to carry out their mandate in an effective and coordinated manner.<sup>83</sup>

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The Children and Young People’s Commissioner for Scotland plays an essential role in supporting the implementation of the UNCRC in Scotland. The Commissioner 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. 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.

Part 2 of the 2014 Act introduced an individual investigations function to the role of the Commissioner. This 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, but would not have the power to order a service provider to take action.

The introduction of this new function is supported by children, although some have stressed the importance of accompanying these new powers with a meaningful form of redress in which suitable action is taken. The extension of the Commissioner’s investigatory power will necessitate the setting up of a casework service within the office 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 provide vital evidence, helping to build up a picture of rights issues arising for children across Scotland.

The UN Committee raised concerns that the Commissioner has not started exercising this mandate<sup>84</sup> and there are concerns among some of Together’s members that this new function is likely to be under-funded. The Commissioner’s new powers are due to commence in 2017.

### Recommendation

- The Children and Young People’s Commissioner should have adequate human and financial resources and capacity to carry out its mandate and ensure the rights of all children in Scotland are respected, protected and fulfilled.<sup>85</sup>

## 1.5 Children's rights and the business sector

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### UNCRC Concluding Observation

With reference to its General Comment No. 16 (2013) on State obligations regarding the impact of business on children's rights, the Committee recommends that the State party:

Integrate an explicit focus on children's rights, including the requirement for businesses to undertake child-rights due diligence, in the revised version of its first National Action Plan on Business and Human Rights;

Establish and implement regulations to ensure that the business sector, including in the context of public procurement, complies with the rights of the child.<sup>86</sup>

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The UN Committee recognises that the business sector's impact on children's rights has grown in recent decades as a result of globalisation and market liberalisation. In 2013, the UN Committee published a General Comment on Business and Children's Rights.<sup>87</sup> It outlines the essential role that businesses play in societies and economies to advance the realisation of children's rights, drawing on examples such as technological advances, investment and employment conditions. The UN Committee is also clear that business can have a negative impact on children's rights. The General Comment defines the general nature and scope of government obligations with regard to children's rights and business, and outlines a framework for implementation and dissemination.

### Scotland

In response to the increasing recognition of the impact of business on wider human rights, in 2015 the Scottish Government commissioned a national baseline assessment. This will develop an evidence base for a Business and Human Rights Action Plan.<sup>88</sup> This baseline assessment will be published in autumn 2016, and the consequent Business and Human Rights Action Plan will form part of the Scottish National Action Plan for Human Rights.

### United Kingdom

The United Kingdom's first National Action Plan (NAP) on Business and Human Rights was published in 2013, setting out the UK's implementation of the UN Guiding Principles on Business and Human Rights.<sup>89</sup> As the NAP does not focus on children's rights, it fails to address the issues outlined in the UN Committee's General Comment on State obligations regarding the impact of the business sector on children's rights.<sup>90</sup>

Important elements of the NAP reflect weak commitments rather than concrete human rights protection measures. While the NAP states that the UK Government expects companies to adopt due diligence policies to identify and prevent human rights risks, this is not a mandatory requirement. In addition, the UK Government has not created adequate safeguards to ensure that large public sector contracts are only awarded to businesses that commit to and report on due diligence regarding human rights, including children's rights. Instead, the NAP only states that the Government has sought to ensure that, in relation to procurement, 'human rights related matters are reflected appropriately when purchasing goods, works and services'.<sup>91</sup>

### Recommendation

- Scottish Government should draw from the UN Committee's General Comment No. 16 in the development of the Scottish Business and Human Rights Action Plan. A framework should be put in place to ensure that all businesses are adequately regulated enabling them to respect children's rights by conducting human rights due diligence that considers the specific impact of business on children.



HERE

AND NOW

ASDA

FACTORY SHOP

YET ANOTHER HAIR SALON  
CUT & BLOW DRY

RECHARGE

POLICE

GREGGS Baguette Express

WE ARE GETTING A SAY IN HOW WE WOULD LIKE THE TOWN TO BE IN TIME TO HAVE A LOOK AT ITS HISTORY NOW WE ARE PLANNING FOR THE FUTURE - WE ARE DESIGNING STREETS AND GREEN SPACES WE WANT TO LIVE IN A FRIENDLY PLACE WHERE EVERYONE GETS ON BETTER AND WHERE CHILDREN AND ADULTS ARE EQUAL AND WE CAN LIVE HEALTHY HAPPY LIVES.

THE PRINCIPLES OF DESIGN  
RANDOM TOWN DREW MACKIE  
OUR NOTES FOR A MEETING WITH JOE EMELIA REVISTA  
CHARRETTE FINDINGS

COME & CLIMB TREES WITH US!

IN TRANEX THERE IS A MINER IN EVERY FAMILY - MINE TOO!

Bus Stop

What hairdresser shall we go to?

My great grandad was a miner and so was his father

My husband's father was killed in the mines

My Uncle was a miner

Rope Tree

Wallrun Tree

My big brother was a miner

Chapter

# 2

# General principles

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(Articles 2, 3, 6 and 12)

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:** non-discrimination.

**Article 3:** best interests of the child.

**Article 6:** life, survival and development.

**Article 12:** respect for the views of the child.

## Case study:

### *StreetsAhead Tranent: sharing stories, shaping futures*

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Children's Parliament is working towards a future where all children in Scotland are valued for what they can offer and are actively engaged in shaping our world. It is important for their experiences, views, concerns and ideas to be sought and taken seriously by adults who are making decisions at home, at school, in the community, and in local and national government. Children's voices should be heard whenever decisions are being made that affect their lives.

As part of Scottish Government's Year of Innovation, Architecture and Design 2016 and the Festival of Architecture *StreetsAhead Tranent* explored children's views of and experiences in their local community and built environment, examining how these factors impact on children's rights and wellbeing. Children's Parliament engaged with local primary schools and community members to share stories of Tranent's past and present in order to generate ideas to shape the future of the town.

Children aged 8 to 11 from Elphinstone, Windygoul, St. Martin's RC, Ormiston and Sanderson's Wynd primaries participated in whole class, creative workshops with a strong emphasis on history, heritage, conservation and intergenerational discussion. These workshops included inputs from local community members, urban planners and architects, historians and archaeologists, and wildlife rangers.

Following nine workshops, a small group of 16 children from across the five schools engaged in an intensive creative process that included visits to historical sites including Prestongrange Museum, Seton Collegiate Church and the APOGI project, tours of Tranent High Street, and working with artists, drama facilitators and local professionals to create a mural reflecting the views of all 250 children who took part. This project resulted in a 24' x 4' mural and a series of films that showcase the *StreetsAhead* journey, from classroom workshops through creation of the mural to a series of exhibitions and events that share *StreetsAhead Tranent* with community members and stakeholders.

While *StreetsAhead Tranent* achieved its main aim of producing a mural that reflects children's experiences in their local environment, what made this project so successful was the commitment and investment of East Lothian Council and the Fa'side Area Partnership. Officials recognised the value of engaging directly with children and taking their ideas seriously. Because of this, numerous additional opportunities have developed from the initial *StreetsAhead* project, for both the participating children and the local community.

Children's ideas for the future of Tranent have been included in the Fa'side Area Plan and money has been earmarked by East Lothian Council to turn these ideas into a reality. For example, the children have asked for more green spaces along the High Street and a town market where families and community members can go to sell and buy local goods.

This commitment was also apparent when an opportunity arose for *StreetsAhead* to be involved in the UNCRC Day of General Discussion in Geneva. Children's Parliament, the International Play Association and the Children and Young People's Commissioner for Scotland (CYPCS) worked with Terre des Hommes to develop *Under the Same Sky*, an international constellation of projects that shared children's views on the environments in which they are growing up. This included projects from six countries – Mozambique, Australia, Palestine, Zimbabwe, Brazil and Scotland.

Initially, through support from Scottish Government and CYPCS, Children's Parliament aimed to get the mural to Geneva and share a film from the project. However, East Lothian Council and the Fa'side Area Partnership viewed this as an opportunity for increased attainment and raised aspirations for the participating children and contributed funds to allow the children to travel to Geneva to share their work directly with the UN Committee on the Rights of the Child.

*StreetsAhead Tranent* demonstrates the possibilities for how children's voices can be included in local and global dialogue, if adults are willing to invest the time and resources needed to create appropriate and supportive opportunities for children to engage and to listen to and value their contributions. Children's voices should have a ripple effect, influencing life in those spheres closest to them as well as the wider discussions of national and global significance.

## 2.1 Non-discrimination

### *Discrimination on the grounds of age*

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#### **UNCRC Concluding Observation**

Consider the possibility of expanding legislation to provide protection of all children under 18 years of age against discrimination on the grounds of their age.<sup>92</sup>

#### **Other treaty bodies and UPR recommendations**

A similar recommendation was made by CESCR in its 2016 Concluding Observations (paragraph 37).<sup>93</sup>

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Children still do not have full protection from age discrimination.<sup>94</sup> As noted by the UN Committee, a number of provisions under the Equality Act 2010 exempt children from protection against age discrimination.<sup>95</sup> For example, children are excluded in relation to the provision of services and public functions<sup>96</sup> as well as recreational and training facilities.<sup>97</sup> In addition, the public sector equality duty excludes schools and children's homes,<sup>98</sup> employers may pay younger workers and apprentices less for the purposes of the National Minimum Wage,<sup>99</sup> and children under 16 in Scotland are not considered to have capacity to bring proceedings in relation to contravention of the Equality Act 2010.<sup>100</sup> Discrimination on the basis of age is also possible if it can be shown to be a proportionate means of achieving a legitimate aim.<sup>101</sup>

The four UK Children's Commissioners argue that extending provisions relating to age discrimination to children could prompt government to monitor for age discrimination through the systematic collection of administrative data.<sup>102</sup>

#### **Recommendation**

- Scottish Government should ensure children have equal legislative protection from age discrimination.

### *Counter-terrorism*

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#### **UNCRC Concluding Observation**

Strengthen the oversight mechanism, including regular independent reviews, to assess and ensure that the implementation of the counter-terrorism and counter-extremism measures, including the Prevent Strategy (2011), will not have a discriminatory or stigmatizing impact on any group of children.<sup>103</sup>

#### **Other treaty bodies and UPR recommendations**

A similar recommendation was made by CERD in its 2016 Concluding Observations (paragraph 19).<sup>104</sup>

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#### **Counter-Extremism Bill**

A Counter-Extremism Bill was announced in May 2015 to combat religious and political extremism, to include measures going beyond those in the Prevent strategy. It did not materialise in the 2015-16 Parliamentary session, but was again included in the 2016 Queen's Speech. In July 2016, the Joint Select Committee for Human Rights (JCHR) released a report on the proposals that included a number of criticisms.<sup>105</sup>

For example, the JCHR criticised the way in which the proposal is based on the questionable assumption that there is a correlation between religious conservatism and violent jihadism. This assumption, according to the JCHR, means that the proposal is aimed at curtailing religious conservatism instead of tackling extremism that leads to violence.<sup>106</sup> Furthermore, the JCHR was critical of UK Government's failure to demonstrate a clear gap in the current legislative regime that needs to be filled.<sup>107</sup>

The report was also critical of a lack of clarity in the proposal, stating that UK Government had not arrived at a clear, focused definition for 'extremism',<sup>108</sup> nor provided a clear explanation as to how the proposals would avoid either unjustifiable discrimination or unjustifiable interference with freedom of religion or expression.<sup>109</sup> These deficiencies might lead to detrimental consequences such as the undermining of relations between authorities and Muslim communities<sup>110</sup> and the creation of conflicting obligations for people and organisations.<sup>111</sup> The JCHR also recommended that any proposals be informed by experience with the Prevent Strategy; as such, an independent review of the Prevent Strategy should be carried out.<sup>112</sup> These criticisms reflect a view shared by Together's members through to academics and police officers, that a vague definition of extremism which includes 'non-violent extremism' (including vocalising certain beliefs) can be counter-productive.<sup>113</sup>

## Prevent strategy

The Prevent Strategy is not subject to continued review or oversight by the Independent Reviewer of Terrorism Legislation.<sup>114</sup> Instead, it is kept under review by a UK Government-appointed oversight board that releases little information about its activities.<sup>115</sup> In May 2016, then Security Minister John Hayes MP stated that there were 'no plans to publish the terms of reference or the membership of the board'.<sup>116</sup>

In February 2016 the Independent Reviewer submitted to the Home Affairs Select Committee that an independent review of the Prevent Strategy could be beneficial, as the programme was 'clearly suffering from a widespread problem of perception, particularly in relation to the statutory duty on schools and in relation to non-violent extremism'.<sup>117</sup> The Home Affairs Committee subsequently called for an overhaul of Prevent to increase transparency.<sup>118</sup>

In its report on the proposed Counter-Extremism Bill, the JCHR mentioned the lack of oversight mechanisms for the Prevent Strategy and recommended an independent review.<sup>119</sup> The current arrangement is referred to as 'too opaque', leading to a lack of confidence in the strategy and the spreading of dangerous myths about how it operates.<sup>120</sup>

As of 25 March 2015, all schools and registered childcare providers in Scotland are subject to a duty to 'have due regard to the need to prevent people from being drawn into terrorism'.<sup>121</sup> From 18 September 2015, the duty was extended to include higher and further education institutions.

A 2016 report by Rights Watch (UK) outlines 'a catalogue of serious violations of the human rights protections the UK government, and public institutions such as schools, owe to individuals, particularly children' resulting from the Prevent Strategy.<sup>122</sup> These include violations of rights such as freedom of expression, freedom of thought, conscience, and religion, the right to education, the right to privacy, the freedom from discrimination, and the principle that decisions made with respect to children must afford their best interests primary importance.<sup>123</sup> The effect of Prevent on inquiry and discussion is identified as risking the counterproductive marginalisation and radicalisation that the Prevent Strategy was developed to stop.<sup>124</sup> A Freedom of Information request revealed that between January and September 2016, nearly 5,000 teachers in Glasgow have received training in Prevent.<sup>125</sup>

A number of Together's members have raised concerns about the appropriateness of using a network of education professionals in the frontline of counter-terrorism efforts.<sup>126</sup> Roshni notes that according to its own research and experience hosting live events and national conferences, there is significant concern that these strategies have the potential to alienate children from different cultural backgrounds. There is specific concern that rights to privacy, freedom of belief and freedom of movement are being infringed directly by counter-extremism policies.<sup>127</sup>

## Recommendation

- Scottish Government should assess measures taken to counter terrorism in terms of their impact on children's rights. Measures should be developed in collaboration with those children most likely to be affected and be monitored, evaluated and reviewed on an ongoing basis.

## *Prevention of discrimination and stigmatisation*

### UNCRC Concluding Observation

Strengthen its awareness-raising and other preventive activities against discrimination and stigmatization and, if necessary, take temporary special measures for the benefit of children in vulnerable situations.<sup>128</sup>

### Other treaty bodies and UPR recommendations

Similar recommendations have been made by CESCR in its 2016 Concluding Observations (paragraphs 19, 23, 27, 64 and 66),<sup>129</sup> by CERD in its 2016 in its Concluding Observations (paragraphs 25 and 35),<sup>130</sup> by the Human Rights Committee in its 2015 Concluding Observations (paragraph 10),<sup>131</sup> by CEDAW in its 2013 Concluding Observations (paragraphs 33(a), 45(b) and 61),<sup>132</sup> and by a number of countries in the United Kingdom's 2012 Universal Periodic Review (paragraphs 110.49-66).<sup>133</sup>

In September 2016, the Equality and Human Rights Commission (EHRC) welcomed findings that discriminatory attitudes held by Scottish people are generally changing for the better. The ECHR noted areas of stubborn entrenchment of discriminatory attitudes, for example towards Gypsy/Travellers, people with mental health problems and transgender people.<sup>134</sup> The survey did not specifically examine the Scottish population's attitude towards children and young people.

Attitudes are shaped by a wider culture that is heavily influenced by mass media. The UN Committee has previously emphasised the role of mass media and tabloids in creating biased and stereotyped images of children, particularly disadvantaged children and adolescents, in ways that can prompt governments to adopt punitive approaches towards real and perceived misbehaviour by children and young people.<sup>135</sup> The 2012 Leveson Inquiry into the culture, practices and ethics of the UK press found evidence of 'a significant tendency within the press which leads to the publication of prejudicial or pejorative references to race, religion, gender, sexual orientation or physical or mental illness or disability'.<sup>136</sup>

### **Gypsy/Traveller children**

Gypsy/Traveller children are impacted by attitudes towards their communities generally. A 2014 survey showed that 50% of people in Britain reported having an unfavourable view of Gypsy/Travellers,<sup>137</sup> and the EHRC reports that Britain has failed to make progress on all of the measures aimed at fighting discrimination that are part of the European Commission's Framework for National Roma Integration.<sup>138</sup>

Gypsy/Traveller communities are portrayed in a 'negative, disrespectful and overtly racist way' by some sections of the British media.<sup>139</sup> This is a concern for Gypsy/Traveller communities as it perpetuates prejudice and dangerous stereotypes that foster discrimination and racial hatred, as well as undermining relations with settled communities.<sup>140</sup> Online media continues to publish a disproportionate number of articles about Gypsy/Travellers, the vast majority of which are negative, discriminatory and racist.<sup>141</sup> Negative reporting has led to feelings of marginalisation and stigma and young Gypsy/Travellers have identified experiencing high levels of discrimination.

### **Ethnic minority children**

A child born into an ethnic minority household in 2016 is nearly four times more likely to be in an overcrowded household, and up to twice as likely to be living in poverty.<sup>142</sup> In addition, data shows that in Scotland in 2013, ethnic minorities were more likely than white people to report discrimination (24% compared with 6%).<sup>143</sup> Freedom of information requests published in July 2016 show almost 3,000 racist incidents reported in Scottish schools since 2011.<sup>144</sup> Scottish Government responded to these figures by pointing out that the number of incidents has been falling in recent years.

### **Children with disabilities**

Disabled children experience discrimination both in the media and in terms of public attitudes. A comparison of disability reporting in the UK press from 2004-5 to 2010-11 noted a one-third increase in negative reports of disability, alongside 'increased politicisation of media coverage' and a reduction in reports sympathetic to disabled people.<sup>145</sup> Although statistics for Scotland are unavailable, children with disabilities in England and Wales are almost twice as likely to be victims of crime than non-disabled children.<sup>146</sup> Discrimination can also result from the difficulties that children with learning disabilities face with regards to participation in their communities at the personal, local and national levels. See page 37 for discussion of research by ENABLE Scotland into children's views on barriers to participation.

### **Looked after children**

The stigma and discrimination experienced by looked after children can be a significant barrier to their participation and wellbeing. Who Cares? Scotland is currently working with its members to explore the concept of a positive care identity, based on the belief that individuals with care experience should not be forced to feel ashamed of their past or silenced by it. Who Cares? Scotland reports that there have been many examples of discrimination against looked after children. For instance, in 2014, initial proposals to relocate a residential children's home to a Kirkcaldy suburb were met with community opposition. This could be seen as an example of a community ignorant to the life experiences of the children they did not want to become a part of their community. Care experienced children report that the articulation of views like this are offensive and evoke feelings of embarrassment, shame and anger.

### **Migrant, asylum-seeking and refugee children**

The media can play an active role in either inflaming or dampening public hostility towards migrants, asylum-seekers and refugees.<sup>147</sup> While the Leveson Inquiry did not specifically consider press practices in relation to migrant, asylum-seeking and refugee children, it did state that 'there are enough examples of careless or reckless reporting to conclude that discriminatory, sensational or unbalanced reporting in relation to ethnic minorities, immigrants and/or asylum seekers is a feature of journalistic practice in parts of the press, rather than an aberration'.<sup>148</sup> There is evidence that inaccurate and inflammatory reporting on the issue is a problem in the UK, most recently in relation to the reporting of asylum seeking children arriving in the UK from Calais.<sup>149</sup>

### **Lesbian, gay, bisexual, transgender and intersex children**

While the Leveson Inquiry did not specifically consider press practices regarding transgender and intersex children, it did find evidence of a marked tendency to fail to treat members of the transgender and intersex communities with sufficient dignity and respect.<sup>150</sup> A 2015 report from LGBT Youth Scotland noted that some LGBT young people report a sense of invisibility in the media as well as over-sexualised and stereotyped representations that was felt to lead directly to stigmatising or created messages that supported homophobic, biphobic, transphobic or sexist attitudes.<sup>151</sup>

## Young women and girls

The Scottish Social Attitudes Survey 2014 noted that women in Scotland face many stereotypical judgments in relation to gender-based violence.<sup>152</sup> Moreover, those who tended to have stereotypical beliefs were less likely view abuse and violence as harmful or wrong.<sup>153</sup> Media can often perpetuate problematic portrayals of gender which serve to fuel society's understanding of what women and girls can and should be. Many advertisements directly discriminate against women and girls by perpetuating harmful stereotypes.

A survey into young people's attitudes to pornography, sex and relationships was published by charity Zero Tolerance in 2015.<sup>154</sup> The findings noted that sexualised media was a part of most participants' lives, that it was understood as part of a broader pattern of sexism and double standards, and that these patterns impacted significantly on understandings of sexualisation, pornography and relationships.<sup>155</sup> Specific issues raised by young women included: pressure both to engage and not to engage in sexual and/or sexualised behaviour, with a range of negative consequences for failing to negotiate the 'appropriate' balance; and pressure to conform to unrealistic beauty standards and resulting negative body image.<sup>156</sup>

## Recommendations

- Scottish Government should take immediate action to increase the protection of vulnerable children and young people with regards to unbalanced, stereotypical reporting.<sup>157</sup>
- Scottish Government should take further steps to combat gender stereotypes and address discrimination experienced by particular groups of children, including children with disabilities, minority ethnic children, Gypsy/Traveller children, children affected by HIV and LGBT young people.

## Hate crime

### Other treaty bodies and UPR recommendations

In 2016 the CERD Committee raised deep concerns that the EU referendum campaign was marked by 'divisive, anti-immigrant and xenophobic rhetoric' (paragraph 15).<sup>158</sup>

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A range of legislation has been passed in an effort to tackle hate crime in Scotland. Along with the offence of racially aggravated harassment,<sup>159</sup> there are provisions that identify aggravation when offences are motivated by prejudice based on a victim's membership of a racial group,<sup>160</sup> religion,<sup>161</sup> disability<sup>162</sup> and sexual orientation or transgender identity.<sup>163</sup> It is also an offence to express or stir up hatred against certain groups at football matches,<sup>164</sup> and to send communications which contain threats of serious violence or which contain threats intended to incite hatred on religious grounds.<sup>165</sup>

A recent report by the Scottish Centre for Crime and Justice Research (SCCJR) concludes that there is still a problem of hate crime in Scotland. 2015/16 statistics published by the Crown Office and Procurator Fiscal Service show that all groups continue to experience hate crime.<sup>166</sup> Although figures are not broken down to show the number of charges reported by children, they provide an insight into hate crime trends across Scotland. The highest proportion of all hate crime remains race hate crime (3,712 charges reported) although this has decreased 3% since the previous year. Sexual orientation crime is the second largest category of hate crime (1,020 charges reported), and has increased 20% since the previous year. There were 201 charges reported of disability hate crime, an increase of 14% on the previous year. Within the number of charges of religiously aggravated crime, there were 134 charges relating to Islam. This is an increase of 89% on the previous year.<sup>167</sup>

The SCCJR report notes that it can be difficult to analyse trends in reported hate crime as the overall figures are widely acknowledged to be affected by reporting issues (both underreporting and inconsistency in reporting practices).<sup>168</sup> This is particularly true in relation to children, who may not always recognise hate crime for what it is, may not know that they have a right to report it, and may fear that they will not be taken seriously even if they do.

In England and Wales, post-referendum hate crime reports peaked at nearly 60% and is still 14% higher than at the same point last year<sup>169</sup> although this has not been reflected in Scotland. Across Great Britain children are reporting an increase in bullying in relation to the EU referendum.<sup>170</sup>

### Children's experiences of hate crime

LGBT young people report that they are particularly affected by hate crime<sup>171</sup> and feel that homophobia, biphobia, and transphobia are still problems in their local areas and across Scotland.<sup>172</sup>

From 2013-2014 to 2014-2015 there was a 20% increase in hate crimes relating to disability.<sup>173</sup> Disabled children experience harassment and hate crime as bullying and are at twice the risk of being subjected to long term bullying at school than non-disabled children.<sup>174</sup> Disabled children have spoken of experiencing bullying, harassment and threats, both at school and in the

local community, which affect their confidence and their ability to participate.<sup>175</sup> Hate Crime Scotland notes a broad consensus that disability hate crime continues to be underreported.<sup>176</sup>

Gypsy/Traveller children also speak of being victims of hate crime when they move to new areas, with children as young as 10 reporting that they are 'disliked' by members of the settled community.<sup>177</sup>

In the summer of 2015, Police Scotland launched a Hate Crime Campaign to inspire victims to come forward and encourage Scotland to stand up to hate crime.<sup>178</sup> In addition, the Independent Advisory Group on Hate Crime, Prejudice and Community Cohesion has called for action to counter the serious and continuing consequences of hate crime.<sup>179</sup> Recommendations included developing a clearer definition of hate crime; review of existing criminal law to protect those at risk of victimisation; better monitoring and response to online hate crime; further action to address prejudice and hate crime in schools, workplaces and on public transport; improvement of data collection; and joint work by the government and Police Scotland to facilitate reporting of hate crime.<sup>180</sup>

## Recommendation

- Scottish Government should act on the recommendations of the Independent Advisory Group on Hate Crime, Prejudice and Community Cohesion to counter the serious and continuing consequences of hate crime.<sup>181</sup>

## *Intolerance of childhood*

### UNCRC Concluding Observation

The Committee recalls its previous recommendation that the State party take urgent measures to address the “intolerance of childhood” and general negative public attitude towards children, especially adolescents, within society, including in the media.<sup>182</sup>

Previous sections of this report have highlighted some of the ways in which public attitudes towards children and young people continue to include negative stereotypes. For example, the use of mosquito devices to disperse young people risks alienating young people and heightening inter-generational ill-feeling (see chapter 3.2). Tabloid media outlets continue to stereotype certain minority groups, including children belonging to those minority groups (see chapter 2.1).

The Children's Parliament reports that engagement with the local community through storytelling and intergenerational workshops and events has led to positive interactions between children and older members of the community. Many of these older community members shared their satisfaction at being recognised by the children and their belief that it helped form better relationships and connections in the community. Past research funded by Scottish Government highlights that inter-generational contact between adults and young people appears to influence not only general orientations towards young people but also willingness to intervene directly when confronted with problematic behaviour by young people.<sup>183</sup>

A lack of research on Scottish attitudes to children and young people makes detailed analysis difficult. Including this issue in research, such as the annual Scottish Social Attitudes Survey, would help to identify trends in the adult population's perception of children and young people.

## Recommendations

- Scottish Government policy should avoid reinforcing stereotypes of and suspicion about young people.
- Scottish Government should engage in attempts to foster inter-generational communication and relationships.
- Scottish Government should encourage and publish research into attitudes towards children and young people.

## 2.2 Best interests of the child

### *Integration, interpretation and application*

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#### **UNCRC Concluding Observation**

Ensure that this right is appropriately integrated and consistently interpreted and applied in all legislative, administrative and judicial proceedings and decisions and in all policies, programmes and projects that are relevant to and have an impact on children.<sup>184</sup>

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The UN Committee notes with regret that the right of the child to have his or her best interests taken as a primary consideration is still not reflected in all legislative and policy matters and judicial decisions affecting children, especially in the area of alternative care, child welfare, immigration, asylum and refugee status, criminal justice and in the armed forces.<sup>185</sup>

In Scotland, the 'best interests' principle is included in a patchwork of legislation:

#### **Paramount consideration**

The 'best interests' principle is sometimes included in the form of the wider 'welfare' principle, by which authorities have a duty to regard the welfare of the child as the paramount consideration.<sup>186</sup>

For example, the Children (Scotland) Act 1995 states that court orders relating to parental responsibilities must regard the welfare of the child as the paramount consideration.<sup>187</sup> The same Act requires any decision in a children's hearing or any determination by a court with respect to a child be made with the welfare of that child as a paramount consideration,<sup>188</sup> and that the welfare of looked after children must be safeguarded and promoted as a paramount concern.<sup>189</sup>

The Antisocial Behaviour etc. (Scotland) Act 2004 provides that when making decisions involving parenting orders, the welfare of the child must be the court's paramount consideration.<sup>190</sup>

The Adoption and Children (Scotland) Act 2007 states that a court or adoption agency is to regard the need to safeguard and promote the welfare of the child throughout the child's life as the paramount consideration.<sup>191</sup> A court must consider the safeguarding and promotion of the child's welfare, throughout childhood, when making permanence orders.<sup>192</sup>

The Children's Hearings (Scotland) Act 2011 provides that in deciding on a matter relating to a child, a children's hearing, pre-hearing panel or court must regard the need to safeguard and promote the welfare of the child throughout the child's childhood as the paramount consideration.<sup>193</sup>

#### **Primary consideration**

According to the Criminal Justice (Scotland) Act 2016, a constable must treat the need to safeguard and promote the wellbeing of the child as a primary consideration when deciding to arrest, hold in custody, interview or charge a child.<sup>194</sup> The Act requires the same standard of a constable when taking the decision to search a child who is not in police custody.<sup>195</sup> However, as of yet, neither of these provisions are in force.

In exercising the functions of Children and Young People's Commissioner for Scotland, the Commissioner must regard, and encourage others to regard, the best interests of children and young people as a primary consideration.<sup>196</sup>

#### **Other references to best interests**

References to the best interests of the child can also be found in other pieces of legislation, without specific reference to paramouncy or primacy of consideration, for example in the Mental Health (Care & Treatment) (Scotland) Act 2003,<sup>197</sup> the Borders, Citizenship and Immigration Act 2009,<sup>198</sup> the Legal Aid (Scotland) Act 1986,<sup>199</sup> the Victims and Witnesses (Scotland) Act 2014,<sup>200</sup> the Human Trafficking and Exploitation (Scotland) Act 2015,<sup>201</sup> the Housing (Scotland) Act 1987,<sup>202</sup> the Vulnerable Witnesses (Scotland) Act 2004<sup>203</sup> and the Children's Hearings (Scotland) Act 2011.<sup>204</sup>

The explanatory notes of the Family Law (Scotland) Act 2006 state that the legislation is designed to ensure that family law protects the best interests of children regardless of the type of family to which they belong.<sup>205</sup>

#### **Recommendation**

- The best interests of the child should be a primary consideration in all legislative and judicial decisions concerning children, except where a higher standard already applies.

## Guidance for decision-making

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### UNCRC Concluding Observation

Develop procedures and criteria to provide guidance to all relevant persons in authority for determining the best interests of the child in every area and for giving it due weight as a primary consideration.<sup>206</sup>

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The Child Rights and Wellbeing Impact Assessment (CRWIA) has been introduced at the national level to help Scottish Government officials meet their duties to children under Part 1 of the Children and Young People (Scotland) Act 2014 (the 2014 Act).<sup>207</sup> The CRWIA is used to assess how government policies, measures and legislation impact on children's rights, and whether they protect and promote the wellbeing of children and young people. In addition, CRWIA has been made available for adoption by public authorities and children's services.

The 'best interests' principle has also informed the development of the Common Core of Skills, Knowledge & Understanding and Values for the Children's Workforce in Scotland.<sup>208</sup>

In 2010, Ministerial guidance<sup>209</sup> was published for local authorities<sup>210</sup> to assist in meeting their duty to have regard to the best interests of children facing homelessness.

### Recommendation

- Scottish Government should promote the widespread use of CRWIA and the Common Core of Skills, Knowledge, Understanding and Values to embed the 'best interests' principle into legislation, policy and practice.

## 2.3 Right to life, survival and development

### Infant and child mortality

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#### UNCRC Concluding Observation

Address underlying determinants of infant and child mortality, including social and economic deprivation and inequality.<sup>211</sup>

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The UK has one of the highest rates of child poverty in wealthy countries (see chapter 6.7).<sup>212</sup> Approximately 350 to 450 infants, children and young people die each year in Scotland.<sup>213</sup> 60% of child deaths in the UK occur before the age of one year, with the next highest age range being 15-19 years, at 18%.<sup>214</sup> Underlying social determinants include poverty, inequality and social policies such as housing, parental leave allowance, and early years education.<sup>215</sup>

Rates of low birthweight are higher in less advantaged socio-economic groups, and are linked to negative health behaviours such as poor prenatal care, substance abuse, poor nutrition during pregnancy and smoking, which are more common in these socio-economic groups.<sup>216</sup> Post neonatal mortality only makes up a small proportion of deaths in more advantaged households, but makes up a higher proportion of deaths in the least advantaged households.<sup>217</sup>

A 2014 report named *Why children die: death in infants, children and young people in the UK* explores measures that Scottish Government can take to improve children's chances of survival.<sup>218</sup> A number of these recommendations have been included throughout this report.

### Recommendation

- Scottish Government should address the most common causes of mortality in children and undertake measures to reduce them.

## Independent reviews

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### UNCRC Concluding Observation

Introduce automatic, independent and public reviews of unexpected death or serious injury involving children, including in custody, care and mental health-care institutions in all the territory of the State party.<sup>219</sup>

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Scottish Government does not require automatic reviews of child deaths or significant incidents. Instead, when an agency asks for a case to be considered by a Child Protection Committee, the Committee will carry out an initial case review to determine whether a significant case review is appropriate.<sup>220</sup> A 2012 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.<sup>221</sup> This audit also found that there was inconsistency in how reviews were undertaken in Scotland, and that there were anomalies in decision-making as to whether reviews be undertaken.<sup>222</sup> The audit recommended more consistency in the way in which initial case reviews are undertaken and recorded, in particular better recording of the reason why initial case reviews do or do not proceed to significant case reviews.<sup>223</sup>

In response, revised guidance for significant case reviews was published by Scottish Government in 2015.<sup>224</sup> However, there appears to be continuing discrepancy in the review process, for example in the thresholds used by child protection committees for deciding whether to proceed with significant case reviews.<sup>225</sup>

### Recommendation

- 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.

## 2.4 Respect for the views of the child

### Participation of children

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#### UNCRC Concluding Observation

Establish structures for the active and meaningful participation of children and give due weight to their views in designing laws, policies, programmes and services at the local and national levels, including in relation to discrimination, violence, sexual exploitation and abuse, harmful practices, alternative care, sexual and reproductive education, leisure and play. Particular attention should be paid to involving younger children and children in vulnerable situations, such as children with disabilities.<sup>226</sup>

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#### National developments

There has been some progress in relation to the promotion and implementation of children's participation at the national level through a combination of legislative and policy developments. The Children and Young People (Scotland) Act 2014 has introduced a provision to take account of the views of children when making decisions that may affect them.<sup>227</sup> However, this provision is weak<sup>228</sup> and gives Ministers discretion as to what views they consider to be 'appropriate' and 'relevant'. Furthermore, Scottish Government has stated that they will only be producing an 'implementation plan' for 'the internal use of Scottish Ministers' rather than a strategy or guidance to accompany the duty.<sup>229</sup> There are concerns that this could result in the duty being carried out in a piecemeal and ad-hoc basis that will not result in a coherent and robust approach to implementing children's participation rights in practice.<sup>230</sup>

Scottish Government has taken steps to involve children in the development of policy,<sup>231 232</sup> and there are examples of children participating in the development of national law and policy. For example, children with experience of the care system led a successful campaign to increase the care leaving age for young people and widen the eligibility criteria to Aftercare services.<sup>233</sup> In addition, partnership work between the Scottish Youth Parliament, Scottish Government and other organisations has led to discussion days with young people in relation to specific proposals including the Commission for Developing Scotland's Young Workforce, proposals for carers' legislation, and the refresh of the Youth Employment Strategy. Furthermore, the involvement of Members of the Scottish Youth Parliament (MSYPs) in the 2015-16 examination of the UK by the UN Committee showed the value of involving young people in the UNCRC reporting process. The 2016 Concluding Observations reflect many of the concerns raised by MSYPs in their work with the UN Committee. Funding challenges meant that younger children from Scotland were left out of UNCRC reporting process altogether, despite being involved in England, Wales and Northern Ireland.

The UN Committee is clear that meaningful participation requires consistent and ongoing arrangements and that involvement of children and young people must avoid being tokenistic and aim to ascertain representative views. Unfortunately, children's rights organisations and representative youth bodies have reported that some efforts can be tokenistic. Anecdotal evidence from MSYPs suggests that when they have attended policy-related events that are not young person-centred, their participation has sometimes felt to be tokenistic rather than meaningful. In addition, while this type of engagement has taken place on a number of occasions since September 2015 (including a Discussion Day on New Psychoactive Substances, a Discussion Day to inform the Scottish Government's next Mental Health Strategy, and a Criminal Justice Discussion Day to inform the Government's consultations on raising the age of minimum responsibility and police stop and search powers), these examples and models have been ad hoc in nature.

The Royal College of Paediatrics and Child Health (RCPCH) reports that the voice of infants, children and young people and their families is often lost within the adult-centric nature of health and social care provision. '& Us®' is RCPCH's new patient voice platform for children, young people, parents, carers and families to contribute to the improvement of child health. & Us® Roadshows and Takeover Challenges launched in January 2016 working with over 400 children, young people and families and supporting their input and influence to shape policy and practice. Consultations are delivered to children and young people in their setting (universal e.g. school/youth club, targeted e.g. special school/health charity, specialist e.g. children's hospital) in interactive and creative activities by participation specialists. Responses are collated, themed and shared with strategic committees, policy boards and policy officers to influence thinking around standards, guidelines & work-plans.<sup>234</sup>

### **Involvement at the local level**

Children's rights organisations have been leading the way in developing participation programs at the local level. For example, Aberlour's Youth Voice forum provides a platform for young people from across Scotland who are supported by Aberlour to discuss and share ideas, opinions and experiences in relation to the support they receive, as well as any other issues relevant to them and their communities. There are regular consultation groups made up of young people supported by Aberlour, both locally and nationally. Aberlour also delivers workshops and supports discussion groups, which are designed and delivered by young people themselves.

Who Cares? Scotland has developed the Care Council, a group of young people with care experience who have been elected from the Who Cares? Scotland membership (over 1,000 members) to be the voice of their local peers. The care councillors agree to organise priorities for their care council business and seek to make improvements to Scotland's care sector.

Highland Children's Forum (HCF) exists to support the participation of children and young people with additional support needs in Highland in their personal plans, service evaluation and policy development. HCF is currently seeking funds to investigate whether children in the harder to reach groups would be more likely to respond to Peer Consultants. If so, HCF is keen to recruit and train Peer Consultants from those harder to reach groups to ensure their future involvement.

Scottish Women's Aid works with children using Women's Aid services to contribute to their policy and influence work around court ordered contact in the context of domestic abuse. In order to ensure safe, meaningful and sustainable participation of children in shaping policy in Scotland, Scottish Women's Aid believes there must be adequate funding and training made available.

Efforts to facilitate participation are particularly important for certain groups of children who face barriers when it comes to involvement in decision-making.

### **Children with disabilities**

It is crucial that children with learning disabilities who may have additional difficulties with communication are supported to participate. This requires well trained practitioners who have a strong understanding and awareness of the needs of disabled children, as well as access to a range of resources to ensure it is true participation and not tokenistic. In addition, it is imperative that there are sufficient opportunities and time for disabled children to build relationships with those professionals who support them. Time constraints on professionals, lack of knowledge and skill in communication methods, as well as length of meetings can make it very difficult for children with learning disabilities to truly participate.

The National Deaf Children's Society notes that skills in facilitating participation are particularly valid in the context of deaf children, who may require unique support to meet their communication needs. Deaf children who use British Sign Language (BSL) as their preferred method of communication require high fluency of support.

In a recent survey undertaken by Family Fund, families in Scotland reported that budgetary cuts have resulted in a reduction in a wide range of services including speech and language therapy, child and adolescent mental health services (CAMHS)/psychology services, music therapy, befriending services and social work. Families reported fewer staff being available and staff having less time for individual children. A reduction in services which directly or indirectly support the meaningful participation of disabled children in decision-making which affects them must be recognised as a barrier to participation.

ENABLE notes that it is common for children and young people with learning disabilities to experience significant barriers throughout their lives, from access to diagnosis and services to participation at school and in social activities. For example, children with learning disabilities face additional barriers to participating in social groups and peer activities, limiting their capacity to reduce social isolation and form friendships.

ENABLE Scotland carried out a survey of 121 young people to understand their experiences of social isolation and barriers to participation. The survey revealed reasons why young people with learning disabilities are not attending young people's activities and services, including being picked on and bullied (17% of respondents) and worry about not making friends (22% of respondents). These hurtful experiences prevent many people who have learning disabilities from participating in their community, and from doing things that many take for granted, like going to the shops or getting the bus to meet friends. Research shows that if someone is aware that they are perceived as different or belong to a stigmatised group they might fear being put down or treated badly by others.<sup>235</sup> In turn, this may lead them to avoid particular social situations or activities where they feel vulnerable or likely to be negatively valued by others.

ENABLE Scotland's survey also revealed that young people with learning disabilities are not attending young people's activities and services because the clubs are not felt to be suitable (41% of respondents) or accessible (21%). Comments on this included:

***People don't always like me I find it hard to make friends  
My social skills are poor and people alienate me because of that***

In addition, ENABLE's national conversation on the reality of educational experiences for young people who have learning disabilities in Scotland – Included in the Main?!<sup>236</sup> – has exposed the barriers to participation in extra-curricular activities and representative structures within schools. Survey responses on this issue showed:

- 46% said that they did not get to take part in clubs at lunchtime or after school;
- 56% said they do not get opportunities to do things outside of school work;
- 60% said that they feel they miss out on things at school;
- Only 27% said they have a role within their school like prefect, school council etc.

More needs to be done to tackle negative attitudes and behaviours that exist in communities and to build supportive inclusive communities. ENABLE Scotland believes that this can be done by focusing on tackling bullying and hate crime, building truly inclusive schools and building inclusive communities.

## **LGBTI youth**

LGBT Youth Scotland's Youth Commissions (formerly LGBT National Youth Council and Voices Unheard project) support young people to represent the views of other young people through created engagement opportunities and by supporting young people to have the skills and knowledge to directly contact decision-makers within public bodies. While these projects are meaningful for the young people involved, concerted effort needs to be made by every public body to make young people aware of their rights, discuss the potential impact that proposed changes to policy and practice may have on them, and make it easier for young people to form part of regular, on-going community and national level advisory groups or be specifically considered when creating engagement opportunities.

## **Gypsy and Traveller children**

Young Gypsy/Traveller's experiences of participation in decision-making processes is varied, and several barriers have been identified in allowing young people within the community to participate in a way that is suitable for them. For example, young Gypsy/Travellers reported feeling discouraged from mainstream politics because it 'wasn't for them' and they felt that negative attitudes towards the Gypsy/Traveller community prevented significant change from happening.<sup>237</sup> Young people stated that they preferred to participate through processes which allow them to engage with professionals who have an understanding of their culture and respect for their needs.<sup>238</sup> This included local organisations specifically for Gypsy/Traveller children.

Article 12 in Scotland notes that until recently children and young people from the Gypsy/Traveller community had little or no input into planning processes at national or local level. However, this is slowly changing due to the efforts of organisations who are working with young Gypsy/Travellers to build their capacity and social capital so that they are in a position to identify issues and respond to them with confidence.

## **Looked after children**

Children's Parliament has worked closely with Fife Council and the Corporate Parent Board in Fife to ensure that younger looked after children are having their voices heard by the adults who are making decisions about their lives, such as corporate parents, social workers, teachers and carers. The Seen + Heard Fife project demonstrates good practice in engaging with younger children and allowing them to develop the skills and confidence to share experiences, views and ideas that will impact on the development and delivery of services for looked after children across Fife.<sup>239</sup>

## **Recommendation**

- Scottish Government should put in place a clear strategy and implementation plan, informed by the views of children, to ensure that their voices are considered and taken into account in the development of national and local policy that affects them in a coherent and systematic manner.

## Legal aid

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### UNCRC Concluding Observation

Assess the impact and expedite the review of the reforms on legal aid in England, Wales and Scotland and conduct child rights impact assessment of the proposed reforms in Northern Ireland and Jersey, in order to ensure that such reforms do not negatively affect children's access to justice, and guarantee effective participation of children in such assessment and review.<sup>240</sup>

### Other treaty bodies and UPR recommendations

Similar recommendations have been made by CESCR in its 2016 Concluding Observations (paragraph 21)<sup>241</sup> and by CEDAW in its 2013 Concluding Observations (paragraph 23(b)).<sup>242</sup>

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In 2011 changes were introduced to the way in which a child is assessed for civil and children's legal assistance.<sup>243</sup> Previously, a child would be assessed in the same way as an adult, on the basis of their own personal disposable income and capital. From 31 January 2011, the financial circumstances of anyone who owes a duty of aliment to a child or young person that applies for legal assistance must also be taken into account.<sup>244</sup>

Clan Childlaw has carried out an analysis of the number of legal aid applications made by children and young people before and after the changes. The figures show a drop in the number of applications made and the number of applications granted between 2009 and 2012.<sup>245</sup> For example, in 2009/10 70% of applications by 16-17 year olds were granted by the Board; this had dropped to 32% by 2011/12.<sup>246</sup> These figures raise concern about the impact of the regulation changes to children and young people's access to legal aid.

Legal assistance to children has been affected by changes that came into effect in June 2013, extending the availability of legal assistance to children and other relevant persons involved in the Children's Hearings system.<sup>247</sup> The Scottish Legal Aid Board notes that it is still too early to establish a proper comparison in volumes of aid grants between years.<sup>248</sup>

### Recommendation

- Scottish Government should ensure all children have access to confidential and independent legal aid and assistance. This should include funding for specialist services for vulnerable children, including migrant and looked after children.

## Youth parliaments

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### UNCRC Concluding Observation

Expedite the establishment of youth parliaments in all devolved administrations and territories as permanent forums for children's effective engagement with national legislative processes on issues that affect them.<sup>249</sup>

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Scottish Youth Parliament (SYP) is a representative body made up of 14-25 year olds who broadly reflect demographics of Scotland more widely.<sup>250</sup> SYP is heavily involved in facilitating engagement between young people and decision-makers. Examples of this type of engagement include facilitating meetings between Members of SYP (MSYPs) and elected representatives, responding to Scottish Government and Scottish Parliament policy consultations, and holding discussion days with young people in relation to specific policy proposals. Through these discussion days, SYP uses its expertise in youth engagement and public policy to facilitate a young person-friendly discussion to inform forthcoming policy proposals. SYP notes that the current and previous Scottish Government have been a very positive partner and very receptive to this type of engagement. SYP also notes that these discussion day events are one of the most effective means of engendering meaningful participation of young people, given that they are young person-centred.

Because a national, representative body is not necessarily a realistic or appropriate way for young children to participate in civic life, there is a potential gap in meaningful and sustained engagement of children under the age of 14. Engagement with this age group requires an adequate investment of time and resources to ensure that their voices are included and given equal weight to those of older young people. It is clear from work taking place across the rest of the UK and from Children's Parliament's ground-breaking work at the recent UN Day of General Discussion<sup>251</sup> that there is a distinct role for younger children to play in wider decision-making processes. A consistent and appropriate framework for children would increase children's participation and contact with local authorities and other decision-making institutions.

In addition, out-of-school participative activities provide children with a crucial opportunity to develop the skills and support they need to reach their potential. Innovative models of participation can help children and young people become active, confident learners and develop different relationships with adults than those they establish in more formal in-school settings.<sup>252</sup> This has been evidenced through work conducted by the Children's Parliament through the Realising Ambition programme, which specifically evidenced improved emotional wellbeing, increased engagement with learning and better relationships, cooperation and pro-social skills among the children taking part in the Children's Parliament's Community Initiative.<sup>253</sup>

## Recommendation

- Scottish Government should put in place systematic and sustainable measures to ensure that children under the age of 14 years-old are able to have their voices heard and taken into account. These measures should be appropriate and accessible for the age and stage of participating children and acknowledge children as a distinct group from young people.

## Consideration of children's views

### UNCRC Concluding Observation

Ensure that children are not only heard but also listened to and their views given due weight by all professionals working with children.<sup>254</sup>

There are legislative provisions for the regard of children's views in decisions that affect them. Those fulfilling parental responsibilities or rights must have regard to the child's views,<sup>255</sup> and when making an order about parental responsibilities, a court must take account of the child's views.<sup>256</sup>

### Children in care

When making a decision with respect to a looked after child, a local authority must ascertain and have regard to the views of the child.<sup>257</sup>

CELCIS notes that looked after children and care leavers face particular challenges in participating, in that expressing their views can be very difficult in many situations, and that complex situations can arise where different family members or professionals hold competing views, which can lead to the child's voice not being heard. There is no legal provision to provide advocacy services to all looked after children or care leavers, although the Chair of the Children's Hearing has a duty to ensure a child is aware of their right to access support from an advocacy service if the child is deemed to be of sufficient age and maturity. There is a vital role for high quality advocacy to empower looked after children and care leavers to fully participate in decisions which affect their lives, whether in a one off situation or on an ongoing basis. Independent advocacy ensures children have the opportunity to raise comments and complaints about their care, and can be a critical safeguard for looked after children.

According to Who Cares? Scotland, many care experienced children report that they are not aware of their rights at formal processes. This often leaves children feeling pushed out of decisions about their own lives. Although having an advocate can make this process easier, many children are not even aware of their right to have independent advocacy. Children across Scotland have very different experiences of formal processes simply due to where they live, who their workers are and who the reviewing officer in their case is. Eighteen And Under report that in their experience looked after children are not listened to, lose contact with siblings and family members and seldom get help to stay in contact with family.

### Courts and tribunals

There are legislative requirements to ensure that a child's views are accurately represented in court. For example, a Children's Hearing, pre-hearing panel or sheriff must give the child an opportunity to indicate whether the child wishes to express the child's views, give the child an opportunity to express them, and have regard to any views expressed by the child.<sup>258</sup> Similarly, when making a decision about adoption, a court or adoption agency must have regard to the child's views regarding the decision.<sup>259</sup> Furthermore, when a court or children's hearing decides on a matter with respect to a child, there is an obligation to consider the child's views.<sup>260</sup>

The Scottish Child Law Centre (SCLC) reports that the voice and the views of the child are not being heard in courts, tribunals or hearings often enough or effectively enough, resulting in a lack of access to justice for children. The SCLC advice line receives a high volume of calls where individuals are unhappy about the frequency, the methods used, the effectiveness of those methods, the time taken and the expense involved in taking the views of the child. Scottish Women's Aid Edinburgh reports that children are often not being supported or provided with adequate opportunity to have a say in decisions affecting their lives in relation to court ordered contact and domestic abuse.

Currently, the Scottish Civil Justice Council (SCJC) Family Law Committee is reviewing 'Form F9' in which children express their views in family cases involving them.<sup>261</sup> Clan Childlaw notes that children are going to road-test the new form, through groups such as Children's Parliament and Scottish Children's Reporter Administration.

## Recommendations

- Scottish Government should ensure that children are not only heard but also listened to and their views given due weight by all professionals working with children.
- Following the revision of Form F9, further methods of ensuring that children's views are heard in courts, tribunals and hearings should be explored.

## Voting age

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### UNCRC Concluding Observation

The Committee encourages the State party and devolved administrations to conduct consultations with children on the voting age. Should the voting age be lowered, the Committee recommends that the State party ensure that it is supported by active citizenship and human rights education in order to ensure early awareness of children that rights are to be exercised as part of citizenship, with autonomy and responsibility, and that the measure does not lend itself to undue influence.<sup>262</sup>

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The 2014 Scottish independence referendum was the first time that 16 and 17 year olds were able to vote in the UK. In 2015 the voting franchise was extended to 16 and 17-year-olds in Scottish elections,<sup>263</sup> which was an essential step to ensuring young people's voices play a part in public life. However, 16 and 17 year olds in Scotland cannot participate in Westminster or European elections. The UK Government has actively resisted moves to lower the voting age. Whilst the House of Lords voted to lower the age of voting in the EU referendum to 16 years old, this was blocked by the House of Commons.<sup>264</sup> This is despite the fact that the EU referendum was widely recognised as one of the most important decisions to be made by the UK in recent times and will have far-reaching implications for children and young people. Over a million children and young people across Scotland will have to live with the consequences of the referendum, having had no influence on its outcome.

It is clear that the overall vote for the UK to leave the EU went against the views of the majority of children and young people. Throughout the UK, it has been estimated that 73% of voters aged 18-24 voted to remain in the EU.<sup>265</sup> In Scotland, only 11% of the 72,744 responses from young people aged 12-25 to the Scottish Youth Parliament's recent Lead the Way Manifesto wanted to leave the EU.<sup>266</sup>

### Recommendation

- Scottish Government should further harness and encourage the political engagement of children. This should include encouraging democratic engagement in schools and other community learning settings, and ensuring the involvement of more vulnerable and isolated groups of children.



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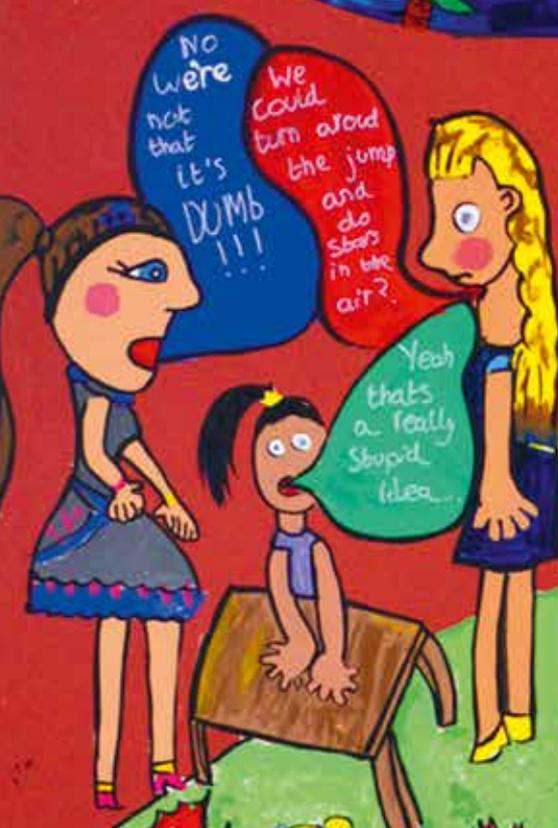
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Yeah that's  
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work so I NEVER  
get chosen to  
do good stuff

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SOMEBODY  
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NOT  
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TO PAY  
THE HEATING  
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VERY  
POOR



We belong  
nowhere

Chapter

# 3

# Civil rights and freedoms

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(Articles 7, 8 and 13-17)

Civil rights and freedoms enshrine children's rights to freedom of association and to express themselves. They also include the right to have their privacy protected.

**Article 7:** birth registration, a name and nationality, and care.

**Article 8:** preservation of identity.

**Article 13:** freedom of expression.

**Article 14:** freedom of thought, conscience and religion.

**Article 15:** freedom of association.

**Article 16:** right to privacy.

**Article 17:** access information and mass media.

## Case study:

### *The use of mosquito devices on children*

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***Mosquito devices send a message to young people that they aren't welcome in their own communities. This abuse of our human rights from childhood to early adulthood doesn't make shops and public spaces safer, it's divisive and makes young people feel alienated.***

*Member of the Scottish Youth Parliament*

The mosquito device has been branded as a 'successful' deterrent for anti-social behaviour. Not only does this paint all young people as troublemakers, the use of the device stops them from being able to enjoy community spaces in the way that older people are entitled to. The device, which tends to be located in community spaces like shopping centres, reduces young people to the category of 'nuisance', disregarding their presence in the community as anything other than anti-social. As a result, young people are being unfairly targeted as they go about their daily business:

***It's really not fun when you're trying to shop or are taken shopping with your parents and you have no choice but to just try and ignore it.***

***Where the device is active in my community is next to one of the biggest shopping centres. Several young people work in this area and so their working environment is also affected.***

The device also negatively affects health, with young people reporting that it can trigger headaches and make them feel sick. 64.5% of young people recently surveyed by SYP said that they were worried about the impact the device had on their health.

***Sometimes the mosquito device outside a shopping centre I go to triggers my migraines and is totally unnecessary.***

On top of this, young people's sense of wellbeing and inclusion is impacted. 71% of young people surveyed said they felt like the device made them feel like they aren't welcome in their own community, while 77% said that they felt discriminated against because of their age.

Mosquito devices are marketed as helping to make communities 'safer'. In reality, they sow division by discriminating against, and negatively affecting, young members of the very community they claim to protect.

Erin McAuley, MSYP for Cunningham South, is one of many young people to experience the mosquito device in her town. Erin reports:

***A device was clearly in place and this was confirmed when I spoke to those who fitted it. It was being used as an anti-social behaviour device due to a small minority of young people. This was both frustrating and annoying. In an attempt to overturn this, I engaged with young people across my town, and gained the support of local youth workers and my council cabinet. These efforts ultimately failed and I was told the device was 'essential' and a 'cheap' option to deal with anti-social behaviour. The device is still on every night of the week between 8pm until 2am.***

***As well as the issues outlined above, using the device does not tackle the root causes of anti-social behaviour, nor is any engagement held with young people when the devices are being considered. I question deeply the rights issues regarding the use of low-level sonic weapons on children.***

The Scottish Youth Parliament along with other children's organisations will continue to campaign to stop the use of mosquito devices in Scotland.

## 3.1 Freedom of thought, conscience and religion

### Religious observance in schools

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#### UNCRC Concluding Observation

The Committee recommends that the State party repeal legal provisions for compulsory attendance at collective worship in publicly funded schools and ensure that children can independently exercise the right to withdraw from religious worship at school.<sup>267</sup>

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All state-funded schools are under a statutory duty to provide 'religious observance' and 'instruction in religion' to students,<sup>268</sup> unless the local education authority passes a resolution, which goes on to be approved by the electors in that area.<sup>269</sup> There is no statutory definition of either 'religious observance' or 'instruction in religion'. Scottish Government guidance includes the following definition of religious observance:

*...community acts which aim to promote the spiritual development of all members of the school's community and express and celebrate the shared values of the school community.*<sup>270</sup>

It is noted that observance must take into account the existence of pupils and staff who practice a non-Christian faith or who have no faith,<sup>271</sup> and that it should take place at least six times in a school year.<sup>272</sup>

A 2015 Arts & Humanities Research Council (AHRC) report criticises the use of the term 'religious observance', pointing out that it is arguably contradictory for the government guidance to demand religious observance that includes pupils of all beliefs.<sup>273</sup> This lack of coherence leaves schools without a clear understanding of how to implement the religious observance required by the legislation.<sup>274</sup>

While the right to withdraw children from religious observance and instruction is available to parents,<sup>275</sup> no independent right of withdrawal is available to pupils.<sup>276</sup> In October 2016 it was reported that a group of non-Catholic students at a Scottish school were punished with a week's worth of detentions after refusing to attend a religious service.<sup>277</sup>

The imposition of compulsory religious activities in schools may infringe students' right to freedom of religion or belief and may result in discrimination. It may also cultivate division and isolation by separating children with minority or no religious beliefs from their classmates. This experience of segregation is potentially negative both for children who withdraw from religious observance and for those who do not.

The AHRC report argues that the right of parents to withdraw their child may not be adequate to protect against breach of these rights.<sup>278</sup> In not giving children the right to withdraw themselves from religious observance, in accordance with their age and capacity, the legislation may not adequately respect the rights of children to have their views heard and taken account of in decisions affecting them.<sup>279</sup> If a child has a view concerning withdrawal from religious observance/instruction at variance with that of the parents, the lack of an exercisable right of withdrawal by the child may mean their right to freedom of religion or belief is not respected.<sup>280</sup> This may infringe on the standards imposed by Standards in Scotland's Schools etc. Act 2000,<sup>281</sup> in that due regard is not given to the views of the child in a decision that could be seen to significantly affect that child.<sup>282</sup>

In March 2016, the Humanist Society Scotland (HSS) formally requested that Scottish Government review its policy regarding religious observance, to conform with policy in England and Wales that allows pupils aged 16 and above the right to withdraw. Scottish Government responded that it 'does not consider it necessary to update its guidance in the form of a new circular to Headteachers, at this time'.<sup>283</sup> It is clear that Scottish Government does not consider the existing regime to contravene Scottish, European or UN protections of the rights of the child.

An application for judicial review of the existing policy by HSS was made in September 2016<sup>284</sup> and has subsequently been approved.<sup>285</sup>

#### Recommendation

- Scottish Government should conduct a Child Rights and Wellbeing Impact Assessment on legislation and guidance relating to religious observance and instruction in religion to ensure its full compliance with the UNCRC and other human rights treaties. Particular attention should be given to ensuring that children's rights to have their views heard in line with UNCRC Article 12 are upheld.

## 3.2 Freedom of association and peaceful assembly

### *Mosquito devices*

#### UNCRC Concluding Observation

Prohibit the use in public spaces of acoustic devices used to disperse gatherings of young people (so-called “mosquito devices”)<sup>286</sup>

Electronic anti-loitering devices, referred to as ‘mosquito devices’, emit a high-pitched buzzing sound at frequencies that can generally only be heard by children and which is designed to be uncomfortable and unpleasant. They are indiscriminate and can be as disturbing for a baby in a pram as they are to a teenager. Devices have been deployed by home-owners, retail businesses, schools, community groups and other organisations to prevent the congregation of children. Concerns have been raised that these devices are a form of discrimination that risks alienating young people from the community.<sup>287</sup>

The long-term physical health implications of exposure to mosquito devices are not clear.<sup>288</sup> A 2001 report concluded that available studies on adult exposure to high frequency sound were inadequate to establish guidelines for safe exposure.<sup>289</sup> A report was published in Germany in 2007 which highlighted the potential risks to very young children who may not be able to move themselves from the vicinity of the noise.<sup>290</sup> It is not yet known whether devices can be heard by, or affect, babies in the womb.

The impact of the devices on children’s wellbeing are evident and well documented, with children speaking of being woken up at night by devices and teenagers describing the noise as ‘screeching’ and ‘going right through you’.<sup>291</sup> The manufacturers market the devices as being ‘UNBELIEVABLY annoying to the point where the kids CANNOT stay in the area’.<sup>292</sup> This clearly presents significant concerns for babies, younger children and children with a disability who are unable to remove themselves from the presence of a device. The Co-op stopped the use of mosquito devices back in 2008 following concerns that they might have serious effects on children with autism.<sup>293</sup>

In 2010 a petition on behalf of the Scottish Youth Parliament was submitted to the Public Petitions Committee by Andrew Deans MSYP, calling for a ban on mosquito devices. It was described by the Convener as ‘one of the most significant petitions that we have received’.<sup>294</sup> In 2012 the Committee invited Roseanna Cunningham, Minister for Community Safety and Legal Affairs, to respond to the concerns raised. The Minister stated her belief that there was insufficient evidence of the devices being a widespread problem, and as such it would likely be considered disproportionate for a ban to be put in place.<sup>295</sup> Following from the Minister’s response, some Committee members were sceptical of whether the devices were being used at all, and successfully closed the petition on 30 April 2013.<sup>296</sup>

According to Freedom of Information requests made by Together:

- 32 local Scottish councils revealed that (see table 2):
  - Two councils had records of mosquito devices installed in their areas;
  - 21 councils confirmed that they had no record of mosquito devices currently installed in their areas;
  - Eight councils did not hold information on the use of mosquito devices in their areas;
  - One council did not reply.
- Police Scotland revealed that it does not use mosquito devices, and has not received any complaints regarding mosquito or similar devices.<sup>297</sup>
- 18 of out 19 Scottish sports and leisure centres<sup>298</sup> confirmed that they do not use devices on their premises. One centre failed to respond.<sup>299</sup>
- Five Scottish transport partnerships confirmed that they do not use devices on their premises<sup>300</sup> while two replied that the requested information is not held.<sup>301</sup>
- Seven Scottish arts authorities<sup>302</sup> confirmed that they do not use mosquito devices.

A Scottish Youth Parliament survey (of 31 young people) indicates that children are encountering mosquito devices in areas where public bodies believe no devices are installed.<sup>303</sup> Respondents from Aberdeenshire, Clackmannanshire, Dundee, East Renfrewshire, North Ayrshire, Renfrewshire, West Dunbartonshire and South Ayrshire reported either encountering the devices or awareness of their use, despite councils and other public bodies in that area reporting that no devices are installed. Similarly, respondents reported encounters or awareness of the use of mosquito devices in six of the eight council areas that did not hold information on the use of devices.

Whilst the majority of public bodies do not support the use of mosquito devices, their use is still widespread and of concern to children (see table 2). The lack of regulation means that the use of devices is not normally known to local councils. The example from Dumfries shows that even when devices are brought to the attention of councils, they have little power to stop their use. It is clear that the longstanding call from children’s organisations<sup>304</sup> to ban their use has to be taken forward to prevent continued violations of children’s rights.

## Recommendation

- Scottish Government should ban the use of mosquito devices immediately.<sup>306</sup>

Table 2. Council responses regarding the use of mosquito devices (2016)

Councils	Knowledge of devices installed	No known devices installed	Info not held	Response by Councils	Response of young people, SYP survey
Aberdeen City Council			●	Holds no records on mosquito or similar devices that are currently in use. Complaints would not be specifically categorised so it is difficult to search records.	6 children have reported encountering devices 'many times' within in the last couple of months. Most respondents cited shops as the main location, alongside public transport, in and around houses and within community facilities.
Aberdeenshire Council		●		In 2008 two mosquito devices were installed on the roofs of two schools for a maximum of two months. This was a joint venture between Aberdeenshire Council and Grampian Police. The Chief Constable decided that his force would not support the use of the device and hence Aberdeenshire Council decided to withdraw them for use. No complaints have been recorded.	One 17-year-old has encountered a device 'many times' in the last month. This has been in parks or public playgrounds.
Angus Council		●			
Argyll and Bute Council			●	Information is not held by the council, but officers have no knowledge of devices being used.	
City of Edinburgh Council			●	Mosquito devices were banned in 2008 therefore the Council holds no data.	3 children aged 16-21 have reported encountering devices 'many times'. One in shops within the last 2 months, one in shops and community facilities within the last year, and one in shops over a year ago.
Clackmannanshire Council		●			One 17-year-old has encountered devices many times in last year in community facilities and shops. Another 17-year-old has never encountered a device but is aware of their presence in public transport related locations.
Comhairle nan Eilean Siar		●			
Dumfries and Galloway Council			●	One complaint was received in 2015 from an adult around noise pollution and health concerns resulting from a device in non-council premises in the town centre. No formal action was taken as the noise did not constitute a statutory nuisance.	One 16-year old encountered a device in a shopping centre in the last month.
Dundee City Council		●			One 20-year old said they have never encountered a device but was aware of one located around shops.

East Ayrshire Council		●			
East Dunbartonshire Council	●			No devices are in use by the Council. One device is in use by a residential user. A complaint made in 2016 is currently under investigation in relation to health concerns caused by high frequency noise to children living nearby.	
East Lothian Council		●		No devices are in use by the Council. ELC purchased a mosquito device in 2008 which was never deployed after representations made by a member of the Scottish Youth Parliament.	
East Renfrewshire Council		●		No records of devices being used in the area.	One 17-year-old has never encountered a device but is aware of one at a school.
Falkirk Council		●		No devices are in use by the Council. Therefore, the Council does not hold information on them and has received no complaints.	
Fife Council			●	Advised that information would be held by Police Scotland.	One 17-year-old encountered a device once in a shop over a year ago.
Glasgow City Council			●	No devices are in use by the Council. Therefore, the Council does not hold information, nor has policies, procedures, guidelines or any other documents on the devices.	Two 17-18-year-olds have encountered devices, one many times in the last month in various locations – school parks, community facilities, public transport stations and shops, the other once in the last year in community facilities/parks. A further 17-year-old has not encountered any devices but knows of one located in or around houses.
Highland Council			●	Council has never used these devices for any public transport location. FOI officer not aware of other parts of the Council using them. No complaints received relating to devices.	
Inverclyde Council		●			
Midlothian Council				No reply	One 17-year-old said they had encountered a device once in the last two months and is aware of the presence of such devices in or around houses, shops, community facilities and cafes.
Moray Council		●		Not aware of any element of Council having access to devices; no devices are used within the public transport sphere.	

North Ayrshire Council		●			Four 16-18-year-olds have encountered devices many times. An MSYP unsuccessfully fought to remove a device from a shopping mall, including consulting with and challenging local councillors. The other 3 respondents said they encountered a device in shops, houses or community facilities within the last couple of months.
North Lanarkshire Council		●		Council has not used devices in period from 1 January 2008 to present.	
Orkney Islands Council		●			
Perth and Kinross Council	●			Approximately 5 devices have been installed on school premises. The council does not hold information relating to the year in which they were installed. There are currently no Council policies relating to the use of devices of this nature. All installations have been as a direct response to ongoing vandalism issues or community engagement. Council is unaware of any complaints in relation to devices of this nature.	One 17-year-old has never encountered a device but is aware of their presence in shops and has heard friends talking about encounters.
Renfrewshire Council		●			One 21-year-old has encountered devices many times in the last month, at locations including community facilities, public transport, shops and in or around houses.
Scottish Borders Council			●		One 17-year-old has never encountered a device but is aware of their presence in shops.
Shetland Islands Council		●			
South Ayrshire Council		●		Information available from April 2013 shows no devices in use, with no Council policies, procedures etc. in place and no complaints received.	One 17-year old said they have never encountered a Mosquito Device but is aware of them being located at community facilities.
South Lanarkshire Council		●			
Stirling Council		●		No devices are currently in use. One device was installed by Housing Services in July 2006 and removed in December 2008. <sup>305</sup>	
West Dunbartonshire Council		●			Two 17-18-year-olds were not sure if they had encountered a device but are aware of their presence either in shops or community facilities.
West Lothian Council		●			

## Anti-social behaviour and crowd dispersal

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### UNCRC Concluding Observation

Collect data on measures used against children, including children aged 10-11 years, to deal with antisocial behaviours and for the dispersal of crowds, and monitor the criteria and proportionality of their use.<sup>307</sup>

### Other treaty bodies and UPR recommendations

Similar recommendations were made by the Human Rights Committee in their 2008 Concluding Observations (paragraph 20).<sup>308</sup>

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If an individual engages in antisocial behaviour, they can be issued with an antisocial behaviour order (ASBO) prohibiting that behaviour, either for a specific time-period or indefinitely.<sup>309</sup> An ASBO is a civil court order rather than a criminal conviction,<sup>310</sup> although breaching an ASBO can result in a criminal conviction.<sup>311</sup> Children see punitive tools such as ASBOs as an ineffective deterrent,<sup>312</sup> and instead would like to be able to talk and interact with police in non-punitive ways.<sup>313</sup>

ASBOs can be issued to anyone over the age of 12; if the person is aged between 12 and 15, the local council must consult the Principal Reporter to the Children's Hearing System in order to arrange an advisory children's hearing.<sup>314</sup> Scottish Government is clear that ASBOs are only to be used on children as a measure of last resort.<sup>315</sup> Practice guidance from the Chartered Institute of Housing notes that courts are very unlikely to place an ASBO on children under the age of 16.<sup>316</sup>

Local authorities must keep a record of each ASBO issued.<sup>317</sup> Each record must specify the individual subject to the order, the prohibitions imposed and the duration of the order.<sup>318</sup> Statistics are no longer collated centrally.<sup>319</sup> This presents difficulties in assessing the extent to which Scottish Government's 'last resort' policy is being implemented.

Similar difficulties are presented in monitoring the use of dispersal powers on children. A constable has the power to disperse a group of two or more people in a public place if they are causing or are likely to cause alarm or distress to members of the public.<sup>320</sup> Evidence from a Scottish Government review in 2007 shows that these powers were used in Scotland far less frequently than equivalent powers introduced in England and Wales.<sup>321</sup> However, there is little data beyond this date to assess whether or not this trend has continued.

It is clear that there is a need for improved data collection in line with the Committee's recommendation to ensure that children's right to freedom of association and peaceful assembly are being upheld. The preceding section on the use of mosquito devices indicates that records on their use are generally not maintained. Records on the use of ASBOs and dispersal powers on children are inadequate to enable effective scrutiny.

### Recommendation

- Scottish Government should publish annual statistics on the number of ASBO applications made, to ensure that their 'last resort' policy is being upheld in practice.<sup>322</sup>

## 3.3 Right to privacy

### *Stop and search*

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#### **UNCRC Concluding Observation**

Prohibit the use of non-statutory stop-and-search checks against children;

Ensure that the statutory use of the stop-and-search checks is proportionate, taking into consideration the age and maturity of the child, and non-discriminatory;

Regularly collect, analyse and publish data relating to the use of stop-and-search checks on children, disaggregated by age, sex, disability, geographic location, ethnic origin and socioeconomic background.<sup>323</sup>

#### **Other treaty bodies and UPR recommendations**

Similar recommendations were made by the Human Rights Committee in its 2015 Concluding Observations (paragraph 11),<sup>324</sup> by the ICERD Committee in its 2016 Concluding Observations (paragraph 27)<sup>325</sup> and by Brazil, Pakistan and Austria in the United Kingdom's 2012 Universal Periodic Review (paragraphs 110.55-57).<sup>326</sup>

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#### **Data on stop and search**

Police Scotland's 'Stop and Search Improvement Plan' came into force June 2015 and involved the roll out of a new national database.<sup>327</sup> The new enhanced database includes additional validations which are designed to improve the quality of the data. New data is therefore only available since June 2015 and cannot be compared with historic data. Although the new database provides most of the information that the UN Committee requested be collected, analysed and published, it does not include disability, and no specific analysis is published on the use of the practice according to socioeconomic area.

The vast majority of stop and search powers are based on whether there is a reasonable suspicion that a person has committed an offence or is carrying a prohibited article.<sup>328</sup> A 2014 report notes that proactive stop and search (stop and search aimed at deterring prospective offenders through high volume search activity) tends to impact unequally on younger age groups, and disproportionate to the probability of offending.<sup>329</sup> The same report notes that young people are significantly more likely to be searched on a non-statutory basis than older age groups.<sup>330</sup>

From June 2015 to June 2016, 12,808 stop and searches were performed on under-18s, including 23 refusals. 1,739 were carried out on females, and 11,069 on males.<sup>331</sup> Of the non-statutory (consensual) stop and searches, only 9% were positive, meaning that an item is recovered where possession implies criminality on the part of the individual being searched or any other, or potentially compromises the safety of that individual or any other. Of the statutory stop and searches, 19% were positive. There has been an overall trend in a reduction in the use of all forms of stop and search, particularly consensual (see table 3). Children are far more likely to be subject to all forms of stop and search when they reach the age of 14 and over (see table 4).

In addition to stop and search powers, police also have the power to remove items from an individual in order to safeguard the health and well-being of that individual or another person, without performing a search. This is known as a 'seizure'. 4,235 seizures were performed on under-18s over the same time period. 1,185 seizures were performed on females and 3,050 were performed on males.

In England and Wales, a black man is five times more likely to be stopped and searched by police than a white man.<sup>332</sup> A 2014 report by the Scottish Police Authority states that there is no indication of disproportionate searching of individuals from minority ethnic groups in Scotland, as 2.6% of searches were conducted on individuals from minority ethnic groups, who make up 4% of the general population.<sup>333</sup> However, there were widespread concerns around likely inaccuracies in stop and search data recorded at this time,<sup>334</sup> and, as a result, Police Scotland revised their approach to all forms of data collection associated with stop and search from June 2015, including the ethnicity data.<sup>335</sup> There is a need to continue monitoring the use of stop and search to ensure it is not used disproportionately against specific groups in the community.

Table 3: Use of stop and search and seizures on under-18s by month (2015-16)<sup>336</sup>

	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16	Feb-16	Mar-16	Apr-16	May-16	Jun-16	Total
Non-statutory	818	526	548	216	322	185	84	65	62	90	104	87	36	<b>3,143</b>
Statutory	1,065	865	805	787	940	903	562	635	659	651	671	599	523	<b>9,665</b>
Seizures	656	562	501	418	428	241	169	158	185	226	259	238	194	<b>4,235</b>
<b>Total</b>	<b>2,539</b>	<b>1,953</b>	<b>1,854</b>	<b>1,421</b>	<b>1,690</b>	<b>1,329</b>	<b>815</b>	<b>858</b>	<b>906</b>	<b>967</b>	<b>1,034</b>	<b>924</b>	<b>753</b>	<b>17,043</b>

Table 4: Use of stop and search and seizures by age (June 2015- April 2016)<sup>337</sup>

Age	Non-statutory	Statutory	Seizures	Total
9			1	1
10		5		5
11		9	2	11
12	34	109	29	172
13	188	430	144	762
14	507	1,169	520	2,196
15	761	1,991	1,007	3,759
16	894	2,948	1,376	5,218
17	759	3,004	1,156	4,919
<b>Total</b>	<b>3,143</b>	<b>9,665</b>	<b>4,235</b>	<b>17,043</b>

### Non-statutory stop and search

A non-statutory (consensual) stop and search is one in which a police officer asks for verbal consent to perform a search. This kind of search might be carried out when a police officer does not consider there to be sufficient reason to justify a statutory search. Non-statutory stop and searches are unique to Scotland within the UK.<sup>338</sup>

A 2016 report based on the *Understanding and Preventing Youth Crime* survey notes that while the number of recorded stop and searches and seizures peaked at around 70,000 in 2014, it has fallen significantly over the last two years.<sup>339</sup> The report's findings, which cover children's experiences with stop and search in Glasgow and Edinburgh, support the UN Committee's conclusion that non-statutory searches should be abolished.<sup>340</sup>

Concerns about the use of non-statutory stop and search have included:

- Officers don't have to advise people that they have the right to refuse the search;
- Officers don't have to advise people on the reasons for the search;
- People's capacity for consent or maturity is not taken into account;
- It is doubtful that a request to be searched by uniformed police officers will be understood as voluntary.<sup>341</sup>

These concerns about the use of non-statutory stop and search are amplified in relation to police interaction with children, who may not understand their rights or be able to give informed consent. This is especially relevant given the evidence that searches are more likely to fall upon children.<sup>342</sup> Particular concerns have been raised around the capacity of children with learning disabilities to be able to understand and assert their rights.<sup>343</sup>

In June 2014, Police Scotland announced an immediate end to the practice of non-statutory stop searches on children under the age of 12,<sup>344</sup> although there is evidence of the practice continuing beyond this date.<sup>345</sup> In March 2015 the Cabinet Secretary for Justice, Michael Matheson MSP asked John Scott QC to chair an independent Advisory Group on police use of Stop and Search.<sup>346</sup> In August 2015, the Advisory Group recommended that a statutory Code of Practice should be introduced, and that the practice of non-statutory stop and search be ended as soon as it comes into effect.<sup>347</sup> In response, Scottish Government introduced provisions to the Criminal Justice (Scotland) Act 2016 that will make it unlawful for police to carry out a non-statutory stop and search<sup>348</sup> and introduce a Code of Practice for Statutory Stop and Search.<sup>349</sup> Scottish Ministers must prepare a draft Code of Practice before 14 January 2017. Non-statutory stop and search will become unlawful on the same day as the Code of Practice comes into effect.<sup>350</sup>

The Act will also impose a duty on police to treat the need to safeguard and promote the wellbeing of a child as a primary consideration when deciding whether to search that child.<sup>351</sup> In the meantime, Police Scotland has noted that there may still be occasions in which non-statutory stop and search is used.<sup>352</sup>

## Statutory stop and search

The previously mentioned 2016 report notes that 'in practice, the widespread and frequent use of stop and search appears to have cast an excessively wide net over children in Glasgow and Edinburgh, leading to high levels of unjustified and intrusive police contact.'<sup>353</sup> Excessive and/or unfair police contact can result in children being unnecessarily drawn into the criminal justice system, damage support for and confidence in the police, undermine police legitimacy and reduce compliance with the law.<sup>354</sup> The report welcomes the significant decrease in the overall number of stop and searches performed over the last two years, but notes that the quality of interaction between children and the police remains problematic.<sup>355</sup>

The Criminal Justice (Scotland) Act 2016 establishes a statutory Code of Practice about searches of individuals who are not in police custody.<sup>356</sup> The Code will set out the circumstances in which searches may be carried out, the procedure to be followed and the records to be kept. In spring 2016, Scottish Government consulted on a draft Code of Practice.<sup>357</sup>

## Stop and search to check for alcohol

The Advisory Group also highlighted the fact that Police Scotland do not currently have a specific legal power to search children for alcohol. Scottish Government subsequently consulted on the desirability of a proposed new power to stop and search children for alcohol.<sup>358</sup> Responses to the consultation showed that children's organisations were largely against the introduction of the proposed new power.<sup>359</sup>

Police already have the power to require persons under the age of 18 to surrender alcohol if there are reasonable grounds for doing so, known as 'seizures'.<sup>360</sup> There are no additional powers to stop and search children for alcohol elsewhere in the UK<sup>361</sup>, and no evidence to suggest that there is particular need for additional powers in Scotland. Most underage alcohol detections currently result from seizures rather than stop and search,<sup>362</sup> suggesting that sufficient police powers are already in place. In the vast majority of cases, it is clear that seizure powers allow the police to remove and dispose of alcohol in the possession of children, and to keep them safe.<sup>363</sup> Whilst children's organisations have recognised the concern that police officers do not wish to be pushed towards a new practice of arresting children suspected of possessing alcohol and criminalising them unnecessarily, there is no evidence to suggest that this will be necessary. There is no evidence of any child or young person refusing to surrender alcohol to an officer under seizure powers, or of an officer needing to consider the arrest of a child or young person for refusing to surrender alcohol.<sup>364</sup> Where consensual stop and search has been employed as a means of attempting to recover alcohol from children, it has been unsuccessful in 90% of cases.<sup>365</sup> This 90% failure rate suggests that this initiative, when weighed with both the evidence and a cost-benefit analysis, is not a tactic that should be pursued.

## Children's views on stop and search

The *Understanding and Preventing Youth Crime Survey* shows that there are negative aspects to interaction between children and the police in relation to stop and searches. Children who had been stopped and searched tended to be equivocal or negative about their experiences, with 34% saying that officers were 'not at all fair' and 14% saying officers were 'very fair'.<sup>366</sup> Half of respondents who were searched said that officers had not explained the reason.<sup>367</sup>

Looked after children in care describe being regularly asked to comply with a police stop and search. This frequent, and almost always public, engagement with the police is more than a simple inconvenience. It is distressing, and has the potential to be harmful to the young person's wellbeing, sense of self and personal development. It can be a constant reminder that they are not perceived by some to be the same as their contemporaries and that some adults see them as stereotypes rather than individuals.<sup>368</sup> While police officers may not intend to target care experienced young people, or perceive that they are doing so, it is important to recognise that this is a feeling conveyed by many looked after young people and care leavers.

ENABLE Scotland has drawn from the experience of a young man with a mild learning disability who had been stopped and searched three times in two years. This had a traumatic effect on the young man, whose anxiety when out in public was exacerbated by these experiences. He did not know whether the searches were consensual, and had little understanding of why he was searched or what his rights were. Since raising these incidents the young man with the support of ENABLE Scotland has met with a number of senior Police Scotland staff in order to tell his story and find out what lessons can be learned from it.

In July 2016, the Scottish Youth Parliament (SYP) held discussion days on the age of minimum criminal responsibility and police stop and search powers with 36 young people, 17 of whom were detained in Polmont Young Offenders Institution. The majority of participants on these discussion days felt that stop and search practices damaged relationships between young people and police, describing the practice as 'degrading', 'humiliating', 'embarrassing', and 'scary'. These echoed the views of younger children involved in a Children's Parliament consultation, who used words such as 'anxious', 'embarrassed', 'bad' and 'worried' to describe how they would feel if they were stopped and searched by the police.<sup>369</sup> Participants at the SYP event felt that stop and search enforced negative stereotypes on both sides. There was also a general belief that police do not respect young people's rights during stop and search, and that young people are not made aware of their rights during stop and search:

***At the moment with stop and search it's borderline harassment. I was in Paisley town centre with my mum one afternoon and was stopped and searched 6 times.***

***Young people don't know their rights.***

***The police are racist – they have searched me loads of times before just because I'm black, and they never search my white pals that are doing the same as me.***

***I've never been asked if I can be searched – they always just do it.***

Participants felt that the draft Code of Practice for stop and search should include a specific section on children. Suggestions for what this section should look like included:

- Police use young person-friendly language and not legal jargon;
- Police should ask young people if they have any questions about being stopped and searched;
- Police should make sure young people know their rights, using accessible, age-appropriate language;
- Young people should be made aware of how they can make a complaint.

Again, this echoes findings from the Children's Parliament that children thought that police powers must be exercised in a way that felt respectful and non-threatening, and that any form of stop and search must be done in a way that does not shame or stigmatise children.<sup>370</sup> In an event hosted by Children in Scotland, young people reported that any action taken by the police had to be proportionate, and that young people have to be made aware of their rights.<sup>371</sup> Many stated that young people are unaware of what Stop and Search means for them, or that they have the right to refuse to be searched.

In relation to stop and searches to check for alcohol, young people consulted through the SYP discussion days gave mixed responses as to whether a power would help protect young people. Some felt it could act as a deterrent for young people to drink alcohol and might reduce alcohol-related incidents. However, the majority felt that it would create tension between young people and the police and there would be a danger of the power being abused. Children involved in the Children's Parliament consultation felt that the police should be able to stop and search children for alcohol if it was coming from a place of concern and looking after their wellbeing. They were clear that the police should exercise these powers in a way that felt respectful and non-threatening. They recognised that children might feel very intimidated or scared by the police or might have had negative experiences with the police in the past.<sup>372</sup>

Children from both the Children's Parliament and Children in Scotland event were clear that they wanted to have a positive relationship with the police, and that the police place an emphasis on building links with the wider community, and not just target 'troubled' children.

### Children with additional support needs

A number of specific issues around Stop and Search have been raised in relation to children with additional support needs, particularly those with a learning disability. Police Scotland's Standard Operating Procedure (SOP)<sup>373</sup> lists some traits that a person may exhibit that might indicate reasonable grounds for suspicion for a statutory stop and search. Some of these same traits can often be seen in people with a learning disability or other additional support needs (e.g. autistic spectrum disorder) for reasons entirely unconnected to criminal or dangerous activities. For example, children with a learning disability may find being in a public place difficult and become anxious or agitated easily. It is important that police officers have at least a basic understanding of how learning disability might affect behaviour and that this is reflected in the Code of Practice.

Scottish Government is yet to respond to the consultation conducted on the draft Code of Practice<sup>374</sup> or Police Powers to Stop and Search Children for Alcohol.<sup>375</sup> In order to address the many issues raised by children's organisations and children themselves, it is clear that the draft Code of Practice should be firmly grounded in a human rights approach. This would need to include specific reference to the relevant articles in the European Convention on Human Rights (ECHR) and the UNCRC as well as clear indications of what these articles mean in practice or police officers. To achieve this, a full Child Rights and Wellbeing Impact Assessment should be conducted on any proposals developed from the consultations.

### Recommendations

- Scottish Government should conduct a full Child Rights and Wellbeing Impact Assessment on any proposal to introduce specific powers for the police to search children for alcohol.
- Recommendations from the Advisory Group on Stop and Search should be taken forward, including a regular review of the Code of Practice (recommendation 3) and the submission of regular reports from Police Scotland to the Scottish Police Authority (SPA) to facilitate monitoring, evaluation and public scrutiny of the practice (recommendation 5).

### Strip-searches of children

No specific Concluding Observations were made regarding the strip-searching of children, although it has been highlighted by some Together members as an area of concern. There is a lack of data on the number of strip searches of children carried out by Police Scotland. Information on the number of children subject to strip search by a police officer was sought by Together through a Freedom of Information request (FOI). When this request was denied,<sup>376</sup> an internal review of the decision was sought. This review concluded that the lack of a Scotland-wide system for logging custodies would mean that extraction of the requested data would exceed the cost limits provided by the Freedom of Information (Scotland) Act 2002.<sup>377</sup> Police Scotland noted that reasons for difficulty in retrieval of data include the use of different records systems for each division, each using different data sets, some of which do not have the capacity to extract information solely related to custodies who have been strip searched.

### Recommendations

- Police Scotland should provide regular reports to the Scottish Police Authority about the use of strip-searching on children for the purpose of evaluating and monitoring use of the practice through public scrutiny. In line with the recommendation relating to stop and search, this data should be released publicly on a regular basis by the SPA and by Police Scotland so as to ensure openness and transparency and to facilitate for wider research and monitoring purposes.
- As a matter of principle, children should not be subject to strip-searching unless absolutely necessary, and then, it should be conducted in line with recognised international best practice.

## Right to privacy and the named person scheme

No specific Concluding Observations were made by the UN Committee in relation to information-sharing. It has consistently been highlighted by Together members and children and young people as an area of concern. In July 2016, the Supreme Court found that the information sharing provisions in relation to the Named Person scheme in the Children and Young People (Scotland) Act 2014<sup>378</sup> are outwith the legislative competence of the Scottish Parliament.<sup>379</sup> Although the Court was clear that the policy aim behind the 2014 Act is 'unquestionably legitimate and benign', it ruled that information-sharing provisions included in the Named Person scheme were not in accordance with the law and may result in a disproportionate interference with the rights of children, young people and their parents under Article 8 of the ECHR. The information-sharing provisions were due to commence on 31st August 2016 but, as a result of the judgment, have been delayed by the Scottish Government.

The Court drew from an intervention submitted by the Community Law Advice Network (Clan Childlaw) outlining concerns about children's right to privacy. This focused on the named person's statutory duties to share information about a child with and by the named person in order to promote, support or safeguard the wellbeing of the child or young person.<sup>380</sup> Clan Childlaw argued that the concept of wellbeing is inappropriate and unlawful as a threshold for sharing confidential information, in that such a threshold is incompatible with the rights protected by Article 8 of the ECHR. Clan Childlaw gave examples of situations where a duty to share information may arise under the 2014 Act where it would not have previously, and where a lack of clarity as to the threshold for disclosure is likely to cause difficulty to professionals with a duty to comply with the 2014 Act. These include:

- A child who visits his guidance teacher and says that he is gay and is considering coming out. He tells the teacher that although he is not directly being bullied because of his sexuality, and does not think that his peers know he is gay, he finds the frequent use of homophobic language by them demeaning and depressing. They use the word 'gay' generally to denote things that they regard as undesirable. This is not information that would indicate that there was a risk of significant harm to the child, but it is relevant to his wellbeing, particularly to the 'achieving', and 'included' indicators. The child does not wish his sexuality disclosed to anyone else at this stage.
- A 17-year-old who moves to a new school, and has previously suffered from anxiety around the times of examinations. At a recent teenage party, she took alcohol to excess and missed sitting one of her exams at her old school as a result. She does not wish any of this information to be passed on to her new school.
- A child referred by his guidance teacher to a counsellor working for the health board following a bereavement. The counsellor identifies that the child is suffering from anxiety and that it is linked with his feeling isolated and friendless at school. The child does not want his school to know this.<sup>381</sup>

The Supreme Court judgment concluded that the information-sharing provisions included in the Named Person scheme violate the privacy protections of Article 8 of the ECHR and are therefore not within the legislative competence of the Scottish Parliament. It detailed the ways in which the apparently 'relaxed' approach to information sharing within the Named Person scheme could result in serious difficulty in understanding what an information holder's duties of disclosure might be, and that it might also result in the disproportionate sharing of confidential information. The judgment considered the importance of the right to privacy of children and young people, specifically referring to Article 16 of the UNCRC. The judgment concluded that the Named Person scheme's lack of safeguards means that it is possible:

*...that information, including confidential information concerning a child or young person's state of health (for example, as to contraception, pregnancy or sexually transmitted disease), could be disclosed [...] to a wide range of public authorities without either the child or young person or her parents being aware of the interference with their article 8 rights, and in circumstances in which there was no objectively compelling reason for the failure to ascertain and have regard to their views.*<sup>382</sup>

The Court noted that without stronger safeguards, the interference with confidentiality is often likely to be disproportionate. These safeguards must include requirements that children, young people and their parents provide informed consent to the sharing of confidential information, and are informed of the possibility that information will be shared.

Scottish Government has been clear in its continued commitment to the Named Person scheme. On the 8<sup>th</sup> September 2016, John Swinney announced the beginning of a three-month engagement with stakeholders, with a view to commencing Named Person in August 2017.<sup>383</sup>

## Recommendations

- In the event that the information sharing provisions of the Children and Young People (Scotland) Act 2014 are to proceed, amendments should include safeguards that ensure children, young people and their parents provide informed consent to the sharing of confidential information and are informed if – and when – information is shared.
- Scottish Government should conduct a full Child Rights and Wellbeing Impact Assessment on any proposed amendments.



oh really

oh yeah

I feel worthless

it's unfair when  
Split up and No  
Where You're

POOL OF

TEARS

OF

Abandoned families

I'm so lonely

fat

HONEST

name calling

upset

Sad

Hurt

Shame

upset

ANGRY

chubby cheeks

Rejected

Shame

upset



Shes  
Small I  
don't like  
her!

Abandoned

upset

upset

Broken families

SAM SEAL

PEOPLE

PEOPLE

Chapter

# 4

# Violence against children

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(Articles 19, 24(3), 28(2),  
34, 37(a) and 39)

This new cluster area of the UNCRC protects children from being hurt and mistreated, physically or mentally. Governments should ensure that children are properly cared for and should protect them from violence, abuse and neglect. The articles outline the right to a safe and dignified environment; to protection from all forms of sexual exploitation and abuse; to protection from cruelty; and to special help for children who have been neglected, abused or exploited in order to help their physical and psychological recovery and reintegration into society.

**Article 19:** protection from violence, abuse and neglect.

**Article 24(3):** abolishing traditional practices prejudicial to the health of children.

**Article 28(2):** school discipline.

**Article 34:** protection from all forms of sexual exploitation.

**Article 37(a):** protection from inhuman or degrading treatment.

**Article 39:** recovery from trauma and reintegration.

## Case study:

### *Honour violence against children in Scotland*

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Honour-Based Violence (HBV)<sup>384</sup> is presented by perpetrators as punishment for undermining what are believed to be the correct codes of behaviour amongst certain communities. These traditional codes of behaviour are different for men and women. Whereas men can *add* to a family or community's honour, women can only detract from it. Therefore, women bear the brunt of HBV. This gender imbalance is so pronounced and interwoven with patriarchal social structures that HBV is now viewed by the United Nations as a specific type of violence against women.<sup>385</sup>

Female genital mutilation (FGM) is one form of HBV practised by communities in Scotland. It is nearly always performed on minors and is therefore a violation of the rights of the child. The practice also violates rights to health – particularly sexual health, security and the physical integrity of the person; the right to be free from torture and cruel, inhuman or degrading treatment; and the right to life when the procedure results in death. While the Prohibition of Female Genital Mutilation (Scotland) Act 2005 allows for general child protection orders to be sought in suspected cases of FGM, unlike the rest of the UK, Scotland does not have specific FGM Protection Orders which would offer the means of protecting actual or potential victims from FGM under civil law.<sup>386</sup>

There has been a fivefold increase in the number of children born into FGM-affected communities in Scotland over the last decade.<sup>387</sup> Children at risk face significant obstacles to accessing help, including their young age, language difficulties, cultural pressures, lack of understanding about their rights, distrust of mainstream services and inadequate or uninformed responses by mainstream services.

Providing a bridge between vulnerable children and families most likely to be affected and hard to access mainstream services, Bright Choices HBV support service is working to protect children from such harmful traditional practices. Zaiha (3) and Amira (5) were referred to Bright Choices with their mother, Bahar, for emotional and practical support in October 2015. Zaiha and Amira's father abandoned their family when Zaiha was born but has recently been trying to gain legal access to them. He has made it clear that he had already made concrete plans to have his girls married and wished for them to first undergo FGM because he thought '*...it is better for men to have a pure woman*'.

In addition to providing emotional support for the family Bright Choices, liaising with the police, arranged for an alarm to be fitted in the girls' home. The service also communicated with the UK passport office and the local passport offices in the father's country of origin to ensure that the two girls are not issued new passports or taken out of the country by abduction. Lastly the service also liaised with Citizen's Advice to ensure that Zaiha and Amira's father cannot withdraw money from their child benefit. This combination of culturally-sensitive practical and emotional support has, in the case of these two girls, had very positive results:

***I have hope now and I no longer feel that I live in a fog. I can see clearly, I can breathe and I know that myself and my children have the whole life ahead of us and we can be happy. That is thanks to the Bright Choices.***

*Zaiha & Amira's mother, Edinburgh 2016*

## 4.1 Torture and other cruel or degrading treatment or punishment

### Use of harmful devices

#### UNCRC Concluding Observation

Prohibit the use on children of electrical discharge weapons, such as Tasers and any other harmful devices and systematically collect and publish age-disaggregated data on their use in order to monitor the implementation of such prohibition.<sup>388</sup>

#### Other treaty bodies and UPR recommendations

A similar recommendation was made by the Committee Against Torture in its 2013 Concluding Observations (paragraph 26).<sup>389</sup>

#### Tasers

The Taser is a single shot device designed to incapacitate a subject through use of an electrical current, which temporarily interferes with the body's neuromuscular system.<sup>390</sup> It is a tactical option available to trained officers at Police Scotland<sup>391</sup> when dealing with an incident with the potential for conflict.<sup>392</sup> The use of Taser ranges from the physical presence of a drawn device through to discharge.<sup>393</sup> Public information regarding Taser use on children and young people before April 2013 is not available.<sup>394</sup> Since the inception of Police Scotland in April 2013, all information in respect of Taser discharges only<sup>395</sup> is publicly available.<sup>396</sup>

Table 5: Taser incidents involving those aged 17 or under (since April 2013)<sup>397</sup>

Calendar year	2013	2013	2013	2013	2014	2014	2014
Division	Forth Valley	Forth Valley	Tayside	Forth Valley	Tayside	Dumfries & Galloway	Highland and Islands
Age of subject	15	16	16	17	17	17	16
Mode of operation	Fired	Red dot	Drawn	Drawn	Red dot	Red dot	Aimed
Gender / ethnicity	White male	White male	White male	White male	White male	White male	White male

From January 2015 to August 2016, there have been no recorded instances where a Taser has been used on a subject aged 17 years or under.<sup>398</sup> There is no official data published on the use of Tasers on children in England, Wales, and official data in Scotland is incomplete.<sup>399</sup>

Police Scotland's use of Tasers complies with policy and procedure laid down in national guidance within the College of Policing's Authorised Professional Practice (Armed Policing) document<sup>400</sup> and the Police Scotland Armed Policing Policy.<sup>401</sup> However, Police Scotland's Equality and Human Rights Assessment Standard Operating Procedure<sup>402</sup> does not comply with the UN Committee's recommendation, which makes it clear that Taser use on children is unacceptable.

Firearms legislation is a reserved matter, and therefore the deployment and use of firearms has been considered by Scottish Government as an operational matter for Chief Constables.<sup>403</sup> <sup>404</sup> However, a legal opinion commissioned by Amnesty International in 2011 contested this interpretation as being unsupported in law.<sup>405</sup> It stated that Scottish Ministers cannot legally absolve themselves of responsibility with regard to police deployment and use of Tasers in Scotland. It is claimed that Scottish Government's obligations under the Scotland Act 1998 and Human Rights Act 1998 to implement a legal and administrative framework governing the use of Tasers and other firearms have not been met.<sup>406</sup>

There is currently no civil society engagement by Police Scotland on Taser use. This does not follow current best practice of UK police forces of equivalent populations. For example, the Metropolitan Police has a 'Taser Reference Group' that acts as an independent advisory and consultative body.<sup>407</sup> It comprises opinion formed on issues relating to youth, mental health, religion, academia, and the general public. At the same time, the London Assembly has a Taser working group monitoring Taser use in London by the Metropolitan Police.<sup>408</sup> There is no such oversight within Scotland by Police Scotland or the Scottish Parliament.

Worldwide, Tasers are linked to hundreds of adult deaths.<sup>409</sup> Since its use in Scotland from 2010, a number of organisations including Amnesty,<sup>410</sup> the Scottish Human Rights Commission<sup>411</sup> and the Children and Young People's Commissioner for Scotland<sup>412 413</sup> have raised concerns regarding the absence of restrictions or safeguards to protect children from Tasers.<sup>414</sup>

## Recommendation

- Scottish Government should ban the use of Tasers on children. In the meantime, the regulations, guidance and transparency around the use of Tasers on children should be improved.

## Spit hoods

Spit hoods are mesh fabric restraining devices, placed over the heads of suspects.<sup>415</sup> The hoods can be a cruel and dangerous form of restraint, which restrict breathing and can cause extreme distress.<sup>416</sup> They can be used on children in police custody in England and Wales.<sup>417</sup> Official figures on how many children across the UK have been hooded are lacking, although FOI requests suggest it is used by a significant number of forces.<sup>418</sup> In June 2016, in England, it emerged that an 11-year-old with a disability was put in leg restraints with a spit hood over her head.<sup>419</sup> Spit hoods as a method of restraint by Police Scotland is permitted<sup>420 421</sup> and is used on adults.<sup>422</sup> It is not known if they are also being used on children and young people in Scotland. Organisations have called for a full consultation on the use of spit hoods throughout the UK.<sup>423</sup>

## Recommendations

- Police Scotland should regularly publish fully disaggregated national data on the use of spit hoods and other harmful devices against children.
- Scottish Government should launch a full consultation on the use of spit hoods in Scotland.

## 4.2 Restraint

### UNCRC Concluding Observation

Abolish all methods of restraint against children for disciplinary purposes in all institutional settings, both residential and non-residential, and ban the use of any technique designed to inflict pain on children.

Ensure that restraint is used against children exclusively to prevent harm to the child or others and only as a last resort.

Systematically and regularly collect and publish disaggregated data on the use of restraint and other restrictive interventions on children in order to monitor the appropriateness of discipline and behaviour management for children in all settings, including in education, custody, mental health, welfare and immigration settings.<sup>424</sup>

### Other treaty bodies and UPR recommendations

A similar recommendation was made by the Committee Against Torture in its 2013 Concluding Observations (paragraph 28).<sup>425</sup>

### Residential settings

The terms 'restraint' and 'seclusion' are not clearly defined in Scottish legislation or regulations. National 'Holding Safely' (2005) guidance<sup>426</sup> is in place for practitioners in residential child care which reflects that restraint must not be used as a form of punishment, and only as a last resort.<sup>427</sup> This guidance was updated in 2013 to provide more detailed information about the use and minimisation of physical restraint in residential care establishments, and extended to include children with a disability. It is not known to what extent this guidance is implemented. National Guidance for the External Management of Residential Child Care Establishments in Scotland published in 2013<sup>428</sup> clarifies the role of external managers in having an oversight of incidents of restraint, as well as complaints from children and their families.

The Mental Welfare Commission (2013) has produced guidance on the appropriate use of seclusion and restraint, for use primarily in residential care settings.<sup>429</sup> The guidance reinforces that seclusion as a form of restraint should never be used as a punishment,<sup>430</sup> but does not refer to children. The policy document contains general principles about the use of restraint that can apply in any setting and could provide a basis for developing national guidance specifically for schools.

Concerns remain that restraint in residential care can be used excessively, and that its use is an inappropriate reaction to challenging behaviour rather than a last resort.<sup>431</sup> UK research has thrown light on the current extent of abuse in residential and foster care.<sup>432</sup> Nineteen local authorities in Scotland returned information on allegations of abuse. In relation to residential child care, the report found that one-half of cases concerning residential staff were categorised as either physical abuse or use of excessive physical restraint and generally involved staff reacting inappropriately to challenging behaviour by children.<sup>433</sup> Little is known about the use of restraint in foster care settings in Scotland.

The Scottish Prison Service (HMYOI Polmont and HMP & YOI Cornton Vale) use 'Pain Compliance' restraint as a last resort and staff are trained to take account of age and gender.<sup>434</sup> <sup>435</sup> No concerns have been reported around the use of restraint in Young Offenders Institutions or secure care in Scotland.<sup>436</sup> This would benefit from further scrutiny.

## Non-residential settings

There is no guidance in place on the use of restraint within non-residential educational settings.<sup>437</sup> Scottish Government's 2013 guidance on supporting people with learning disabilities, *Keys to Life*,<sup>438</sup> acknowledges that 'there is still a lack of clear guidance [on restrictive interventions] or standards for use'<sup>439</sup> in relation to people with learning disabilities. The use of restraint and seclusion in schools for children with disabilities continues to be inadequately monitored.<sup>440</sup> Children with a disability are more likely to be restrained if their disability presents as 'challenging behaviour'.<sup>441</sup> Restraint can take a number of forms beyond the use of 'approved holds', such as the inappropriate use of wheelchair harnesses.<sup>442</sup>

Currently, Education Scotland has responsibility for inspecting and reporting on the quality of education across all types of provision, but does not have a specific role to ensure appropriate care and dignified treatment.<sup>443</sup> This lies within the remit of the Care Inspectorate but only in the setting of registered care providers.<sup>444</sup> This means that there is a gap in protection for some vulnerable children who attend special schools or units which are not registered care providers.

Concerns around restraint being used in non-residential schools for children with learning disabilities led to a public petition in 2015<sup>445</sup> calling for national guidance on restraint and seclusion in schools.<sup>446</sup> The Care Inspectorate stated that it could support the development of such guidance.<sup>447</sup> In response to the Public Petition, Scottish Government committed to incorporate further guidance on physical restraint and exclusion within the refreshed 'Included, Engaged and Involved Part 2: A Positive Approach to Preventing and Managing School Exclusions' (IEI2).<sup>448</sup> <sup>449</sup> The Children and Young People's Commissioner for Scotland has expressed concern that this approach does not allow for full exploration of the impact of restraint and seclusion on children's rights and may miss opportunities to highlight indicators of abuse.<sup>450</sup>

A number of Together's members have been clear that any guidance must be developed in partnership with children with complex additional support needs, their parents/carers and educational staff. It has been noted that disabled children were not included in a consultation on whether to produce stand-alone guidance for the use of restraint on disabled children in schools.<sup>451</sup>

There are concerns that Scottish Government has advised that 'local authorities should monitor, record and review any incidents involving physical restraint and seclusion using their own reporting mechanisms'.<sup>452</sup> Without consistent data and analysis across Scotland on the number and proportionality of restraints taking place on disabled children, any misuse of restraint is likely to remain hidden.<sup>453</sup> Children with a disability may have limited communication, which can make raising a complaint about restraint or its use by particular staff members very difficult. National guidance could be drafted to allow for some degree of local flexibility, as supported by the Children and Young People's Commissioner.<sup>454</sup>

## Recommendations

- Scottish Government should ensure that restraint against children is only used as a last resort and exclusively to prevent harm to the child or others. It should never be used to deliberately inflict pain. All methods of physical restraint for disciplinary purposes should be abolished.<sup>455</sup>
- All institutional settings, whether run by the government or by private or voluntary organisations, should be open and transparent about their approaches to discipline and behaviour management. Scottish Government should introduce a robust and comprehensive national recording system to provide consistency in monitoring the use of restraint across all settings.<sup>456</sup>

## 4.3 Corporal punishment

### *Equal protection*

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#### **UNCRC Concluding Observation**

Prohibit as a matter of priority all corporal punishment in the family, including through the repeal of all legal defences, such as ‘reasonable chastisement’.

Ensure that corporal punishment is explicitly prohibited in all schools and educational institutions and all other institutions and forms of alternative care.<sup>457</sup>

#### **Other treaty bodies and UPR recommendations**

Similar recommendations have been made by the Human Rights Committee in its 2015 Concluding Observations (paragraph 20),<sup>458</sup> the Committee Against Torture in its 2013 Concluding Observations (paragraph 29),<sup>459</sup> CEDAW in its 2013 Concluding Observations (paragraph 35(e)),<sup>460</sup> and by Sweden (paragraph 110.78),<sup>461</sup> Norway (paragraph 110.79)<sup>462</sup> and Finland (paragraph 110.80)<sup>463</sup> in the United Kingdom’s 2012 Universal Periodic Review.

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Despite recommendations during the last UK examination, repeated calls from children’s organisations and increasing international pressure to prohibit all forms of corporal punishment, children continue to have less protection from violence than adults in Scotland. This is becoming increasingly apparent as Scotland continues to consult on legislation relating to domestic abuse.

The legal defence of ‘justifiable assault’ remains in Scots law.<sup>464</sup> This means that the physical punishment of children can be legally permissible. Scotland is one of four countries within the European Union which has not yet committed to a ban on physical punishment.<sup>465</sup> In October 2015, Ireland became the latest country to change the law<sup>466</sup> and in 2016 the Welsh Assembly voted to establish a Committee to consider how the repeal of the defence of ‘reasonable chastisement’ could be implemented.<sup>467</sup>

A 2015 review of the international evidence on physical punishment found strong and consistent evidence from 98 international studies that physical punishment damages children’s wellbeing and carries the risk of escalation into physical abuse.<sup>468</sup> Evidence is clear that physical punishment increases aggression, antisocial behaviour, depression and anxiety in children, which may continue into their adult lives. Children’s views on being ‘smacked’ are consistently and longitudinally negative.<sup>469</sup> There is concern that the harmful physical punishment of children is both trivialised and normalised by being referred to as ‘smacking’.<sup>470</sup>

Scottish Government stated in 2015 that it ‘does not support ‘smacking’ as a way of disciplining children’ and encourages ‘all parents to avoid physical punishment of children’.<sup>471</sup> However, there has been no update on the 2013 position that Scottish Government has ‘currently no intention to change the law in this area’,<sup>472</sup> despite widespread multi-sectoral concern from education, health and social care organisations that physical punishment is a public health issue and a clear statement of support for the repeal of existing legislation by the Scottish Police Federation.<sup>473</sup>

A provision of a new criminal offence is not required but rather a simple legal reform would remove the defence of ‘justifiable assault’ in law. There is no evidence that a change to the law results in increased criminal proceedings, but rather that it facilitates widespread culture change.<sup>474</sup>

Several MSPs backed a motion lodged in June 2016<sup>475</sup> in which the Scottish Parliament stated its recognition of the damaging effects of smacking and the need for the equal protection of children in law. Although there is cross-party support for change from MSPs, there are no plans to consider ways to repeal the existing legislation in order to bring the law in line with stated Scottish Government policy in this area.

#### **Schools and alternative care**

Corporal punishment is prohibited by regulation in residential care institutions throughout the UK including through Scottish legislation.<sup>476</sup> It is prohibited in foster care arranged by local authorities or voluntary organisations but is lawful in private foster care.<sup>477</sup> Corporal punishment is prohibited in day care institutions and childminding, in all state-supported and private education, and is regarded as unlawful as a disciplinary measure in penal institutions, but there is no explicit prohibition.<sup>478</sup>

#### **Recommendation**

- Scottish Government should ensure children have the same protection as adults from violence by repealing the defence of ‘justifiable assault’ with immediate effect.<sup>479</sup>

## Positive parenting

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### UNCRC Concluding Observation

Strengthen its efforts to promote positive and non-violent forms of discipline and respect for children's equal right to human dignity and physical integrity, with a view to eliminating the general acceptance of the use of corporal punishment in child-rearing.<sup>480</sup>

### Other treaty bodies and UPR recommendations

A similar recommendation was made by the Committee Against Torture in its 2013 Concluding Observations (paragraph 29).<sup>481</sup>

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Alongside legislating to remove the defence of justifiable assault, there is a need to improve support mechanisms for children and their parents/carers, including initiatives which promote positive, non-violent parenting. This should provide effective public health measures that build on the 2012 National Parenting Strategy which includes a commitment to develop comprehensive and practical advice to parents on managing their children's behaviour.<sup>482</sup> Workshops conducted by the Children's Parliament found that having protective and supportive parents plays an important role in making children feel happy and safe.<sup>483</sup> A survey comparing where parents go for advice and support shows an increase in their ability to identify services and support in 2015 compared with 2010.<sup>484</sup>

### Recommendation

- Scottish Government should ensure that positive parenting strategies and programmes are sufficiently resourced to equip parents with alternative forms of behaviour management techniques.<sup>485</sup>

## 4.4 Violence, abuse and neglect

### Child protection

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#### UNCRC Concluding Observation

Revise the Children and Young Persons Act 1933 in order to protect all children under 18 years from child abuse and neglect.<sup>486</sup>

Child protection policy and legislation is the responsibility of the Scottish Government. The Children and Young Persons (Scotland) Act 1937 provides children under the age of 16 with protection from neglect and ill-treatment in the family and in a health and social care setting.<sup>487</sup> Following a consultation in 2015 on proposals to create an offence of wilful neglect or ill-treatment in relation to services for children under the age of 18 years-old,<sup>488</sup> a review of this provision is currently underway.<sup>489</sup>

Local authority policy and procedure are the responsibility of Child Protection Committees (CPCs), which coordinate the various agencies involved in child protection.<sup>490</sup> Scottish Government's National Guidance for Child Protection in Scotland, updated in 2014, is the primary reference for those working in child protection.<sup>491</sup>

Several indicators of child abuse have decreased in Scotland in recent years. Child homicides and child deaths by assault and undetermined intent have decreased since the 1980s, and recorded offences of cruelty and neglect of children have decreased since the 2000s.<sup>492</sup> Other indicators of child abuse have increased, including recorded sexual assaults against children,<sup>493</sup> the number of children on the child protection register, and the number of looked after children.<sup>494 495</sup>

Over 2,700 children in Scotland in 2015 were identified as needing protection from abuse. Physical, emotional and neglectful forms of abuse continue to disproportionately affect the most vulnerable children including those with a disability,<sup>496</sup> those living in poverty<sup>497</sup> and looked after children.<sup>498</sup> In the UK and specifically Scotland, neglect has consistently been found to be a background factor in children and families whose circumstances formed the subject of Significant Case Reviews.<sup>499</sup>

It can be particularly difficult to evidence emotional abuse and neglect. The prevalence of emotional abuse is inconsistent and estimates vary, although evidence suggests that this form of maltreatment is more prevalent than anticipated.<sup>500</sup> In the last five years, child protection registrations of emotional abuse have substantially increased<sup>501</sup> and in 2014, NSPCC Scotland reported a significant rise in the number of serious emotional abuse cases referred to police and social workers.<sup>502</sup> However, emotional abuse is still under-recognised and under-reported, especially if more explicit forms of abuse are involved.<sup>503</sup> Several forms of abuse can co-exist, including domestic and child (emotional, physical, sexual) abuse from the same perpetrator.<sup>504</sup> Emotional abuse is extremely harmful

and can cause difficulties in developmental transitions throughout a child's lifespan.<sup>505</sup> Greater awareness and understanding would be valuable in ensuring that children's psychological needs are met and to avoid the detrimental impact of this form of abuse.<sup>506</sup>

Budget cuts in local authorities have caused charities working in child protection to report an increase in demand for their services, alongside insufficient funding and contract reduction.<sup>507</sup> This can leave many vulnerable children without the services and personnel capacity needed to protect them in situations of child abuse and severely impact on early intervention. There is insufficient data on children's own views about how safe they feel from abuse and neglect<sup>508</sup> although anecdotal evidence suggests that children report absent social workers, can feel like 'one of a huge number' and are aware of cuts to resources.<sup>509</sup>

The Children and Young People's Commissioner for Scotland has highlighted the need for cohesion in the complex policy environment and has called 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.<sup>510</sup>

Organisations such as Children 1<sup>st</sup> have highlighted the need for sustainable funding for widespread family support services that use initiatives such as Family Group Conferencing in order to provide support for vulnerable children and families where appropriate.

In February 2016, the then Education Secretary, Angela Constance MSP, announced a comprehensive review of the child protection system which will result in a Child Protection Improvement Plan.<sup>511</sup> This has been widely welcomed by many of Together's members.<sup>512</sup> <sup>513</sup> The review will identify strengths and weaknesses in existing systems, processes and practices<sup>514</sup> and will include a broad range of work including a systems review, Children's Hearings, leadership and workforce development, inspections, neglect, data and evidence, child sexual exploitation, internet safety and trafficking.<sup>515</sup> The review is due to deliver recommendations by the end of 2016, to inform further work in 2017.

## Recommendation

- The Child Protection Improvement Plan should be underpinned by a human rights approach that specifically progresses recommendations made by the UN Committee and other international treaty bodies in relation to the violence, abuse and neglect of children.

## Data collection and referral

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### UNCRC Concluding Observation

Strengthen the systematic collection of data and recording of information on violence against children, including domestic violence, gender-based violence, abuse and neglect, in all settings, and the sharing of information and referral of cases among relevant sectors.<sup>516</sup>

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### Child protection register

It is not known how many children in Scotland experience violence, abuse and neglect, although there has been a general upwards trend of referrals to the Child Protection Register (2,050 in 2000 to 2,751 in 2015) which can act as an indicator.<sup>517</sup> 2015 statistics from the Child Protection Register present key findings such as: half of the children on the register are aged under five; 50% (1,378) of children on the register are boys; 45% (1,242) are girls; 5% (131) are unborn children and three in every 1,000 children under 16 are on the register. The statistics also show significant geographical variation.<sup>518</sup>

Scottish Government does not use self-report studies to measure the extent of abuse, and there is no official measure of lifetime exposure to abuse and neglect.<sup>519</sup> Official statistics, research studies and what children say are the best indicators of prevalence<sup>520</sup> (see table 6 and 7). These figures probably underestimate the number of children who are abused or at risk of violence and abuse.

Table 6: Children placed on Child Protection Register due to physical abuse/neglect (2012-15)<sup>521</sup>

Year	2012	2013	2014	2015
Children placed on child protection register due to physical abuse	467	537	680	600+
Children placed on child protection register where neglect is a reported concern <sup>522</sup>	993	1030	1009	1017

The number of reported physical abuse cases has risen from 2012 (see table 6), and there is a significant rise in the number of children accessing the NSPCC helpline because of physical abuse. It is not known if this is because children feel more supported to report the abuse, or because the prevalence of physical abuse is rising. Referred calls for suspected child abuse have also risen by 58% in the past three years, from 1,091 in 2012-13 to 1,722 in 2015-16.<sup>523</sup> Rates of child homicide and child mortality deaths by assault are both low and are in long-term decline (see table 7).

The number of child protection cases where neglect is a reported concern has risen since 2012 (see table 7). However, there is a lack of cross-referencing between the two statistical databases in relation to 1) neglect (as defined within the National Guidance for Child Protection), and 2) lack of parental care (as defined as one of the grounds for referral to the Children’s Reporter).<sup>524</sup> This is one of the key barriers to gauging the prevalence of neglect.

Table 7: Other reports of physical abuse and neglect<sup>525</sup>

No. of child homicides	8 in 2014/2015 – in decline since 2004/2005
Child mortality deaths by assault and undetermined intent	Rate is 4 per million in 2014 – in decline since 2008
Number of children accessing NSPCC helpline because of physical abuse	Around 10,300 contacts made in 2015/16 – continues to increase from around 4,000 in 2008 <sup>526</sup>
Number of cruelty and neglect offences	1,041 in 2014/15 – in decline since peak of 1,919 in 2009/2010
Self-reported prevalence of abuse and neglect through survey	Over one in six 11-17 year olds have experienced some type of severe maltreatment <sup>527</sup>

### Domestic abuse incidents

Around 60,000 incidents of domestic abuse are reported to the police each year.<sup>528</sup> Although there is no national estimate of children experiencing domestic abuse, children living with domestic abuse are over-represented in referrals to children and family social work teams, represent up to two-thirds of cases seen at child protection conferences and comprise a significant proportion of those referred to the Children’s Hearings system.<sup>529</sup>

According to a 2015/16 statistical analysis of the grounds on which children were referred to the Children’s Reporter, ‘close connection with person who has carried out domestic abuse’ was the third most common ground of referral (2,498 children from a total of 15,329 referrals).<sup>530</sup> The close connection children may have with perpetrators can mask the visibility of children living with domestic abuse.

As part of the Scottish Government’s Child Protection Improvement Programme,<sup>531</sup> existing data and evidence is being mapped to examine where there might be gaps in existing data capture. The focus of this work is to explore how a holistic data and evidence base could be developed to inform day-to-day management and facilitate ongoing improvement of child protection systems.<sup>532</sup>

## Violence against women and girls

### Other treaty bodies and UPR recommendations

Recommendations have been made by the Human Rights Committee in its 2015 Concluding Observations (paragraph 13)<sup>533</sup> and by CESCR in its 2016 Concluding Observations (paragraph 46).<sup>534</sup>

Violence against women and girls include a range of actions that harm, or cause suffering and indignity to, women and children.<sup>535</sup> These are discussed throughout this report and include physical, sexual and psychological violence, including domestic abuse (see page 66), sexual exploitation including pornography and trafficking (see pages 69-71 and pages 147-148) and so called ‘honour based’ violence, including female genital mutilation, forced marriages and ‘honour’ crimes (see chapter 4.6). Violence against women and girls can have both an immediate and long-lasting impact on the women, girls and children directly involved,<sup>536</sup> and can affect their lives in multiple and complex ways.<sup>537</sup>

Gender inequalities are a root cause of gender-based violence. Despite the many advances being made, there remain persistent inequalities based on gender.<sup>538</sup> Many women and children who experience violence specifically because of their gender also face multiple discrimination across all protected characteristics, and also as a result of poverty and limited literacy skills.<sup>539</sup> As a result, they may face additional barriers to accessing services.<sup>540 541</sup> For example, while there is no evidence to suggest that there is a higher rate of gender-based violence within black and minority ethnic communities, there are specific cultural issues facing black and minority ethnic women which can limit their access to support and protection should they experience violence.<sup>542</sup> Young people (particularly girls and LGBT young people) are also affected directly by violence within their own intimate relationships and by other forms of gender based violence.<sup>543 544</sup>

Equally Safe is Scotland's strategy for preventing and eradicating violence against women and girls. It was developed in 2014 and updated in 2016.<sup>545</sup> Equally Safe contains four priority areas:

- Scottish society embraces equality and mutual respect, and rejects all forms of violence against women and girls;
- Women and girls thrive as equal citizens: socially, culturally, economically and politically;
- Interventions are early and effective, preventing violence and maximising the safety and wellbeing of women, children and young people;
- Men desist from all forms of violence against women and girls and perpetrators of such violence receive a robust and effective response.

Equally Safe's explicit acknowledgement that preventing gender-based violence is dependent on reducing gender inequality broadly across all sectors has been welcomed.<sup>546</sup> Individual workstreams have been tasked with producing action plans that will inform an implementation plan for the strategy.<sup>547</sup> A number of Together members are involved in these workstreams,<sup>548</sup> and have been vocal about the need to ensure the implementation plan takes account of the views and experiences of children affected by violence against women and girls, and that a Child Rights and Wellbeing Impact Assessment (CRWIA) is undertaken on the draft implementation plan.

Dedicated funding has been put in place to promote equality and tackle violence against women.<sup>549</sup> Between 2012 and 2016, the Scottish Government allocated £46.3m through the Equality Budget, and the Justice portfolio has committed an additional £20m over 2015 to 2018.<sup>550</sup>

Culture change can be facilitated through Scotland's education system: Zero Tolerance and Rape Crisis Scotland are jointly leading an initiative to develop a whole school approach to support secondary schools to address and prevent gender based violence in all areas of their school ethos, environment and education. It links together all forms of gender based violence which affect schools and young people including sexual harassment, homophobia, 'sexting', sexual abuse, assault and exploitation, FGM, rape, domestic abuse, stalking, honour-related violence and explains how they are interrelated and share common causes and consequences in terms of gender inequality, as set out in the Equally Safe Strategy. Teachers often identify a need for greater knowledge, understanding and confidence addressing these issues.<sup>551</sup>

Other areas of good practice include the Mentors in Violence Prevention Programme (MVP)<sup>552</sup> and for example, work with the Young Edinburgh Action (YEA)<sup>553</sup> team whose remit is youth participation. These programmes make explicit the link between discrimination and gender-based violence.

## Recommendation

- Scottish Government should ensure that the ongoing implementation of the Equally Safe strategy and delivery plan is informed by the views and experiences of children affected by violence against women and girls. A Child Rights and Wellbeing Impact Assessment (CRWIA) should be conducted on the draft implementation plan.

## Domestic abuse

### Other treaty bodies and UPR recommendations

Recommendations have been made by CEDAW in its 2013 Concluding Observations (paragraphs 23, 35 and 57),<sup>554</sup> by CESCR in its 2016 Concluding Observations (paragraph 46)<sup>555</sup> and by the Human Rights Committee in its 2015 Concluding Observations (paragraph 13).<sup>556</sup>

Domestic abuse is an incredibly complex issue which impacts on physical, emotional and social development throughout a child's life.<sup>557</sup> Some black and minority ethnic women can face particular issues surrounding domestic abuse, including the lack of appropriate refuge space for women and children from BME communities,<sup>558</sup> the role of other family members in perpetrating abuse<sup>559</sup> and under-reporting caused by different cultural understandings of marital roles and issues such as stigma.<sup>560</sup> Domestic abuse is also a common factor in the lives of many looked after children.<sup>561</sup>

There is increased recognition of the impact of domestic abuse on children and the links in policy to gender inequality,<sup>562</sup> as well as an increased partnership working between women's rights and children's rights organisations. Some local authorities are exploring new models of practice such as Safe and Together,<sup>563</sup> a perpetrator pattern, child-centred, survivor strength based approach to domestic abuse and child protection responses, and also the Caledonian System<sup>564</sup> which runs an integrated service in 13 local authorities aimed at addressing domestic abuse. There are also new support services run by the voluntary sector which reach out to those less likely to use 'mainstream' domestic abuse services, including those from black and minority ethnic communities who have experienced abuse, members of the LGBT community and men who have experienced abuse.<sup>565</sup>

The 2016-17 Programme for Government includes a Domestic Abuse Bill.<sup>566</sup> This has been welcomed by a number of Together's members.<sup>567</sup> Scottish Government has consulted on legislation to introduce a specific offence of domestic abuse, to ensure that criminal law adequately covers the emotional and psychological nature of domestic abuse.<sup>568</sup> The Children and Young People's Commissioner for Scotland, the IMPACT project with young survivors (ex-members of Voice Against Violence)<sup>569</sup> and a number of Together's members raised concerns that the draft offence focused solely on adult victims, taking no account of the impact of domestic abuse on children and leaving them largely invisible.<sup>570</sup> A number of organisations have urged Scottish Government to consider children's rights in redrafting the legislation, and to conduct a Child Rights and Wellbeing Impact Assessment to allow a full exploration of the bill in the context of the wider child protection system.<sup>571 572</sup>

Children 1<sup>st</sup> and others continue to highlight the inconsistency in Scottish Government policy whereby domestic abuse is being robustly addressed while there remains a legal defence for assaulting a child in the home. Our members are clear that the two issues should be considered in tandem so that there is no contradiction with respect to violence in the home.

### Recommendation

- Scottish Government should conduct a Child Rights and Wellbeing Impact Assessment on the Domestic Abuse Bill to ensure children's rights are considered throughout its provisions.

## Services to address violence against children

### UNCRC Concluding Observation

Increase the number of social workers and strengthen their capacity to address violence against children.<sup>573</sup>

### Other treaty bodies and UPR recommendations

CEDAW made a number of related recommendations in its 2013 Concluding Observations (paragraph 35).<sup>574</sup>

The Care Inspectorate Triennial Review for 2011–2014 made recommendations on how children's services as a whole could improve, drawing on evidence from over 30,000 inspections.<sup>575</sup> Scottish social care is increasingly outcomes driven, with service users and carers ever more involved in service planning and delivery.<sup>576</sup> In terms of early intervention, the review found significant geographical inequality, with half as many services per head in the most deprived areas of Scotland as in the least deprived.<sup>577</sup> There is a continued variation in standards of strategic planning and commissioning across Scotland.<sup>578</sup> Neglect is damaging to children both in the short and long term and is associated with some of the poorest outcomes for children.<sup>579</sup> Formulating an effective response to neglect still poses national and local challenges, within which early intervention and integrated responses are crucial. Funding for preventative services should be prioritised in line with the recommendations from the Christie Commission and the work of the Early Years Collaborative. Initiatives such as the Dundee Early Intervention Team<sup>580</sup> produce clear results in terms of providing high-intensity family support services, but their funding is often under threat and rhetoric about early intervention and prevention is not matched by commissioning decisions. Information gaps have been identified in groups such as BME communities who may not recognise neglect or physical discipline as abuse.<sup>581</sup> There is a need for services that are confident in cultural awareness.<sup>582</sup>

Together's members have also highlighted the need for sustainable funding for trauma recovery services for children who have experienced or witnessed abuse. Currently there is not a clear picture of how many trauma recovery services are available across Scotland, but organisations such as Children 1<sup>st</sup> speak anecdotally about high demand for their services and a need to ensure that children who have experienced abuse are able to access high-quality, holistic services that meet their individual recovery needs.

### Recommendations

- Children's views and experiences should be heard and taken into account in the development of all measures to combat all forms of violence, abuse and neglect.
- Domestic abuse should be recognised as a child rights issue in legislation, policy and practice.
- Sufficient funding and resources should be made available across national and local government to protect children from the effects of domestic violence, focusing on prevention and family support,<sup>583</sup> as well as for the types of services that provide abuse and trauma recovery support.

## Children's views in court proceedings

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### UNCRC Concluding Observation

Give due weight to the views of children concerned in the responses to violence, including in criminal and family law proceedings.<sup>584</sup>

### Other treaty bodies and UPR recommendations

A related recommendation was made by CEDAW in its 2013 Concluding Observations (paragraph 23).<sup>585</sup>

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Research by the Children and Young People's Commissioner for Scotland in 2013 showed that the best interest principle was not being upheld in all family law contact decisions where there is a history of domestic abuse.<sup>586</sup> Children are often not being supported or provided with adequate opportunity to have a say in decisions affecting their lives in relation to court ordered contact and domestic abuse.<sup>587</sup> This has a negative impact on some of the youngest and most vulnerable children as well as those who are exposed to ongoing abuse through unsafe contact orders.<sup>588</sup> The older children are, the more likely it is that their views will be taken into account.<sup>589</sup> However, even when children's views in cases involving domestic abuse are taken, there is significant variation in the weight that is attached to their views.<sup>590</sup> Research shows that one-third of children (34%) had a contact outcome that bore no resemblance to the view they expressed and one-fifth (20%) had an outcome that only partially accommodated their view.<sup>591</sup>

### Recommendations

- All those who take children's views in decisions on contact should be trained on the dynamics of domestic abuse and in the benefits of participation for children, and given materials to support participation in practice.
- Scottish Government should ensure that all children involved in contact decisions and court procedures have consistent access to high quality independent advocacy and a full range of therapeutic interventions.<sup>592</sup>

## Istanbul Convention

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### UNCRC Concluding Observation

Consider ratifying the Convention on preventing and combating violence against women and domestic violence.<sup>593</sup>

### Other treaty bodies and UPR recommendations

A similar recommendation was made by CEDAW in its 2013 Concluding Observations (paragraph 35(a)).<sup>594</sup>

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The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (sometimes known as the Istanbul Convention)<sup>595</sup> has been signed but not ratified by the UK Government.<sup>596</sup> The Scottish Government supports the principles and aspirations of the Convention<sup>597</sup> and it is referenced in the Equally Safe Strategy,<sup>598</sup> although an explicit commitment to implementation has yet to be made.<sup>599</sup> Implementation of the Istanbul Convention would be a means of tackling the persistently high prevalence of gender-based violence and gender inequality currently experienced in Scotland and across the UK more widely.<sup>600</sup>

### Recommendation

- UK Government should ratify the Council of Europe Convention on preventing and combating violence against women and domestic violence (the 'Istanbul Convention').<sup>601</sup>

## 4.5 Sexual exploitation and abuse

### *Reporting and awareness*

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#### **UNCRC Concluding Observation**

Systematically collect and publish comprehensive and disaggregated data on child exploitation and abuse, including through mandatory reporting, in all settings.<sup>602</sup>

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There are widespread concerns about systematic child sexual exploitation and abuse. Reports of sexual offences against children have increased sharply in Scotland. Police recorded 4,082 sexual offences against children in Scotland in 2014/15.<sup>603</sup> This was a 9% increase on the 2013/14 figure of 3,742 offences.<sup>604</sup> It is the highest number of sexual offences recorded against children in the past decade.<sup>605</sup> During 2014/2015, ChildLine provided 635 counselling sessions to children in Scotland worried about child sexual exploitation.<sup>606</sup> Barnardo's Scotland provided specialist support to 266 children who had experienced or were at risk of child sexual exploitation.<sup>607</sup>

From April 2015 to February 2016, child sexual exploitation cases accounted for 33% of Police Scotland's National Child Abuse Investigation Unit resource hours.<sup>608</sup> Scottish Government has expressed concerns that these figures are likely to under-represent the extent of the issue.<sup>609</sup> Despite ongoing work, there is still relatively little known about the scale and nature of child sexual exploitation in Scotland or about how diverse the response to child sexual exploitation may be in different areas.<sup>610</sup>

Several groups of children are at heightened risk of child sexual abuse, including disabled children<sup>611</sup> and children with care experiences.<sup>612</sup> Children who have been abused prior to care can be at greater risk of further abuse.<sup>613</sup> <sup>614</sup> The geographical mobility of some looked after children through placement changes can contribute to their vulnerability through an absence of support networks. It is believed that perpetrators may target looked after children because they are often vulnerable.<sup>615</sup> It is widely acknowledged that some perpetrators volunteer or seek employment in organisations for children, such as care settings and schools.<sup>616</sup> Child sexual abuse can be associated with shame and taboo in some minority ethnic communities; research finds that some communities will not discuss sexual abuse, with only 41% noting sexual abuse as a form of abuse.<sup>617</sup>

A 2013 YouGov survey<sup>618</sup> looking at understanding and knowledge of child sexual exploitation in Scotland showed that most parents lack awareness and understanding of the issue with over a third believing that it could not affect their family.<sup>619</sup>

### *Online technologies*

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#### **UNCRC Concluding Observation**

Develop and implement comprehensive multi-sectoral strategies on child exploitation and abuse, including online, to ensure effective prevention, early detection and intervention.<sup>620</sup>

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There are widespread concerns around systematic child exploitation online in Scotland, as elsewhere in the UK and internationally.<sup>621</sup> Between April 2013 and December 2015, Police Scotland charged 875 perpetrators involved in online child abuse.<sup>622</sup> During June and July 2016, Police Scotland's first national operation<sup>623</sup> to tackle online sexual abuse resulted in the identification of more than 500 children aged from 3 to 18 who were either victims or potential victims of online predators, as well as the recovery of 30 million images of abuse.<sup>624</sup> A 2016 Crime Audit has found that children are increasingly experiencing sexual crime via commonly used apps on smartphones and tablets.<sup>625</sup> Emerging evidence shows that children at risk of online exploitation may not have the same vulnerabilities as children at risk of other exploitation. This can mean that they are less likely to be identified.<sup>626</sup> A survey of parents showed limited awareness of the nature of online grooming and the connections between online and offline abuse.<sup>627</sup>

In 2016, the NSPCC published data showing an increase in the number of contacts to the organisation from both children and concerned adults about online child sexual abuse.<sup>628</sup> This included a 24% increase in counselling about online sexual abuse over the preceding year. Children reported feeling under pressure to share naked pictures of themselves.

Previously, child online safety in Scotland had been monitored by the Scottish Government-led Stakeholder Group on Child Internet Safety (SSGCIS) set up in 2009.<sup>629</sup> In 2015 the group published 'A Cyber Resilience Strategy for Scotland'<sup>630</sup> and in 2016 published an update to Scotland's National Action Plan to Prevent and Tackle Child Sexual Exploitation.<sup>631</sup> This document recognises that the internet and social media make it easier to access and share images, allow perpetrators to connect, provide a sense of anonymity and make online child sexual exploitation an increasingly global crime.

In March 2016, the Scottish Parliament passed the Abusive Behaviour and Sexual Harm (Scotland) Act 2016.<sup>632</sup> Provisions within the 2016 Act include a new specific offence for the non-consensual sharing of private, intimate images (often called revenge porn). The present Scottish Government committed in its manifesto to refresh its internet safety plan; work to prepare a refreshed plan is currently underway.<sup>633</sup>

## Recommendations

- A Child Rights and Wellbeing Impact Assessment should be used to inform the revised Internet Safety Plan. Children's views and experiences should be taken into account to ensure the plan reflects the realities of their online lives.
- Scottish Government should ensure all children and their parents are better informed about their right to online safety and privacy, and how to stay safe online.<sup>634</sup>

## Support services, detection and prosecution

### UNCRC Concluding Observation

Further develop comprehensive services to support children who are victims or at risk of sexual exploitation and abuse.

Strengthen the capacity of law enforcement authorities and the judiciary to detect and prosecute child sexual exploitation and abuse, and grant effective remedies to the child victims.<sup>635</sup>

In 2014, Scottish Government published Scotland's National Action Plan to Tackle Child Sexual Exploitation.<sup>636</sup> Since its publication:

- public awareness campaigns have been launched;<sup>637</sup>
- additional support has been put in place for children, including additional funding for ChildLine;<sup>638</sup>
- safety and rights online frameworks have been created;<sup>639</sup>
- protection and reporting in minority ethnic communities has been improved through SAFE;<sup>640</sup>
- guidance and training to help equip practitioners have been provided,<sup>641</sup> including in child protection with respect to children with a disability;<sup>642</sup>
- support has been put in place for those at risk of perpetrating.<sup>643</sup>

Measures to address the wider scope of child sexual exploitation, such as the UK's engagement with the global WePROTECT Model National Response,<sup>644</sup> have been welcomed by the UN Committee.<sup>645</sup>

Police Scotland launched the National Child Abuse Investigation Unit in April 2015 to provide specialist support to local policing Child Protection Units and develop a more co-ordinated and strategic response to child abuse investigations across Scotland.<sup>646</sup> A joint thematic review by the Care Inspectorate and HM Inspectorate of Constabulary for Scotland, published in November 2015, concluded that well-established arrangements are in place to manage registered sex offenders through dedicated offender management teams, joint working and information sharing.<sup>647</sup>

It is important to provide children with a variety of ways to talk about abuse, and they need to feel safe and secure in order to do this. The 2014 National Action Plan to tackle child sexual exploitation, and the National Guidance for Child Protection in Scotland provide a framework for consistently responding to vulnerable children and young people.<sup>648</sup> <sup>649</sup> Some of Together's members remain concerned about how adults respond to children when they talk about abuse they have experienced.<sup>650</sup> Some children, such as those in minority ethnic communities, may face additional cultural barriers to talking about abuse.<sup>651</sup> Some of Together's members have identified a need to train professionals to enable appropriate responses to help children talk about sexual abuse.<sup>652</sup>

Children often feel that the child protection and justice systems are unhelpful following experiences of sexual abuse, and describe how they feel unable to control the proceedings, the pace of the process and who is told about their experiences.<sup>653</sup> A 'Stop to Listen' multi-agency initiative, led by Children 1st, has been established to improve and develop child-centred responses across services to child sexual abuse which involves children in decisions that affect them.<sup>654</sup> Confidential services, statutory agencies and voluntary organisations should work in partnership to ensure that all children who have experienced sexual abuse and exploitation are able to access services they trust.

There also needs to be a wider recognition of the benefits of therapeutic support available to children who have experienced sexual abuse.<sup>655</sup> Through the provision of therapy, children say they want to be taken seriously, be believed and supported, to feel safe, comfortable and cared for.<sup>656</sup> Children like being listened to, but may not want to talk about the details of the abuse itself.<sup>657</sup>

## Recommendations

- Scottish Government should ensure effective information sharing and multi-agency working practices are in place that protect children from sexual exploitation. These should include rights-based practices that identify and tackle abuse; ensure children's views and experiences are taken into account; minimise the impact of the process on the child; ensure all professionals are trained to recognise abuse and exploitation and respond appropriately; and record the numbers of children who are at risk of child sexual exploitation.
- Scottish Government should ensure that children who have experienced abuse have equitable access to high-quality therapeutic abuse and trauma recovery services and that funding for these services is sustainable.

## Council of Europe Convention

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### UNCRC Concluding Observation

Consider ratifying the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.<sup>658</sup>

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ECPAT UK echoed the UN Committee's recommendation in a 2015 briefing that outlined how ratifying the Council of Europe Convention would reinforce efforts to prevent child sexual abuse abroad and to promote greater international cooperation to bring offenders to justice across borders.<sup>659</sup> The UK has no single team dedicated to investigating and prosecuting transnational child exploitation, which significantly inhibits its ability to monitor data and cooperate on international investigations involving British offenders.<sup>660</sup> Since 2012, the current UK Government has continued to maintain that 'officials across a number of Government Departments are currently considering the steps that would be required to ratify the Council of Europe Convention'.<sup>661</sup> Only 13 of 47 Council of Europe member states have failed to ratify and implement the convention.<sup>662</sup>

## 4.6 Harmful practices

### Honour-based violence (HBV)

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#### UNCRC Concluding Observation

Take effective measures to ensure that marriage of children aged 16 and 17 years takes place only in exceptional circumstances and is based on the full, free and informed consent of the concerned children.<sup>663</sup>

Continue and strengthen preventive and protection measures to address the issue of harmful practices, including the collection of data, the training of relevant professionals, awareness-raising programmes, the provision of protection and care to the child victims and the prosecution of those found guilty of perpetrating such acts.<sup>664</sup>

Ensure that no one is subjected to unnecessary medical or surgical treatment during infancy or childhood, guarantee bodily integrity, autonomy and self-determination to children concerned and provide families with intersex children with adequate counselling and support.<sup>665</sup>

Provide redress to the victims of such treatment.<sup>666</sup>

Educate medical and psychological professionals on the range of sexual, and related biological and physical diversity and on the consequences of unnecessary interventions for intersex children.<sup>667</sup>

#### Other treaty bodies and UPR recommendations

Similar recommendations were made by CEDAW in its 2013 Concluding Observations (paragraph 37 and 55).<sup>668</sup>

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Violence against women, gender-based violence and 'honour-based' violence are strongly linked. So-called honour-based violence (HBV) can refer to harassment, physical, emotional, domestic and sexual abuse and manifest in the harmful practices of female genital mutilation (FGM), forced marriage and child marriage. Although communities who exercise harmful practices through HBV

are small in Scotland as compared with the UK, there can be significant barriers for children affected by HBV to realise their rights.<sup>669</sup> Evidence shows that migrating communities are likely to retain cultural and social norms from their home country,<sup>670</sup> particularly when integration policies are neglected as in the UK more widely.<sup>671 672</sup> Scottish Government's 2014-2017 'Integrating Refugees in Scotland's Communities framework'<sup>673</sup> commits to building inclusive communities, yet focuses on incoming groups rather than resident populations to foster this inclusivity. This has several consequences for the prevention of HBV.

Mainstream services are rarely able to respond appropriately to the needs of minority ethnic families who are new to Scotland.<sup>674</sup> There is a lack of awareness, understanding of cultural pressures and translation capacity specific to the needs of HBV, such as gender and cultural sensitivity.<sup>675</sup> Organisations working with minority ethnic communities are concerned that cultural sensitivity and a lack of confidence in cultural issues is a significant barrier to teachers, health workers and other statutory services responding effectively.<sup>676</sup> Schools are reported to be poorly equipped to respond to victims of HBV and children can fall through the gap of transition services.<sup>677</sup> Responsive systems such as the Named Person will not necessarily close this gap without sufficient cultural competence through additional resourcing and HBV training for professionals.

Schools are also important settings to prevent HBV in relation to Relationships, Sexual Health and Parenthood Education (RSHPPE) (see chapter 6.4). Many parents from traditional communities may remove their daughters from these classes in UK schools or forbid them from socialising with their male peers.<sup>678</sup> Lack of knowledge can contribute to the vulnerability of girls, increasing the risk of sexual exploitation and pregnancy.<sup>679</sup>

### **Forced and child marriage**

A common manifestation of HBV is early, forced, or child marriage. In 2015, the Forced Marriage Unit (FMU) gave advice or support relating to a possible forced marriage in 1,220 cases across the UK, 27% of which involved victims below 18 years of age.<sup>680</sup> In Scotland, the age at which marriage is legally permitted is 16.<sup>681</sup> However, there are known cases of forced marriage where engagements have initially been arranged involving children under 10 years old.<sup>682</sup> While there is recent work contextualising HBV expressly as a form of violence against women and children,<sup>683</sup> this form of violence may still go unrecognised by those it affects, due to cultural sets of embedded social norms and enforced behavioural standards.<sup>684</sup> For example, at Saheliya,<sup>685</sup> although only 2% of clients identify themselves at the intake assessment as having been affected by forced marriage, 38% are considered to have been affected by the staff who work with them.<sup>686</sup> This is a particularly significant barrier to reducing types of HBV and reporting of its occurrence. Other indicators of forced marriage can include domestic abuse, child abuse, FGM, wider coercive familial behaviour, self-harm, substance misuse, mental and physical health problems and extreme isolation.<sup>687</sup> It will require extensive and sustained efforts to engage with practicing communities to reframe commonly-held views in-line with human rights standards.

The Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 provides specific civil remedies for those threatened with forced marriage and those already in forced marriages.<sup>688</sup> From September 2014, forced marriage became a criminal offence in Scotland under the UK-wide Anti-Social Behaviour, Crime and Policing Act 2014.<sup>689</sup> Forced Marriage Protection Orders (FMPOs) were introduced through the 2011 Act and aim to protect those threatened with, or already in a forced marriage.<sup>690</sup> The individual at risk can apply for the FMPO, or a third party can do so on their behalf.<sup>691</sup>

In practice it is unlikely that vulnerable individuals experiencing forced marriage will overcome the significant coercive, psychological and financial barriers required to obtain an FMPO. Women and girl's capacity to seek legal help may be impacted by the need for an interpreter, who are most commonly male and almost always known to those seeking help.<sup>692</sup> Girls under the age of 16 are likely to be given more protections under child protection legislation.<sup>693</sup> However, the cost of lodging a protection order costs £105 and the process of obtaining the order may require the services of expensive solicitors.<sup>694</sup> There have subsequently been no prosecutions on the basis of forced marriage in Scotland.<sup>695</sup>

Schools are frequently unaware of the dangers involved in children traveling abroad for significant periods of time during school holiday.<sup>696</sup> Together's members have highlighted the link between children missing from school and HBV practices such as child marriage.<sup>697 698</sup> Often, if a child does not return to the UK, no alarm is raised and no effort is made to locate them and return them to the country.<sup>699</sup> This is a particularly high risk for children approaching the age of 16 as they will no longer be considered the responsibility of the school.<sup>700</sup> Professionals have emphasised the lack of awareness, understanding and support in secondary schools regarding HBV, which disempowers teachers who may otherwise be well placed to recognise, report and support child victims.<sup>701</sup>

## Female Genital Mutilation (FGM)

The prevalence of FGM is higher in the UK than in any European country.<sup>702 703</sup> There is a lack of accurate Scotland-specific data on FGM prevalence.<sup>704</sup> There are communities potentially affected by FGM living in every Scottish local authority area. The number of children born into FGM-affected communities has increased significantly over the last decade, with 363 girls born in Scotland in 2012 to mothers born in an FGM-practising country, representing a fivefold increase over a 10-year period.<sup>705</sup> Currently, there is no available data on ethnicity or other variables affecting the practice of FGM in communities, so it is not possible to determine how many people in these communities are likely to be directly affected by FGM.<sup>706</sup>

Between one-fifth and one-quarter of 376 refugee Saheliya service users who had undergone FGM were confident that FGM practices would not be noted or reported in Scotland if carried out on their daughters, regardless of the country in which the FGM was carried out.<sup>707</sup> Further research is required to ascertain if this is true of the UK as a whole or specific to Scotland. An obstacle to identification is the lack of special training of nursery, preschool and early years staff who offer personal care support to young children who are unlikely to recognise or identify Type I or Type II FGM, which is less externally visible than Type III.<sup>708 709</sup> A consistent approach to the recording of FGM prevalence is needed across health, child protection and other frontline services to inform preventative and protective interventions.<sup>710</sup> There is also a need to train professionals on identification and recording of FGM working with affected communities.<sup>711</sup>

FGM has been unlawful in Scotland since 1985 under the Prohibition of Female Circumcision Act 1985.<sup>712</sup> This law was re-enacted by the Female Genital Mutilation (Scotland) Act 2005,<sup>713</sup> which extended protections by making it a criminal offence to carry out FGM either in Scotland or for taking a child abroad for the purpose of carrying out FGM.<sup>714</sup> The 2005 Act also increased the penalty on conviction on indictment from five to 14 years' imprisonment and allows for general child protection orders to be sought in suspected cases of FGM.<sup>715</sup> However, many parents who inflict FGM on their daughters do so in the belief that they are protecting them from being unclean, undesirable for marriage or otherwise socially-excluded<sup>716</sup> and are under significant societal pressures to continue the practice.<sup>717</sup> There are concerns that an over-focus on punitive legislation, punishment and mandatory reporting<sup>718</sup> will make FGM-practising communities reluctant to seek preventative measures and medical assistance.<sup>719</sup>

Scotland's 2016 National Action Plan to Tackle FGM<sup>720</sup> highlights the importance of long-term attitudinal and behavioural change amongst practicing communities as key to the eradication of FGM. It is aligned with the overarching principles of the Equally Safe strategy.<sup>721</sup> Whilst this has been welcomed, some Together members working with FGM practicing communities have not seen this commitment put into practice.<sup>722</sup> Despite financial investment in services to help tackle gender-based violence and FGM by the Scottish Government,<sup>723</sup> there has been little work undertaken to empower parents to change attitudes and accept alternative methods of affirming cultural identity.<sup>724</sup> Fundamental changes to both HBV and gender-based violence in line with the wider policy framework such as GIRFEC are needed to ensure emphasis on prevention.<sup>725</sup> This approach is more likely to encourage the abandonment of HBV practices than legislation, which can criminalise and alienate some communities.

## Intersex Genital Mutilation

Like FGM, some types of Intersex Genital Mutilation (IGM) are unnecessary surgical alterations carried out on children.<sup>726</sup> IGM survivors criticise the practice as physically and psychologically harmful and abusive, and call for legislation to end the practice as well as access to redress for survivors.<sup>727</sup> All forms of IGM are practised in the UK.<sup>728</sup> Research is needed to ascertain the extent and uses of IGM in Scotland in order to ensure appropriate policy, legislation and practice.

## Recommendation

- Scottish Government should ensure that Equally Safe is effective in preventing and eliminating harmful practices in line with UNCRC General Comment 18.<sup>729</sup> This should take account of legal, policy and social measures with appropriate mechanisms to implement the measures in practice.

## 4.7 Freedom of the child from all forms of violence

### *Bullying and violence*

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#### **UNCRC Concluding Observation**

Intensify its efforts to tackle bullying and violence in schools, including by teaching human rights, building the capacities of students and staff members to respect diversity at school, improving students' conflict-resolution skills, monitoring regularly the incidences of bullying at school and involving children in the initiatives and monitoring aimed at eliminating bullying.<sup>730</sup>

#### **Other treaty bodies and UPR recommendations**

Similar recommendations have been made by CERD in its 2016 Concluding Observations (paragraph 16)<sup>731</sup> and by CEDAW in its 2013 Concluding Observations (paragraph 45).<sup>732</sup>

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Children value the right to an education that meets their needs, where they are understood, valued and listened to.<sup>733</sup> However, many experience bullying and discrimination, which can make their educational experiences negative, challenging or short-lived. In 2015/16 across the UK, over 25,700 counselling sessions were held with children who cited bullying – including cyberbullying – as their main concern.<sup>734</sup>

Some children are disproportionately affected by bullying. Freedom Of Information requests<sup>735</sup> in 2016 have found almost 2,000 incidents of racism in primary schools and 1,000 more in secondary schools since 2011.<sup>736</sup> Although these figures have been falling, there are concerns over increases in racism following the vote to leave the EU.<sup>737</sup> The CERD Committee<sup>738</sup> has recommended requiring schools to collect qualitative and quantitative data on bullying on grounds of ethnicity and to use the data to develop concrete strategies.<sup>739</sup> Although as many as 95% of local authorities recommend reporting of race and ethnicity incidents that take place in schools, almost one half of local authorities do not monitor whether schools are meeting them.<sup>740</sup> The majority of local authorities have no evidence for the prevalence of most forms of identity-based bullying.<sup>741</sup>

Children with a disability continue to be faced with social stigmas<sup>742</sup> and experience bullying, harassment and threats.<sup>743</sup> Children with additional support needs are twice as likely to experience social exclusion by their peers,<sup>744</sup> and 76% of children with a learning disability have been bullied at school.<sup>745</sup> Young carers are hiding their caring responsibilities from their peers due to bullying and a lack of understanding.<sup>746</sup> Gypsy/Traveller children often face bullying and stereotyping because of their ethnicity and way of life, and often do not complete mainstream education as a consequence.<sup>747</sup> Looked after children are particularly vulnerable to bullying as they are seen as 'different'.<sup>748</sup> Children who are looked after away from home can also experience bullying behaviour in their residential care home, at school and in their community.<sup>749</sup> LGBTI young people report educational settings as where they face the most discrimination: 69% of LGBTI young people have experienced homophobic or biphobic bullying in school, 25% in college and 14% at university, impacting on mental health.<sup>750</sup> Developing trusting and supportive relationships between children and practitioners is required to tackle bullying of all forms and in all settings.

Bullying and violence in schools is part of a wider culture of prejudice and discrimination. A number of measures have been taken to tackle this: #BeTheChange campaign challenges the public to address attitudes and behaviours towards those with additional support needs and creates safe places in school lesson plans for children to discuss learning disabilities and challenge the barriers to forming friendships.<sup>751</sup> Research indicates that knowledge and understanding about peers with a disability creates substantial gains in acceptance of differences.<sup>752</sup> The Mentors and Violence Prevention Programme tackles gender-based and homophobic discrimination and is offered at local authority level to foster a strategic understanding of the issues within and beyond individual schools.<sup>753</sup> The programme integrates young people as mentors to become leaders of changing attitudes and to challenge wider cultures of prejudice and abuse.<sup>754</sup> Furthermore, a national report has set out a number of recommendations on how to tackle hate crime and prejudice in the public and build greater community cohesion,<sup>755</sup> which has led to new measures such as the establishment of network of LGBTI liaison officers in Police Scotland to improve the reporting of hate crimes.<sup>756</sup> The report emphasises ongoing issues of discrimination and hate crime including the increasing incidence of cyberbullying for children and continued face-to-face prejudicial bullying.<sup>757</sup>

The education system is important in fostering a culture of non-discrimination.<sup>758</sup> The need to embed rights-based education into the Curriculum for Excellence is discussed on page 103 of this report and mandatory child rights education has been recommended by the UN Committee.<sup>759</sup> Programmes such as the Rights Respecting Schools Award (RRSA) have impacted on reducing the occurrences of bullying in primary schools in some local authorities<sup>760</sup> and staff involved have observed an impact on children's attitudes towards diversity RRSA schools.<sup>761</sup>

## Online bullying and abuse

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### UNCRC Concluding Observation

In the light of the recommendations resulting from the day of general discussion on digital media and children's rights, train children, teachers and families on the safe use of information and communication technologies, raise awareness among children on the severe effects that online bullying can have on their peers and increase the involvement of social media outlets in the efforts to combat cyberbullying.<sup>762</sup>

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Face-to-face bullying is still more prevalent than online bullying (60% compared with 19%).<sup>763</sup> However, the increasing incidence of online bullying for children<sup>764</sup> means that it is essential they are equipped with the skills and capacity to be able to make responsible use of information and communication technologies (ICT) whilst avoiding risks and protecting themselves from harm. Online bullying is often an extension of face-to-face bullying in which perpetrators are known to the victim.<sup>765</sup> Consequently, children state that the two should be addressed collectively<sup>766</sup> and that the location of bullying matters less than the skills and confidence of both children and adults to respond.<sup>767</sup> Children feel that online bullying is a crucial matter for schools to address and report incidents of teachers unresponsive to disclosures of online bullying outside school time.<sup>768</sup> This indicates that preventative measures regarding culture change and rights-based education should be used to tackle both types of bullying, and that solutions and protection for children are found through open, supportive and respectful interpersonal rights-based relationships inside and outside school settings.

However, there are particular types of bullying and abuse that originate from growing use of ICT and online platforms. Networking sites can create an environment from which discriminatory statements are made regarding particular groups, including ethnic minorities and Gypsy/Traveller children.<sup>769</sup> Sexualised, misogynistic and violence-related content is widespread online.<sup>770</sup> This can contribute to girls at school feeling bullied and pressured both in and outside of relationships.<sup>771</sup> In particular, girls report that double standards, pornography and sexualised media consumption affects the expectations of partners and impacts on their mental and physical health.<sup>772</sup> A recent survey finds that children across the UK are increasingly encountering pornography from an early age,<sup>773</sup> shaping the norms, values and pressures of young people to engage in sexual activity (such as 'sexting')<sup>774</sup> that they are often not comfortable with.<sup>775</sup> <sup>776</sup> Most parents/carers do not talk to their children about issues such as sexting<sup>777</sup> and need help to understand online culture to set appropriate boundaries for their children. This is being addressed through parent/carers online awareness and capacity building pilots across Scotland.<sup>778</sup>

A whole school approach has significant potential to tackle issues of online bullying and abuse. This includes embedding online bullying as a core component of the school curriculum<sup>779</sup> (including within Relationships, Sexual Health and Parenthood education (RSHP), see chapter 6.4); supporting children who are experiencing online bullying outside of school; and providing teacher training to teachers to effectively recognise and handle cases of cyberbullying, coercion and peer pressure.<sup>780</sup> It is also clear that education services should include the unintended consequences of self-generated content<sup>781</sup> and address the privacy risks that children may face in their use of online media within RSHP education.<sup>782</sup> A whole school approach project is being undertaken by a number of third sector organisations together with the Education Institute Scotland and the Glasgow Health and Public Sciences Unit to end gender-based bullying in schools including issues such as 'sexting' and abuse experienced online.<sup>783</sup>

### Recommendations

- Ensure there is integration of preventative and response strategies with clearer and explicit strategies to tackle and prevent prejudice-based bullying and online bullying behaviours.
- Ensure consistent and robust recording and monitoring of bullying behaviour, both in person and online, across all local authorities.
- Undertake research nationally on prejudice-based bullying with children on their identification and/or attitudes to provide insight into how prejudice functions.
- Provide adequate resources to help reduce bullying and promote children's safety online.<sup>784</sup>

MY frie

I don't think he's committed as he's late again.

SOME PEOPLE ARE LATE WHEN THEIR CLUBS ARE FAR AWAY



REACH FOR YOUR GOALS!

I can Fly like the Wind!

Jumping makes your legs strong



I can jump I can fly!

# INCLUSION

BULLYING

MY TEAM can push ME to another level

Will you hurry up

What a great Job!



adults- your behaviour affects us



go GAA! !!!!

I'm so Excited that I'm here

girls and boys should feel free to make their own choices and play whatever they want

at last I'm as good as the Boys!

Thanks for including me

I feel angry when you shout at me, I feel happy when you encourage me

My brother can go now to the club

Finally theres a club I can join

Finally I'll be able to join in.

Friends help me at dance



Yes

Chapter

# 5

# Family environment and alternative care

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(Articles 5, 9-11, 18(1-3),  
20-21, 25 and 27(4))

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 and carers 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.

**Article 5:** parental guidance and a child's evolving capacities.

**Article 9:** separation from parents.

**Article 10:** family reunification.

**Article 11:** abduction and non-return of children.

**Article 18:** parental responsibilities and state assistance.

**Article 20:** children unable to live with their families.

**Article 21:** adoption.

**Article 25:** social security.

**Article 27:** adequate standard of living.

## Case study:

### *Children looked after at home*

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Article 12 of the UNCRC requires the views of children to be respected, and for their opinions to be sought and listened to. Article 18 places a responsibility on governments to provide support services to parents and families, recognising the crucial role of parents in guiding their children. Both these rights should be realised when children are subject to a Compulsory Supervision Order (CSO) and 'looked after at home'; however, this may not always happen.

Lucy lives at home with her mum and dad and her four younger brothers and sisters. Life is often chaotic and sometimes her parents struggle to look after everything properly. Lucy's mum suffers from severe depression and her dad struggles with an addiction to alcohol. They find it hard to keep routines and boundaries in place, and often Lucy doesn't go to school. When she was 13, Lucy was referred to a Children's Hearing because of these issues.

Lucy's found her Children's Hearing difficult. There were many adults there she didn't know, and her head teacher came, which made her feel like she was in a lot of trouble. Lucy didn't really understand what would be talked about, and some things were discussed which she felt were very personal. Lucy didn't say anything in the meeting because it was frightening and intimidating. The panel at the Hearing decided a Compulsory Supervision Order was needed and Lucy became 'looked after at home'.

After the Hearing, Lucy didn't notice anything really changing, except she knew she had to go to school every day or else she and her family would be in trouble. This was not easy to do, because her parents needed help at home with her younger brothers and sisters, and there was no one else to support the family. Lucy couldn't concentrate in her lessons and she wasn't achieving educationally like her class-mates. Her teachers told her off for not listening and not doing her homework.

Lucy had a social worker who spent time with her to try and understand her views. With her permission, Lucy's social worker talked to her teachers about what was going on, and this helped to make things better at school.

Lucy is one of approximately 4,000 children who are looked after at home in Scotland. Children can be looked after at home for many different reasons when there are concerns that parents are struggling to manage without social services. These children have the poorest educational outcomes of all looked after children, including children who are looked after away from home in placements like foster care and residential care.

So what could be different for Lucy? The adults involved should have taken time to support Lucy through her Children's Hearing. Her views should have been sought in a meaningful way, and should have formed the basis of the reports that were written. Lucy could have been supported to use the 'Having Your Say' forms to make sure everyone at the Hearing knew her views.

Lucy's right to privacy should have been considered and her opinions taken seriously about who needs to know personal information. Plans to support Lucy and her family should be clear, and have Lucy at the centre. Plans should then be implemented. Any plans should be regularly reviewed and Lucy and her family given the chance to say if they are getting the help they needed. Her school should play a key part in ensuring her right to education is realised fully, and that she is supported rather than feeling guilty and afraid. Lucy should be able to rely on all adults being supportive like her social worker, who she knew would be kind to her, listen and help with her worries and identify possible solutions (more than worries).

Children like Lucy who are looked after at home need to be given the same priority as other children. They need support and nurturing relationships so that they have the same chances in life as every other child. Fortunately, Lucy's experience is not the same as all children. The Scottish Government, Children's Hearings Scotland, and other corporate parents are committed to improving experiences for all looked after children, including children who are looked after at home. By listening to the needs, fears and wishes of children and young people, services can continually improve, to effectively support children like Lucy.

## 5.1 Childcare and family support

### *Affordability, availability and accessibility of childcare*

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#### **UNCRC Concluding Observation**

Conduct a rigorous child rights impact assessment of the recent reduction of funding for childcare and family support and adjust the family support policy in order to make childcare services available to all those who need it.<sup>785</sup>

#### **Other treaty bodies and UPR recommendations**

Similar recommendations were made by CESCR in its 2016 Concluding Observations (paragraph 44),<sup>786</sup> and by CEDAW in its 2013 Concluding Observations (paragraph 47).<sup>787</sup>

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There is substantial evidence to show that access to high quality early childhood education and care has been associated with benefits and lasting gains for children's development and can help to tackle socio-economic inequalities.<sup>788</sup> Children make better all-round progress in early learning and childcare settings which view educational and social development as complementary and equal in importance.<sup>789</sup>

Scotland has some of the highest childcare costs in the UK,<sup>790</sup> which in turn are among the highest costs in the world (26.6% of average family income, compared to an OECD average of 11.8%).<sup>791</sup>

The 2008 Early Years Framework requires local authorities in Scotland to have 'a strategic view of childcare accessibility' and a longer-term objective that families have 'access to integrated pre-school and childcare services in every community matched to an assessment of local demand'.<sup>792</sup>

The Children and Young People (Scotland) Act 2014 contains a number of duties relating to childcare. These include a duty on local authorities to consult and publish plans for childcare, for both under-fives and out-of-school care (from August 2014).<sup>793</sup> Furthermore, the Act includes provisions that increased the amount and flexibility of free early learning and childcare from August 2015 from 475 to a minimum of 600 hours per year for 3 and 4-year-olds.<sup>794</sup> For the first time, provision was extended to include eligible two year-olds with the aim of supporting families out of poverty.<sup>795</sup> Plans to expand the number of free hours of childcare available for eligible children, including looked after 2-year-olds have been restated in the 2016 Programme for Government.<sup>796</sup>

The Commission for Childcare Reform found that many parents cannot access and afford high quality provision that meets their needs.<sup>797</sup> A survey found that 67% of parents were concerned about affordability of childcare and 30% wanted more childcare but cannot afford it.<sup>798</sup> More vulnerable parents, such as refugees,<sup>799</sup> some minority ethnic parents,<sup>800</sup> and those with a disability<sup>801</sup> can face particular difficulties. The Commission for Childcare Reform found that 16% of parents who do not use childcare stated that they did not do so as it was too expensive.<sup>802</sup> This proportion increased to 26% when respondents who had more than one child were included.<sup>803</sup>

The extra childcare introduced through the 2014 Act has been widely welcomed by Together's members.<sup>804</sup> Funding of childcare was reported as being complex, confusing, unfair and lacking in transparency.<sup>805</sup> Parents repeatedly reported being unable to access the new entitlement.<sup>806</sup> The lack of flexibility can mean that parents are unable to find suitable employment that fits around the hours of childcare provision in their area.<sup>807</sup> A campaign has called on the Scottish Government to work with all local authorities to create a more flexible system of national childcare that works for all parents and children.<sup>808</sup> In October 2016, the Scottish Government announced a consultation on increased flexibility for parents regarding free pre-school childcare hours.<sup>809</sup> Together's members have also highlighted the need to ensure that families and carers of looked after children are routinely made aware of their right to additional childcare provision.<sup>810</sup>

There is a key challenge in maintaining and enhancing quality of childcare whilst also expanding provision, not least in ensuring a highly trained, motivated and supported workforce. To address this, there needs to be a system of integrated support for children's learning and care that meets their needs and rights at key ages and stages of development, and enables appropriate support for any identified issues to be put into place.<sup>811</sup> Expansion of childcare provision for looked after children should be of a specialist nature and involve family centres, foster carers and parents, as well as provide family support in the home. The Scottish Government has outlined an intention to publish good practice guidance in relations to the expansion of early learning and childcare.<sup>812</sup>

#### **Childcare for children with a disability**

In a recent survey of families of disabled children in Scotland, 15% of respondents indicated that childcare was one of the most significant additional financial costs which their family faces as part of raising a disabled child.<sup>813</sup> It is widely evidenced that the cost of childcare for families affected by disability is substantial.<sup>814</sup>

Parents of disabled children can have limited choices about childcare options due to accessibility,<sup>815</sup> staffing levels, appropriately trained staff, and the funding available for additional support, which may increase childcare costs.<sup>816</sup> Some of Together's members report that school holidays, after-school provision and transitioning to secondary school are more difficult due to the cost of childcare for parents of disabled children.<sup>817</sup>

Support with additional access to childcare is shown to promote positive outcomes for children with a disability.<sup>818</sup> Extending the childcare provisions of the 2014 Act to two-year-olds in receipt of Disability Living Allowance would have a significant impact on children and their families.<sup>819</sup> This would promote the rights of children with a disability to start formal education with the skills they need, and create important respite opportunities for their families. It would also have the potential to deliver effective earlier interventions by increasing opportunities for the assessment of emerging additional support needs of a vulnerable group of children.<sup>820</sup> Given the disproportionate number of families affected by disability living in poverty, it would also have the potential to help lift families out of poverty by enabling parents to work.<sup>821</sup>

### Childcare for young people with care experience

The rates of parenthood for young people with care experience are above the average for all young people, according to UK research.<sup>822</sup> Although parenting at a young age can be a positive experience, it can pose additional challenges for those who have less informal support networks from wider family, which is commonly used in Scotland.<sup>823</sup> This may make sourcing affordable childcare particularly difficult.<sup>824</sup> Families in this situation should have the same entitlement to additional hours of early learning and childcare for their 2-year-olds as they would if their child was looked after.<sup>825</sup>

### Lone parents

The cost and availability of childcare remains a priority issue for lone parents, 92% of whom are women.<sup>826</sup> Access to affordable childcare can be a major barrier to women being able to work, study and train<sup>827</sup> and presents a significant risk of single mothers (and by extension their children) entering into deeper and sustained poverty.<sup>828</sup>

Under new requirements in relation to Universal Credit,<sup>829</sup> lone parents have been particularly impacted on by sanctions and conditionality.<sup>830</sup> Lone mothers have reported escalating stress levels as a result, and a lack of certainty about how the regulatory changes will affect their families.<sup>831</sup>

The UK Government's summer Budget in 2015 extended the main rate freeze on most working age benefits and tax credits for four years from April 2016.<sup>832</sup> This freeze includes child benefit and child tax credit, and also affects the childcare components of working tax credit and universal credit.<sup>833</sup> The UK Government's impact assessment shows that women will be disproportionately affected by this, with 33% of women claiming childcare credits suffering a loss of income in real terms.<sup>834</sup> Research shows that the benefit freeze could lead to a 12% loss of income for households with children.<sup>835</sup> This reduces access to childcare for low-income families and could prevent mothers of young children from accessing opportunities in education and employment. A number of Together's members have called for the Scottish Government to use its new powers in relation to welfare to mitigate against such cuts to child benefit with a universal Scottish Child Premium.<sup>836</sup>

### Recommendation

- Measures should be developed in Scottish Government to ensure that affordable, flexible and high quality childcare is available to all families, focusing particularly on provision for those with low income, living in rural areas, parents with atypical work patterns and families with disabled children.<sup>837</sup>

## Shared parental leave and responsibility

### Other treaty bodies and UPR recommendations

Similar recommendations were made by CESCR in its 2016 Concluding Observations (paragraph 44),<sup>838</sup> and by CEDAW in its 2013 Concluding Observations (paragraph 47).<sup>839</sup>

In 2015, 63% of women in the UK had primary responsibility for daily childcare compared to 23% of men.<sup>840</sup> In April 2015, new shared parental leave regulations came into force across the UK which enable parents to share leave over the course of a year following the birth or adoption of a child.<sup>841</sup> Parents can share up to 50 weeks of parental leave, by either taking time off together or separately.<sup>842</sup> This legislation has been welcomed by Together's members. Shared parental leave is a progressive step towards redressing the imbalance of childcare responsibilities. Take-up will be crucial in determining what impact it has on children's rights and women's equality.<sup>843</sup> The gender disparity of caring responsibilities become more significant over a child's lifetime, transferring into adulthood.<sup>844</sup>

## Recommendation

- Scottish Government should monitor the take up of shared parental leave and assess the impact of the new regulations in terms of their impact of children's rights and gender equality.

## 5.2 Children deprived of a family environment

### *Looked After Children*

#### UNCRC Concluding Observation

Intensify its efforts to render appropriate assistance to parents and legal guardians, including informal kinship carers, in the performance of their childrearing responsibilities;

Ensure that the removal of children from their families is always subject to thorough investigation, is in accordance with the best interests of the child and is only used as a measure of last resort.<sup>845</sup>

Table 7: Children looked after by type of accommodation (2010 – 2015).<sup>846</sup>

Type of accommodation	2010	2011	2012	2013	2014	2015
At home with parents	6,193	5,476	5,153	4,762	4,144	3,927
With friends/relatives	3,172	3,910	4,076	4,183	4,181	4,158
With Foster Carers provided by LA	3,651	3,871	3,946	3,906	4,011	3,891
With Foster Carers purchased by LA	1,046	1,197	1,333	1,427	1,522	1,587
With prospective adopters	299	267	262	243	201	264
In other community	51	49	45	45	51	48
In local authority home	620	615	564	575	580	564
In voluntary home	82	88	90	112	117	133
In residential school	471	460	451	439	393	402
In secure accommodation	82	86	95	65	82	79
Crisis care	17	13	14	12	16	18
In other residential	208	199	219	263	182	333
Total looked after children	<b>15,892</b>	<b>16,231</b>	<b>16,248</b>	<b>16,032</b>	<b>15,580</b>	<b>15,404</b>

On 31 July 2015, there were 15,404 looked after children<sup>847</sup> in Scotland – a decrease of 196 (or 1%) from 2014. This included children looked after at home with one or both biological parents, those looked after by friends or relatives in formal kinship care, those living with foster carers, and those living in residential houses, schools or other accommodation away from home. This is the third consecutive year the number of looked after children has decreased following a peak of 16,248 in 2012. Unlike the rest of the UK, figures for Scotland include children who are looked after at home. However, the percentage of looked after children is higher than the rest of the UK and increasing more steeply.<sup>848</sup> Looked after children also tend to be younger in Scotland than the rest of the UK.<sup>849</sup> Whilst the proportion of children looked after at home has continued to reduce since 2010, the number and proportion living with foster carers and kinship carers has continued to rise.<sup>850</sup> The numbers leaving care each year have been consistently higher than the numbers entering care.<sup>851</sup>

There was an average of 82 residents in secure care accommodation throughout 2014-15, an increase of 11 per cent from 74 residents in the previous year and reversing the recent downward trend.<sup>852</sup> The number of young people in secure care accommodation throughout the year ranged from 71 to 89.<sup>853</sup>

Many of Together's members have welcomed provisions in the Children and Young People (Scotland) Act 2014 to put corporate parenting on a statutory footing with a new framework of duties and responsibilities introduced for public bodies listed as corporate parents.<sup>854</sup> These duties commenced on 1 April 2015 and require corporate parents to collaborate with each other to promote the wellbeing of all looked after children and care leavers.<sup>855</sup> Together's members have been encouraged by the involvement of care experienced young people throughout the legislative process of the 2014 Act.<sup>856</sup>

Issues which can impact on looked after children include experiences of stigma and discrimination as a result of their care experience, issues of respect of privacy and sharing of inappropriate or unnecessary information by professionals, and poor outcomes in many areas of their lives compared to their non-looked after peers.<sup>857</sup> Furthermore, delays in decision-making and securing permanent placements for looked after children result in poorer outcomes for their futures.<sup>858</sup> Evidence indicates that looked after disabled children often experience greater instability in placements and more delays in reaching permanence decisions than other looked after children.<sup>859</sup>

Care experienced young people have reported a need to make corporate parenting practices more rights-based and focused on the child's views.<sup>860</sup> The Seen + Heard project demonstrates good practice in linking corporate parents with younger children whereby the children are given the opportunity to express the views and ideas that will impact on the development and delivery of services for looked after children across Fife.<sup>861</sup>

There are concerns that looked after children with a disability who use a range of different communication strategies do not always get the opportunity to express their views, or that assumptions are made about their competency to do so.<sup>862</sup>

In October 2016, the Scottish Government announced an independent review of the care system for looked after children.<sup>863</sup> Most importantly, this review will be driven by care experienced young people.

## Looked after children at home

Children looked after at home still live at home with their parents but are looked after by the state. Despite a decrease in the numbers of children looked after at home since 2010, they still constitute a highly significant proportion of children looked after in Scotland – currently over a quarter of Scotland's looked after population.<sup>864</sup>

Children looked after at home have been consistently identified as a group in need of extra support.<sup>865</sup> Their needs and circumstances can be complex, and as pressing as the needs of children looked after away from home.<sup>866</sup> Outcomes for this group are some of the poorest in society, in particular poor education outcomes and involvement in the criminal justice system.<sup>867</sup> Evidence has shown that support services provided are often limited and inconsistent, with service providers prioritising other groups of looked after children.<sup>868</sup>

The families of children looked after at home often experience multiple, chronic problems such as domestic violence, drug and alcohol abuse, mental health issues and financial difficulties.<sup>869</sup> Despite the numbers of children looked after at home, and the seriousness of the challenges they face, little is known about their or their families' needs, or whether the intervention of 'looked after' status works to improve children's realisation of their rights.<sup>870</sup> Children 'looked after at home' are subject to a Compulsory Supervision Order (CSO).<sup>871</sup> On the basis of the evidence available, this intervention does not appear to lead to the comprehensive and consistent delivery of intensive family support, or other focused interventions which are needed to address the causes of the issues which led to the decision to impose compulsory measures.<sup>872</sup>

The 2016 Scottish Government's National Mentoring scheme for children looked after at home will fund, via Inspiring Scotland, projects focused on providing mentoring relationships to looked after children at home between the ages of 8 and 14 years.<sup>873</sup> The Life Changes Trust has funded peer mentoring projects for care experienced young people as part of its funding programme to support care experienced young people.<sup>874</sup> There is an international evidence base that demonstrates the effectiveness of mentoring in improving outcomes across a wide range of educational, health and wellbeing, and 'positive destination' indicators, including the role of community engagement.<sup>875</sup>

## Kinship carers

The number and proportion of children living with kinship carers continues to rise.<sup>876</sup> In 2015, there were 4,158 children in Scotland considered to be in formal kinship care. This accounted for 27% of all children in care.<sup>877</sup> In 2012, 13,000 children were estimated to be living in Scotland in informal kinship care.<sup>878</sup> These children may live with family or friends under a residence order, or they may be being cared for by family or friends in a private arrangement with no local authority involvement.<sup>879</sup>

Specific provisions have been introduced through the 2014 Act<sup>880</sup> to improve support for children in kinship care. These include duties on local authorities, which commenced in April 2016, to make kinship care assistance available to safeguard, support and promote the wellbeing of looked after children and those at risk of becoming looked after.<sup>881</sup> Ongoing concerns have been raised by children's organisations around the failure to legislate for a minimum allowance for kinship carers and discrimination between the support to those offered in kinship care compared with foster care.<sup>882 883</sup> The Scottish Government has committed to provide an additional £10.1 million funding annually so that the kinship allowance is the same as the foster allowance when combined with state benefits.<sup>884</sup> This applies to looked after children in formal kinship care and children who are subject to a Kinship Care Order<sup>885</sup> who were previously looked after, or at risk of becoming looked after.<sup>886</sup> Children 1<sup>st</sup> have highlighted that disparities in financial arrangements which are dependent on how Kinship Care Orders are made remain a concern for many kinship carers. It is therefore important that the impact of Part 13 of the 2014 Act on support for Kinship Carers is evaluated to ensure positive outcomes for kinship carers and children.

In addition to financial support, kinship carers have reported that they lack emotional support, and that they need greater clarity on how to access support and services such as kinship carer groups, free swimming lessons and leisure passes.<sup>887</sup> While there may be recognition that Kinship Carers have different needs to other foster carers, this is often not matched in practice.<sup>888</sup> Areas of good practice have been highlighted by children's organisations where children in kinship care are consulted about their Child's Plan and feel listened to.<sup>889</sup>

## Fostering

Increasing numbers of children are being looked after away from home in community settings, in particular with foster carers – 36% of the total number of looked after children.<sup>890</sup> In 2015, there were approximately 5,450 children living with foster families in Scotland.<sup>891</sup>

It was identified in 2012 that organisations need to take further steps to take account of the views of children in foster care, and shape services to meet their needs.<sup>892</sup> Recommendations from the 2013 Foster Care Review included the need for clearer terminology on types of placements and the development of a learning and development framework for foster carers to help the long-term stability of placements.<sup>893</sup> In July 2014 the Scottish Government commissioned the Scottish Social Services Council (SSSC) to develop this framework.<sup>894</sup> A consultation on proposed new Standards for Foster Care was conducted in spring 2016.<sup>895</sup> Whilst welcoming the positive, practical orientation of the framework, organisations have also suggested that there should be an additional focus on trauma, and highlighted the complexities and considerations for the implementation of the Standards.<sup>896</sup>

All local authorities and foster care providers are expected to implement new definitions of foster care placements by 2016-17.<sup>897</sup> Despite the Scottish Government's efforts to promote learning and development opportunities for foster carers,<sup>898</sup> children's organisations report that local authorities and some independent fostering services are cancelling training programmes due to austerity measures.<sup>899</sup>

New provisions in the 2014 Act entitle eligible young people in foster care to remain in their care setting after they cease to be looked after to support their transition.<sup>900</sup> Whilst children's organisations welcome this as a step forward, it is estimated that fostering agencies need to recruit a further 800 foster families within an annual period to meet demand.<sup>901</sup> Carers must be assured appropriate support and there needs to be greater engagement with potential carers who are willing to care for children who are more difficult to place, including older children, sibling groups and children with disabilities.<sup>902</sup>

## Recommendations

- Scottish Government should ensure that children with care experience are included in decisions regarding all aspects of their care. Improvements in care services should be shaped by the views of children and by evidenced outcomes.<sup>903</sup>
- Scottish Government should ensure that all kinship care families are provided with appropriate support (including financial) to meet the needs of children and their carers.<sup>904</sup>

## Changes in placements

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### UNCRC Concluding Observation

Take all measures necessary to provide stability for children in care, including efforts to retain social workers and to avoid unnecessary changes in placement.<sup>905</sup>

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Children often experience multiple moves against their wishes, or can spend long periods of time in one placement before being moved to permanent carers or adoptive homes,<sup>906</sup> both of which can have a detrimental impact on a child's development of attachment and their experience of trauma and loss.<sup>907</sup> Together's members report that despite children frequently stating the importance of trusting and long-lasting relationships, many of them experience multiple moves during care which disrupt these relationships.<sup>908</sup> Although recognising the progress of the Scottish Government's strategy of permanence planning, looked after children can still experience a lack of permanence in practice.<sup>909</sup>

An FOI request revealed that there were 4,997 foster children in care in Scotland during April 2014 to March 2015 and of that figure, 1,967 foster children had moved placements twice or more.<sup>910</sup> This experience is counter to the evidence which shows that a sense of permanence is vital to children's wellbeing.<sup>911</sup> Children who have a number of placements tend to have poorer health, greater social and behavioural difficulties, and poorer educational participation and progress compared to those who are adopted or are in long-term stable foster care.<sup>912</sup> Local authorities have reported a shortage of foster carers; some have noted that longer placements, whilst beneficial for the stability of children, reduces the numbers of placements for those coming into care.<sup>913</sup> The Scottish Government have stated that in order for children to achieve permanence away from home more quickly, there needs to be an increased availability of permanent foster care.<sup>914</sup>

Many children have reported that, when they are removed from their parents, their basic needs are assessed and met, but they lack caring and lasting relationships.<sup>915</sup> Children and young people have also talked about decisions being made about their care without their involvement. For example, *'being told I was getting moved unit the day before,' 'contact with my family stopping and not knowing why'* and, *'the work of local authority children's rights officers and voluntary sector advocacy workers is extremely valuable but they like all of the professionals are over-stretched'*.<sup>916</sup> Some of Together's members have highlighted examples of good practice demonstrated by public bodies such as seeking out best placements for children which are retained over a long period, and ensuring that placements are sought based on the needs of children.<sup>917</sup> Positively, the use of permanence orders is increasing year on year, and episodes of care continue to lengthen – the number of episodes longer than five years have doubled since 2008.<sup>918</sup>

## Sibling contact

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### UNCRC Concluding Observation

Wherever possible, find a placement for the child that will facilitate contact with his or her biological parents and siblings.<sup>919</sup>

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Sibling contact is a major issue which can impact on looked after children who are separated from their siblings as a result of one or more becoming looked after.<sup>920</sup> Although local authorities are required to promote contact between a child and any person with parental responsibilities, the same level of duty is not required to promote sibling contact.<sup>921</sup> Children say that their relationships with brothers and sisters are among the most important in their lives.<sup>922</sup> These relationships are frequently not supported for looked after children.<sup>923</sup> While the benefits of sibling contact are widely recognised,<sup>924</sup> children often encounter barriers when trying to keep in touch with family members after they are taken into care.<sup>925</sup> Lack of action from local authorities to facilitate sibling contact can have a devastating effect on looked after children.<sup>926</sup> Many of Together's members report that children are frequently not given the space to express their views regarding sibling contact or that their wishes are not taken into full consideration.<sup>927</sup>

Multiple placement moves and geographical distances present challenges to remaining in contact. Children may require support to become aware of their right to contact and to access legal advice and advocacy.<sup>928</sup> Many of Together's members report a lack of consistency in the approach of social workers who hold responsibility for carrying out assessments and facilitating sibling contact.<sup>929</sup>

Children should be included in decisions about contact, and arrangements made on the basis of the best interests of the child rather than the needs of parents, carers or professionals arranging the contact. However, the Children (Scotland) Act 1995 directs the local authority to *'take such steps to promote ... personal relations and direct contact between the child and any person with parental responsibilities'*.<sup>930</sup> This often means that social workers prioritise contact with adults with parental responsibilities over sibling contact, including in assessment, care planning and preparation of reports.<sup>931</sup>

## Recommendation

- The initiation of contact proceedings should be facilitated for all children and reflect their particular needs, including for those in long-term residential care.<sup>932</sup>

## Care leavers

### UNCRC Concluding Observation

Inform and consult with children from an early stage on plans for their care and transition and provide sufficient support for care leavers, including for accommodation, employment or further education.<sup>933</sup>

Care leavers in Scotland continue to have poor outcomes and unmet needs. Throughcare and aftercare support and service provision is variable and significant numbers of eligible young people have been unable to access these services in the past.<sup>934</sup> Challenges include how to best engage, plan for and support young people into adulthood, how to meet the needs of different groups of care leavers and how to ensure local authorities have the information they need to plan services and monitor young people's outcomes.<sup>935</sup>

New provisions for care leavers included in the 2014 Act<sup>936</sup> have been welcomed by children's organisations. These will enable young people to remain in stable care placements up to age 21 and raise the age of entitlement to request aftercare support from the local authority from 21 to 26 years-old. Looked after children have highlighted that successful implementation of these duties should include meaningful and flexible involvement of care plans and early support in preparing for the future.<sup>937</sup> Take-up will depend on the entitlements being understood by both professionals and young people. Concerns have been raised around a lack of consistent information being disseminated to ensure a full understanding of the new entitlements.<sup>938</sup> In response, Who Cares? Scotland and the Children and Young People's Commissioner for Scotland are working to develop an information pack for young people about their rights to continuing care and aftercare.<sup>939</sup> Research will be needed to assess the impact of the new duties and any subsequent changes in the average age of leaving care.

Corporate parents can demonstrate their commitment to positive outcomes for care leavers by endorsing and signing up to the Scottish Care Leavers Covenant.<sup>940</sup> The Covenant supports implementation of the 2014 Act in supporting the aftercare of care leavers transitioning into adulthood, recognising the primacy of graduated and extended transitions and relationship-based practice.<sup>941</sup>

Research conducted with young care leavers showed they felt that their views were not consistently heard,<sup>942</sup> which had a negative effect on their feelings of power and control in their lives.<sup>943</sup> They reported feeling isolated and alone when leaving care, and uncertain about their future.<sup>944</sup> To address this, they identified the need for better access to financial and practical resources and emotional support,<sup>945</sup> especially when preparing to leave and after they had left care.<sup>946 947</sup> Although good practice through Corporate Parenting and the Covenant is being carried out in some areas, consistent implementation of suitable accommodation options and abolishing homelessness for care leavers has not been achieved.<sup>948 949 950</sup>

## Recommendation

- Young careleavers should be actively involved in all stages of preparing for, planning and evaluating their throughcare and aftercare support.<sup>951</sup>

## Advocacy

Looked after children and care leavers face particular challenges of participation, particularly in expressing their views in complex situations which may arise where different family members or professionals hold competing views; this can lead to the child's voice not being heard.<sup>952</sup> The current commissioning and availability of independent advocacy for children remains inconsistent, with no agreed methodology being used to assess local advocacy need and procure appropriate levels of provision.<sup>953</sup> This has resulted in children having access to varied provision dependent on issues such as where they live.<sup>954</sup>

The Children's Hearings (Scotland) Act 2011 sets out a requirement for the chairing member of a Children's Hearing to inform the child of the availability of advocacy.<sup>955</sup> The enactment of this part of the Act was delayed to allow the Scottish Government to understand advocacy provision and the need for it in the lives of care experienced young people.

In 2014 the Scottish Government commissioned several action research projects to explore the arrangements for advocacy support and an understanding of children's experiences.<sup>956</sup> Who Cares? Scotland is completing research providing two perspectives of

advocacy support; the young persons and the professionals. The research findings demonstrate that understanding of advocacy is relatively poor for both young people and professionals and that many children remain unaware of their right to have independent advocacy, causing them to feel excluded from decisions about their own lives.<sup>957</sup> However, 92% of respondents that have accessed advocacy believe it helped them and 76% of respondents who have not had advocacy would like to hear more about it after reading a short description.<sup>958</sup> Independent advocacy ensures children have the opportunity to raise comments and complaints about their care, and can be a critical safeguard for looked after children.

## Recommendation

- Looked after children should have consistent access to high quality independent advocacy to ensure their participation in decisions affecting them.<sup>959</sup>

## Adoption

There was a gradual decrease in the number of children who were with a prospective adopter between 2010 and 2014.<sup>960</sup> However, the number rose again relatively steeply in 2015.<sup>961</sup> There are more than twice as many children on the Adoption Register needing a family than prospective adopters offering a placement in Scotland.<sup>962</sup> The number of children referred to the Scotland Adoption Register rose from 184 to 205 in 2014-2015 while the number of adopters fell from 122 to 110.<sup>963</sup> This reflects reports from a number of agencies who say it has been particularly challenging to recruit sufficient adopters.<sup>964</sup>

Of the 205 children referred to the Adoption Register, there were significantly more boys than girls, a difference that has become even more pronounced in recent years.<sup>965</sup> Age remains one of the key factors determining the likelihood of a placement being found.<sup>966</sup> Forty-five of the referrals to the register came from local authorities, representing a fall in the number from 2015 due to the difficulty some authorities have in recruiting families.<sup>967</sup>

Research assessing the Adoption and Children (Scotland) Act 2007 has identified areas of progress such as Permanence Orders (without authority to adopt) which are being used across Scotland and, as intended, to respond to children's individual circumstances.<sup>968</sup> However, more children could benefit from the legal security and stability provided by Permanence Orders. There are clear geographical differences in the route to adoption with local authorities in the west of Scotland favouring direct adoptions and those in the east adoption after a Permanence Order with authority to adopt.<sup>969</sup> In 90% of cases, it takes over two years for children's first involvement with services to the Order being made at court.<sup>970</sup> It is the early stages of care and permanence planning following the child being accommodated that take the longest time in the overall process.<sup>971</sup> The Scottish Government has established a Permanence Group as part of the Children's Hearings Improvement Partnership to produce an Action Plan to take forward the areas for improvement identified by the research.<sup>972</sup>

The 2014 Act has now placed Scotland's Adoption Register on a statutory footing,<sup>973</sup> making it easier and quicker to find placements for children who need adoption. This means every adoption agency in Scotland must refer children registered as needing adoption, and all families approved as adopters, to the register as a compulsory rather than a voluntary arrangement,<sup>974</sup> and within a timescale of 3 months, as specified in regulations.<sup>975</sup>

## 5.3 Children of incarcerated parents

### UNCRC Concluding Observation

Ensure that child protection authorities are always informed when a person who has a child or children is imprisoned, in order to avoid situations where children are left unattended;

Take into account the best interests of the child as a primary consideration when sentencing parents, avoiding, as far as possible, sentences for parents that lead to their being separated from their children.<sup>976</sup>

### Other treaty bodies and UPR recommendations

Similar recommendations concerning the welfare of children of incarcerated parents were made by Slovakia (paragraph 96) in the United Kingdom's 2012 Universal Periodic Review.<sup>977</sup>

Scotland has one of the largest prison populations in Europe (per 100,000 population).<sup>978</sup> It is estimated that around 63% of prisoners in Scotland have children<sup>979</sup> which means that a large number of children are affected by parental imprisonment. Despite this, there is no recording system of how many children are affected. Estimates are placed at approximately 27,000 children affected each year.<sup>980</sup> The lack of information on the number of children makes it difficult to tailor support services to meet their needs.

Children and families with a family member in prison experience stigma,<sup>981</sup> keep the issue hidden and often do not seek support, even when it is available.<sup>982</sup> Evidence shows that children of prisoners are three times more likely to suffer from mental health problems than their peers,<sup>983</sup> that they experience the separation as bereavement, and that families often suffer financially as well as emotionally when a parental figure is removed from the home.<sup>984</sup> These difficulties are exacerbated by the economic circumstances which many families experience before and after the prison sentence.<sup>985</sup> Children are often not given information about parents being released from prison, which can be re-traumatising and disempowering.<sup>986</sup>

A number of Together's members report concerns around a lack of awareness and training for those working with children on the effects of having a family member in prison.<sup>987</sup> Good practice is found in the Children Affected by Parental Substance Misuse Group (CAPSM) who were responsible for strengthening an understanding across agencies of the needs of children affected by parental substance misuse.<sup>988</sup> Support and information for families has also been made available through the Framework for the Support of Families Affected by the Criminal Justice System<sup>989</sup> which recognises and respects the rights of those affected.

Statistics show that children with a parent in prison are often subsequently looked after by kinship carers.<sup>990</sup> The involvement and support of kinship carers of children affected by family imprisonment is an area that needs to be explored further.

## Family contact

In 2012, the Commission on Women Offenders found that women prisoners struggle to maintain relationships with their children while in prison.<sup>991</sup> A set of Minimum Standards for Encouraging Family Contact was produced by the Scottish Prison Service and became operational on 1 April 2013.<sup>992</sup> All prisons now have children's visits as a right of the child,<sup>993</sup> and there are examples of good practice in NGO service provision.<sup>994</sup> Prison Visitors' Centres serve a vital role in providing information that visitors need.<sup>995</sup> Such Centres act as a bridge between prisons and the community, as a useful neutral venue for engagement with families, and as a gateway for links with community-based support.<sup>996</sup> In 2013, the Scottish Prison Service announced its aim that every prison in Scotland should have a Visitors' Centre.<sup>997</sup> Out of 15 prisons in Scotland, eight still do not offer this service, and those that do exist vary in terms of their resources and capacity.<sup>998</sup> In response, in 2016 the Scottish Government invested in support for existing visitors' centres and in the development of new centres at prisons that do not have them.<sup>999</sup> The National Prison Visitor Centre Steering Group (NPVCSG) will be overseeing national coordination and a set of National Standards for Prison Visitor Centres.<sup>1000</sup>

Some children's organisations have concerns about child victims of domestic abuse who feel pressured to visit or maintain contact with an abusive parent in prison, under inaccurate assumptions that it is always in the child's best interest to maintain contact.<sup>1001</sup>

## Assessing the impact of parental imprisonment on a child

The importance of communication between children and adult services at the stage of parental or family arrest and imprisonment is paramount in supporting children. This helps to avoid situations where children are left unattended, unsupported, and even unknown.

Unlike sentencing guidelines in England and Wales,<sup>1002</sup> there is no requirement for the judiciary in Scotland to take a child's best interest into account when deciding whether to place an adult in prison.<sup>1003</sup> The routine use of Child and Family Impact Assessments at key stages in the criminal justice system is needed to assess the impact of parental imprisonment on a child. The voices of children of offenders are rarely heard within the justice system.<sup>1004</sup> Impact Assessments have the potential to inform a Judge's or Sheriff's decision and ensure children's views are taken into account.<sup>1005</sup> Crucially, they ensure that the rights of the child are upheld and respected, and appropriate support is put in place.<sup>1006</sup> Despite the clear benefits from their use, Impact Assessments are still not in place.<sup>1007</sup> Some progress has been made through the Criminal Justice (Scotland) Act 2016 which places duties on Scottish Ministers to ensure that a newly admitted prisoner is asked whether he or she is a parent and, if so, for details of any children.<sup>1008</sup> This information must then be passed to the Named Person (a key professional responsible for the oversight of child wellbeing).<sup>1009</sup> While welcome, this only applies to children of people who have already been sent to prison, and does not include those who are being detained or sentenced. This means that children's interests are often only highlighted after the decision to imprison a parent or carer has already taken place. Furthermore, guidance on this does not yet exist and is on hold following the Supreme Court judgment relating to the Named Person scheme.<sup>1010</sup> A Framework for support to children and families at other stages of the justice process has been agreed at a national level, but this guidance is not statutory.<sup>1011</sup> There is no agreement regarding the 'acceptable' level of impact on a child, such as whether placement in care is an acceptable consequence as a result of a parent's imprisonment.<sup>1012</sup>

Much more needs to be done within the court system to put GIRFEC into practice, and put children at the centre of decision making that affects them, as has been done in other areas of the justice system.<sup>1013</sup> <sup>1014</sup> Preparing children for prison visits and talking to them about the situation should be an important part of the support to ensure that the impact of the sentence on the child is reduced.<sup>1015</sup> Child visits should not be used as a method of behaviour control of the parent or carer prisoner.<sup>1016</sup> The availability of age-appropriate literature is important to ensure accessible materials such as 'Children of Prisoners Europe'<sup>1017</sup> which explains rights to children with animation. Taking account of the age and stage of a child's development is key to methods of support when affected by parental or carer imprisonment.<sup>1018</sup>

## Babies looked after in prison

Babies whose parents are offenders and are in the criminal justice system can experience risks that could affect their care and development.<sup>1019</sup> This occurs for a number of reasons: Firstly, parents involved in the criminal justice system often have additional

needs, such as poor mental health, that can impact on the care a baby receives.<sup>1020</sup> Secondly, the criminal justice system can disrupt relationships, particularly if parents and infants are separated.<sup>1021</sup> Thirdly, the physical incarceration of pregnant women and babies in Mother and Baby Units can impact on the health and wellbeing of infants.<sup>1022</sup>

New research suggests that the current custodial estate arrangements in Scotland do not adequately account for the often complex needs of imprisoned mothers and that babies could be better supported to stay in their mother's care where this is in their best interests through improved environments, staff support and custodial alternatives.<sup>1023</sup>

## Recommendations

- Child Rights Impact Assessments should be undertaken during arrest, sentencing and conviction of a parent or carer, making sure that the children's best interests are a primary consideration at all stages.<sup>1024</sup>
- Children affected by imprisonment should be identified and data collected so their needs are met. Professionals working with children should receive training and guidance on how to identify children affected by imprisonment of a family member.<sup>1025</sup>
- Scottish Government should ensure sufficient and sustainable funding for a Prison Visitors' Centre in every prison, recognising the multiple positive impacts that they have on children and families affected by imprisonment.<sup>1026</sup>

## 5.4 Children with parents or siblings in the Armed Forces

Children with parents or siblings in the armed forces are not reflected as a group in the 2016 Concluding Observations. Little attention has been given to children affected by parents or siblings in the Armed Forces although this group of children can suffer from anxiety and worry when a member of their family is deployed overseas.<sup>1027 1028</sup>

Anecdotal evidence suggests that children affected by a family member in the Armed Forces have felt unsupported by professionals and peers, and there has previously been very little empirical evidence about this vulnerable group.<sup>1029</sup> Since 2015 all local authorities in Scotland have been asked to encourage schools to capture data on the number of Armed Forces pupils through the SEEMIS system.<sup>1030 1031</sup> Although this is still dependent on parents and pupils' self-identifying, there is evidence that many pupils have now been identified who were hitherto not known as members of Armed Forces families.<sup>1032</sup> Consequently, schools are now in a position to put in place appropriate support for pupils.<sup>1033</sup>

There is emerging evidence that some local authorities are embedding support for pupils from Armed Forces families in their core work and there is a wider acknowledgement that young people from Armed Forces families are a distinct group who may have specific needs.<sup>1034</sup> In the Highlands, the remit for Armed Forces families now rests with the Scottish Government's Promoting Positive Relationships team,<sup>1035</sup> thus embedding it into the core work of the local authority. It is included in the Highland's Development Plan<sup>1036</sup> and is now part of the Emotional Literacy training programme.<sup>1037</sup>

There is an increasing interest in professionals undertaking research around the experiences of children from Armed Forces families.<sup>1038</sup> Some of these young people are being given increased opportunities to have their voices heard through focus group meetings.<sup>1039</sup> Training and resources are delivered by the Royal Caledonian Education Trust (RCET) to professionals and pupils in order to raise awareness of the issues around the education and wellbeing of children from Armed Forces families. Evaluations indicate that these resources have provided valuable insight into otherwise unknown issues.<sup>1040</sup>

## Recommendation

- UK and Scottish Government should determine how many children are affected by a family member in the Armed Forces and ensure that the views of this group of children are gathered to help ensure that their needs are met.<sup>1041</sup>

## 5.5 Young carers

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It is estimated that around 44,000 people under the age of 18 are caring for a relative, friend or neighbour in Scotland.<sup>1042</sup> However, the rights of young carers are not reflected in the 2016 Concluding Observations. The hidden nature of this group makes it difficult to give a definitive figure. Estimates vary significantly from around 15,167 in the 2011 Census to around 100,000 by The Princess Royal Trust for Carers.<sup>1043</sup> The census figures are likely to be underestimated as many young carers do not identify as a 'carer'<sup>1044</sup> and the census form will often be completed by the main householder who is likely to be an adult and may also be the person that the child provides care to.<sup>1045</sup>

Other data sets found that among children aged 4-15 years-old, 5% of children provide regular care for someone else.<sup>1046</sup> In contrast to adult caring rates, there were no significant differences between the prevalence of caring among boys and girls (both 5%).<sup>1047</sup> The proportion of boys and girls with caring responsibilities did however vary by age. Older children (aged 12-15), were five times as likely as younger children (aged 4-11) to provide regular care for someone else (10% compared with 2%).<sup>1048</sup> Young carers are more likely to live in the 20% most deprived data zones.<sup>1049</sup>

A consistent method of identifying young carers would provide early identification and the provision of sufficient support. Young carers face multiple barriers; schools in Scotland in 2014 identified nearly 1,200 school age children with additional support needs because they were young carers.<sup>1050</sup> Financial pressures cause young carers great stress and anxiety and can affect their ability to study,<sup>1051</sup> and young carers have identified a lack of sufficient support and financial assistance during transition from childhood to adulthood.<sup>1052</sup> Caring responsibilities can impact on socialising and friendships; research shows that 40% of young carers in Scotland have hidden their responsibilities from their friends due to bullying and a lack of understanding.<sup>1053</sup>

Young carers value face-to face support and in particular local young carers' groups; they emphasise that it is important they are listened to and that professionals, including those in school, support them,<sup>1054</sup> understand their unique circumstances<sup>1055</sup> and respect their privacy.<sup>1056</sup> The provision of young carers' groups varies markedly across Scotland.<sup>1057</sup>

Good practice to support young carers includes the commitment to develop a Young Carers Rights Charter,<sup>1058</sup> the dissemination of Young Carers Identification Cards<sup>1059</sup> and the production of local strategies to support young carers.<sup>1060</sup>

Concerns have been raised that the universal GIRFEC provisions within the Children and Young People (Scotland) Act for all children<sup>1061</sup> may not be sufficiently bespoke for the circumstances of young carers.<sup>1062</sup> The Carers (Scotland) Act was passed by Parliament in February 2016<sup>1063</sup> and will be commenced in 2018. The aim of the legislation is to 'promote, defend and extend the rights' of adult and young carers across Scotland.<sup>1064</sup> It includes duties on local authorities (or health boards if the child is of pre-school age) to prepare a 'young carer's statement' for any child it believes to be a young carer (and who wishes to have such a statement), and also for any young carers who request one.

The introduction of a Young Carer's Allowance to give children extra financial support is being considered by Scottish Government.<sup>1065</sup> Under UK Government guidelines, only 250 people in Scotland under the age of 18 years-old receive Carer's Allowance.<sup>1066</sup> As part of their considerations, the Scottish Government will also look at what non-financial support is currently available and identify any gaps.<sup>1067</sup> It has been confirmed that once the range of welfare powers are devolved to Scotland under the Scotland Act 2016,<sup>1068</sup> the Scottish Government will begin to increase Carers' Allowance to the same level as Jobseeker's Allowance (amounting to an increase of almost 18% ).<sup>1069</sup> Research will be needed to assess the impact of this measure on young carers.

### Recommendation

- Scottish Government should ensure that all young carers are identified as early as possible, that they receive appropriate support throughout school and in the community, and particularly during their transition to adulthood. Universal approaches to support children's wellbeing should recognise, identify and provide the necessary support for young carers.<sup>1070</sup>

# Healthy

# Aberdeen



Thanks for listening and making sure of me

If you don't feel well it's time to see a doctor

SAFE PLACE FOR ALL WE CAN BE

THE FUN... CLUB

RESPECT PEOPLE FOR WHO THEY ARE

STOP

Hiway!!

Healthy Aberdeen



# Disability, basic health and welfare

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(Articles. 6, 18(3),  
23, 24, 26, 27(1-3) and 33)

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

**Article 6:** survival and development.

**Article 18(3):** childcare services.

**Article 23:** children with disabilities.

**Article 24:** health and health services.

**Article 26:** social security.

**Article 27(1-3):** adequate standard of living.

**Article 33:** drug and substance abuse.

## Case Study:

### *Young Gypsy/Travellers rights recognised by the UN Committee*

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*Article 12 in Scotland* is a non-governmental organisation that works to promote young people's rights as set out in international human rights treaties. Through the *Young Gypsy Travellers' Lives* project, *Article 12 in Scotland* aims to significantly improve relations between the Gypsy/Traveller and settled communities; building bridges, bonds and links between people and communities of different cultures, enabling young Gypsy/Travellers to contribute as equal citizens and live their lives free from prejudice. *Article 12 in Scotland* submitted an alternative report to the UN Committee, in which young Gypsy/Travellers spoke about a lack of suitable and culturally appropriate accommodation, and the everyday impact this has on their rights. Information for this case study has been taken from *Article 12 in Scotland's* alternative report: *I Witness: The UNCRC in the United Kingdom: Young Gypsy/Travellers' Voices*.<sup>1071</sup>

Young Gypsy/Travellers are currently facing unacceptable levels of discrimination, harassment and abuse at the hands of the media, the authorities and members of the settled community; this has a negative impact upon every aspect of their lives. The huge shortfall in culturally sensitive accommodation, the geographical location of sites and a lack of public transport are all barriers which restrict young Gypsy/Travellers access to everything from everyday essentials such as clean drinking water, electricity and sanitary facilities, to participating in education, finding employment, accessing basic healthcare, maintaining relationships with their peers and having access to 'normal' social and recreational activities, including safe spaces to play. This can, and indeed does, have an extremely negative effect on the physical health and mental well-being of young Gypsy/Travellers.

***We used to have bricks thrown at us and called names every day at one site, but you just get used to it.***

***On one site when we were shifting [moving on] last week, there were men who came to where we were camped and were throwing metal poles at our trailers.***

***A lot of people don't like us, some people are fine but others are not.***

The lack of adequate sites, both transit and permanent, has become catastrophic. A 'not-in-my-back-yard' attitude to the provision of Gypsy/Traveller sites – both private and run by the local authority – results in Gypsy/Travellers being forced to live 'illegally'. Even those living on one of the few council sites available have been subjected to racial harassment from those living around them. The few that are lucky enough to live on private land are in the minority; planning permission is rarely granted, in part due to local opposition from residents and council officials. Being forced to move constantly affects young Gypsy/Travellers access to healthcare, education, employment and legal representation.

***When you are moved on, you're told there are plenty of Traveller sites but people don't realise you have to put your name on a waiting list, it can take months!***

***Our sites are very far away from everything: swimming pools, school [we don't get transport provided anymore], cinemas, shops and places to eat.***

***Our rubbish doesn't get lifted often enough and we can get rat problems on site.***

***We would like a better park to play in on site, the one we have is rusty and dangerous because you slip.***

The huge shortage of official sites, the blocking off of traditional stopping places, and the discrimination many face when they try to camp on public campsites result in Gypsy/Travellers often being forced into camping on unsuitable plots of land, next to busy roads, on industrial estates, near pollutants and so on. Others, having been subjected to continuing harassment, choose to camp very remotely so as to avoid further victimisation. Most young Gypsy/Travellers reported that they have become the victims of hate crime when they travel to new areas.

After listening to the experiences of young Gypsy/Travellers in Scotland, the UN Committee made a specific recommendation that the Scottish Government introduce a statutory duty for local authorities to provide safe and adequate sites for Gypsy/Travellers. The UN Committee also stated that mechanisms should be put in place to ensure that Gypsy/Traveller communities, including children, can meaningfully participate in planning and decision-making processes.

## 6.1 Children with disabilities

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### UNCRC Concluding Observation

Adopt a human rights-based approach to disability, set up a comprehensive strategy for the inclusion of children with disabilities.<sup>1072</sup>

### Other treaty bodies and UPR recommendations

No other international treaty bodies have made similar recommendations in recent years. The UN Convention on the Rights of Persons with Disabilities (UNCRPD) was ratified by the UK in 2009<sup>1073</sup> but as of yet no Concluding Observations have been made.

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Throughout 2015, Scottish Government worked with disabled peoples' organisations, scrutiny bodies, Members of the Scottish Parliament (MSPs) and public bodies to assess progress made in implementing the UNCRPD.<sup>1074</sup> This work informed a draft Disability Delivery Plan<sup>1075</sup> which includes a set of commitments to progress the UNCRPD over the next 10 years. Children are only explicitly referred to in one of the four outcomes outlined in the plan<sup>1076</sup>, in relation to healthcare provision and support for independent living. In their responses to the consultation on the draft plan, Together's members stressed the importance of ensuring that the plan takes a holistic approach to supporting the rights of children with disabilities, across all areas of their lives. The plan is currently being finalised and is expected to be launched later in 2016.

In 2015, CoSLA launched a Local Government Plan for Disabled People<sup>1077</sup> which includes 30 actions to take forward from 2015 to 2019, one of which directly refers to children.<sup>1078</sup> Together's members are not aware of further activity within local government to implement the plan. They particularly welcome the inclusion of an action which commits CoSLA to publish a progress report for Council Leaders in 2016-17, which will be made available for public scrutiny.<sup>1079</sup>

### Recommendation

- Scottish Government should conduct a Child Rights and Wellbeing Impact Assessment on the draft Disability Delivery Plan to ensure it proactively considers and promotes the rights of disabled children, and takes account of their experiences.
- Local authorities should integrate actions included in the Local Government Plan for Disabled People into the planning and reporting of children's rights and children's services in relation to Part 1 and Part 3 of the Children and Young People (Scotland) Act 2014 <sup>1080 1081</sup>
- The 2016-17 report to be published by CoSLA on the Local Government Plan for Disabled People should take full consideration of the rights of children across all relevant actions.

## *The views of children with a disability*

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### UNCRC Concluding Observation

Ensure full respect of the rights of children with disabilities to express their views and to have their views given due weight in all decision-making that affects them, including on access to and choice of personal support and education.<sup>1082</sup>

Those children who frequently use health services have reported feeling a lack of involvement in processes regarding their treatment, and many believe communication with children is limited and not age appropriate.<sup>1083</sup> Children have suggested that it would be useful for health care services to provide resources such as illustrated books that explain what will be involved in a hospital visit to make it easier for disabled children to understand these processes as opposed to interaction from medical professionals being limited to parents.<sup>1084</sup>

Recent research undertaken with children with disabilities highlighted their desire for independence and to be treated with respect and dignity by adults.<sup>1085</sup> They felt that children should 'help make the rules' and that adults should include them in conversations about issues that concern them, rather than talking over them.<sup>1086</sup> Young people with disabilities have also emphasised the importance of communication tools in allowing them to be involved in the decision-making process, and how having access to updated and customised equipment can allow them to discuss their opinions effectively.<sup>1087</sup> In terms of accessing support and services, young people reported being unaware of many of the services that were available to them and stated that information and support should be accessible online.<sup>1088</sup>

## Recommendation

- Scottish Government should ensure accessible and child-friendly guidance to support the effective participation of disabled children is made widely available to children and practitioners. Training for professionals should include the development of skills and competencies to support the needs of disabled children, with particular reference to the Common Core.<sup>1089</sup>

## Inclusive education

### UNCRC Concluding Observation

Set up comprehensive measures to further develop inclusive education, ensure that inclusive education is given priority over the placement of children in specialized institutions and classes and make mainstream schools fully accessible to children with disabilities.<sup>1090</sup>

Please refer to chapter 7.1.

## Transitions

### UNCRC Concluding Observation

Provide children with disabilities with a comprehensive and integrated package of services for transition to adulthood, from a sufficiently early stage, by coordinating legislation, policy and programmes across relevant sectors, and ensure fully informed decisions by children with disabilities on their personal choice in the transition, by involving them in the design of services and by providing advice and information on available options.<sup>1091</sup>

Organisations working with children who have a disability have raised several concerns regarding the quality of support received by both parent and child, during and after diagnosis. Research has shown that 64% of parents of disabled children felt it took too long to get a diagnosis and that support during the time before diagnosis is limited.<sup>1092</sup> Further, only 37% of parents felt like they had the opportunity to ask questions which lead to a lack of involvement in their child's diagnosis and some feeling belittled or patronised.<sup>1093</sup> Evidence from Together's members who work directly with families with children with a disability also suggests that, once diagnosed, children can face barriers in access to health services as services are often disjointed and information is not shared between practitioners.<sup>1094</sup> This causes stress and frustration among both parents and children.<sup>1095</sup>

Together's members have highlighted that transitions are also an issue for children with long term or life limiting conditions. As young people move into adulthood, the different changes that occur during this time mean that they require support in many areas of their life, for example, with moving from education to employment or training and managing welfare changes.<sup>1096</sup> The Children and Young People (Scotland) Act 2014 states that the authority which is handling a young person's transition should have regard for the views of the child when preparing their plan.<sup>1097</sup> Taking into account a young person's needs and aspirations has been shown to improve outcomes during transitions.<sup>1098</sup> Scottish legislation such as the 2014 Act and the Social Care (Self-Directed Support) (Scotland) Act 2013<sup>1099</sup> promotes independence and choice so that young people are more actively involved in this decision-making. However, this approach is not always fully realised and young people with additional support needs (ASN) sometimes feel that the organisational processes involved with their transition are prioritised over their needs, as opposed to the overall processes being person-centered.<sup>1100</sup>

Support for young people and their families during transitions, often comes from a wide range of services including health, social care, and education. Following amendments in 2009 to the additional support for learning legislation<sup>1101</sup>, appropriate agencies are under a duty to assist education authorities with various functions. This includes preparation, planning and support for transitions from school for those pupils with additional support needs who would benefit from extra help.<sup>1102</sup> The coordination of these services during transition, or lack thereof, can therefore define a young person's experience during this time, particularly for those with complex needs.<sup>1103</sup> Scottish Government has acknowledged the importance of efficient coordination among partners and states that an 'effective multi-agency approach' can ensure there is sufficient access to the support young people need during transitions.<sup>1104</sup> Challenges exist in achieving this as managers in local authorities and NHS boards have reported a lack of joined up working between professional disciplines, which can hinder them from supporting transitions as effectively as possible.<sup>1105</sup> Procedures for the transition planning process can vary across local authority and depending on child's additional support needs<sup>1106</sup>, which in turn can result in inconsistent practice.<sup>1107</sup> Introducing roles such as those of transition coordinators can help to improve the quality of planning and the outcomes of young people experiencing transition.<sup>1108</sup>

## Recommendation

- Legislation and policy relating to transitions must be coordinated to ensure planning involves children at all stages, is coordinated across all services (including health, education and social care) and continues up to age 25.<sup>1109</sup> Ensure young people undergoing transitions are involved in the design of services and have access to advice and information regarding options available.<sup>1110 1111</sup>

## 6.2 Health and health services

### *Health Inequalities*

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#### UNCRC Concluding Observation

Develop comprehensive and multisectoral strategies on child health, with the allocation to the maximum extent of available resources and a robust monitoring mechanism, a strong focus on eliminating inequalities in health outcome and in access to health services and addressing underlying social determinants of health.<sup>1112</sup>

#### Other treaty bodies and UPR recommendations

Similar recommendations have been made by CEDAW in its 2013 Concluding Observations (paragraph 53)<sup>1113</sup> and by Spain (paragraph 110.102)<sup>1114</sup> and Cuba (paragraph 110.103)<sup>1115</sup> in the United Kingdom's 2012 Universal Periodic Review.

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In 2007, in recognition of the importance of improving health inequalities, a Ministerial Task Force was established to review progress.<sup>1116</sup> The resulting report, *Equally Well*<sup>1117</sup>, set out a long-term strategy to address health inequalities, including a number of recommendations for NHS Scotland, Local and National Government, as well as the Third Sector. The Task Force has reconvened twice, firstly in 2010 to review how well agencies were responding to the principles set out,<sup>1118</sup> and secondly in 2013, to review how communities are being engaged in the decisions that affect them and the importance of 'place' on health inequalities.

Overall health is improving, yet health inequalities continue to persist between social groups, resulting in stark differences in various health outcomes.<sup>1119</sup> Factors such as gender, age, and ethnicity all impact on a person's health outcomes yet deprivation remains the key determinant of health inequalities. Those from lower socioeconomic groups suffer from lower life expectancy, increased rates of smoking and drug and alcohol misuse, and worse mental health.<sup>1120</sup>

The effects of health inequalities on children can be particularly damaging, especially during their early years. The health outcomes of children from more deprived groups are significantly impacted by these inequalities as they grow older.<sup>1121</sup> Indicators such as a child's Body Mass Index can help to illustrate trends in inequalities between socioeconomic groups. For example, the percentage of children that are clinically overweight, obese or severely obese has increased by 1.3%, from 16.6% to 17.9% in the most deprived quintile, between 2008-2015, yet has increased by only 0.1% in the least deprived quintile within the same timeframe.<sup>1122</sup> The gap between the most and least deprived groups has therefore widened, rising from 5.5% to 6.7%. Another indicator illustrating the difference in child's health outcomes between social groups is the 27-30-month review statistics. In 2014/2015, 11.6% of children at this age in the least deprived quintile were identified as having at least one concern, for example with speech, communication, or behaviour. This figure rose to 27.2% for children in the most deprived quintile. Further, there are also significant inequalities between ethnicities, with 19.2% of White Scottish children identified as having at least one concern compared with 25.2% for Asian children, and 25.1% for Black, Caribbean or African children. Evidence from research and practice also shows significant health inequalities between looked after children and care leavers, and the general population.<sup>1123</sup>

In 2014, Scottish Government committed to create 500 new health visitor posts over the next four years<sup>1124</sup> with an investment of £41.6 million. In 2015, the Universal Health Visiting Pathway was launched which sets out the minimum core home visiting programme to be offered to all families by Health Visitors.<sup>1125</sup> This aims to ensure consistent national services, underlining the importance of prevention and early intervention. The pathway consists of 11 home visits to all families, within the first year of life and three Child Health Reviews between 13 months and 4-5-years-old. In placing an emphasis on the proactive and health promoting focus of Health Visitors, the programme aims to reach parents who may not initially have engaged with services and therefore increase uptake and use of services, and reduce health inequalities. Whilst the initiative has broadly been welcomed, concerns have been raised around the current capacity of the health-visiting workforce to implement the new programme, and whether the additional 500 Health Visitors will be sufficient to meet demand in an aging workforce.<sup>1126</sup>

## Recommendation

- Health inequalities should be addressed through a coordinated approach across UK and Scottish Governments, across government departments, and in response to children's views. This approach should reduce income inequality and poverty, be focused on the early years and include targeted measures to tackle the barriers to healthcare experienced by particularly vulnerable groups of children of all ages.<sup>1127</sup>

## Children kept in adult wards

Whilst not addressed in the UN Committee's Concluding Observations, the number of children kept in adult wards in hospitals continues to be of concern to Together's members. This increases significantly with age. For example, Freedom of Information requests (FOIs) submitted by Together reveal that in 2015 Greater Glasgow and Clyde NHS Board admitted 12 twelve-year-olds to adult NHS wards, 359 fourteen-year-olds, and 1,347 sixteen-year-olds.<sup>1128</sup> This trend can be seen across all NHS boards, with many admitting new born babies to adult wards.<sup>1129</sup> Positively, this data shows that there is an overall decrease of children of all ages being kept in adult wards since 2008. The exceptions to this trend were NHS Lanarkshire and NHS Lothian, where there was an increase of admittance numbers across the majority of age groups between 2008 and 2016.<sup>1130</sup>

## Recommendation

- Children under the age of 16 should not be admitted to adult wards. Those between 16 and 18 should be given the choice of ward type to which they are admitted. The Information Services Division should make information on the admission rates of 15-18 year olds available on its website. Adult wards should record the number of children under 18 admitted. Consideration should be given to the needs of 16-18 year olds admitted to adult wards.<sup>1131</sup>

## 6.3 Mental health

### Mental health data

#### UNCRC Concluding Observation

Regularly collect comprehensive data on child mental health, disaggregated across the life course of the child, with due attention to children in vulnerable situations and covering key underlying determinants.<sup>1132</sup>

A number of comprehensive regular national studies provide detailed information and an analysis of trends across children's mental health. These include the Health Behaviour in School-Aged Children (HBSC) study<sup>1133</sup>, the Scottish Schools Adolescent Lifestyle and Substance Use Survey (SALSUS)<sup>1134</sup> and Scottish Health Survey.<sup>1135</sup> A Children and Young People's Mental Health Indicator Set was launched by Scottish Government in 2011 and strongly endorsed by children's organisations. The first report of these indicators was published in 2013 but no further update has been released.

Data shows that that mental health and wellbeing deteriorates with age, and girls have worse mental health and wellbeing than boys.<sup>1136</sup> Whilst the overall state of child and adolescent mental health has not changed significantly over the past few years, emotional and peer problems have worsened.<sup>1137</sup> In particular, the number of 15-year-old girls with a borderline or abnormal mental health and wellbeing score rose from 28% to 41% between the years 2010 and 2013, and emotional problems accounted for much of this increase.<sup>1138</sup> This notable change in mental health is balanced out by a decrease in conduct problems and an improvement in pro-social behaviour.<sup>1139</sup>

## Child and adolescent mental health (CAMH) services

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### UNCRC Concluding Observation

Rigorously invest in child and adolescent mental health services and develop strategies at the national and devolved levels, with clear time frames, targets, measurable indicators, effective monitoring mechanisms and sufficient human, technical and financial resources. Such strategy should include measures to ensure availability, accessibility, acceptability, quality and stability of such services, with particular attention to children at greater risk, including children living in poverty, children in care and children in contact with the criminal justice system;

Expedite the prohibition of placing children with mental health needs in adult psychiatric wards or police stations, while ensuring the provision of age-appropriate mental health services and facilities;

Support and develop therapeutic community-based services for children with mental health conditions;

Review current legislation on mental health to ensure that the best interests and the views of the child are taken duly into account in cases of mental health treatment of children below the age of 16 years, in particular with regard to hospitalization and treatment without consent.<sup>1140</sup>

### Other treaty bodies and UPR recommendations

Similar recommendations have been made by CESCR in its 2016 Concluding Observations (paragraph 58),<sup>1141</sup> by the Human Rights Committee in its 2015 Concluding Observations (paragraph 16)<sup>1142</sup> and by the Committee Against Torture in its 2013 Concluding Observations (paragraph 31).<sup>1143</sup>

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### Accessibility, availability and funding

Availability of CAMH services differs across Scotland owing to a lack of consistency in the services which each Health Board is able to provide. For example, inpatient services are available only in Glasgow, Edinburgh and Dundee and this can result in some children being placed in adult psychiatric wards because of a lack of service provision.<sup>1144</sup> The number of mental health admissions for under 18s to adult wards is often greater than the number of admissions to child and adolescent wards. In the quarter from January to March 2015, the period of the last published figures, there were 54 admissions to child and adolescent wards compared with 59 to adult wards.<sup>1145</sup> Both of these numbers have showed no significant trend since 2012.<sup>1146</sup> The number of mental health bed days is also important to consider as they vary significantly from the trends shown in the ward admissions figures. In the quarter from January to March 2015, under 18s spent a total of 3,467 mental health bed days in child and adolescent wards compared with 932 mental health bed days in adult wards.<sup>1147</sup> Therefore, although there are relatively similar numbers of under 18s being admitted to adult wards than there are to child and adolescent wards, those who are staying in child and adolescent wards are admitted for a much longer period on average.

In 2015, it was reported that only 5.56% of the mental health budget was spent on CAMH services, which amounted to 0.45% of NHS Scotland total expenditure.<sup>1148</sup> This created a significant funding gap and Scottish Government have since, in January 2016, committed £54 million in funding for mental health services, a large part of which will be used to improve CAMH services.<sup>1149</sup>

When attending appointments for CAMH services, there are several barriers that children can face. Although it is possible to go to CAMH services without parental permission, it is not possible to leave school for an appointment without a parent or guardian's permission and this creates a significant barrier to independent access to services as an appointment during school hours may be a child's only option.<sup>1150</sup> When children with mental health issues do miss school for appointments, or for other health related reasons, it can often be marked as 'non-attendance' which can result in exclusion.<sup>1151</sup> However, access to CAMH services is made slightly easier than accessing adult mental health services as non-health professionals are able to make direct referrals, as opposed to the responsibility being limited to GPs, as long as the child's GP is informed.<sup>1152</sup>

Research undertaken with young people suggests that the majority, 74%, do not know how to access mental health self-help guidance, information, and services that are available in their area.<sup>1153</sup> In particular, 70% of those with experience of a mental health problem did not know about local services and information regarding mental health.<sup>1154</sup> In order to improve this, young people suggested that information about mental health and CAMH services should be more widely available through mediums such as TV and social media, and that public spaces such as schools should display more of this information.<sup>1155</sup> Younger children in particular can experience significant barriers in accessing adequate mental health care as most CAMH services teams do not provide services for under 5s.<sup>1156</sup> Those involved in child protection cases are also often excluded from using services which results in the most vulnerable children being deprived of mental health care.<sup>1157</sup>

## Waiting times

Current targets for CAMH services waiting times were set by Scottish Government in December 2014 and state that at least 90% of patients should be seen no longer than 18 weeks after referral.<sup>1158</sup> As illustrated in table 9 below, these targets have not been met since their introduction as less than 80% of patients are seen within 18 weeks in most quarters. There has been a significant rise in the number of children being seen by CAMH services with numbers increasing from 2,640 in the period April to June 2012 to 4,642 within the same period in 2016.

Table 9: CAMH services wait times (2012-2016)<sup>1159</sup>

Quarter	People seen	Adjusted <sup>1160</sup>			Unadjusted		
		Seen within 18 weeks (%)	Seen within 26 weeks	Average wait time	Seen within 18 weeks (%)	Seen within 26 weeks	Average wait time
Apr-Jun 2016	4,642	77.6	N/A	10	73.6	N/A	13
Jan-March 2016	4,496	84.4	N/A	8	80.7	N/A	10
Oct-Dec 2015	4,505	76.2	N/A	8	72.5	N/A	9
Jul-Sep 2015	4,239	73.1	N/A	9	69.0	N/A	11
April-June 2015	4,463	76.7	85.2	9	73.0	83.9	11
Jan-March 2015	4,269	78.9	85.2	9	75.1	83.5	10
Oct-Dec 2014	4,172	77.0	86.0	7	74.6	83.5	9
Jul-Sep 2014	3,308	78.0	86.2	9	72.3	83.4	12
Apr-June 2014	3,431	82.9	89.1	8	78.3	87.2	10
Jan-Mar 2014	3,601	83.9	91.4	8	79.7	89.5	9
Oct-Dec 2013	3,330	82	90	7	77	87	9
July-Sep 2013	3,343	85	94	7	79	92	9
Apr-June 2013	3,994	87	97	7	82	95	9
Jan-March 2013	3,971	N/A	96	7	N/A	93	9
Oct-Dec 2012	3,166	N/A	91	7	N/A	90	8
July-Sep 2012	2,398	N/A	89	8	N/A	86	11
Apr-June 2012	2,640	N/A	92	N/A	N/A	90	N/A

The latest statistics published by Scottish Government highlight the differences in provision of CAMH services between the 14 Scottish Health Boards. In the period April to June 2016, only seven Boards met the 18-week standard.<sup>1161</sup> This is a decrease of the previous quarter when eight Boards met the standard.<sup>1162</sup> In an attempt to decrease waiting times and improve efficiency, the Scottish Government has asked the Mental Health Access Improvement Team to work with those Boards with the largest workload of longest current waiting times.<sup>1163</sup>

## Looked after children

Looked after children can face many difficulties when accessing CAMH services. Owing to the changes in placements that many looked after children experience, complications can arise over which health board is responsible for particular children. This can result in delays with referrals and treatment.<sup>1164</sup>

Scottish Government produced Guidance on Health Assessments for Looked After Children and Young People in Scotland in 2014 which stated that looked after children should undergo a health assessment by Health Boards within 4 weeks of becoming looked after, which includes mental health and emotional wellbeing.<sup>1165</sup> The Guidance notes that, while some looked after children may benefit from CAMH services if the assessment raises serious concerns for their mental health, CAMH services are specialist and therefore looked after children may benefit from other services such as educational psychologists.<sup>1166</sup> Some organisations working with looked after children feel that this could result in a lack of services for children who experience emotional and behavioural difficulties due to factors such as adverse childhood events but who do not meet the clinical criteria for accessing CAMH services.

## LGBTI children and young people

Research undertaken with Lesbian Gay Bisexual Transgender and Intersex (LGBTI) children and young people suggests that the majority of those who had accessed CAMHS had had a negative experience, with 40.8% describing it as 'not okay' and 34.7% describing their experience as 'terrible'.<sup>1167</sup> Among the reasons young people gave as to why they felt this way was that they felt patronised, as if they weren't listened to, and as if their doctor did not understand them.<sup>1168</sup> In particular, transgender young people faced many issues when accessing CAMH services because they often felt as if they were misunderstood and disrespected by the mental health professionals owing to factors such as being misgendered by their counsellor.<sup>1169</sup>

## Suicide and self-harm

Table 10 illustrates trends in the number of deaths due to intentional self-harm that have occurred in the period 2008-2015. For the age categories 10-14 and 15-19, the number of male deaths is consistently higher than the number of female deaths.

Table 10: Deaths due to intention self-harm (2008–2015)<sup>1170</sup>

Age group/gender	2008	2009	2010	2011	2012	2013	2014	2015
<b>0-9 – Total deaths</b>	<b>0</b>							
0-9 – Male deaths	0	0	0	0	0	0	0	0
0-9 – Female deaths	0	0	0	0	0	0	0	0
<b>10-14 – Total deaths</b>	<b>2</b>	<b>4</b>	<b>1</b>	<b>0</b>	<b>2</b>	<b>2</b>	<b>3</b>	<b>1</b>
10-14 – Male deaths	2	2	0	0	2	0	1	0
10-14 – Female deaths	0	2	1	0	0	2	2	1
<b>15-19 – Total deaths</b>	<b>18</b>	<b>28</b>	<b>28</b>	<b>20</b>	<b>18</b>	<b>19</b>	<b>13</b>	<b>18</b>
15-19 – Male deaths	14	21	20	11	12	14	9	17
15-19 – Female deaths	4	7	8	9	6	5	4	1

In 2015/16, Childline provided a total of 13,687 counselling sessions and 934 of these were with suicidal children.<sup>1171</sup> Scottish Government has committed to publish a revised Suicide Prevention Strategy in 2017.<sup>1172</sup>

## Mental health strategy for Scotland

Scottish Government has committed to publish a new Mental Health Strategy in late 2016, which will cover a 10-year timeframe.<sup>1173</sup> The draft strategy was opened for consultation over the summer of 2016. It contains eight priorities, three of which have been particularly welcomed and subjected to scrutiny by children's organisations:

- Priority 1: Focus on prevention and early intervention for pregnant women and new mothers.
- Priority 2: Focus on prevention and early intervention for infants, children and young people.
- Priority 8: Realise the human rights of people with mental health problems.

Scottish Government has committed to support the strategy with an investment of £150m over five years.<sup>1174</sup>

There is widespread support among children's organisations for a ten-year mental health strategy, which covers all life stages and promotes prevention, early intervention, support and recovery as key values. Some concerns have been raised during consultation with the children's sector regarding the absence of an overall vision for mental health in Scotland and the lack of reference to existing evidence around what affects mental health in this population.<sup>1175</sup> Children's organisations have collaborated to articulate five key principles that should underpin the enactment of the strategy:<sup>1176</sup>

- The importance of a child-centred approach, including actively involving children in the drafting of the strategy and its implementation.
- A holistic approach should be taken to address the needs of children, to ensure that mental health is regarded as a priority across all sectors, and not confined only to the health sector. This should include recognising and addressing the significant impact that poverty and inequality have on mental health and the role of the third sector in supporting positive mental health and wellbeing.
- A coordinated 'whole system approach' should be taken, to help ensure that children can access the right help, at the right time.
- The strategy should recognise more vulnerable groups such as those who have an increased risk of developing mental health problems.
- The strategy should be explicitly integrated with other related policies, legislation and strategies to support implementation.

## Recommendation

- Scottish Government should conduct a Child Rights and Wellbeing Impact Assessment on the draft Mental Health Strategy for Scotland to ensure it proactively considers and promotes the rights of children, and take accounts of their experiences.<sup>1177</sup>

## Medications

### UNCRC Concluding Observation

Regularly collect data on the amount and regularity of psychotropic drugs (Ritalin, Concerta, etc.) being prescribed to children, and make the data transparent;

Ensure that the prescription of drugs is used as a measure of last resort and only after an individualized assessment of the best interests of that child, and that children and their parents are properly informed about the possible side effects of such medical treatment and about non-medical alternatives;

Establish a system of independent expert monitoring of diagnoses of or related to attention deficit and hyperactivity disorders, and undertake a study on the root causes of their increase, also aimed at improving the accuracy of diagnoses.<sup>1178</sup>

Attention-deficit hyperactivity disorder (ADHD) and hyperkinetic disorder (HKD, a form of severe ADHD) are amongst the most commonly diagnosed behavioural disorders in children.<sup>1179</sup> Psychotropic drugs, including Ritalin and Concerta, are used in the treatment of ADHD.<sup>1180</sup> Children with ADHD can have significant difficulties with things like poor attention, over-activity and impulsiveness.<sup>1181</sup>

Studies indicate that worldwide prevalence rates for ADHD are about 5%<sup>1182</sup> of school age children. The prevalence among males is thought to be four times that of females.<sup>1183</sup> It is estimated that around 37,000 children in Scotland may be affected and need access to support and services.<sup>1184</sup> Prevalence of the most severe form of ADHD, hyperkinetic disorder, is about 1.5%,<sup>1185</sup> which equates to about 11,000<sup>1186</sup> children in Scotland. In 2008, it was estimated that 4,539 Scottish children with a diagnosis of ADHD were in contact with specialist CAMHS and paediatric services.<sup>1187</sup> A 2012 Health Improvement Scotland report suggested that ADHD is under-recognised in the Scottish school-aged population.

In the 2012-2015 Mental Health Strategy, Scottish Government committed to 'work to develop appropriate specialist capability in respect of developmental disorders as well as improving awareness in general settings'.<sup>1188</sup>

Data tables on the prescribing and medicines relating to ADHD are published annually by ISD Scotland.<sup>1189</sup> In Scotland a total of 8,089 children aged 19 and under were prescribed treatments for ADHD in 2015/16. This is an increase of 8.5% compared to 2014/15 (7,452 patients) and an increase of 20.5% since 2009/10 (6,711 patients) (see table 11).

Table 11: Medicines for ADHD (aged 19 and under) (2005/06 – 2015/16)<sup>1190</sup>

Age Group	2009/10		2010/11		2011/12		2012/13		2013/14		2014/15		2015/16	
	No. Dispensed Items	No. Patients	No. Paid Items <sup>1191</sup>	No. Patients										
0-4	127	19	68	14	27	8	57	13	83	18	54	12	37	13
5-9	12,614	1,246	12,805	1,279	13,849	1,320	14,606	1,378	16,961	1,683	18,156	1,886	21,129	2,153
10-14	31,299	2,808	33,472	2,939	34,271	2,931	35,209	2,937	36,751	3,075	37,725	3,283	40,507	3,543
15-19	15,932	1,717	17,190	1,815	18,600	1,914	19,997	1,988	21,952	2,205	22,801	2,271	23,376	2,380
<b>Total</b>	<b>59,972</b>	<b>5,790</b>	<b>63,535</b>	<b>6,047</b>	<b>66,747</b>	<b>6,173</b>	<b>69,869</b>	<b>6,316</b>	<b>75,747</b>	<b>6,981</b>	<b>78,736</b>	<b>7,452</b>	<b>85,049</b>	<b>8,089</b>

The total number of Defined Daily Doses per 1,000 population per day of drugs for ADHD has increased over the past ten years from 4.6 in 2006/07 to 8.98 in 2015/16 (see table 12).

Table 12: Defined Daily Doses per 1000 Population per Day\* (2006/07 – 2015/16) <sup>1192</sup>

	2006/07	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16
DDD	4.60	4.94	5.15	5.50	5.77	6.17	6.66	7.36	8.17	8.98

\*This includes patients of all age groups as DDD data is not disaggregated by age.

Out of the total number of patients being prescribed medicine for ADHD (including adults), the vast majority of those receiving treatment are aged 19 or under (75%) (see table 13).

Table 13: Patients by age group (2015/16) <sup>1193</sup>

Age Group	Number of Patients	% of total patients
0-4	13	0%
5-9	2,153	20%
10-14	3,543	33%
15-19	2,380	22%
20-29	1,700	16%
30+	1,089	10%

Those being prescribed medication for treatment of ADHD are significantly more likely to be living in areas of socioeconomic deprivation, with 30% living in the most deprived areas (see table 14).

Table 14: Number of patients by SIMD Quintile (2015/16)\*<sup>1194</sup>

	Number of Patients	% of total patients
1 (Most Deprived)	3,312	30%
2	2,488	23%
3	1,998	18%
4	1,546	14%
5	1,324	12%
Unknown	215	2%
<b>Total</b>	<b>10,883</b>	<b>100%</b>

\*This includes patients of all age groups as SIMD data is not disaggregated by age.

National clinical guidance on the management of ADHD and HKD recommends:

- medication for school aged children with HKD;
- a combination of medication and behavioural treatments for school aged children with ADHD/HKD symptoms of oppositional defiant disorder and/or aggressive behaviour; or
- a combination of medication and behavioural treatments for school aged children with ADHD/HKD and generalised anxiety disorders.

The guidance states that best practice is to consider behavioural approaches in the first instance where symptoms of ADHD are mild.<sup>1195</sup>

## Recommendations

- Children and their parents should be properly informed about the treatment options for ADHD, including possible side effects and non-medical alternatives;
- Scottish Government should establish a system of independent expert monitoring of diagnoses of or related to attention deficit and hyperactivity disorders, and undertake a study on the root causes of their increase, also aimed at improving the accuracy of diagnoses.

## 6.4 Adolescent health

### UNCRC Concluding Observation

Develop and adopt a comprehensive sexual and reproductive health policy for adolescents, with particular attention to reducing inequalities and with participation of adolescents;

Ensure that meaningful sexual and reproductive health education is part of the mandatory school curriculum for all schools, including academies, special schools and youth detention centres, in all areas of the State party. Such education should provide age-appropriate information on: confidential sexual and reproductive health-care services; contraceptives; the prevention of sexual abuse or exploitation, including sexual bullying; the support available in cases of such abuse and exploitation; and sexuality, including that of lesbian, gay, bisexual, transgender and intersex children.<sup>1196</sup>

### Other treaty bodies and UPR recommendations

A similar recommendation was made by CEDAW in its 2013 Concluding Observations (paragraph 45).<sup>1197</sup>

## Teenage pregnancy

Teenage pregnancy rates in Scotland have historically been some of the highest in Europe<sup>1198</sup> and vast inequalities in rates persist between socioeconomic groups. The number of teenage pregnancies has shown a steady decline from 2008-2014 amongst all age groups (see table 15) yet despite the overall decline in pregnancies, stark inequalities continue to exist between socioeconomic groups in both the number of terminations and deliveries as evidenced in table 16.<sup>1199</sup>

Table 15. Pregnancies among under 18s by age of mother at conception (2008-2014)<sup>1200</sup>

	2008	2009	2010	2011	2012	2013	2014
<14	22	25	19	23	15	23	16
14	165	157	123	115	108	95	82
15	522	449	475	355	369	280	254
16	1245	1142	953	883	816	698	597
17	1889	1723	1692	1348	1204	1090	990

Table 16. Pregnancies among u18s by SIMD quintile & outcome of pregnancy (SIMD Quintile 1 = Most deprived)<sup>1201</sup>

	Total	SIMD Quintile 1	SIMD Quintile 2	SIMD Quintile 3	SIMD Quintile 4	SIMD Quintile 5
2014 – Delivery	1062	505	282	148	93	34
2014 – Termination	877	286	202	144	135	110
2013 – Delivery	1180	540	319	178	93	50
2013 – Termination	1006	281	237	193	156	133
2012 – Delivery	1381	665	358	178	137	43
2012 – Termination	1131	326	277	205	171	149
2011 – Delivery	1498	645	411	236	133	72
2011 – Termination	1226	341	264	257	179	182
2010 – Delivery	1779	854	448	258	150	69
2010 – Termination	1483	419	310	313	226	215
2009 – Delivery	1933	844	471	313	218	87
2009 – Termination	1563	423	341	301	277	211
2008 – Delivery	2102	919	578	298	215	92
2008 – Termination	1741	481	418	332	261	244

## Relationships, sexual health and parenthood education in schools

Relationships, Sexual Health and Parenthood (RSHP) education continues to be non-mandatory in all types of schools.<sup>1202 1203</sup> This means that there is no obligation to provide consistent RSHP education throughout a child’s time at school. Sex education is often lacking from primary school settings in particular, with 13 of 299 primary schools surveyed not providing any RSHP education at all.<sup>1204</sup>

The Scottish Government issued revised RSHP education guidance in 2014.<sup>1205</sup> This explicitly references the UNCRC and sets out how it relates to the right to education and the general principles. It incorporates several new topics including LGBT education and addressing online exploitation.<sup>1206</sup> Some of Together’s members have identified some of the 2014 revisions as being problematic. Concerns have been raised that the views of parents still trump those of children and young people in relation to opting out of RSHP education, even if the child or young person has the capacity and maturity to make an informed decision. As a consequence, some may be prevented from receiving quality RSHP education.<sup>1207</sup>

Evidence from Together’s members suggests that some young people are unable to recognise signs of violence against women/ girls<sup>1208</sup> or domestic abuse<sup>1209</sup>, indicating that more needs to be done to address gender-based violence and related issues in RSHP education. This is discussed in more detail in Violence against children (chapter 4) and sections entitled ‘Sexual exploitation and abuse’ (see page 69) and ‘Freedom of the child from all forms of violence’ (see page 74). See also the case study on page 116 ‘Rape Crisis national prevention programme’ on RSHP support in schools.

### The impact of information technologies

In the event of poor teaching practices and lack of information, evidence suggests young people turn to other sources for information on sex and relationships, which are often less accurate. For example, in a 2014 survey conducted by Zero Tolerance, 77% of young people stated that RSHP education at school was a source of their knowledge on sex and relationships. However, 62% claimed their knowledge came from pornography and 70% said it came from sexual relationships.<sup>1210</sup> Research on the impact of exposure to online pornography on 11-16 year olds across the UK found that at 11 years-old, the majority of children (72%) had not seen online pornography while children were more likely (65%) than not to have seen online pornography by the age of 15. Of those who had viewed pornography online, substantial minorities of older children (42% of 12-16 year olds) wanted to try things out they had seen

in pornography, and a greater proportion of boys (44%) wanted to emulate pornography than the proportion of girls (29%).<sup>1211</sup> The research also looked at the sending and receiving of pornography. Results showed that pornographic material had been received by a quarter (26%) of young people; that a minority of young people (4%) had generated naked or semi-naked images of themselves; some of them had shared the images further; and repeated viewing of online pornography may have a desensitising effect with young people feeling less negative over time and generally less anxious or disgusted by what they are seeing.<sup>1212</sup> Most young people thought pornography was a poor model for consent or safe sex and wanted better sex education, covering the impact of pornography. Young people wanted to be able to find out about sex and relationships and about pornography in ways that were safe, private and credible. Young people highlighted the need for materials that are age and gender appropriate.

## Children and young people who identify as LGBTI

The lack of Lesbian Gay Bisexual Transgender and Intersex (LGBTI) inclusive RSHP education in schools has raised concerns among LGBTI youth organisations and young people. The introduction of the Marriage and Civil Partnerships (Scotland) Act 2014<sup>1213</sup> legalised same-sex marriage, prompting the 2014 revision of the RSHP guidelines to include information about LGBTI children or those with LGBTI-parents. As the guidance is not statutory, the impact of these changes may not be as significant as was first hoped by LGBTI advocates.

Several of Together's members have reported that young people who identify as LGBTI do not feel as though the current RSHP curriculum represents them in any meaningful way. This can lead to young people accessing information in alternative ways, such as on the internet, which may result in outcomes that are detrimental to their mental and physical health. For example, they will not receive adequate information on protection from sexually transmitted infections (STIs), relationships, or domestic abuse despite gay and bisexual men being at increased risk of domestic abuse in their first relationships.<sup>1214</sup> Further, without access to comprehensive RSHP education and age-appropriate inclusive socialisation opportunities LGBT young people seek sexual information and experiences from the internet and age-inappropriate venues that can place them at risk of grooming or power imbalances.<sup>1215</sup> Some young people have spoken about a lack of teacher awareness of the potential additional vulnerabilities faced by young people who do not identify as either male or female in a binary manner.<sup>1216</sup>

Positive steps have been taken to promote the introduction of compulsory LGBTI education in schools. LGBT Youth Scotland<sup>1217</sup> and Stonewall Scotland have long histories of LGBT-inclusive education, and work with professionals to ensure that the whole school is inclusive. More recently, several Scottish politicians have indicated their active support for the TIE (Time for Inclusive Education) campaign which advocates for LGBTI inclusive education.<sup>1218</sup>

## Children with disabilities

Some of Together's members have noted that significant barriers exist for young people with disabilities when receiving RSHP education. Resources and educational tools used in school for RSHP lessons can be inaccessible to pupils with communication or learning challenges<sup>1219</sup> and it can be difficult to find up to date accessible resources that include LGBT identities. Further, anecdotal evidence from Together's members' case work services suggests parents of pupils with certain disabilities, such as Down's Syndrome, have been told by schools that RSHP education is not appropriate for their child. These children have been excluded from lessons with no alternative offered.<sup>1220</sup>

## Minority ethnic communities

Research undertaken on child grooming and sexual exploitation highlighted several issues regarding the barriers young people from minority ethnic (ME) groups experience when accessing RSHP education. Most notably, there can be a lack of awareness of sex education among ME groups as it is often considered a taboo subject.<sup>1221</sup> In order to improve this situation, there have been calls for culturally sensitive sex education, and for RSHP education to be introduced in faith institutions in order to create a more co-ordinated approach.

## Denominational schools

The 2014 revised guidance includes a section on 'Denominational Education' which outlines guidance specific to denominational schools, particularly Roman Catholic schools.<sup>1222</sup> This allows denominational schools to make decisions regarding RSHP in order to ensure faith aspects of the curriculum, determined by the Scottish Catholic Education Service, remain unchanged.<sup>1223</sup> Consequently, pupils attending these schools can be prevented from receiving comprehensive RSHP education. This can lead to a lack of adequate preparation for future relationships or for those who are already sexually active.<sup>1224</sup>

## Recommendations

- Implement RSHP education consistently and effectively by improving content and establishing monitoring systems to ensure schools carry this work out to a high standard.
- Ensure RSHP education strategies are culturally sensitive and take into account the multiple influencing factors (such as emotional literacy, consent, pornography, attitudes, gender equality and abuse and exploitation) and the need for age and stage appropriate learning within a coordinated long-term approach.
- Ensure resources used for RSHP education are inclusive of a range of identities (in terms of visible representation and relevant content) including sexual orientation, gender identity and expression, minority ethnic young people, and those with a disability.
- Ensure children who are not in school have access to RSHP education and broaden out-of-school approaches to RSHP education through youth work, faith institutions and other networks.

## 6.5 Nutrition

### UNCRC Concluding Observation

Systematically collect data on food security and nutrition for children, including those relevant to breastfeeding, overweight and obesity, in order to identify the root causes of child food insecurity and malnutrition

Regularly monitor and assess the effectiveness of policies and programmes on child food security and nutrition, including school meal programmes and food banks, and programmes addressing infants and young children;

Promote, protect and support breastfeeding in all policy areas where breastfeeding has an impact on child health, including obesity, certain non-communicable diseases and mental health, and fully implement the International Code of Marketing of Breast-milk Substitutes.<sup>1225</sup>

### Other treaty bodies and UPR recommendations

Similar recommendations were made by CESCR in its 2016 Concluding Observations (paragraph 54),<sup>1226</sup> and several other recommendations indirectly relate to food security and associated rights (paragraphs 19, 31, 37 and 41).<sup>1227</sup>

### Data collection on child nutrition

Scottish Government collects and publishes comprehensive data on child nutrition on an annual basis. Statistics comprise of the results of annual health checks that are undertaken for all primary one pupils which includes recording their weight. Results are published on the percentage of children at risk of being underweight, overweight and obese and also the number of children that are clinically underweight, overweight, obese, or severely obese. These statistics are further disaggregated by gender, SIMD quintile, Local Authority and NHS Board<sup>1228</sup> and this is helpful in identifying the root causes of negative health outcomes such as malnutrition and childhood obesity.

### School meals

There has been a rise in the number of children accessing school meals, whether free or purchased, from 2008 to 2016. The significant increase in the number of primary school-aged children accessing school meals can be attributed to a Scottish Government initiative introduced in January 2015 that entitles all school children in primary 1-3 to a free school lunch.<sup>1229</sup> This step was widely welcomed by children's organisations.<sup>1230</sup> As a result, the percentage of primary school-aged children registered for free school meals increased by 34.7% between 2014 and 2015. Free, healthy school meals have proven benefits in relation to family budgets, educational attainment<sup>1231</sup> and addressing inequality.<sup>1232</sup>

Table 17: School meal eligibility and registration (primary and secondary) (2008-2016)<sup>1233</sup>

Data collected	2008	2009	2010	2011	2012	2013	2014	2015	2016
% primary pupils registered for free school meals	16.9%	16.7%	19.8%	22.6%	22.1%	22.0%	20.6%	55.3%	54.1%
% primary pupils who take school meals, (free or purchased, incl absences)	47.1%	48.9%	50.4%	51.9%	53.2%	53.2%	53.2%	64.6%	66.0%
% secondary pupils registered for free school meals	12.7%	12.3%	14.4%	15.2%	15.4%	15.5%	15.5%	15.0%	14.2
% secondary pupils who take school meals (free or purchased, incl absences)	38.1%	39.2%	39.6%	41.6%	41.8%	43.7%	44.4%	44.2%	45.8%

### 'Holiday hunger'

Children's organisations and schools share widespread concerns around children's access to food during school holiday periods, when free school meal initiatives do not run.<sup>1234</sup> A report published in 2015 by What Works Scotland entitled 'The Cost of School Holidays' concludes that children from families with low incomes are more likely to experience malnourishment and damage to their health during school holidays owing to a range of issues including poverty and unavailable childcare provision.<sup>1235</sup> This can negatively impact not only a child's nutrition and health but also their learning and development opportunities, making the gap between children from low income families and those from higher socioeconomic groups more pronounced each year. In response to this

evidence, projects targeting areas with the highest number of children entitled to free school meals, such as Dalmarnock, have been piloted by charities in order to provide children with a healthy meal during school holidays as well as engaging them in activities.<sup>1236</sup> It is hoped that this will help reduce inequalities, particularly in areas of higher deprivation where the number of those receiving free school meals is around 30%.<sup>1237</sup>

## Food banks

There is no official monitoring of food insecurity in either the UK or Scotland. An increase in financial hardship owing to recent welfare reforms and austerity measures has caused an increase in the number of families with children accessing food banks.<sup>1238</sup> The three primary reasons for accessing food banks that people cite are benefit delays, benefit changes, and low incomes.<sup>1239</sup>

Data on the number of food parcels distributed by the largest food bank provider in the UK, the Trussell Trust shows a significant rise in the number of food parcels by the charity from 2011 to 2016 (see table 18).

Table 18: Number of 3-day food parcels distributed in Scotland by the Trussell Trust<sup>1240</sup>

	2011-12	2012-13	2013-14	2014-15	2015-16
Adults	3865	9760	49,041	81,575	89,764
Children	1861	4572	22,387	36,114	43,962
<b>Total</b>	<b>5726</b>	<b>14,332</b>	<b>71,428</b>	<b>117,689</b>	<b>133,726</b>

Whilst data is helpful in providing an overview of the general trends in food bank usage, it fails to account for the use of other food banks (aside from Trussell Trust), the use of food providers such as soup kitchens, and does not provide the demographic profile of the people who are using these services.

A 2013 report entitled 'Overview of Food Aid Provision in Scotland', published by the Scottish Government, aimed to understand the extent of food aid provision. The study collected data on food banks and food providers in eight locations across the country.<sup>1241</sup> It notes the concern that some respondents felt over the 'alarmingly high and growing number' of children that are using their services.<sup>1242</sup> The report also highlights the difficulties of determining the exact scale of food aid provision owing to the diverse and often informal nature of provisions. The Scottish Government does not collect or publish any data on food aid provision and therefore those figures published by the Trussell Trust are the only available data source in this area.

Consultation with children regarding food insecurity highlighted children's understanding that this often stems from financial difficulties within families.<sup>1243</sup> Many children were also aware of the role of food banks in society and agreed that every child has the right to food.<sup>1244</sup> The Scottish Government has committed to begin consultation on a Good Food Nation Bill in 2017 which Nourish Scotland, an NGO campaigning on food justice issues, has described as having the 'potential to be world leading'.<sup>1245</sup>

## Breastfeeding

### UNCRC Concluding Observation

Promote, protect and support breastfeeding in all policy areas where breastfeeding has an impact on child health, including obesity, certain non-communicable diseases and mental health, and fully implement the International Code of Marketing of Breast-milk Substitutes.<sup>1246</sup>

Extensive research has proven that there are significant health benefits of breastfeeding for both mother and infant, including reduced risk of obesity and diseases such as gastroenteritis.<sup>1247</sup> Breastfeeding rates across the UK remain low compared with global rates<sup>1248</sup>, with Scottish Government reporting only 35.2% of babies exclusively breastfed at 10 days old.

Since the recording of breastfeeding statistics in the UK through the National Infant Feeding Surveys, breastfeeding rates have risen steadily; 62% in 1990, 76% in 2005 to 81% in 2010. In Scotland; 50%, 70% & 74% respectively<sup>1249</sup>. This survey data was last collected in the UK in 2010, and will not be collected again. Plans are in place for a Scottish National Infant Feeding Survey to collate comparable data, to record and report breastfeeding trends over time.

In the last decade, NHS Scotland Information Services Division breastfeeding statistics collected at the first visit (10 days) and 6-8 weeks identifies that aside from the percentage of babies who are mixed feeding at first visit which has increased slightly since 2008, overall breastfeeding rates have remained static, either exclusively or as part of mixed feeding at 6-8 weeks.

Table 19: Percentage of total number of babies being breast-fed at First Visit and 6-8-week review <sup>1250</sup>

Data collected	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15
% babies exclusively breast fed at First Visit from health worker (10 days old)	37.2%	36.3%	36.3%	35.9%	35.2%	35.4%	35.2%
% babies on mixed feeding (breast & formula) at First Visit	8.2%	9.3%	10.5%	11.1%	11.9%	13.0%	13.1%
% babies exclusively breast fed at 6-8-week review	26.6%	26.1%	26.5%	26.2%	26.2%	27.1%	27.3%
% babies on mixed feeding (breast & formula) at 6-8-week review	9.7%	9.9%	10.6%	10.4%	10.3%	10.7%	10.7%

This data suggests that the percentage of mothers breastfeeding has decreased slightly over the last six years in almost every age group, particularly with exclusive breastfeeding. There is a notable difference in the percentage of infants breastfed depending on the age of the mother, with over 30% more babies being breastfed by mothers aged between 35-39 than mothers under 20.<sup>1251</sup> Percentages have increased slightly for mothers under the age of 20 for both exclusive and mixed breastfeeding.

There are further inequalities in breastfeeding rates between socioeconomic groups. Data indicates a direct correlation between the percentage of babies breastfed and socioeconomic status, with the percentage increasing significantly as socioeconomic status increases.<sup>1252</sup> Encouragingly, the 2010 National Infant Feeding Survey identifies that breastfeeding rates in the most deprived areas of Scotland have increased since the millennium, with overall breastfeeding rates increasing from 24.3% in 2001/02 to 33.8% 2014/15 and at 6-8 weeks from 18.1% to 23.5%<sup>1253</sup>. However, as deprivation levels rose, women were less likely to initiate breastfeeding with a 22% difference between those most deprived in Scotland compared to those women living in the most affluent areas<sup>1254</sup>.

'Improving Maternal and Infant Nutrition: A Framework for Action'<sup>1255</sup>, published by Scottish Government in 2011, reinforces the importance of breastfeeding and outlines some of the steps that have been taken by NHS Boards to improve breastfeeding rates across the country. These include breastfeeding training for healthcare professionals such as midwives and provision of breastfeeding support groups in the majority of NHS Boards.<sup>1256</sup> As evidenced in the Lancet breastfeeding series<sup>1257</sup><sup>1258</sup> and Acta Paediatrica<sup>1259</sup>, Scotland is committed to implementing the UNICEF UK Baby Friendly Initiative to improving breastfeeding practices. 100% of hospital births in Scotland now take place in a Baby Friendly hospital.<sup>1260</sup> The challenge now is for Scottish maternity services to embed and make sustainable the Baby Friendly standards and for this high quality care to be further expanded into all neonatal and community settings. For success, the evidence suggests that interventions should be delivered in a combination of settings by involving health systems, home and family and the community environment concurrently. Promotion of breastfeeding in nurseries and schools is undertaken by the majority of NHS Boards in an effort to raise awareness of its benefits.<sup>1261</sup>

Despite recent policy efforts on both a Scottish and UK-wide level to improve breastfeeding rates, progress regarding the implementation of the International Code of Marketing Breast-Milk Substitutes has been minimal. A report published by the WHO in 2016 which details how countries are working to implement the Code states that the UK only has 'few provisions in law'.<sup>1262</sup> In order to address loopholes in the law regarding the naming of follow-on formula, the 'Infant Formula and Follow-On Formula (Scotland) Regulations' were implemented in 2007 so as to prevent harmful advertising of infant formula.<sup>1263</sup> However, UK regulations are still not as robust as the Code as they do not consider follow-on formula a breast-milk substitute.<sup>1264</sup> Companies selling these products therefore continue to find ways to advertise to large audiences.<sup>1265</sup>

## Recommendation

- Scottish Government should; promote, protect and support breastfeeding in all policy areas where breastfeeding has an impact on child health, including obesity, certain non-communicable diseases and mental health; implement evidence based initiatives known to support breastfeeding including sustainability of the UNICEF UK Baby Friendly Initiative standards; and fully implement the International Code of Marketing of Breast-milk Substitutes.

## 6.6 Environmental health

### *Air pollution*

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#### **UNCRC Concluding Observation**

Set out a clear legal commitment, with appropriate technical, human and financial resources, to scale up and expedite the implementation of plans to reduce air pollution levels, especially in areas near schools and residential areas.<sup>1266</sup>

#### **Other treaty bodies and UPR recommendations**

No other treaty bodies have made recommendations that address the impact of environmental health on children in recent years but there has been a growing interest in this issue, as illustrated by the Day of General Discussion being devoted to 'Children's Rights and the Environment'.<sup>1267</sup>

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Research shows that continued exposure to air pollutants can cause a host of health problems and that infants and children are particularly vulnerable as their lungs are still developing.<sup>1268</sup> Health conditions that the presence of air pollution can trigger in infants can range from an increase in coughs to decreased lung function.<sup>1269</sup> Some pollutants can cross through the placenta from mother to foetus during pregnancy, causing negative health outcomes such as low birthweight and premature birth.<sup>1270</sup> Children living in deprived areas are also more vulnerable to air pollution owing to a lack of green spaces and poor living conditions.<sup>1271</sup> It is thus a social justice issue as well as an environmental one.

Significant problems with indoor pollutants have also been found in schools across Europe which means that children will be increasingly exposed to these harmful substances. Studies show that indoor pollutants such as formaldehyde, benzene, and asbestos have all been found in some schools across the EU and children are therefore at risk of contracting the health problems associated with their exposure.<sup>1272</sup> A study conducted by Friends of the Earth concluded that air pollution remains a 'public health crisis' in Scotland.<sup>1273</sup>

Scottish Government currently monitors the air quality of Scotland and reports on pollutant trends, the impact of pollutants, and various other factors.<sup>1274</sup> Air quality is currently a devolved issue and the development of air quality policy and legislation is undertaken by the Scottish Government.<sup>1275</sup> The Scottish Government published a national air quality strategy in November 2015 entitled 'Cleaner Air for Scotland: The Road to a Healthier Future' which outlines a National Modelling Framework (NMF), which will provide a standard air quality assessment methodology for use across Scotland and a National Low Emission Framework (NLEF).<sup>1276</sup>

Owing to the 'transboundary nature' of air pollutants, the 2000 Air Quality Strategy and subsequent UK Government air quality documents are produced as a joint UK Government and devolved administrations publication.<sup>1277</sup> The most recent Strategy, produced in 2007, discusses children and schools only in the context of the Smarter Choices travel to school scheme and does not address the level of air pollution around schools and other public spaces that children use regularly.<sup>1278</sup> Scottish Government has funded schemes to create 20mph zones around primary schools and some local authorities have imposed parking restrictions on roads in the vicinity of schools at the start and end of the school day.<sup>1279</sup> Scottish Government also funded Scottish Environment Protection Agency (SEPA) and North Lanarkshire Council, in consultation with Education Scotland, to produce an air quality teaching package for both primary and secondary schools,<sup>1280</sup> designed to encourage pupils to think about air quality and how it affects them and their families. Through this project, schools can also access an air quality sensor to record air quality data from around their school.

### *Environmental policy*

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#### **UNCRC Concluding Observation**

Place children's rights at the centre of national and international climate change adaptation and mitigation strategies, including through its new domestic climate strategy, and in the framework of its international climate change programmes and financial support.<sup>1281</sup>

Climate change can have a negative impact on a number of children's rights.<sup>1282</sup> Scottish Government has introduced ambitious climate policy in recent years. The Climate Change (Scotland) Act was passed in 2009<sup>1283</sup> and commits to a 42% reduction in emissions by 2020 in Scotland.<sup>1284</sup> The former UK Energy and Climate Secretary also committed to publishing a new climate plan before the end of 2016 which will directly impact on Scottish climate policy.<sup>1285</sup> The Scottish Government will also deliver the first Low Emission Zone (LEZ) which will help to reduce air pollution in Scotland's cities.<sup>1286</sup>

Scottish Government has taken positive steps to reduce the health risks of climate change by introducing a moratorium on shale gas fracking and coal bed methane extraction whilst a full health impact assessment and public consultation is undertaken.<sup>1287</sup> This consultation has included very little involvement of children, so their views will not be adequately represented in the final decision-making process.<sup>1288</sup> Scottish Government has sought to include children in other environmental initiatives and recent recommendations given as part of an independent review of the Scottish Planning System specifically stated that young people should be given ‘a new statutory right ... to be consulted on the development plan.’<sup>1289</sup>

As part of Scotland’s National Action Plan on Human Rights (SNAP), the Scottish Human Rights Commission (SHRC) led a roundtable discussion on climate justice in May 2015. This explored the coordination of action across the public, private and third sectors. Actions from this discussion will be taken forward through the SNAP action plan.

## Recommendation

- Children’s rights should be at the centre of all decisions made in relation to air pollution and climate change. Children should be involved and listened to in local and national discussions and decision-making as a matter of routine.

## 6.7 Standard of living

### Child poverty

#### UNCRC Concluding Observation

Set up clear accountability mechanisms for the eradication of child poverty, including by re-establishing concrete targets with a set time frame and measurable indicators, and continue regular monitoring and reporting on child poverty reduction in all parts of the State party.<sup>1290</sup>

Ensure clear focus on the child in the State party’s poverty reduction strategies and action plans, including in the new “Life Chances Strategy”, and support the production and implementation of child poverty reduction strategies in the devolved administrations.<sup>1291</sup>

#### Other treaty bodies and UPR recommendations

Similar recommendations were made by CESCR in its 2016 Concluding Observations (paragraphs 19 and 48)<sup>1292</sup> as well as by Norway (paragraph 110.41)<sup>1293</sup> and Vietnam (paragraph 110.101)<sup>1294</sup> in the United Kingdom’s 2012 Universal Periodic Review.

In 2014-2015, around 18% of Scotland’s population were living in relative poverty after housing costs and this included 220,000 children.<sup>1295</sup> There has been no significant reduction in relative child poverty after housing costs in recent years in Scotland and figures have remained relatively high and stable, with over one in five children living in low income households.<sup>1296</sup> Children are disproportionately affected by poverty across the UK. Young children are at a particularly high risk, with almost half of all families experiencing poverty having a child under 5 years-old.<sup>1297</sup> Two-thirds of children in poverty in Scotland (66%) lived in families where someone was working. This rate of ‘in-work poverty’ has been steadily increasing for several years.<sup>1298</sup>

Living in poverty can impact almost all areas of a child’s life as families living in poverty have less money to spend on food, heating and energy, and housing. Children living in low income households are much more likely to have a standard of living below that which most people deem an acceptable level; one in eight children living in poverty in Scotland are materially deprived.<sup>1299</sup> Poverty also affects children’s social and emotional wellbeing. Relationships with friends and family members are affected as children who have experienced poverty are more likely to be solitary and play alone, four times more likely to fight with or bully other children, and less likely to talk to someone at home about their worries.<sup>1300</sup> Poverty is the cause of inequalities in children’s early development as well as their educational attainment.<sup>1301</sup> (see chapter 7.1).

Research suggests that the majority of young people in Scotland believe that families are in poverty due to causes that they cannot control, such as unstable income and the rising cost of living.<sup>1302</sup> They also identified other factors such as someone in the family having a disability. This echoes concerns from Together’s members that those families with a disabled adult are disproportionately affected by poverty, with one in three children with a disabled parent living below the poverty line compared to 24% of children who live in a family where no one has a disability.<sup>1303</sup> Children with disabilities are also more likely to experience poverty and evidence suggests that 31% of families with disabled children are going without essentials such as food, which is a significant increase from previous years.<sup>1304</sup> The reasons for this are wide-ranging but include additional transport and childcare costs, parents being unable to work because of caring responsibilities, and benefit changes resulting in lower incomes for families.<sup>1305</sup> Lone parent families are also at a significantly higher risk of poverty in Scotland and across the UK.<sup>1306</sup>

In 2015, the UK Government removed its commitment to end child poverty in the UK by 2020, removed the definition of child poverty from legislation<sup>1307</sup> and left no requirement for the devolved governments to produce child poverty strategies.<sup>1308</sup> The Scottish Government has been vocal in its opposition of these changes.<sup>1309</sup> Child Poverty Strategies produced by the Scottish Government<sup>1310</sup> under the Child Poverty Act 2010<sup>1311</sup> include detailed information on both relative and absolute poverty and provide statistics on the progress of indicators which were laid out in the Child Poverty Measurement Framework for Scotland.<sup>1312</sup> This has meant that child poverty has maintained a high political profile in Scotland and has helped to identify gaps in existing policy. The scope of this work remains limited to devolved matters and, as such, cannot tackle some root causes of poverty that remain reserved to UK level. The Scottish Government has made several further commitments to improve the health and wellbeing of children living in poverty through the implementation of policies such as the Children and Young People (Scotland) Act 2014,<sup>1313</sup> the Education (Scotland) Act 2016,<sup>1314</sup> and the Community Empowerment (Scotland) Act 2015.<sup>1315</sup>

In June 2015, the Scottish Government announced the appointment of an Independent Advisor on Poverty and Inequality who made fifteen recommendations of actions needed to tackle poverty across all policy areas in Scotland.<sup>1316</sup> These included a recommendation to ensure childcare commitments focus on quality to improve outcomes, and to consider providing a limited number of free hours of childcare for primary school aged children.<sup>1317</sup>

A significant development in Scottish Government is also the proposed Child Poverty Bill, which is currently on the 2016-2017 legislative programme and was open for consultation over summer 2016.<sup>1318</sup> In the consultation document, Scottish Government pledged that the Bill must 'live up to the UNCRC recommendations and set out a clear agenda for tackling, reporting on and measuring child poverty'.<sup>1319</sup> Proposals include directly replacing the repealed sections of the UK Child Poverty Act 2010,<sup>1320</sup> and enshrining in legislation the commitment to the eradication of child poverty. They also include placing a duty on Scottish Ministers to publish a Child Poverty Delivery Plan every five years and report on it annually.<sup>1321</sup> Together's members have welcomed the proposal of the Bill and believe that it will help to ensure child poverty remains a priority.<sup>1322</sup>

## Recommendations

- UK and Scottish Government should make the elimination of child poverty a national priority and ensure progress is made to reduce the number of children living in poverty by 2020.
- Income-based targets should be statutory and set at the lowest sustainable rate possible, supported by strategies to improve family incomes and children's outcomes.
- Duties on government and its partners should also be formalised and adequately resourced and appropriate systems should be put in place to track and monitor progress.

## Welfare reform

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### UNCRC Concluding Observation

Conduct a comprehensive assessment of the cumulative impact of the full range of social security and tax credit reforms introduced between 2010 and 2016 on children, including children with disabilities and children belonging to ethnic minority groups.

Where necessary, revise the mentioned reforms in order to fully respect the right of the child to have his or her best interests taken as a primary consideration, taking into account the different impacts of the reform on different groups of children, particularly those in vulnerable situations.

### Other treaty bodies and UPR recommendations

A similar recommendation was made by CESCR in its 2016 Concluding Observations (paragraph 41),<sup>1323</sup> as well as by Nepal (paragraph 110.42)<sup>1324</sup> and Vietnam (paragraph 110.101)<sup>1325</sup> in the United Kingdom's 2012 Universal Periodic Review.

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Significant changes to welfare provision that the UK Government announced in 2013 have continued to be implemented across the country. In 2015 and 2016, various welfare reforms were implemented resulting in a further decrease in income for many families undermining both in-work and out-of-work support for families with children.<sup>1326</sup> As well as the introduction of a four-year freeze on Child Benefit, the benefits cap was reduced from £26,000 to £20,000 in April of this year.<sup>1327</sup> Changes were also made which would affect those who access housing benefit as maximum housing benefit in private tenancies was frozen for four years and the backdating of housing benefits was cut from six months to four weeks.<sup>1328</sup> Reforms to tax credits that were announced in the Chancellor's Emergency Summer Budget in 2015, which would have involved significant cuts to the income thresholds of both working and child tax credits, were abolished after the House of Lords demanded a full analysis of the impact of these cuts on families.<sup>1329</sup> <sup>1330</sup> In 2013/2014, tax credits were worth £2 billion to Scottish households and two thirds of this went to low income families with children.<sup>1331</sup> The move by the House of Lords to prevent cuts to tax credit therefore protected these families from further

losses to their benefit. Other reforms that are set to occur in 2017, such as the limitation of child tax credit to two children<sup>1332</sup> and the cuts already made to Universal Credit<sup>1333</sup> will continue to affect families across Scotland.

Low-income families with children are among those who are most severely affected by welfare reform.<sup>1334</sup> The roll out of Universal Credit continues to impact on the most vulnerable families such as those living in kinship care or where there is domestic abuse.<sup>1335</sup> Scottish Women's Aid and the Joint Committee on Human Rights (JCHR), among others, have raised concerns that the introduction of a single payment system, where one person receives all the family's entitled benefits to their bank account, will result in those in abusive relationships being cut off financially from their partners.<sup>1336</sup> <sup>1337</sup> As payments for Child Tax Credit will no longer go to the main carer, this also puts children at risk.<sup>1338</sup>

Cuts made to benefits available for those with disabilities, such as the replacement of Disability Living Allowance (DLA) with Personal Independence Payments (PIP), will affect children who are living with someone with a disability as these changes begin to impact on families' ability to live independently.<sup>1339</sup> Children with disabilities will also be affected as Disabled Child Additions replace Child Tax Credit Disability Additions and will be worth over 50% less with a loss of £30 per week for families.<sup>1340</sup>

## Recommendation

- UK Government should ensure that the child's right to an adequate standard of living is not negatively impacted upon as a result of welfare reform.

## Temporary accommodation and homelessness

### UNCRC Concluding Observation

Strictly implement the legal prohibition of prolonged placement of children in temporary accommodation by public authorities in England, Wales and Scotland, and enact similar legislation in Northern Ireland;

Take necessary measures to reduce homelessness and to progressively guarantee all children stable access to adequate housing that provides physical safety, adequate space, protection against the threats to health and structural hazards, including cold, damp, heat and pollution, and accessibility for children with disabilities.

### Other treaty bodies and UPR recommendations

A similar recommendation was made by CESCR in its 2016 Concluding Observations (paragraph 50).<sup>1341</sup>

The Housing (Scotland) Act 2001<sup>1342</sup> requires all local authorities to provide temporary accommodation to homeless applicants during the period that their application is being assessed.<sup>1343</sup> In addition to this, the Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2004<sup>1344</sup> requires that local authorities do not place homeless households with children and pregnant women in unsuitable temporary accommodation, including bed and breakfasts, unless under exceptional circumstances.<sup>1345</sup> The numbers of households with children placed in bed and breakfast temporary accommodation has been steadily declining since 2008, as illustrated in Table 20 below. Despite an overall decline since 2008, the number of households with children and the number of children in total that are staying in temporary accommodation has been increasing significantly since 2014. This rise has been described as 'unacceptable' by Shelter Scotland, and as a 'worrying trend that needs urgent attention'.<sup>1346</sup>

Table 20: Households with children in temporary accommodation (2008-2016)<sup>1347</sup>

	As at 31 March 2008	As at 31 March 2009	As at 31 March 2010	As at 31 March 2011	As at 31 March 2012	As at 31 March 2013	As at 31 March 2014	As at 31 March 2015	As at 31 March 2016
No temp accommodation households w/children	3,988	3,825	3,715	3,833	3,487	2,936	2,479	2,675	2,884
No. children in temp accommodation	7,124	6,268	6,103	6,064	5,593	4,847	4,153	4,633	5,224
No. households w/children in B&Bs	118	86	49	34	21	17	11	14	29
No. children in B&B accommodation	180	103	59	51	35	21	19	27	45

The 2004 Order<sup>1348</sup> also committed to providing accommodation of adequate condition to pregnant women and families. This included the availability of a toilet, living room, cooking facilities and personal wash facilities which are for the exclusive use of the household and can be used 24 hours a day. The Homeless Persons (Unsuitable Accommodation) (Scotland) 2014 Order<sup>1349</sup> then expanded on the definition of unsuitable accommodation for families to include accommodation that was not wind or watertight and which is not suitable for accommodation by children. This failed to reflect recommendations made by Shelter to include 'and in all other respects reasonably fit for human habitation'.<sup>1350</sup> Families are therefore still at risk from being placed in properties with unsafe internal fittings and fixtures.<sup>1351</sup>

The number of homelessness applications made by 16 and 17 year olds in Scotland has declined in recent years. There has been a decrease in applications made by both male and females, yet 16 and 17-year-old girls continue to account for a higher percentage of the total applications made than males (see table 21).

Table 21: Number of homelessness applications made by 16/17 year olds (2008-2016)<sup>1352</sup>

	2008-2009	2009-2010	2010-2011	2011-2012	2012-2013	2013-2014	2014-2015	2015-2016
No. male applications (%total applications made)	1,452 (5%)	1,399 (5%)	1,226 (4%)	1,003 (4%)	869 (4%)	760 (4%)	687 (4%)	612 (3%)
No. female applications (%total applications made)	2,633 (10%)	2,330 (9%)	2,150 (8%)	1,606 (8%)	1,072 (6%)	1,029 (6%)	999 (6%)	881 (6%)

Black and minority ethnic (BME) communities can face unique barriers when accessing housing services due to homelessness. Lack of social housing can make it difficult to find safe accommodation if a family is experiencing hate crime and, when housing BME families, Local Authority housing policy may result in certain ethnic groups being housed in 'clusters'.<sup>1353</sup> Further, some members of the BME community feel as if welfare and housing allocation policies are discriminatory which can lead to social isolation or a poor quality of life.<sup>1354</sup> Children in particular will experience the negative impact of this as if they are housed in areas where they feel unsafe they may experience poorer health outcomes due to a lack of social and recreational spaces.<sup>1355</sup>

## Recommendation

- Scottish Government should end the use of inappropriate bed and breakfast accommodation for homeless families and 16 and 17-year-olds, with action taken against those that continue to house children and families in B&Bs beyond the six-week legal limit. A strengthened requirement for local authorities to commission sufficient alternative emergency facilities should be adopted into law. Any temporary accommodation used for families must be child-friendly, clean and safe.

## Housing for Gypsy/Traveller communities

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### UNCRC Concluding Observation

In Scotland, introduce a statutory duty for local authorities to provide safe and adequate sites for travellers, while ensuring meaningful participation of Roma, gypsy and traveller communities, including children, in planning and decision-making processes.

### Other treaty bodies and UPR recommendations

Similar recommendations were made by CERD in its 2016 Concluding Observations (paragraph 27)<sup>1356</sup> and by CEDAW in its 2013 Concluding Observations (paragraph 61).<sup>1357</sup>

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As highlighted in the case study on page 92, there is a significant lack of culturally sensitive accommodation for Gypsy/Traveller children and a continued inequality between standards of housing for those in fixed accommodation and those who are living on sites.<sup>1358</sup> The shortage of official sites, as well as the discrimination many Gypsy/Travellers face when using public campsites, can lead to an increased usage of more unsuitable plots of land including those besides busy roads or near pollutants.<sup>1359</sup> Further, young people report a plethora of problems associated with staying on sites. These include high electricity rates, which resulted in some families going without heating, health hazards such as the infestation of rats and sewage overflow, poor sanitation facilities, and fly-tipping near the site.<sup>1360</sup>

### Recommendation

- A statutory duty for local authorities to provide safe and adequate sites for Gypsy/Travellers should be introduced and mechanisms should be put in place to ensure that Gypsy/Traveller communities, including children, can meaningfully participate in planning and decision-making processes (in line with the UN Committee's recommendation).





# Education, leisure and cultural activities

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(Articles 28, 29, 30 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.

**Article 28:** right to education.

**Article 29:** goals of education.

**Article 30:** children from minority or indigenous groups.

**Article 31:** right to leisure, play and culture.

## Case Study:

### *Rape Crisis national prevention programme*

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Prevention workers at Rape Crisis centres across Scotland are working in partnership with schools to deliver evidence-based education programmes to young people on issues such as consent, gender, pornography and social media, bringing an understanding of the impacts sexual violence can have and how survivors can access support. The programme is funded by Scottish Government's Children, Young People and Families Early Intervention fund, in recognition of the significant pressures and expectations around sexual activity faced by young people, and the levels of sexual violence to which they are exposed. In an NSPCC study published in 2009<sup>1361</sup> 31% of girls surveyed had experienced sexual violence from a partner, and in a 2015 European Commission-funded study<sup>1362</sup> 41% of girls and 14% of boys surveyed in England reported experiencing sexual violence, figures which are likely to be similar in Scotland. Young people tell us they want – and should have access to – safe and high quality relationships, sexual health and parenthood (RSHP) education so that they have greater understanding and agency to be able to engage in sexual activity that feels right for them and their partners, when they're ready.

There has been huge uptake of our prevention programmes by schools and we are sometimes unable to meet demand; it's clear that teachers recognise the need and want to support young people with these issues. The Curriculum for Excellence sets out a range of outcomes and experiences relevant to sex and relationships, abuse and violence. However, there is insufficient training and support for teachers, and provision is inconsistent. Young people often report that it doesn't meet their needs. For example, in a recent UK-wide report by the Terrence Higgins Trust,<sup>1363</sup> half of young people surveyed rated the RSHP education they received in school as either 'poor' or 'terrible', and 75% reported they were not taught about consent. Occasionally, we even hear from teachers who think it's inappropriate to educate young people on sex and relationships. It's clear that much needs to be done to bring about widespread acceptance that young people have the right to RSHP, and to resource high quality provision.

Where programmes are co-designed by adult educators and young people, they are more likely to be relevant and to tackle issues such as social media, pornography and peer group norms more effectively. Young people's participation has been integrated in the programmes from the outset, ensuring that the materials are engaging, and that those who have an interest can take a greater role in challenging sexism, gender stereotyping and violence. Young people have been involved in co-facilitating discussions, campaigning online, designing LGBTQ-inclusive materials and creating short films which are now used within our education programme.

The Rape Crisis programme builds on research evidence on effective approaches to sexual violence prevention. An external evaluation stated that 'the findings on strength of impact indicate that the intervention is very effective in changing young people's knowledge and attitudes.' Evaluators spoke with teachers and young people, who both expressed views that the programme benefitted from delivery by specialist external facilitators, rather than by teachers themselves. Young people agreed that adults were right to be concerned, and gave examples of their own concerns:

***Photos of girls passed around boys. School now quite strict and came down on it quite heavily. In 1st and 2nd year it was happening a lot but police and school dealt with it – they took phones off everyone. Still think that boys don't realise it's wrong or that it's upsetting.***

***Are adults right to be worried? Yes. Especially the amount of stuff available online. The porn. It makes boys think that sex should be like that.***

So what, based on the experience we have gained in working with young people, do we at Rape Crisis believe is needed to realise young people's right to high quality RSHP education? We support the recommendations made in this report, particularly that there needs to be recognition of the right to RSHP education, that young people are involved in the design and delivery of programmes and that teaching and the delivery of specialist programmes are sufficiently resourced.

## 7.1 Education, including vocational training and guidance

### *Educational attainment*

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#### **UNCRC Concluding Observation**

Enhance its efforts to reduce the effects of the social background or disabilities of children on their achievement in school and to guarantee the right of all children to a truly inclusive education in all parts of the State party, including for newcomer children without experiences of formal education.<sup>1364</sup>

Taking note of target 4.2 of the Sustainable Development Goals, on access to quality early childhood development services, allocate sufficient human, technical and financial resources for the development and expansion of early childhood care and education, based on a comprehensive and holistic policy of early childhood development, with special attention to the children in the most vulnerable situations.<sup>1365</sup>

#### **Other treaty bodies and UPR recommendations**

Similar recommendations have been made by CESCR in its 2016 Concluding Observations (paragraph 66),<sup>1366</sup> by CERD in its 2016 Concluding Observations (paragraph 35),<sup>1367</sup> by CEDAW in its 2013 Concluding Observations (paragraph 45(c)-(d)),<sup>1368</sup> and by Spain (paragraph 110.102),<sup>1369</sup> Cuba (paragraph 110.103)<sup>1370</sup> and Costa Rica (paragraph 110.106)<sup>1371</sup> in the United Kingdom's 2012 Universal Periodic Review.

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There has been a general improvement in educational attainment from 2010 to 2015 among most children and young people.<sup>1372</sup> Girls are continuing to outperform boys at SCQF<sup>1373</sup> level 4 to 6.<sup>1374</sup> A child's socio-economic background continues to have a significant impact on their educational experiences and on attainment inequalities in Scotland.<sup>1375</sup> Statistics from late 2015 show that the gap between the poorest 20% of pupils and the wealthiest 20% has widened sharply.<sup>1376</sup> Scotland falls behind the rest of the UK regarding the poorest children going straight into higher education.<sup>1377</sup> Children living in poverty are more likely to start school at a disadvantage compared to children from families on higher incomes.<sup>1378</sup> Closing the attainment gap needs to involve maximising family income and providing support through adequate benefits, including school clothing grants set at a level that enable low income families to buy school uniforms and equipment.<sup>1379</sup> Other groups of vulnerable children include young carers whose caring responsibilities can impact significantly on their educational attainment and future employment,<sup>1380</sup> and minority ethnic children who may face language barriers and discrimination as additional barriers to learning.<sup>1381</sup>

Children in secondary schools face particular challenges. Children's enjoyment of school drops sharply among secondary students, and their reported 'belonging' in school has fallen since 2003.<sup>1382</sup> National surveys show a higher incidence of low achievement against expected level among secondary pupils than previously.<sup>1383</sup>

The Scottish Government have made closing the socio-economic educational attainment gap a priority in the new 2016 parliamentary session and have taken a number of welcome measures. Through the Education (Scotland) Act 2016,<sup>1384</sup> the government is introducing a National Improvement Framework for Education which includes closing the attainment gap as a key aim along with a duty on local authorities to make and report on progress.<sup>1385</sup> In addition, the Scottish Government has introduced an Education Delivery Plan to reduce the attainment gap and intends to establish targets to reduce it over time.<sup>1386</sup> The Scottish Government is also taking a number of welcome measures as part of its approach to closing the gap, in particular, to share and develop ways in which the vocabulary gap can be closed through a literacy-rich curriculum in the first few years of primary school; further support to engage families in children's education; and new tools and funding to support schools to identify and target action to close the attainment gap at key stages of children's learning.<sup>1387</sup> In February 2015, the Scottish Attainment Challenge was launched, aimed at achieving equity in educational outcomes, with a particular focus on closing the poverty-related attainment gap.<sup>1388</sup> In July 2016, Scottish Government announced a new International Council of Education Advisers to assist in shaping educational reform.<sup>1389</sup> The Council will advise on the Scottish Government's priorities for education and bring influences of international best practice into actions set out in the Scottish Government's Education Delivery Plan. In addition, a Governance Review of early years and schools education was launched in September 2016.<sup>1390</sup> Outcomes will need to be recorded to assess the impact of these measures on closing the educational attainment gap.

Children's organisations have welcomed the focus on the poverty-related attainment gap and encourage a shift towards addressing learner confidence and the relevance of learning to disadvantaged children and families.<sup>1391</sup> Furthermore, they emphasise the value of out-of-school approaches to tackling the attainment gap.<sup>1392</sup> For example, youth work can play a significant role in re-engaging pupils in learning through targeted interventions such as youth work in schools programmes, the delivery of outdoor education, youth awards programmes, and employability, leadership and citizenship education.<sup>1393 1394 1395</sup> In order to be effective, youth work needs to be recognised as a partner with schools and other learning providers. Youth work can be particularly effective for engaging young people in situations where they face profound disadvantage, for example in HMYOI Polmont.<sup>1396</sup>

Overall, Scottish Government's renewed focus on closing the attainment gap is an opportunity to deliver progressive approaches which look at equality and inclusion. This focus should include the whole school experience and achievements of children, as well as academic achievement. The new National Improvement Framework<sup>1397</sup> is an ideal opportunity for Scottish Government to embed the principles of inclusive communication and ensure accessibility is built in from the beginning.

## Early childhood development

Children's organisations have raised concerns about the impact of poverty on young children's early learning and development.<sup>1398</sup> National statistics continue to show significant differences between children's early outcomes in Scotland, particularly their early speech and language skills.<sup>1399</sup> In 2015, early language difficulties or delays were the most common child development concern identified in the 27 to 30-month child health review; and toddlers from the poorest areas were twice as likely to experience early language difficulties as their peers.<sup>1400</sup> On starting school, the poorest children remain twice as likely to have lower development outcomes.<sup>1401</sup> Whilst there have been overall improvements in children's vocabulary in Scotland, the gap between the most and least advantaged children remains wide.<sup>1402</sup> Children experiencing poverty are as many as 13 months behind their peers in terms of vocabulary development at age five.<sup>1403</sup> This has direct implications for children's later literacy skills.<sup>1404</sup> Children who start school without strong language development have lower literacy abilities at ages eight and 11.<sup>1405</sup> One in five children from the most deprived areas leave primary school unable to read well.<sup>1406</sup>

Strong early language skills underpin children's achievement across the curriculum and are critical to children's future life chances, such as their ability to access further and higher education and employment; while low literacy and communication skills are linked to low pay and poverty in adulthood.<sup>1407</sup> It is likely that these early inequalities are contributing to and reinforcing the disadvantages in education that the poorest children in Scotland face.<sup>1408</sup>

Repeated studies also show a link between child abuse and neglect and educational attainment.<sup>1409</sup> Trauma in childhood can lead to reduced educational attainment, mental and physical health problems and difficulties in adult relationships which in turn are highlighted as key factors in producing negative financial outcomes.<sup>1410</sup> Children who have experienced abuse and trauma will perform more poorly at school than their peers.<sup>1411</sup> A child living with fear and helplessness from experiences outside school cannot focus or learn to the same standard as other children.<sup>1412</sup> Issues at home which may affect a child's learning in school include alcohol or substance misuse, poverty, mental or physical ill-health, and children's caring responsibilities.<sup>1413</sup> These additional challenges can make arriving at school well-rested, fed, dressed and able to concentrate particularly difficult.<sup>1414</sup>

The expansion of early learning and childcare entitlements under the Children and Young People (Scotland) Act 2014 provides a significant opportunity to address inequalities in the early years.<sup>1415</sup> Commitments to provide additional early years teachers and graduates in the most deprived areas is welcomed by children's organisations who also encourage steps to increase the number of qualified teachers and graduates with speech and language expertise working within these services.<sup>1416</sup> Expansion of early learning and childcare services must retain a focus on quality support, including parental engagement in learning, to ensure that inequalities faced by children are adequately addressed.<sup>1417</sup>

## Additional support for learning

Over 153,000 pupils in Scottish schools have Additional Support Needs (ASN) (more than 22.5% of the pupil population),<sup>1418</sup> This disproportionately affects those from lower income families and areas of deprivation.<sup>1419</sup> Since the introduction of the Education (Additional Support for Learning) (Scotland) Act 2009,<sup>1420</sup> all looked after children are presumed to have additional support needs unless assessed otherwise. Children with Additional Support Needs need access to a wider variety of high quality, well-resourced and quickly accessible services, with adequate provision in both special and mainstream education.<sup>1421</sup>

The most recent figures on attainment and leaver destinations indicate that nine months after leaving school, those with Additional Support Needs are more than twice as likely to be unemployed (15.1%) than those with no Additional Support Needs (6.3%).<sup>1422</sup> This is a trend that continues into adulthood. Only 44% of individuals with disabilities in Scotland are employed compared to 73% for the wider population.<sup>1423</sup> Employment rates have fallen in recent years among some disabled groups.<sup>1424</sup>

Schools and education authorities have a duty to provide reasonable adjustments for disabled pupils under the Equality Act 2010 and, from September 2012, this includes a duty to provide auxiliary aids and services for disabled pupils.<sup>1425</sup> Children say that devices to assist in communication, such as communication boards, are vital to participation.<sup>1426</sup> A concern for children with disabilities is adults not having the skills to communicate with them.<sup>1427</sup> Local authority budget cuts mean that there is increasing pressure to reduce classroom support staff, making the inclusion of children with a disability into mainstream education increasingly difficult.<sup>1428</sup>

Previous guidance, such as the Administration of Medicines in Schools, also addresses the needs of children who have health issues and who require medication or healthcare in schools. However, this is now outdated and requires review.<sup>1429</sup> <sup>1430</sup> Lack of adequate support and training for school staff who administer medicines and health care procedures in schools has been raised as a concern.<sup>1431</sup> Workers providing these services in schools report that their confidence and competence was impaired by inadequate training, leaving them uncomfortable administering medicines or health care procedures.<sup>1432</sup> Research shows that families of children and young people with common health conditions and even straightforward medication requirements have experienced serious difficulties in ensuring that these are provided safely, regularly and willingly in schools.<sup>1433</sup> Action for Sick Children Scotland sought amendments to the Education (Scotland) Act 2016 to place a duty on education departments to ensure that arrangements are made for adequate provision of medication and healthcare in schools.<sup>1434</sup> While these efforts were unsuccessful, it has recently been confirmed that Scottish Government is in the final stages of developing guidance on the provision of healthcare in schools.<sup>1435</sup>

Since the introduction of the 'presumption to mainstream' in the Standards in Scotland's Schools etc. Act 2000,<sup>1436</sup> the majority of Scotland's pupils who have a learning disability or healthcare needs have been placed in mainstream settings. Whilst this has created the positive opportunity for children with a learning disability to be educated alongside their wider peer group, the legislation acknowledges that the needs of some children are best met in specialist provision rather than in mainstream schools.<sup>1437</sup>

Scottish Government has made a commitment to revise the Standards in Scotland's Schools Act Guidance on Presumption of Mainstream Education after concerns were raised from across Scotland regarding inconsistencies in the implementation of presumption of mainstream education.<sup>1438</sup> This revision, whilst encouraging mainstreaming, should also robustly support the implementation of a fully inclusive education, and make available other options to children and their parents so they can decide what educational setting is in the best interests of the child.

Children's organisations are concerned about the lack of mandatory training for teachers in supporting children with learning disabilities, which often results in certain behaviours not being understood.<sup>1439</sup> Within mainstream schools, too many young people with a learning disability are still excluded from the classroom, break times, curriculum, lesson discussions, activities, opportunities and the broad spectrum of school life.<sup>1440</sup> 52% of young people with learning disabilities in school said they don't get enough help and time from teachers, and 94% of parents feel schools do not receive enough resources to work with young people who have learning disabilities.<sup>1441</sup> 74% of young people who have learning disabilities feel like people at their school don't understand them and 77% have been bullied.<sup>1442</sup> Young people report that:

***I felt like teachers didn't always know that there were students with disabilities and how to assist them. This meant that there was a lot of bullying. It would've also been better to have more learning assistants in class.***<sup>1443</sup>

Increasingly, the vital role played by the specialist workforce providing additional support for learning has been recognised by the Educational Institute of Scotland. With the reduction in specialist staff, it is acknowledged that teachers and schools will struggle to meet the needs of children with a disability due to a lack of appropriate skills and expertise in this area.<sup>1444</sup> A workforce planning exercise around additional support for learning could be used to map existing roles and provision and to identify gaps in order to establish how best to support this workforce in the future.

The Education (Additional Support for Learning) (Scotland) Act is the key legal framework for supporting the educational rights of children with a disability.<sup>1445</sup> The Act was intended to address a number of critical challenges for children with a disability at the time of transitioning from school.<sup>1446</sup> However, research found that although children with a disability – in this case deaf children – are entitled to transitional planning under the Act, very few who took part in the research recalled having received this.<sup>1447</sup> As such, the challenge of supporting smooth transitions for disabled young people is about ensuring both children's and adult services are actively playing their role to promote positive post school outcomes.

Children's organisations have raised concerns in relation to the Education (Scotland) Act 2016.<sup>1448</sup> The Act extends the rights of children aged 12-15 years in relation to the Education (Additional Support for Learning) (Scotland) Act 2004.<sup>1449</sup> This allows children with capacity to: ask a local authority to determine whether they have additional support needs or determine whether they require a co-ordinated support plan, make a request for an assessment,<sup>1450</sup> request that an advocate or supporter accompany them to a meeting; or refer a matter to dispute resolution. Depending on the right to be exercised, children may address a matter to either the local education authority or the Additional Support Needs Tribunal. Whilst children's organisations support the extension of these rights, there is real concern that Scottish Government has inadvertently put in place a number of barriers that may prevent children from exercising them.<sup>1451</sup> Barriers identified include the introduction of a 'capacity assessment', carried out by the local education authority or the Additional Support Needs Tribunal (depending on which right the child is seeking to exercise), and the introduction of an 'adverse effect on wellbeing' assessment as a preliminary assessment.<sup>1452</sup> In order to exercise their rights, children must successfully negotiate both assessments (with a right of appeal to the Additional Support Needs Tribunal where the outcome of these assessments is disputed).<sup>1453</sup> The Scottish Government has stated that these assessments are necessary in order to safeguard the wellbeing of a child.<sup>1454</sup> However, many children's organisations remain concerned that these assessments are unnecessary and ensure that the balance of power remains firmly in the hands of adults.<sup>1455</sup>

## Looked after children

The educational attainment of looked after children in Scotland remains low compared with children who are not looked after, especially for children who are looked after at home.<sup>1456</sup> Latest figures show that while 98% of all school leavers achieve at least one qualification at SCQF 3 (equivalent to a foundation level standard grade), only 86% of looked after school leavers, and only 63% of leavers who were looked after at home, achieve this level.<sup>1457</sup> 14% of looked after children leave school with no qualifications at all, compared to only 2% of all school leavers.<sup>1458</sup> The attendance rate of looked after children is increasing steadily, and in 2014/15 is close to four percentage points higher than it was in 2009/10. While this is increasing for looked after children at all stages,<sup>1459</sup> most of the increase is driven by the improvement in the attendance of looked after children in secondary school.<sup>1460</sup>

The Education (Additional Support for Learning) (Scotland) Act 2009 entitles all looked after children to an assessment of additional support needs, and requires education authorities to consider the requirement for a co-ordinated support plan.<sup>1461</sup> There are concerns that this has not been fully implemented. Children's organisations report considerable variation among local authorities in the proportion of looked after children assessed as not having additional support needs under the 2009 Act, and the variations are too large to be explained by differences in the populations of children in different areas.<sup>1462</sup>

There are concerns regarding delays in educational provision when a looked after child moves into a placement in a different local authority.<sup>1463</sup> This can be a particular problem where the child has additional support needs and the authorities have not reached an agreement about funding arrangements.<sup>1464</sup> There is a need for an explicit protocol in such circumstances in order that children's rights to an education are not infringed.

All corporate parents have a role in supporting the education, training and employment opportunities for looked after children and care leavers.<sup>1465</sup> Partners working with corporate parents report that, broadly speaking, there is a clear recognition in the higher or further education sector of the issues which may affect the experience of looked after children and care leavers, and a commitment to support this group in achieving positive destinations.<sup>1466</sup>

## Minority ethnic children

Scotland's diversity is increasing. The 2011 census showed that 8.4% of Scotland's population come from ethnic and cultural minority backgrounds.<sup>1467</sup> 57,921 pupils in Scotland have a non-Scottish ethnicity.<sup>1468</sup> <sup>1469</sup> The 2015 pupil census showed that Polish (13,229) is now the second most commonly spoken additional language in Scottish schools,<sup>1470</sup> but community languages are not supported within the education system with the specific purpose of developing speaking, listening, reading and writing skills.<sup>1471</sup> While being highly represented in higher and further education, minority ethnic young people are under-represented in key employment pathways such as the Modern Apprenticeships scheme.<sup>1472</sup> Organisations working with minority ethnic communities have observed insufficient awareness of current equalities practice and a lack of confidence in equalities which may have led to the poor take-up of apprenticeships.<sup>1473</sup> In educational settings more widely, parents of minority ethnic children are often unsure how to support their children with issues around subject choice and accessing further education and employment opportunities.<sup>1474</sup> Parents who were not born in the UK are unfamiliar with the system and the support that is available to their children.<sup>1475</sup> Furthermore, while parents of minority ethnic children are often actively involved in their children's education at primary school level, this is often not continued into secondary school and a lack of contact between home and school can result in parents feeling increasingly unable to support their children at this stage.<sup>1476</sup>

Organisations working with minority ethnic communities call for increased opportunities for training and support of education practitioners in multicultural issues.<sup>1477</sup> Accessible versions of the Curriculum for Excellence such as 'Nationals in a Nutshell'<sup>1478</sup> need to be more widely distributed. The Curriculum for Excellence provides an opportunity to encourage the engagement of the broader cultural community in highlighting the achievements of individuals and communities; some good practice already exists in schools, although this is usually restricted to schools that have a higher ethnic and cultural diversity.<sup>1479</sup>

Specifically, Gypsy/Traveller children often do not complete mainstream education.<sup>1480</sup> A multiplicity of issues affect their learning such as a lack of authorised sites (which makes long-term access to education difficult),<sup>1481</sup> the decreased availability of ASN resources such as home or additional tutoring following interruptions to learning, and the unacceptable abuse and bullying Gypsy/Travellers often face at school.<sup>1482</sup>

Scottish Government data shows that Gypsy/Travellers have the lowest attainment scores – 88 compared to the Scotland average of 181 – and the lowest attendance rates of any ethnic group (79.9% compared to the 93.1% Scotland average).<sup>1483</sup> According to Census 2011 analysis, Gypsy/Travellers were less likely to be full-time students than the general population aged 16-24.<sup>1484</sup> Gypsy/Travellers were much more likely to have never worked than the population as a whole; almost a quarter (23%) of Gypsy/Travellers aged 16-74 had never worked compared to only 3% of the general population.<sup>1485</sup> Further, over a half were on state benefit, unemployed or lowest grade workers.<sup>1486</sup> This was almost double the proportion for the population as a whole.<sup>1487</sup>

A more culturally aware approach to education needs to be implemented on a nationwide basis, including remote or 'e-learning' which would provide a realistic platform for non-mainstream education.<sup>1488</sup> This would help to address the evident learning and development deficit experienced by Gypsy/Traveller children and young people.

Through the Scottish Traveller Education Review Group (STERG), the Scottish Government is developing guidance to support the inclusion of more young Gypsy/Travellers in education, support improved educational outcomes, and encourage inclusive and tailored approaches that deliver the entitlements of children and young people in Curriculum for Excellence.<sup>1489</sup> The guidance is due to be published early 2017.

## LGBTI children and young people

The main attainment issue that affects LGBT children and young people as a group is related to experiences of bullying, anxiety about bullying, or discrimination in the educational environment.<sup>1490</sup> It has been found that 10% of LGBTI young people had left education as a result of a learning environment in which homophobia, biphobia, and transphobia were present, regardless of whether they had ever experienced direct bullying.<sup>1491</sup>

## Recommendations

- Scottish Government should continue to intensify efforts to reduce the effects of children’s social background on their achievement at school, focusing on the early years, on parents’ engagement, improving the home learning environment and ensuring the entitlement to early education is taken up among under-represented or disadvantaged groups.
- Steps should be taken to improve data collection, research and evaluation to enable schools and local authorities to better inform their approaches to tackling the attainment gap and to inform workforce development. This should include national mapping and scrutiny of specific services including speech and language therapy, classroom assistants and educational psychologists.
- The views and experiences of children should be used by government officials, school leaders, teachers and other key stakeholders to inform and identify the practical support needed by the children they work with.

## Exclusions

### UNCRC Concluding Observation

Use the disciplinary measure of permanent or temporary exclusion as a means of last resort only, forbid and abolish the practice of “informal” exclusions and further reduce the number of exclusions by working closely with social workers and educational psychologists in school and using mediation and restorative justice.<sup>1492</sup>

Ensure that children have the right to appeal against their exclusion and are provided with legal advice, assistance and, where appropriate, representation for those without means.<sup>1493</sup>

### Other treaty bodies and UPR recommendations

A similar recommendation is made by CERD in its 2016 Concluding Observations (paragraph 35).<sup>1494</sup>

### Permanent or temporary exclusions

In Scotland, the power exists to exclude children where it is considered that to allow the child to continue attendance would be seriously detrimental to order and discipline in the school or the educational wellbeing of the learners there.<sup>1495</sup> The number of exclusions has been falling year on year since 2006/07 (see table below).<sup>1496</sup>

Table 22: School exclusions (temporary and permanent) (2006-2015)

	2006/07	2007/08	2008/09	2009/10	2010/11	2012/13	2014/15
Exclusions in total <sup>1497</sup>	44,794	39,717	33,917	30,211	26,844	21,955	18,430
Temporary exclusions	44,546	39,553	33,830	30,144	26,784	21,934	18,425
Removed from register	248	164	87	67	60	21	5

Over 99% of all exclusions are for a fixed period of time, referred to as temporary exclusions, and pupils are expected to return to their original school when the exclusion period ends. In a small number of cases (five in 2014/15), an excluded pupil is ‘removed from the register’. When this occurs, a pupil does not return to their original school and will be educated at another school or in other educational provision.<sup>1498</sup> Concerns have been raised that the implementation of Scottish Government guidance which advocates taking a positive approach to managing school exclusions is patchy<sup>1499</sup> and that where exclusion is being considered, the Getting It Right For Every Child (GIRFEC) approach to consider the wellbeing needs of a child is not always undertaken.<sup>1500</sup> Disproportionately high exclusion rates persist in respect of vulnerable groups such as Gypsy/Traveller children,<sup>1501</sup> and for pupils with ASN and who are living in poverty (see table). Exclusion rates for pupils with additional support needs and those living in areas of the most deprivation have not changed compared with the 2012 figures included in a previous Together report.<sup>1502</sup>

Table 23: Cases of exclusion and rate per 1,000 pupils by additional support needs and SIMD (2014-15) <sup>1503</sup>

	Cases of exclusions	Rate per 1,000 pupils
Pupils with ASN	9,688	69.0
Pupils with no ASN	8,638	16.1
Lowest 20% of SIMD (most deprived)	7,579	52.0
Highest 20% of SIMD (least deprived)	1,005	7.9
<b>Scotland total</b>	<b>18,430</b>	<b>27</b>

The exclusion rate per 1,000 pupils for those with an additional support need is more than four times higher than those who have no additional support needs (see table above).<sup>1504</sup> Rates of exclusion among pupils attending special schools is high at 148 per 1,000, compared to 58 per 1,000 in mainstream secondary and 10 per 1,000 in primary.<sup>1505</sup> Deprivation plays an important factor in the likelihood of exclusion. Rates of exclusions per 1,000 pupils are more than six times greater for pupils living in the 20% of areas associated with most deprivation, compared with pupils living in the 20% associated with least deprivation.<sup>1506</sup>

National guidance states that exclusion of looked after children should be avoided where possible.<sup>1507</sup> Despite this, looked after children continue to experience much higher rates of exclusion than the general school population, especially in secondary school (see table below). Overall, they are more than eight times more likely to be excluded than other pupils: there are 218 cases per 1,000 looked after pupils, compared to 27 per 1,000 in the general school population.<sup>1508</sup> The rate of exclusion of looked after children in special schools is extremely high. However, these exclusion rates of looked after children for all stages have fallen steadily since 2009/10.<sup>1509</sup>

Table 24: Exclusion rate per 1,000 pupils by all pupils, looked after children and stage, (2009/10-2014/15) <sup>1510</sup>

Stage	Looked after full year (in comparison with all pupils shown in brackets)			
	2009/10	2010/11	2012/13	2014/15
Primary	122 (12)	95 (11)	83 (10)	79 (9)
Secondary	632 (82)	584 (72)	476 (58)	322 (50)
Special	591 (174)	455 (148)	576 (148)	569 (126)
Scotland	360 (45)	321 (40)	279 (33)	218 (27)

Although the overall number of exclusions is decreasing annually, vulnerable groups continue to be disproportionately represented. Excluding children from the stable routines of school worsens behaviour and does not address any underlying issues.<sup>1511</sup> Missed schooling can in turn lead to disengagement, truancy and further exclusion.<sup>1512</sup> Labels attached to children seen as 'troublemakers' at school can lead to isolation and stigmatisation and exclusion sends a message to children that they are unwanted and unmanageable.<sup>1513</sup> School exclusion is a key factor impacting adversely on the likelihood of offending behaviour and the subsequent conviction rates of children.<sup>1514</sup> 80% of young people in HMYOI Polmont have been excluded from school.<sup>1515</sup> There is an urgent need to develop more imaginative ways of retaining children in mainstream provision whose behaviour is perceived as challenging.<sup>1516</sup> Children at risk of exclusion have recommended that practitioners listen to them and look behind challenging behaviour to try to understand the factors that contribute to it.<sup>1517</sup>

Parents and young people aged 16 and over, and children over the age of 12 who are deemed to have legal capacity, have the right to appeal against exclusions decisions.<sup>1518</sup> Guidance to education authorities on schools exclusions states that where a child with ASN or disability is at risk of exclusion, the education authority must take all reasonable steps to ensure that appropriate provision can be made to meet the learner's additional support needs during the period of exclusion.<sup>1519</sup> Since 2011, the powers of the Additional Support Needs Tribunal Scotland have been extended to include cases related to discrimination in education, including exclusions for reasons directly related to disability.<sup>1520</sup> In addition, social work services should always be informed of a decision to exclude where the pupil concerned is on the Child Protection Register or is looked after.<sup>1521</sup> As far as possible, provision should be put in place to ensure the ongoing monitoring of the welfare of the child, as well as provision for their educational needs as described in the child's Care Plan.<sup>1522</sup> Further information is needed as to the provision of support and advocacy services in place to assist vulnerable children and young people through the right of appeal in the case of school exclusion.

## Informal exclusions

'Informal' exclusions should not be taking place at all. Scottish Government guidance states that 'informal' exclusions are a form of exclusion and must be recorded as such and that alternative education provision must be delivered without undue delay.<sup>1523</sup> There is an urgent need for better awareness of this national guidance among education staff. The guidance is currently being updated; it is understood this will clarify Scottish Government's position on informal exclusions.<sup>1524</sup>

Children's organisations report that informal exclusions are still being used by schools.<sup>1525</sup> Those children most likely to receive an informal exclusion generally have a history of previous and repeated exclusions.<sup>1526</sup> Children with disabilities and additional support needs are disproportionately subject to informal exclusion.<sup>1527</sup> Children with a disability have experience of informal exclusions when their behaviour is perceived as non-compliant or challenging and may be placed on part-time timetables, rather than receiving the appropriate support.<sup>1528</sup> Children often feel they are being 'punished' because of their additional support needs.<sup>1529</sup> Survey evidence shows that 44% of young people who have learning disabilities have been informally excluded from school.<sup>1530</sup> For 14% of these children, this happens on a weekly basis. The rationale given by schools include that the class, activity or school trip is not suitable for the child (28%); that the child is not coping (42%); and that it is for the child's 'own good' as they are having a 'bad day' (47%).<sup>1531</sup> Only 15% of parents agreed with the reason given by school with 74% feeling that a more accurate reason for their child's informal exclusion from school was the child not receiving the necessary support.<sup>1532</sup>

## Recommendations

- Scottish Government should ensure that the number of exclusions is reduced, informal exclusions are never used and permanent or temporary exclusion is only used as a last resort. The over-representation of particular groups of children, who are currently more likely to be affected by exclusion, should be addressed and the quality of alternative provision is monitored and improved.
- Children have a separate statutory right to appeal against school admission and exclusions with legal advice, assistance and representation provided for those without means. This should include the right to appeal to special educational needs tribunals.

## Use of isolation rooms

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### UNCRC Concluding Observation

Abolish the use of isolation rooms.<sup>1533</sup>

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## Use of seclusion in educational settings

The term 'seclusion' is not clearly defined in Scottish legislation or regulations.<sup>1534</sup> Schools use different terminology to refer to seclusion including 'time out' and 'quiet room'.<sup>1535</sup> In the absence of consistent terminology and definitions used across Scotland, any statistics are potentially misleading.

Data collection on the use of seclusion in educational settings is not systematic. A comparison of the most recent evidence shows that whilst the use of what is referred to as 'time out' has declined in Scotland's schools, it is still used frequently.<sup>1536</sup> The percentage of secondary head teachers who say the approach of 'time-out' is used 'frequently' or 'sometimes' in their school has fallen from 81% in 2009 to 73% in 2012.<sup>1537</sup> The use of seclusion can cause distress and psychological harm.<sup>1538</sup>

Although some institutional guidance has been produced on the use of seclusion,<sup>1539</sup> it primarily applies to residential care settings and is not mandatory. There is no national guidance on the use of seclusion and restraint for children in local authority schools in Scotland.<sup>1540</sup> Such policies do exist for some groups of children such as those who are looked after.<sup>1541</sup> New guidance is being produced to regulate the use of restraint and seclusion in special schools to protect the rights of children.<sup>1542</sup>

There is currently no government policy that provides children with additional support needs who attend local authority education or care facilities with protection from restraint and seclusion.<sup>1543</sup> This is problematic for children with complex support needs who may attend mainstream schools. These children may have communicative behaviours that are not understood and, without clear guidance, inappropriate responses are likely to occur.<sup>1544</sup> Issues may include a lack of monitoring of the length of time a child spends in seclusion, and no risk assessment carried out to measure impact. There is an urgent need to address this policy gap to ensure the safety and wellbeing of all children.

## Mandatory child rights education

### UNCRC Concluding Observation

Make children’s rights education mandatory.<sup>1545</sup>

### Other treaty bodies and UPR recommendations

The General Assembly adopted a designated UN Declaration on Human Rights Education and Training in December 2011, which calls for governments to strengthen their attempts in promoting respect for human rights, acknowledging “...the fundamental importance of human rights education and training in contributing to the promotion, protection and effective realization of all human rights.” The Declaration, with its 14 Articles, presents a significant legal framework on which to base advocacy for human rights education and explicitly directs states to take account of the World Programme for HRE in Article 8.<sup>1546</sup>

### Rights-based education

Outlined in the Table below are the subjects in the Curriculum for Excellence which explicitly address human rights and active citizenship (or related terms). No other subjects explicitly discuss human rights or active citizenship (including expressive arts, languages, mathematics, sciences, and technologies).

Table 25: Curriculum for Excellence subjects addressing human rights and active citizenship<sup>1547</sup>

Health and Wellbeing	Under ‘Mental, emotional, social and physical wellbeing’ the following outcomes are stated: “As I explore the rights to which I and others are entitled, I am able to exercise these rights appropriately and accept the responsibilities that go with them. I show respect for the rights of others.” [human rights] “Representing my class, school and/or wider community encourages my self-worth and confidence and allows me to contribute to and participate in society.” [active citizenship] “Through contributing my views, time and talents, I play a part in bringing about positive change in my school and wider community.” [active citizenship]
	Under ‘Relationships, Sexual Health and Parenthood’: “I know how to access services, information and support if my sexual health and wellbeing is at risk. I am aware of my rights in relation to sexual health including my right to confidentiality, and my responsibilities, including those under the law” [human rights]
Religious and Moral Education	Under ‘Christianity: Values and Issues’: “I can share my developing views about values such as fairness and equality and love, caring, sharing and human rights.” [human rights]
	Under ‘World Religions: Values and Issues’: “I can share my developing views about values such as fairness and equality and love, caring, sharing and human rights” [human rights] NB: human rights not addressed in the ‘Religious Education in Catholic Schools’ experiences and outcomes.
Social Sciences	Under ‘People, Past Events and Societies’: “I can make reasoned judgements about how the exercise of power affects the rights and responsibilities of citizens by comparing a more democratic and a less democratic society” [active citizenship]
	Under ‘People in Society, Economy and Business’: “By exploring the ways in which we use and need rules, I can consider the meaning of rights and responsibilities and discuss those relevant to me” [human rights] – National 1 “I can describe the main features of a democracy and discuss the rights and responsibilities of citizens in Scotland” [human rights & active citizenship] – National 2 “I have compared the rights and responsibilities of citizens in Scotland with a contrasting society and can describe and begin to understand reasons for differences” [human rights] – National 3 “I can evaluate the role of the media in a democracy, assess its importance in informing and influencing citizens, and explain decisions made by those in power” [active citizenship] – National 4

Although some progress has been made in Scotland with aspects of human rights education, there is still much work to be done to avoid an ad-hoc approach.<sup>1548</sup> For example, although some elements of human rights and active citizenship are taught in health, religious and moral education and social science education, a rights-based approach is missing in technologies curricula (see table above). This has been identified and outlined as an area of particular concern in this report’s Violence Against Children chapter (see page 69).

Children’s organisations have called for mandatory human rights education beginning in the early years, continuing through school and extending into tertiary education.<sup>1549</sup> Research shows that schools in areas of deprivation scored higher than expected in attainment when there was evidence that the school addressed pupil participation.<sup>1550</sup> It concludes that it is useful to see rights-based education as an ethos across all school life, rather than as a supplement to mainstream education. Areas of good practice

include embedding a whole school approach, such as recent training that has been developed to equip youth workers with the knowledge to embed a child rights-based approach to their work.<sup>1551</sup>

UNICEF's Rights Respecting Schools Award<sup>1552</sup> now has a substantial proportion – over 50% – of Scotland's schools registered.<sup>1553</sup> To date, 2016 has seen the greatest number of schools achieving Level 2 of the Award.<sup>1554</sup> Costs to access materials and assessment may be a barrier to schools' participation.<sup>1555</sup> Local authorities can choose to enter into a Service Level Agreement with UNICEF, reducing the cost to individual schools.<sup>1556</sup> Registration for the Award is now open to some early years centres and is being piloted at residential children's homes.<sup>1557</sup>

The Rights Respecting Schools Award can have a profound impact on children and the school as a whole; when the principles and values of the UNCRC are introduced and reinforced throughout school life, children and the wider school community benefit.<sup>1558</sup> In some schools, staff may initially lack awareness and understanding of children's rights.<sup>1559</sup> Ensuring the wider school community are aware and supportive of progressing children's rights is central to the award's success.<sup>1560</sup> Anecdotal evidence reports that secondary schools in particular are more reluctant to engage with the initiative and that parents and staff may see children's rights education as an additional workload due to a focus on exams.<sup>1561</sup> However, in schools where the approach is well embedded, this is not felt to be a concern. In May 2016, a motion was passed by the Scottish Secondary Teachers' Association (SSTA) calling for all local authorities to support RRSAs with a Service Level Agreement and all secondary schools to become Rights Respecting Schools.<sup>1562</sup> UNICEF's Impact Evaluation forms have demonstrated that the award has a significant impact on relationships, engagement with learning and attitudes toward diversity.<sup>1563</sup>

Although there are current gaps in the provision of rights-based education, there is enthusiasm for embedding children and young people's information rights in the curriculum across Scotland. This is a view shared by children, young people and adults.<sup>1564</sup> It must be recognised that alongside rights education for children, parents and carers need to be informed about children's rights, to support children and young people in realising them.<sup>1565</sup> <sup>1566</sup> Scottish Government should support existing successful initiatives such as the Rights Respecting School Awards with the aim of embedding the UNCRC in the school curriculum.<sup>1567</sup>

### Child participation in school matters

The Curriculum for Excellence aims to ensure all children develop the attributes, knowledge and skills they will need in life, learning and work.<sup>1568</sup> Children value participating in their own learning<sup>1569</sup> and want to be listened to on topics including spending money, the school community, and choosing books and games.<sup>1570</sup> Across all areas of school life, pupils who have opportunities to formally and informally take part in a variety of meaningful activities and decisions achieve better outcomes regardless of other factors such as social deprivation.<sup>1571</sup> A review of the Curriculum for Excellence<sup>1572</sup> found that children still want a more active role in planning their learning that includes partnerships with teachers, more personal choice and pupil-led opportunities.<sup>1573</sup>

Examples of good practice exist whereby children have been able to assert their views on issues such as school food provision,<sup>1574</sup> teaching practices,<sup>1575</sup> and school toilets.<sup>1576</sup> Nearly all schools have a pupil council and often offer a range of opportunities for pupils to get involved in having their say.<sup>1577</sup> <sup>1578</sup> <sup>1579</sup> Research in 2010 found that pupil councils were rarely involved in teaching matters and communication between the pupil council and the wider community could be irregular and ineffective.<sup>1580</sup> At that time, many pupils felt that the councils' goals were not being achieved owing to a lack of money and/or time, irregular attendance by pupil councillors or adult advisers, and 'being let down by schools'.<sup>1581</sup> An updated review of this evidence would be useful in order to understand the current views of school pupils regarding pupil councils.

### Recommendations

- Scottish Government should ensure there is a systematic and embedded approach to rights-based education throughout Curriculum for Excellence.
- Enhance dialogue, power sharing, and decision-making within schools with all pupils. Ensure purposeful, participatory opportunities for all pupils in all areas of school life.<sup>1582</sup>

## 7.2 Rest, leisure, recreation and cultural and artistic activities

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### UNCRC Concluding Observation

Strengthen its efforts to guarantee the right of the child to rest and leisure and to engage in play and recreational activities appropriate to the age of the child, including by adopting and implementing play and leisure policies with sufficient and sustainable resources.<sup>1583</sup>

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Play, leisure and culture opportunities, as enshrined in UNCRC Article 31, are essential for children's wellbeing and healthy development.<sup>1584</sup> Children benefit from play and socialisation in a number of ways including improved physical and emotional wellbeing, adaptability, resistance to stress and anxiety, risk assessment, ability to form friendships and attachments, improved cognitive ability, problem solving abilities and language development.<sup>1585</sup> Furthermore, through engagement in youth work, young people become resilient, participate effectively in groups, make reasoned decisions, express their voice and demonstrate social commitment.<sup>1586</sup> Poor recognition of the significance of Article 31 results in a lack of investment in appropriate provision, weak protective legislation and the invisibility of children in national and local planning.<sup>1587</sup>

Scottish Government published its first national Play Strategy<sup>1588</sup> and corresponding Action Plan in 2013.<sup>1589</sup> A cross-sector Play Strategy Group supported implementation of the Action Plan in partnership with Scottish Government from 2014 to 2016, however there is currently no such group in operation.<sup>1590</sup> The Early Years Framework specifically highlights the importance of play in improving children's outcomes and quality of life.<sup>1591</sup> A number of strategies have been produced relating to children's participation in art,<sup>1592</sup> sport<sup>1593</sup> and youth work.<sup>1594</sup> Scottish Government has supported play through measures such as investment of £7m over five years to support direct play provision for children in disadvantaged communities.<sup>1595</sup> The 2016 'Theatre in Schools' pilot, which aims to ensure every child has access to creativity through theatre, is successfully expanding all over Scotland.<sup>1596</sup> Children say the barriers they face in accessing play and recreation include confidence, choice, support from families, encouraging and informed coaches, inclusivity, ease of access, quality of equipment and venue, and affordability.<sup>1597</sup>

Despite the introduction of the Play Strategy and the growing body of evidence supporting the benefits of play,<sup>1598</sup> <sup>1599</sup> children's organisations report that access to suitable funding has reduced annually.<sup>1600</sup> Funders seek evidence of outcomes obtained through play<sup>1601</sup> such as combating obesity rather than recognising the intrinsic value of play in terms of the enjoyment and pleasure afforded, as recognised by the UNCRC.<sup>1602</sup> There is no statutory duty for play<sup>1603</sup> which may prevent the effective implementation of the Play Strategy and make this an area vulnerable to budget cuts.<sup>1604</sup>

Adequate outdoor space to play is in decline throughout the UK<sup>1605</sup> including Scotland.<sup>1606</sup> Free play in outdoor environments is essential for the wellbeing of children and for their healthy development.<sup>1607</sup> <sup>1608</sup> Children identify general cleanliness, dog fouling, unimaginative play areas, distance to parks and anti-social behaviour as the most common reasons preventing play outdoors.<sup>1609</sup> Barriers to free play outdoors such as high traffic volumes and unwelcoming public spaces can be managed through improved planning.<sup>1610</sup> Since 2012, local authorities in Wales have had a statutory duty to assess the sufficiency of play opportunities in their local area and secure sufficient play opportunities for children.<sup>1611</sup> This duty cuts across different public service agendas, and requires all those whose roles affect children's play to be involved. The process of producing assessments and 'securing sufficient play opportunities' involves services such as town planning, which have often struggled to include children's needs in practice.<sup>1612</sup> Similar legislation for Scotland should be considered.

### *Play spaces for disadvantaged children*

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### UNCRC Concluding Observation

Provide children, including those with disabilities and children in marginalized and disadvantaged situations, with safe, accessible, inclusive and smoking-free spaces for play and socialization and public transport to access such spaces.<sup>1613</sup>

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All children should play, learn and socialise in places that are free from tobacco but they are often unable to remove themselves from smoky environments that are harmful to their health.<sup>1614</sup> As advocated by Scotland's Charter for a Tobacco-Free Generation,<sup>1615</sup> there is a need to make spaces where children play, socialise and take part in sport and recreational activities entirely smoke-free.<sup>1616</sup> There is no statutory duty to prohibit smoking in outdoor spaces where children play. However, local authorities uphold smoke-free policies and have been encouraged by the Scottish Government to consider extending this approach to outdoor areas likely to be accessed by children.<sup>1617</sup> Although progress has been piecemeal there are examples of good practice; Clackmannanshire and

Edinburgh City Council<sup>1618</sup> have declared their playparks smoke-free zones, whilst East Dunbartonshire have adopted an asset-based approach to creating smoke-free play parks in partnership with schools, using local children's artwork to convey the message that the move to create healthy play spaces is being driven by children themselves.<sup>1619</sup>

Disabled and disadvantaged children face multiple barriers to being able to play and socialise at home, at nursery, school, early learning and childcare and in the community.<sup>1620</sup> Evidence shows that 63% of children with a learning disability do not have the same chances to take part in playground games as their peer group.<sup>1621</sup> Children report that lack of accessible toilets or wheelchair access can prevent them from taking part in play activities.<sup>1622</sup> There is often a need for parents and carers of children with a disability to remain within leisure facilities or sessions as there is insufficient support staff to allow full participation.<sup>1623</sup> To ensure children with a disability have adequate and inclusive play, leisure and cultural opportunities,<sup>1624</sup> the quality of physical environments needs to be addressed, as well as the training, support and capacity of practitioners such as play workers, sports coaches, youth workers and drama teachers.<sup>1625</sup> Parents, carers and children report that significantly more attention should be given to coordination across services, such as transport across geographic areas to achieve inclusive opportunities.<sup>1626</sup> Carers and social workers are often unable to provide timely and appropriate transportation arrangements to activities.<sup>1627</sup> Young people experience the same transportation barriers to their social lives, college and job prospects and ability to see siblings and other family.<sup>1628</sup> Examples of good practice are the Deaf Friendly Swimming Project,<sup>1629</sup> weekend Friendship and Storytelling Clubs,<sup>1630</sup> the Free Range project in Fife which provides outdoor play for vulnerable primary school children<sup>1631</sup> and school sports days adapted to meet the needs of children with additional support needs.<sup>1632</sup>

Play facilities and staff in hospitals were last reviewed in 2013.<sup>1633</sup> Play staff expressed difficulties in obtaining training for play specialists,<sup>1634</sup> and the relevant course to improve skills and knowledge is no longer offered. Play staff are concerned that this may limit the number of trained staff in hospitals in the future. Parents and their children are not allowed to use hospital play areas unsupervised in more than a third (36%) of wards. This, combined with a lack of access to play facilities at the weekends in 26% of wards, restricts availability for play for some children. It was found that recreation equipment and facilities were often limited for young people, and play resources were more suitable for younger children.<sup>1635</sup>

Corporate parents are responsible for ensuring looked after children and care leavers have access to recreational opportunities and are included in their local community.<sup>1636</sup> To achieve this, corporate parents must identify and remove the barriers that looked after children and care leavers encounter.<sup>1637</sup> Corporate parenting planning and reporting<sup>1638</sup> should set out clear indicators that can be used to track the progress made in promoting equality of access and opportunity to play and recreational activities. Concerns that professionals and carers caring for looked after children have held about risk and liability in case of incidents during play are addressed in guidance such as 'Go Outdoors', to discourage risk averse practices and reduce barriers to the inclusion of looked after children and young people.<sup>1639</sup>

Adequate Gypsy/Traveller site provision for play is critically important.<sup>1640</sup> In 2009, Scottish Government acknowledged<sup>1641</sup> that Gypsy/Traveller children were disadvantaged in accessing quality play opportunities<sup>1642</sup> and this is still a concern. It is reported that safe spaces for play on Gypsy/Traveller sites are not prioritised in terms of funding or research.<sup>1643</sup> Furthermore, young Gypsy/Travellers have difficulty getting to other social spaces owing to a lack of public transport between their sites and places such as swimming pools, making the availability of recreational activity further restricted.<sup>1644</sup> Good practice in Wales can be used to inform appropriate policy responses; guidance published in 2015 supports local authorities to consider and include play and early years provision when developing new and existing Gypsy/Traveller sites.<sup>1645</sup> Overall, there is still a lack of research into play and leisure opportunities for minority ethnic communities.<sup>1646</sup>

Other groups of children in Scotland who may be significantly disadvantaged in accessing adequate play, leisure and culture opportunities include child asylum seekers and refugees<sup>1647</sup> and those living in poverty.<sup>1648</sup> <sup>1649</sup> For example, since 2003 the percentage of 2-15 year olds who play sport on a weekly basis has been consistently higher among households in the top three income deciles than those in the bottom three.<sup>1650</sup> Children from the most deprived areas have less play at home, less perceived access to safe outdoor play space,<sup>1651</sup> and have reduced local access to the natural environment and open green spaces.<sup>1652</sup> Children from higher socio-economic backgrounds are more likely to play for longer on a weekend, take part in a greater variety of play activities, play together with a parent and to have 'positive' barriers to play such as extra-curricular activities and homework.<sup>1653</sup>

Young carers' responsibilities mean they often have a lack of time to play and socialise.<sup>1654</sup> The benefits of targeted play interventions for young carers has been recognised through the Edinburgh Young Carers project which offers 'playdates' for young carers aged 5-8 who find that being part of a larger group is difficult and beyond their stage of socialising skills.<sup>1655</sup> Research will be carried out in the next nine months to assess the impact of these playdates on the young carers and their families.

Less than half of LGBT young people say they feel there are enough places where they can safely socialise and be open about their sexual orientation and gender identity.<sup>1656</sup> While 54% of those aged 18-25 feel that there are enough places to socialise and be open about their sexual orientation or gender identity, less than one third (29%) of young people aged 13-17 agree with this.<sup>1657</sup> There are barriers to opportunities for LGBT young people living in rural areas that are not experienced by their urban peers – this is discussed in the case study on page 129. There is a need to address the availability, frequency and safety of public transport services to enable opportunities for leisure and socialising.<sup>1658</sup>

Gender equality also needs to be considered in relation to children's access to safe and inclusive spaces for play and culture. Gender stereotyping significantly influences children, with consequential effects on their wellbeing, life chances, choices and potential.<sup>1659</sup> Studies continue to link belief in traditional gender roles with attitudes which condone violence against women.<sup>1660</sup> Research shows that parents feel equality in the early years is paramount, including when children engage in play activities, but that this is not possible due to a variety of constraints such as social attitudes outside the home and cultural messaging in the wider toy, media and marketing industries.<sup>1661</sup> In particular, parents call for health and education providers in the early years to promote gender equality amongst staff, children and other parents so that play activities no longer perpetuate gender inequalities.<sup>1662</sup>

Children's organisations report that young people's right to play and recreational activities is under-resourced and not given the same significance as that of younger children.<sup>1663</sup> Young people are more likely to seek opportunities to socialise, spend time with peers or be alone, explore more challenging activities and recreation chosen voluntarily, including being online.<sup>1664 1665</sup> This is necessary for the development of young people's sense of identity, belonging and citizenship.<sup>1666</sup> The National Play Strategy and National Youth Work Strategy reference the value of youth work, youth workers and community spaces including youth clubs.<sup>1667 1668</sup> There are requirements on local authorities through community learning and development to recognise the value of youth work.<sup>1669</sup> Despite this, funding for youth work is often ad hoc.<sup>1670</sup> Further measures should be taken forward to build on the evidenced value that youth work provides. Children's organisations express the need for those involved in local community planning and strategic service design to engage with young people in relation to play and youth work.<sup>1671</sup>

Young people can be perceived by the public as engaging in anti-social behaviour when in public spaces.<sup>1672</sup> They can be made to feel unwelcome, and may be moved on to avoid intimidating younger children.<sup>1673</sup> There is a need for spaces where young people can play, gather, and be social and active. There is a particular need for inclusive play spaces which meet the needs of young people with a disability.<sup>1674</sup> Examples of good practice include The Yard which provides an adventure playground for children and young people up to the age of 25 and provides facilitated play for older young people affected by a disability.<sup>1675</sup> It is important to consider diverse spaces in local areas which can accommodate the play and recreational needs of all children within their community.

## Participation in planning processes

### UNCRC Concluding Observation

Fully involve children in planning, designing and monitoring the implementation of play policies and activities relevant to play and leisure, at the community, local and national levels.<sup>1676</sup>

In May 2016, an independent review of the Scottish planning system was published, containing a series of recommendations which will be used to inform the development of a Scottish Government programme of planning reform.<sup>1677</sup> It contains a recommendation to introduce a statutory duty to consult young people in the preparation of Local Development Plans, referring specifically to the importance of underpinning education with active citizenship. The recommendation states that:

***Community council membership could be transformed where involvement of young people is a requirement rather than an exception. A mechanism for direct engagement between young people and elected members which focuses on place is also recommended. Training will be required in this area as well as a measure for monitoring inclusion.***<sup>1678</sup>

Whilst Scottish Government has agreed in principle with many of the recommendations of the review,<sup>1679</sup> it has not yet responded to this recommendation.<sup>1680</sup> Additionally, the recommendation only refers to young people which may further exclude younger children from planning decisions.<sup>1681</sup>

The meaningful participation of children in decisions around their built environment has been found to impact positively on communities<sup>1682</sup> and to promote equality and empower those children and young people who are often overlooked in decision-making.<sup>1683</sup> There are pockets of good practice across Scotland. Examples include a Conservation Area Regeneration Scheme in Tranent, which explored children's views and experiences of their local community and built environment and examined how these factors impact on their rights and wellbeing.<sup>1684</sup> In the Highlands, community guidance is being developed which looks broadly at the promotion of space for play and leisure which can be freely chosen by children and young people.<sup>1685</sup> Planning Aid Scotland has worked with children of all ages and backgrounds to produce imaginative educational resources on issues such as community allotments, recycling, housing, design and shared spaces.<sup>1686</sup> These examples demonstrate that positive and meaningful involvement requires an embedded commitment to include children, listen to their views and ideas, and act on the issues they have raised as important to them. Such positive examples of inclusion are still dependent on decision-makers' understanding of children's rights and, as a result, processes and practices are inconsistent across services and local authorities.

### Recommendation

- Scottish Government should focus resources on ensuring vulnerable groups, including disabled children and children living in more deprived areas, have access to safe and inclusive play, leisure and cultural activities. Coordinate and implement efforts to further Article 31 in a consistent and integrated way and ensure policies are sufficiently and sustainably resourced, monitored and reviewed to measure progress.

## Case Study:

### Safe spaces for LGBT young people

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Children and young people living in rural areas experience barriers to socialisation that are not experienced by their urban peers. For example, there may not be any socialisation opportunities available in their area or they may need to travel long distances to access these opportunities or venues, requiring use of public transportation or support from a parent or carer.

Barriers to socialisation can be intensified for LGBT children and young people. Where there are services, such as mainstream youth groups, LGBT young people may not feel confident to access them or be hesitant about accessing a potentially homophobic, biphobic or transphobic service. Rather than considering LGBT young people a 'hard to engage' group, mainstream organisations need to do more to actively promote their services as inclusive to LGBT people. They then need to follow up on this by ensuring that everyone receives a positive, inclusive and responsive service.

LGBT young people living in rural areas are more likely to think homophobia, biphobia and transphobia are a problem in both Scotland and their local area. Just 27.1% of those living in rural areas consider their area to be a good place to live for LGBT young people. Rural respondents were also less likely to feel included and accepted in their families and communities.

**74.8% of those who live in urban areas felt included and accepted in their own families, compared to 64.1% of those in suburban areas, and just 56.3% of rural respondents.**

**In the wider community, 69% of urban respondents felt included and accepted, while only 51.6% of suburban respondents and 45% of rural respondents said the same.**

LGBT young people may not have transportation to LGBT-specific youth groups or may need to come out to a parent or carer in order to access transportation. Living in rural areas can mean that young people need to travel long distances between towns or that they return late at night after youth groups. As a result, even if it is not necessary to obtain transportation from parents or carers, young people living at home with parents or carers may question the travel they're undertaking.

LGBT young people, particularly those in rural areas, often raise concerns about their safety when using public transportation. Although more than three quarters (78.7%) of all LGBT young people feel safe using public transportation, only half (51.8%) of transgender young people feel safe using public transport. Those in urban areas were most likely (88.3%) to feel safe using public transportation, followed by 76.3% of those in suburban areas and falling to 64.6% of those in rural areas. Buses are of particular concern as young people cannot simply move to another carriage, as they would on a train, if experiencing discrimination. Reporting opportunities on public transportation need to be improved and enforced. The reduced transportation options in rural areas mean that LGBT young people must often choose between using public transportation and not taking part in socialisation opportunities.

Dylan identifies as non-binary and grew up living with their brother, mother, and grandfather in a rural area with six houses. Dylan and their brother were the only children in the area, which lacked clubs and services, so did not socialise much until secondary school. LGBT identities were not discussed in Dylan's family or community. Because Dylan was experiencing bullying at school, they did not feel comfortable taking part in the after school activities available. Dylan feels that opportunities to safely socialise at an earlier age, and LGBT-inclusive information in school, would have helped them understand their identity:

***I think if I had more exposure earlier I would have understood how I was feeling about my body. [There should be] more information in schools in because that's the place the community gathers.***

Dylan felt comfortable using the bus because it was always the same driver and an empty bus when they travelled, but found that the minimal service of one outward bus per day created other barriers. As both a 'teenager and a night owl', combined with depression and anxiety that they were unaware of until the age of 17, Dylan found it difficult to make the morning bus out of the village. This greatly reduced their ability to socialise with their peers. Although there were no LGBT-specific or LGBT-inclusive youth groups for Dylan to travel to, they did find a small group of friends with which they could be out about their gender identity.

***If it was a good day and I had something really important to do, like spending the day with a few friends, I could make the bus. I live in a city now and can walk to social groups and [meet with] friends, so I socialise a lot more.***



Being together is best

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# Special protection measures

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

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.

- Article 22:** refugee children.
- Article 30:** children from minority or indigenous groups.
- Article 32:** child labour.
- Article 33:** protection from drug abuse.
- Article 34:** protection from sexual exploitation.
- Article 35:** prevention of abduction, sale and trafficking of children.
- Article 36:** protection from other forms of exploitation.
- Article 37(b-d):** arrest, detention and imprisonment of children.
- Article 38:** war and armed conflict.
- Article 39:** recovery from trauma and reintegration.
- Article 40:** juvenile justice.

## Case study:

### *Being a child witness in Scotland*

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Jane was told she could use a live TV link to give evidence during her Dad's trial, which took place in 2014. Since the Victims and Witnesses (Scotland) Act 2014 came into force, all children under the age of 18 have an automatic right to standard special measures, such as giving evidence by live TV link, using a screen and/or using a supporter. However, as Jane's experience shows, child witnesses continue to experience additional trauma and are unable to give their best evidence, as a result of court processes and procedures.

To prevent Jane from seeing her Dad she was asked to arrive at the court for 9:30am. When she arrived she was shown into a dirty room and told she had to wait there until the court was ready to hear from her. Nobody told Jane how long she might have to wait for, or what was happening. People came in and out of the room all day without explaining to Jane who they were or what they were doing.

Jane was about to give evidence against her Dad, who had been charged with assaulting her Mum. She had no privacy and no idea what was happening. She began to feel scared and confused and started to worry that she might see her Dad. After waiting like this for 7 hours, Jane was eventually called to give her evidence at 4:15pm.

Jane was introduced to the court, but those in the court were not introduced to her. She didn't know who was speaking to her or asking her questions. What she did know was that her Dad was in the room with them.

People in the court asked Jane questions using complicated language that she couldn't understand. Jane didn't know if she could ask the questioner to repeat the question so that it would be clearer for her. Jane became confused.

Although Jane had a supporter in court, the supporter was not allowed to speak during the evidence session. This meant the supporter was unable to let the court know that Jane could not understand the questions she was being asked. When Jane became very upset, the supporter was unable to ask the court for a short break to enable Jane to recompose herself.

Jane left court feeling that she had been unable to give her best evidence. Instead of feeling that justice had been done, Jane felt frustrated. Things felt worse than they had before she had given evidence. Unfortunately, Jane's experience is common to many child witnesses in Scotland, who often experience additional trauma as a result of participating in a justice process that is driven by the needs of the system, instead of children's rights and wellbeing.

## 8.1 Asylum-seeking, refugee and migrant children

### *Data collection on children seeking asylum*

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#### **UNCRC Concluding Observation**

Systematically collect and publish disaggregated data on the number of children seeking asylum, including those whose age is disputed.<sup>1687</sup>

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The Home Office releases quarterly immigration statistics, which include the number of applications by unaccompanied asylum seeking children (UASC) and the number of age disputed cases across the UK.<sup>1688</sup> Separate figures are not provided for Scotland. Statistics on the age and gender of dependents are published annually. The UN Committee nevertheless expressed concern that reliable data on asylum-seeking children, including those whose age is disputed, remains unavailable.<sup>1689</sup> Some of Together's members have expressed strong concerns around the lack of reliable data on the number of children seeking asylum in Scotland.

In its 2013 report on unaccompanied migrant children and young people in the UK, the Joint Select Committee on Human Rights (JCHR) noted a widespread view that the data available from the Home Office on age disputed cases were insufficient and concluded that 'the case for providing comprehensive, robust and transparent data is absolutely clear'.<sup>1690</sup> The JCHR recommended that the government record and publish statistics of all those who claim to be children whose age is disputed, including but not be limited to:

- The number of asylum applicants who claim to be children but who are treated as adults by the immigration authorities on the ground that their appearance or demeanour very strongly suggest that they are significantly over 18;<sup>1691</sup>
- The number of cases where an individual claiming to be a child is placed in immigration detention, and any subsequent action in relation to those cases;
- The number of cases in which age is assessed by local authorities, and, in such cases, how many children are determined to be adults and how many are determined to be children;
- The number of cases that are challenged by judicial review, and the number of such challenges that are successful.<sup>1692</sup>

The JCHR further recommended that these statistics 'should be disaggregated to allow scrutiny of the gender and nationality of all cases. Local authorities should also be required to produce statistics for any cases where those requesting support and claiming to be children emerge outside of the usual asylum and immigration processes'.<sup>1693</sup>

#### **Recommendation**

- UK Government should systematically collect and publish disaggregated data on children seeking asylum, in line with the JCHR's 2013 recommendations and including separate data for the devolved nations.

### *Statutory independent guardians*

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#### **UNCRC Concluding Observation**

Establish statutory independent guardians for all unaccompanied and separated children throughout the State party.<sup>1694</sup>

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Scottish Ministers have led the way in the UK in funding the Scottish Guardianship Service (SGS) since April 2013. SGS provides asylum seeking children with independent support in navigating immigration and welfare processes as well as helping the child build social connections and resilience. It works with children who arrive in Scotland separated from their care-givers and who may have been trafficked from outside the European Union. It has been built upon through a provision in the Human Trafficking and Exploitation (Scotland) Act 2015<sup>1695</sup> which gives separated children that may have been trafficked, or are considered vulnerable to trafficking (including as a result of being separated and alone), an entitlement to an independent guardian. This will therefore include separated asylum-seeking children.

Age disputed young people who have had some form of age assessment in England, and then been dispersed to Scotland through the asylum system as an adult, may be eligible for support if they have not exhausted their rights to challenge an age assessment decisions, such as by requesting a reconsideration of the decision or challenging it through judicial review. As highlighted on page 134, there are widespread concerns around practices for age assessment, which often leave children unaware of the processes they have gone through to result in being considered adults. When they reach Scotland, these age-disputed children have not exhausted the legal avenues for being recognised as children. Nevertheless, they remain in an adult system without access to the additional support, rights and protections that are owed to children.

## Recommendation

- Age disputed children should have access to an independent guardian through the Scottish Guardianship Service until they have exhausted all legal avenues to be recognised as a child, regardless of where the original age assessment is undertaken.

## Age assessments

### UNCRC Concluding Observation

Conduct age assessments only in cases of serious doubt through multidisciplinary and transparent procedures, taking into account all aspects, including the psychological and environmental aspects of the person under assessment.<sup>1696</sup>

Table 26. UASC subject to age disputes (UK-wide) – 2008-2016<sup>1697</sup>

Year	2008	2009	2010	2011	2012	2013	2014	2015	2016 (Q1/2 only)
Asylum applications from UASC	3,976	2,857	1,515	1,248	1,125	1,265	1,945	3,253	1319
No. age disputed cases	1,515	1,146	530	370	337	323	318	789	512
Age disputed cases as % of total UASC applications	38%	40%	35%	30%	30%	26%	16%	24%	38%

Table 27. Number and % of age disputes resolved as u18 or 18+ (UK-wide) - 2008-2016<sup>1698</sup>

Year	2008	2009	2010	2011	2012	2013	2014	2015	2016 (Q1/2 only)
No. age disputes resolved	2,185	1,687	1,727	773	467	406	466	718	484
No. age disputes resolved: u18 when raised	1,077	804	1,104	463	226	179	242	274	156
% of total age disputes resolved: u18 when raised	49%	48%	64%	60%	48%	44%	52%	38%	32%
Age disputes resolved: 18+ when raised	1,108	883	623	310	241	227	224	444	328
% of total age disputes resolved: 18+ when raised	51%	52%	36%	40%	52%	56%	48%	62%	68%

Age assessments are regularly undertaken on children and young people seeking asylum because they do not have the correct documentation to prove their date of birth. UK Government's statutory guidance advises 'age assessments should only be carried out where there is significant reason to doubt that the claimant is a child'.<sup>1699</sup> As such, age assessments should not be a routine part of a local authority's assessment of unaccompanied or trafficked children.

The proportion of age disputed cases among asylum applications from UASC has risen significantly from a low of 16% in 2014, to 38% across the first two quarters of 2016 (see table 26). Of the 484 age disputes resolved in the first two quarters of 2016, 156 children (32%) were found to be under the age of 18 when the age dispute was raised (see table 27). It is clear that a significant proportion of children are still regularly disbelieved about how old they are. The Scottish Guardianship Service (SGS) reports that 40% of children and young people in the service have been age assessed by local authorities in Scotland.

Together's members have raised concerns around 'initial age assessment' meetings, which are conducted by social services with children and young people, and used to determine whether or not a full age assessment is necessary. Meetings can take at least an hour, in which children and young people are asked similar questions to those asked in a formal age assessment. As the meetings are not defined as a formal age assessment, there is no compulsion to ensure that an appropriate adult is present or to produce a report. This results in a lack of transparency which impacts on the child or young person's ability to challenge the assessment. By definition, any meeting to decide whether or not an age assessment is necessary should be conducted as a formal age assessment.

Children and young people can face a number of barriers to participating fully in their age assessment. These include brief visual assessments being made on their physical appearance which the young person has not fully understood, interpreters not being provided, and/or an appropriate and responsible adult not being present to safeguard their rights and welfare during the assessment process.

If a child is wrongly considered to be an adult, they will not be supported by children's services and may be detained or accommodated with adults.<sup>1700</sup> This has been illustrated through a recent court case<sup>1701</sup> in which a young person from Sudan was detained for seven days before a local authority established his age as being approximately 16 or 17. He was detained for a further four days before being released. This period of detention was found by the court to be unlawful.<sup>1702</sup>

International and domestic legal obligations around presumption of age towards a child should be rigorously and consistently applied in Scotland.<sup>1703</sup> If an assessment is to be undertaken it should be made following multidisciplinary and transparent procedures that are not limited to appearance, but take into account wider and equally relevant considerations such as psychological state and behaviour, environmental factors and social background.<sup>1704</sup>

In 2013, the JCHR recommended that the UK Government, alongside the Association of Directors of Children's Services (ADCS), develop a clear set of statutory guidelines for assessing the age of unaccompanied migrant children that make clear that young people should be given the benefit of the doubt unless there are compelling grounds to discount their claim.<sup>1705</sup> Multidisciplinary and transparent age assessment procedure based on statutory guidance would enable accurate and consistent assessments, promote greater joint understanding and reduce the risk of legal challenges.

The development of Scottish-specific age assessment guidance would provide Scottish Ministers with the opportunity to safeguard the consistent interpretation of the presumption of age and fair access to independent guardianship for children in vulnerable circumstances. Together's members welcome the Scottish Government's commitment in its draft trafficking and exploitation strategy<sup>1706</sup> to update the 2012 age assessment guidance but urge that this be statutory guidance, reflecting the enormous significance of age assessment decisions for a child or young person.

## Recommendations

- All meetings, including initial assessment meetings, should be regarded as part of the age assessment. As such, they should be conducted and reported on in a transparent, clear and appropriate manner, with an interpreter and an appropriate and responsible adult present to safeguard the rights and welfare of the child.
- Age disputed children should have access to an independent guardian through the Scottish Guardianship Service until they have exhausted all legal avenues to be recognised as a child, regardless of where the age assessment as undertaken.

## Child detention

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### UNCRC Concluding Observation

Cease the detention of asylum-seeking and migrant children.<sup>1707</sup>

### Other treaty bodies and UPR recommendations

Similar recommendations have been made by the Human Rights Committee in its 2015 Concluding Observations (paragraph 21)<sup>1708 1709</sup> and by Chile (paragraph 110.111),<sup>1710</sup> Honduras (paragraph 110.112),<sup>1711</sup> Ecuador (paragraph 110.113),<sup>1712</sup> Mexico (paragraph 110.114)<sup>1713</sup> and Argentina (paragraph 110.115)<sup>1714</sup> in the United Kingdom's 2012 Universal Periodic Review.

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UK Government announced its intention to end the detention of children in May 2010. In August 2011 a 'pre-departure' accommodation facility, known as Cedars, was opened to house families with children.<sup>1715</sup> Cedars is used for families who are subject to an ensured return, for a period of pre-departure detention for up to 72 hours or, exceptionally, one week with ministerial authorisation. Although Cedars is run by G4S, family support, social work and welfare services are provided on site by Barnardo's.<sup>1716</sup> In July 2016 the UK Government announced plans to close Cedars and replace it with new pre-departure accommodation at Tinsley House immigration removal centre.<sup>1717</sup> Barnardo's subsequently responded that the proposed accommodation is not in the best interests of the children involved.<sup>1718</sup>

Despite the 2010 commitment, the UK Government still has the statutory power to detain children. They can be detained as part of the family removals process, in age dispute cases, in entry refusal cases or at ports and airports on arrival on the UK. In 2015, 128 children entered detention, 41 of whom were in Cedars pre-departure accommodation and 63 in Tinsley House family unit.<sup>1719</sup>

Tinsley House immigration removal centre is a secure, fenced-in site, very different to the apartment-style family accommodation at Cedars.<sup>1720</sup> This is a secure, fenced-in site, very different to the apartment-style family accommodation at Cedars. In a recent inspection, the Chief Inspector of Prisons reported that ‘Cedars produced the best outcomes for detainees that we have seen anywhere in immigration detention.’<sup>1721</sup> In transferring the family returns function to Tinsley House, a number of Together’s members believe the government is reversing its commitment to end child detention.

While the number of children placed in detention has fallen following the UK Government’s announcement in May 2010, children are still detained.<sup>1722</sup> A total of 888 children were detained from 2011 to 2015<sup>1723</sup> (see table 28). In 2015, 163 children entered detention.<sup>1724</sup> While this number is down from 1,119 in 2009, the continued detention of children is inconsistent with statements from the Government that child detention is no longer a reality in the UK.<sup>1725</sup>

Families with children who are waiting to be admitted or removed from the UK can still be held in short term holding facilities at ports of entry, or at Tinsley House Immigration Removal Centre (usually in the Family Unit). While detention at other Immigration Removal Centres is now rare, it does occasionally occur.<sup>1726</sup>

Although detention does not take place specifically in Scotland, asylum-seeking children living in Scotland may be detained elsewhere in the UK.

Table 28. Total children entering detention by year (UK-wide)<sup>1727</sup>

	Children under 5 years entering detention	Children 5-11 years entering detention	Children 12-16 years entering detention	Children 17 years entering detention	Total children entering detention
2015	38	35	56	34	163
2014	70	28	37	23	128
2013	70	85	50	23	228
2012	72	84	67	19	242
2011	43	24	40	20	127
2010	153	145	106	32	436
2009	498	369	211	41	1,119

In June 2012, the Home Affairs Select Committee recommend the publication of a breakdown of the number of children entering immigration detention by the reason for their detention.<sup>1728</sup> This would provide scrutiny of the extent of the child detention at different points in the immigration process.

## Recommendations

- UK Government should confirm and fulfil its commitment to cease the detention of asylum-seeking and migrant children.
- In the short-term, UK Government should publish a breakdown of the number of children entering immigration detention by the reason for their detention, length of detention and what happen to the child on release.

## Family reunion

### UNCRC Concluding Observation

Review its asylum policy in order to facilitate family reunion for unaccompanied and separated refugee children within and outside of the State party, including through implementation of the European Union Dublin III Regulation.<sup>1729</sup>

The UN Committee expressed concern that unaccompanied and separated refugee children within and outside of the UK can face restrictions on family reunification.<sup>1730</sup>

## Child inside the UK

Current immigration rules do not give children in the UK the same entitlements to be reunited with their parents, as adults have to be reunited with their children.<sup>1731</sup> Family members must apply under a relevant category of the Immigration Rules in their own right or as a dependent partner, parent, child or adult dependent relative. The Immigration Minister has said that this is to avoid creating a situation in which families send their children on ahead in the hope that parents can join them at a later date.<sup>1732</sup> However, these rules discriminate against children as they treat the child's parents as being of less importance to the child as a child is to its parents.

Children's organisations argue that if children are granted refugee status and accepted as being in need of international protection, then it seems their parents were right to send them to safety.<sup>1733</sup> It cannot be argued that it is in the best interests of the child to deny them the right to be reunited with their family in a place of safety. The JCHR inquiry into the Human Rights of Unaccompanied Migrant Children and Young People in 2013, recommended that 'where a child is granted refugee status he or she should have the possibility of being reunited with family members, as is the case for adults in the same situation'.<sup>1734</sup>

## Children outside the UK

European Union law currently provides a route of entry to the UK for people who have already entered Europe as asylum seekers and have family living in the UK. Through the Dublin III Regulations<sup>1735</sup> unaccompanied and separated children are entitled to be reunited with family in the UK. This is achieved through the transfer of their existing asylum cases to the UK from the EU Member State they are in. The UK Government's commitment to meeting its obligations under the Dublin Regulations was made clear in a statement from the Immigration Minister in January 2016.<sup>1736</sup>

In June 2016, UNICEF UK reported that, until recently, there had been few successful claims for the transfer of unaccompanied and separated children's cases under Dublin III.<sup>1737</sup> Children can face difficulties in accessing their rights under Dublin III due to a lack of information and support to enable separated families and unaccompanied and separated children to access the asylum procedure and effective legal support in countries they are travelling through. Children can also be reluctant to access the asylum procedure, as they lack confidence that their case will be transferred to the UK and result in family reunion.<sup>1738</sup> Dublin III puts in place a maximum time limits of 11 months for a child to be transferred, yet in practice the process can take even longer. This presents yet another barrier to children seeing Dublin III as a viable solution for family reunion.

## Recommendations

- UK Government should allow unaccompanied or separated children who have been granted refugee status or humanitarian protection the right to sponsor their parent or main carer to reunite with them.
- UK Government should make UK family reunion rules less restrictive in practice to allow for children, who are currently at risk in their regions of origin or in Europe, to join extended family members such as grandparents and adult siblings in the UK.
- UK Government should take forward recommendations made by UNICEF UK in the report 'The Refugee Crisis in Europe – the UK's role in protecting the rights of unaccompanied and separated children' in relation to Dublin III and family reunion.<sup>1739</sup>

## Access to basic services

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### UNCRC Concluding Observation

Provide sufficient support to migrant, refugee and asylum-seeking children to access basic services.<sup>1740</sup>

### Other treaty bodies and UPR recommendations

Similar recommendations have been made by CESCR in its 2016 Concluding Observations (paragraphs 25 and 56),<sup>1741 1742</sup> by the CEDAW Committee in its 2013 Concluding Observations (paragraph 57(b))<sup>1743</sup> and by Chile, Ecuador, Honduras, Morocco, Egypt, Guatemala, Sudan, Uruguay and Iran in the United Kingdom's 2012 Universal Periodic Review (paragraphs 110.114-118).<sup>1744</sup>

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Migrant young people in Scotland can hold one of a range of immigration statuses. Depending on the status held, these children will be entitled to access different services. When awaiting decisions of immigration status, it can be impossible to predict timescales, making it even more difficult for children, young people, families and professionals to plan next steps in terms of education, for example. Complex bureaucracy around entitlement to funding for further education, as well as limited access to specialist support, can impact on some young peoples' access to educational opportunities, work placements and apprenticeships.

A lack of reliable data on the numbers of migrant children in Scotland also hampers evaluation of whether looked after asylum seeking and other migrant children are receiving appropriate support.

## Dispersal

The Immigration Act 2016 provides the Home Secretary with a power to require designated local authorities to accept the transfer of unaccompanied children from another council area.<sup>1745</sup> This power does not yet have affect in Scotland. That will require the Home Secretary to get regulations approved by the UK Parliament. The Home Office have committed to engage with Scottish Ministers on this and this provides Scottish Ministers with an excellent opportunity to ensure responsible transfers that are on a voluntary, rather than mandatory, basis.

Any such transfer of additional unaccompanied children to Scotland needs to be carefully planned and managed to ensure that sufficient capacity and provision is in place. In particular, there needs to be consideration to ensure accommodation, education services, healthcare, the provision of specialist legal services and provision of interpreting are in place.

This planning matters for the protection, welfare and integration of young people transferred to Scotland and of the ability of local authorities to successfully participate in this programme and act in the best interests of young people.

## Accommodation

In March 2012, UK Government awarded a contract to manage the provision of asylum accommodation in Scotland and Northern Ireland to Serco until March 2017. Serco sub-contracted the property management company, Orchard and Shipman to take on operational responsibility to secure and manage properties in Scotland (principally in Glasgow) for the purpose of housing asylum claimants.<sup>1746</sup> While Scottish Government does not hold powers over immigration and asylum, it does have powers in relation to housing and can therefore use Scottish housing legislation and standards to ensure that accommodation for asylum seekers are of an acceptable quality.

Concerns have been raised by a number of Together's members around the quality of accommodation provided to families seeking asylum as well as their treatment by contractor and sub-contractor staff. A 2013 inquiry into asylum by the Home Affairs Select Committee of the House of Commons expressed concern at the sub-standard level of housing provided to asylum applicants.<sup>1747</sup> More recently, the ex-chair of the Committee has described housing conditions for asylum seekers in Glasgow as being 'horrific' and the worst in the UK.<sup>1748</sup> Evidence of overcrowded accommodation in Scotland has been presented to a subsequent Home Affairs Select Committee inquiry focused on asylum accommodation, with children having to sleep in the same room as their parents or in communal areas, and two families being allocated a bedroom each in a two-person flat,<sup>1749</sup> and of concerns in relation to the cleanliness of accommodation provided.<sup>1750</sup>

## Healthcare

Refugee and unaccompanied asylum seeking children have the same rights to care as UK nationals. However, children's organisations report that asylum seeker and migrant children, as well as their families, often find it hard to get hospital treatment or register with a GP. Members of the Royal College of Paediatrics and Child Health have raised concerns about the current health care provision for unaccompanied and separated asylum seeking children. Many of these children and young people are presenting with complex mental and physical health issues and yet are facing significant barriers in accessing appropriate health services.

## Education

Asylum seeking children can face difficulties in accessing appropriate education. A 2015 report by the Red Cross found that on average it took two months for children to be enrolled in schools.<sup>1751</sup> Parents report that a lack of English and knowledge of school catchment areas can present barriers to enrolling their children in school.

There is a gap in education provision, and of clear integration pathways, for older children between the ages of 16 and 18. It is almost always the case that 16-18 year olds arriving through family reunion (or indeed asylum routes) are placed in college. Together's members report that it is often assumed that young people arriving at this age would not cope with going straight into mainstream school classes because of the language levels needed. Unlike children who can enrol in school at any time during of the school year, college intakes are usually only once or twice a year. The delays young people experience in pursuing their educational goals has led to several feeling that they are wasting time and falling further behind in their education.

The lack of activities for young people to engage in meant that many were left feeling bored and with few opportunities to engage with others of the same age.

*The missing thing is to do more for young people. We are a bit lost, we're not children and we're not adults.*

*(Young man, Syria)*

School offers young people the opportunity to join a cohort of peers for a fuller programme of activities and brings wider integration benefits. Limiting access to schools for 16-17-year-olds can have implications for their wider integration experiences, limiting opportunities for building social connections, improving English language skills, gaining cultural knowledge and pursuing future career goals.

## Recommendations

- UK and Scottish Government should ensure that sufficient support is provided to migrant, refugee and asylum-seeking children to ensure they are able to access basic services, including suitable accommodation and adequate healthcare and education.

# Asylum support

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## The current regime

### Asylum seekers

Asylum seekers, other than unaccompanied asylum seeking children, can apply for support while their application for asylum is being determined ('Section 95 support').<sup>1752</sup> When asylum support was first introduced in 2000, payments were fixed at 70% of the rates for income support for adults and children respectively.<sup>1753</sup> However, the level of support provided is now set annually in accordance with what is 'felt to be appropriate'.<sup>1754</sup> As a result, the percentage relative to income support has fallen. This flat rate of asylum support and the policy development process leading up to its introduction in August 2015 is currently subject to judicial review challenges on similar grounds in Glasgow and Birmingham.

If an asylum seeker is destitute, or likely to become destitute, while their application for Section 95 support is being processed, short term accommodation and essential living needs may be provided ('Section 98 support').<sup>1755 1756</sup>

### Unaccompanied asylum seeking children

Unaccompanied asylum seeking children are provided with support administered by local authorities.<sup>1757</sup>

### Pregnant asylum seekers

An asylum seeker who is pregnant will be given an extra £3 per week, and a mother with young children will be given an extra £5 for a baby under 1-year-old and an extra £3 for a child aged 1 to 3.<sup>1758</sup> A mother whose baby is due in 8 weeks or less, or whose baby is under 6 weeks old, can apply for a one-off £300 maternity payment.<sup>1759</sup>

### Refused asylum seekers

In some circumstances, if unable to return to their country of origin, refused asylum seekers can be eligible for support ("Section 4 support"). This consists of accommodation and vouchers for goods and services.<sup>1760</sup>

## Calls for reform

In 2013, the Children's Society released a report of a parliamentary inquiry into asylum support for children and young people.<sup>1761</sup> The report concluded from the evidence gathered that:

***[t]he asylum support system is in need of urgent reforms if it is to meet its statutory duty to promote the welfare of children and ensure that children's best interests come first.*** <sup>1762</sup>

This call for reform was based on the finding that support for asylum seeking families was not meeting children's essential living needs, nor their wider need to learn and develop.<sup>1763</sup> Recommendations included abolishing Section 4 support and replacing it with a single cash-based support system for all children and families in need of asylum support,<sup>1764</sup> reasonably aligning living expenses support with mainstream benefit rates and increasing support yearly,<sup>1765</sup> aligning rates of support for 16 and 17 year olds with support for children under 16, ensuring support is calculated to take account of the additional needs of pregnant women and women with small children,<sup>1766</sup> and examination of the cost efficiency of maintaining three separate sources of support to families in the asylum system.<sup>1767</sup>

In 2013 there was also an inquiry into the asylum regime by the Home Affairs Select Committee of the House of Commons, which included consideration of the asylum support system. The Select Committee noted that many of those on Section 95 support at the time were unable to afford living essentials, and that the level of financial support provided was well below the level of income used to signify poverty.<sup>1768</sup> The Select Committee concluded that a separate support system for refused asylum seekers unable to return home is unnecessary, and called on the Government to scrap Section 4 support and replace it with a more appropriate support system.<sup>1769</sup>

## Immigration Act 2016 reform

The Immigration Act 2016 introduces significant change to the asylum support system. Regrettably, it creates an immigration, rather than a child rights-based, system for supporting families with children and unaccompanied young people, and is a step backwards in terms of fulfilment of the UNCRC.

For example, the Act institutes a more restrictive regime of support for refused asylum seekers, including families whose appeal rights have been exhausted. Critically, the Act will remove the automatic entitlement of families to stay in their asylum accommodation and receive very basic financial support, as well as remove their right to appeal to the Asylum Support Tribunal (AST) against a Home Office decision to discontinue or not to grant such support. Appeals to the AST are often successful, reflecting almost certainly poor initial decision-making by the UK Home Office on asylum support: appeal success rates at the AST tend to range from 40% to 60%.

In addition, the Act will also almost certainly erect a two-tier system for unaccompanied young people in the immigration system transitioning from being a child (under 18) to an adult (18 or over). The Act envisions the substitution of the Home Office for local authorities as the decision-maker on what support entitlements, if any, will be accessible to an unaccompanied young person deemed to be aged 18 or over without leave to remain in the UK. The most important leaving care supports are financial assistance and accommodation, but young people will lose a right to other assistance, which will become discretionary. Support provided through the new regulations to be created under the Act is likely to almost always be limited in practice to the provision of accommodation and basic financial assistance.

The UK Government plans to introduce these changes, via regulations, from early 2017. A question for Scottish Ministers is the extent to which they are able to influence any substitution of immigration decision-makers and guidance for social workers in Scottish local authorities, regarding decisions as to whether unaccompanied young people transitioning to adulthood may access the new asylum support regime

It is likely that these changes will increase destitution of unaccompanied young people as well as of families and children refused asylum in the UK.

#### Reform of Section 4 Support for refused asylum seekers

The Immigration Act 2016 creates a new category of support ('Section 95A support')<sup>1770</sup> to replace Section 4 support. Section 95A support provides for failed asylum seekers and dependents who are destitute or likely to become destitute, and who face a genuine obstacle in leaving the UK.

There are a number of problems with the Section 95A scheme. Important elements, such as what constitutes a genuine obstacle and how support will be provided, is left to be determined and put into regulations. There will be no right of appeal against the refusal of an application for Section 95A support, which had been available to those applying for Section 4 support.<sup>1771</sup> In addition, support for refused asylum seekers is not provided in cash but in payment cards, which can cause many unnecessary difficulties.<sup>1772</sup>

According to the Asylum Support Appeals Project, the most restrictive element of Section 95A support is that it will only be possible to apply for it within a 'grace period' after becoming appeal rights exhausted (ARE):

***For single people this will be 21 days, for those with children it will be 90 days. In practice, this means that most people who have a genuine obstacle to leaving the UK will be made destitute, since this obstacle is unlikely to occur and be evidenced within the grace period. As an example, of the 105 applications for support made in 2015 for 'genuine obstacle' reasons (i.e. medical or voluntary return), only 6 were made within the grace period.***<sup>1773</sup>

The Asylum Support Appeals Project also argues that the Home Office's claim that Section 95A is 'the new Section 4 support' is misleading, since a large proportion of people who currently qualify for Section 4 support will not qualify for Section 95A support.<sup>1774</sup>

#### Individuals with a dependent child not receiving Section 95A support

Concerns have also been raised by the introduction of a new power, granted to the Secretary of State, which allows for the creation of regulations to provide support for someone who is destitute, who has a dependent child, and who is not receiving Section 95A support.<sup>1775</sup> As pointed out by the Immigration Law Practitioners' Association (ILPA), this legislation may lead to a situation in which the Home Office is providing support that is inadequate, and local authorities are prevented from providing additional support to ensure the welfare of a dependent child.<sup>1776</sup>

#### Care leavers

There is also concern about a new power to provide support for someone who is destitute, who is eligible for care leavers support and whose immigration status is not resolved or whose appeal rights are exhausted.<sup>1777</sup>

These provisions exclude certain groups of young people who reach 18 from accessing mainstream leaving care support provided by local authorities. While these provisions currently only apply to England, the Act envisions extension to Scotland via regulations, subject only to the affirmative procedure in the UK Parliament. This extension is due in 2017, and there is a question for Scottish Ministers as to how much they can influence this process, impacting as it does on rights of care and support for such young people in the Children (Scotland) Act 1995 and the Children and Young People (Scotland) Act 2014.

## Recommendation

- Scottish Ministers should ensure that they and affected Scottish public authorities are fully consulted and involved in any draft regulations that seek to introduce the changes to the leaving care provisions for young people through the Immigration Act 2016.

# Review of Immigration Act (2016)

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## UNCRC Concluding Observation

Review the Immigration Act (2016) in order to ensure its compatibility with the Convention.<sup>1778</sup>

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A number of Together's members strongly endorse the UN Committee's recommendation to review the 2016 Act to ensure its compatibility with the UNCRC. The 2016 Act is seen to regress from the UK's obligations enshrined in the UNCRC, and does not provide a child rights-based system to support unaccompanied children and young people.

It is clear that the progressive recommendations made by the two 2013 inquiries have not informed the recent changes made by the Immigration Act 2016. Together's members express serious concern that these changes will increase the destitution of unaccompanied young people and families refused asylum in the UK.

Further regulations regarding asylum support will have to be made by the Home Secretary and approved by the UK Parliament before the limitations on Scottish local authorities, and therefore Scottish children's legislation, may be extended to have any effect in Scotland. The Home Office has committed to discuss any regulations with the devolved governments. This provides Scottish Ministers with an opportunity to influence or resist the intrusion of immigration legislation into Scottish children's law and policy and entitlements for unaccompanied young people who are often particularly vulnerable in transitioning from child to adulthood.

Resistance against these regressive reforms is crucial, as access to support for families facing destitution is already difficult. The British Red Cross has experience of families being informed by social services that the local authority will not provide accommodation, despite being fully aware that this decision will mean that children will have nowhere to sleep. In these extreme cases, Red Cross, as a charity, has had to intervene to provide safety and security for the children by providing emergency accommodation in a hotel. The British Red Cross also reports that some families have been informed by social services that they are unwilling to provide assistance because the adults are 'choosing' to remain in destitute circumstances (even when clients inform them of intentions to launch legal challenges), and therefore if they continue to choose destitution the child will be removed from the family unit and accommodated separately. In two instances this was the case even when the mother was breastfeeding. According to the British Red Cross, the primary function of social services should always be addressing the needs of the children within their obligations to protect and promote their best interests, not determining the eligibility of a family to be in the UK.

The British Red Cross is also concerned about the impact of financial hardship and destitution during pregnancy, including delays that women face accessing the support that they are entitled to, resulting in them having to support newborn babies without the additional support that should be available to them. In addition, there is concern about the impact that destitution has on pregnancy and the development of the baby.

Pregnant women should never be faced with destitution as a result of Home Office asylum support policies at any stage of pregnancy, irrespective of the status of their asylum claim.<sup>1779</sup> Given the significant evidence on the importance of good maternal health on the development of the baby pre and post birth, pregnant women should be supported throughout the term of their pregnancy and after in order to protect the development and best interest of the baby and the new mother.

## Other aspects of the Act in need of reform

### Eviction

The 2016 Act enables landlords and landladies to evict people who have no 'right to rent' due to their immigration status (and face prosecution for not doing so). Families with children could be evicted with only 28 days' notice.<sup>1780</sup> ILPA is concerned that this will result in families with children being turned out into the street.

### Appeals using the Article 8 right to private and family life

The 2016 Act has also expanded the Secretary of State's power to certify that the temporary removal of a person will not breach the UK's human rights obligations.<sup>1781</sup> This power can now be used against anyone who has made a human rights claim and is subject to immigration control, increasing the likelihood it will be used against individuals with dependent children or even against children themselves. Individuals removed would be required to bring any appeal against a wrong decision from outside the UK, causing the separation of families, disruption to an established life in the UK and practical difficulties in appealing from abroad.

### Further relevant provisions

Additional changes have been made to the asylum regime through the 2016 Act that may detrimentally impact an individual's ability to provide for the welfare of dependent children. For example, the Act imposes a requirement on banks and building societies to carry out immigration checks on certain accounts to determine whether the account is operated by or for someone in the UK who does not have leave to remain and for whom the Secretary of State considers that a current account should not be provided.<sup>1782</sup> If such an account is identified, it can then be frozen and/or closed.

Furthermore, the 2016 Act makes it an offence to drive a motor vehicle while an unlawful resident in the UK.<sup>1783</sup> In Scotland this can result in imprisonment for up to 6 months.

In addition, the Secretary of State now has the power to cancel leave while applications for extension of leave are under review.<sup>1784</sup> This extension of power further erodes an individual's ability to seek protection in the UK.

## Recommendations

- Ensure that immigration law, policy and practice reflects the UK's obligations under the Convention. The Home Office should ensure that the best interests principle is a primary consideration in every action concerning children.
- Amend the regressive measures introduced by the Immigration Act 2016.

## Return

### UNCRC Concluding Observation

Ensure that children are returned only where there are adequate safeguards, including a formal best-interests determination, effective family tracing, including individual risk and security assessments, and appropriate reception and care arrangements.<sup>1785</sup>

The Committee expresses concern that children are returned to the country of origin or habitual residence without adequate safeguards.<sup>1786</sup>

### Recommendation

- A separated child should only be returned to their country of origin on a voluntary basis to family, not to institutionalised care, following a formal Best Interests Determination process. Where a parent with a child in the UK is appealing their deportation the appeal should be brought from within the UK if this is in the best interests of the child

## 8.2 Administration of juvenile justice

### Minimum age of criminal responsibility

#### UNCRC Concluding Observation

Raise the minimum age of criminal responsibility in accordance with acceptable international standards.<sup>1787</sup>

#### Other treaty bodies and UPR recommendations

The Human Rights Committee made a similar recommendation in its 2015 Concluding Observations,<sup>1788</sup> as did the Committee Against Torture in its 2013 Concluding Observations.<sup>1789</sup>

Similar recommendations have been made by Belarus (paragraph 110.94)<sup>1790</sup> and Chile (paragraph 110.95)<sup>1791</sup> during the United Kingdom's 2012 Universal Periodic Review.

At age 8, the age of criminal responsibility in Scotland remains one of the lowest in Europe. Children aged 8-11 who commit an offence cannot be prosecuted through the courts and are dealt with via an offence ground in a Children's Hearing. The number of children aged 8 to 11 referred for offending has declined over the past 5 years by 73%. In 2014-15 there were 215 children aged 8 to 11 referred to the Reporter for offending.

It is clear that those children referred for offending are particularly vulnerable. Research examining the cases of 100 children aged 8 to 11 found that:

- 39% of children had disabilities and physical and/or mental health problems.
- 53% of children had concerns recorded about their educational achievement, attendance or behaviour in school.
- 25% had been victims of physical and/or sexual abuse.

- 75% had service involvement for at least a year, and over half had been involved with services for at least 5 years.
- 75% had previous referrals to the Reporter. Seventy children had been referred on non-offence grounds and five on offence grounds. Twenty-six children were on Compulsory Supervision Orders (CSO) at the time of the offence referral incident in 2013-14.<sup>1792</sup>

Whilst these children cannot be prosecuted, information about an offence accepted or established through a Children's Hearing can continue to appear on a child's Disclosure Certificate or Protection of Vulnerable Groups (PVG) scheme record well into adulthood. This can cause difficulties for them in later life when they apply for educational courses or attempt to pursue certain career paths. Children may be unaware of the long-term implications of accepting or having an offence ground established at the time of the original incident.

Research has shown the majority of children currently being brought before a Children's Hearing on offence grounds for offences committed between the ages of 8 and 11 will not go on to re-offend.<sup>1793</sup> For those committing more serious offences, research by the Scottish Children's Reporter Administration (SCRA) suggests that these are rare.<sup>1794</sup>

### Advisory Group on the Age of Criminal Responsibility

Scottish Government established an advisory group in autumn 2015 to give detailed consideration to the implications of raising the minimum age of criminal responsibility from 8 to 12 years old. The group was tasked with looking at issues such as care, protection and risk, the role of the police, the Children's Hearings system and disclosure (including criminal records). To inform the group's consideration, the Children and Young People's Commissioner for Scotland worked alongside Together (Scottish Alliance for Children's Rights), the Centre for Youth and Criminal Justice, Victim Support Scotland and the other Advisory Group members, to produce a CRWIA that was published alongside the Advisory Group's final report and recommendations<sup>1795</sup> (see case study on page 14 ).

The Advisory Group reported to Ministers in March 2016, presenting evidence to show that the age of criminal responsibility should be raised to 12 'at the earliest opportunity'.<sup>1796</sup> Other key recommendations included:

- Where children under 12 display harmful behaviour the focus should be on providing care and protection, and addressing any support needs;
- A proportionate approach should be taken towards the risk posed by a child, both to themselves and others;
- Police should continue to be able to investigate incidents involving younger children, and new procedural safeguards – adapted from child protection rather than criminal justice – should support children and families through that process;
- Non-conviction information relating to harmful behaviour involving children under 12 should be disclosed only in exceptional circumstances and subject to independent ratification; and
- Any changes should take into account the needs of victims, some of whom would be children themselves.

As a result, Scottish Government issued a consultation on raising the age of criminal responsibility, which concluded in June 2016. The Advisory Group recommendations have been largely welcomed by Together's members.

### Children and young people's views

As part of the wider Scottish Government consultation on the age of criminal responsibility, Children's Parliament worked with children aged 8 to 14 across two local authorities to gather their views on the proposal to raise the age of criminal responsibility.<sup>1797</sup> The children explored the idea of consequences for wrongdoing and poor behaviours. The children thought it was important to have consequences if you did something that was wrong and having consequences helped you learn and make better decisions in the future. They felt that it was important that a consequence was equal to whatever the child had done and appropriate for the age/stage of a child.

Children were also very aware of how the environment in which you grow up impacts on your behaviour and your choices. They recognised that parents, siblings and friends all influence you and if you don't have the proper care, support and guidance, you might make poor decisions or act inappropriately. The children unanimously agreed that 8 years old was too young and felt that the age of criminal responsibility should be raised to 12 years old, with some children thinking it should be even higher.

Scottish Youth Parliament carried out consultations on the issue in mid-2016 with young people aged between 15 and 22 with varied experience of the criminal justice system.<sup>1798</sup> A majority of participants believed the minimum age of criminal responsibility should be raised to 12 years of age. Issues raised during discussion included children aged 8 not having the capacity to distinguish right from wrong, nor appreciating the long term consequences of their actions. Young people were keen to highlight the advantages of rehabilitation and prevention over punishment.

It is clear that there is a strong consensus across children's organisations, children and young people and international treaty bodies that the age of criminal responsibility should be increased to a minimum of 12 years old with immediate effect. This should be seen as a starting point on a journey to remove all children from the criminal justice system, and is a position shared by child rights experts internationally.<sup>1799</sup>

### Recommendations

- Scottish Government should raise the age of criminal responsibility to 12 years old with immediate effect, with a view to increasing it to a higher age level as advised in UN Committee's General Comment 10 in future.<sup>1800</sup>
- Scottish Government should also take forward the wider recommendations of the Advisory Group.

## Juvenile justice system

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### UNCRC Concluding Observation

Ensure that children in conflict with the law are always dealt with within the juvenile justice system up to the age of 18 years, and that diversion measures do not appear in children's criminal records.<sup>1801</sup>

### Other treaty bodies and UPR recommendations

Related recommendations have been made by the Committee Against Torture in its 2013 Concluding Observations (paragraph 27).<sup>1802</sup>

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The UN Committee expresses concern that some children are tried in adult courts in the UK.<sup>1803</sup> A January 2016 paper by the Centre for Youth & Criminal Justice (CYCJ) shows that many children and young people in Scotland are being prosecuted as adults, in adult courts, rather than appearing before the Children's Hearing System (CHS).<sup>1804</sup>

Children under 16 (as well as 16 and 17 year olds subject to a Compulsory Supervision Order) who offend are reported by police both to the Procurator Fiscal and to the Children's Reporter. For children under 16 there is a presumption that they will be referred to the Children's Reporter, while it is presumed that 16 and 17 year olds will be dealt with by the Procurator Fiscal.<sup>1805</sup> This latter group are treated as adults for the purposes of prosecution.

The CYCJ report highlights the fact that during a six-month period in 2014, 55% of all jointly reported cases for 16 and 17-year-olds were dealt with by the Procurator Fiscal.<sup>1806</sup> Furthermore, 35% of all jointly reported cases for 12 to 15-year-olds were dealt with by the Procurator Fiscal. The report also shows that in a 5-year period up to 2014, 333 children under 16 years of age were prosecuted in adult courts, with 137 receiving adult convictions.<sup>1807</sup>

### Criminal records

Convictions at a Children's Hearing or in an adult court will be held on the Scottish Criminal History System. Generally, the rehabilitation period (the length of time before a conviction becomes spent) for a childhood criminal record is half that of an adult conviction.<sup>1808</sup>

Since September 2015, spent convictions are divided into two groups, namely 'offences which must always be disclosed' and 'offences which are to be disclosed subject to rules'.<sup>1809</sup> A conviction in the former category must always be disclosed even if spent, no matter how old the conviction. A conviction in the latter category will not be disclosed for people under 18 when convicted if it is over 7.5 years old. If the conviction is less than 7.5 years old, it will not be disclosed if it did not result in a punishment or intervention.<sup>1810</sup> However, non-conviction information may still appear on a child or young person's Disclosure certificate or PVG scheme record.

There are non-statutory arrangements which determine when records relating to offences committed by children are completely deleted from the central criminal history system. These arrangements are determined by the way in which the case was resolved.<sup>1811</sup> Information relating to children is generally deleted after two years unless the child was placed under compulsory supervision by the Children's Hearing, or the case involved disposal by a court of law.<sup>1812</sup>

It is also worth noting that sections 187 and 188 of the Children's Hearings (Scotland) Act 2011, which allow some offences dealt with through the Children's Hearings system to be recorded as Alternatives to Prosecution, have not yet been brought into effect.

### Recommendations

- All young people under age 18 who offend and cannot be diverted to non-formal measures should be reported to the Children's Reporter. Only in the most serious cases/harm caused should a young person be reported to the Procurator Fiscal.
- Only on those occasions, where it is in the public interest/the most serious of cases, should the decision be made to prosecute. <sup>1813</sup>

## Life imprisonment

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### UNCRC Concluding Observation

Abolish the mandatory imposition of life imprisonment for children for offences committed while they are under the age of 18.<sup>1814</sup>

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There is no legislative protection against the sentencing of children and young people aged 12 and over to 'detention without limit of time'.<sup>1815</sup> If a young person aged 12 to 17 is convicted of murder, they must be sentenced to detention 'without limit of time and shall be liable to be detained in such place, and under such conditions, as the Secretary of State may direct'.<sup>1816</sup> In 2013-14, 18 young people were sentenced to 'detention without limit of time', although this figure does not distinguish between young offenders (defined as those under 21 years old) and children (defined as those under 18 years old), nor does it show the number of adults who may be held after being convicted as a child.<sup>1817</sup>

### Recommendation

- Scottish Government should publish disaggregated data to allow analysis of the number of children and young people sentenced to detention 'without limit of time'.

## Child detention

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### UNCRC Concluding Observation

Establish the statutory principle that detention should be used as a measure of last resort and for the shortest possible period of time and ensure that detention is not used discriminatorily against certain groups of children.

Ensure that child detainees are separated from adults in all detention settings.

Immediately remove all children from solitary confinement, prohibit the use of solitary confinement in all circumstances and regularly inspect the use of segregation and isolation in child detention facilities.<sup>1818</sup>

### Other treaty bodies and UPR recommendations

Similar recommendations have been made by the Human Rights Committee in its<sup>2015</sup> Concluding Observations (paragraph 23),<sup>1819</sup> the Committee Against Torture in its 2013 Concluding Observations (paragraphs 31 and 32)<sup>1820</sup> and CEDAW in its 2013 Concluding Observations (paragraph 55).<sup>1821</sup> Related recommendations have been made by Austria (paragraph 110.87)<sup>1822</sup> and Belarus (paragraph 110.94)<sup>1823</sup> in the United Kingdom's 2012 Universal Periodic Review.

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There is no protective minimum age regarding arrest defined in legislation. If a constable suspects that an arrested or detained person is a child (under 16), the constable must inform a parent or guardian.<sup>1824</sup> If a child cannot be brought before a sheriff, police can (but need not) release the child, with or without a written undertaking to appear in court.<sup>1825</sup> If the child is not released, he or she must not be detained in a police station, unless arranging an alternative is impracticable or unsafe.<sup>1826</sup> In Scotland, figures on the number of children held overnight in police custody are unavailable.

These procedures for under-18s in custody will be amended by provisions of the Criminal Justice (Scotland) Act 2016. A child or young person has the right to have the fact that they are in custody, and the place of custody (through 'intimation'), made known to a parent or guardian.<sup>1827</sup> The person contacted must be asked to attend the place of custody.<sup>1828</sup> If the constable believes that the young person is 16 or 17, that young person can request that the person contacted be asked not to attend.<sup>1829</sup>

Offences committed by children are normally dealt with by the Children's Hearings System, which is governed by the Children's Hearings (Scotland) Act 2011.<sup>1830</sup> Hearings under this system are not criminal prosecutions, although information about an offence accepted or established through a Children's Hearing can continue to appear on a child's record well into adulthood. A hearing may result in a Compulsory Supervision Order, which is an order specifying a local authority is responsible for carrying out measures that may include, among other things, restriction of the child's liberty, movement restrictions, placement in secure accommodation authorisation, and regulation of contact with other people.<sup>1831</sup> If a child is guilty of an offence (carrying a possible penalty of imprisonment for a person 21 years or over), she or she may be detained in residential accommodation provided by the appropriate local authority for up to one year.<sup>1832</sup>

The detention of children under 16 who were deemed 'unruly' in prisons or young offender institutions (YOIs) was prohibited by the Scottish Parliament in 2010.<sup>1833</sup> If a young person is over 16 and under 21, and is subject to supervision requirements, the court can commit them to a local authority, rather than to prison or to a YOI.<sup>1834</sup> If a young person is over 16 and under 21, and is not subject to supervision requirements, the court must commit them to a remand centre if available, or to prison or a YOI.<sup>1835</sup>

## Recommendation

- Scottish Government should ensure overnight police detention is only used as a last resort, and that there is sufficient local authority accommodation to accommodate children in a place of safety. Improved data needs to be publicly available.

## 8.3 Child victims and witnesses of crimes

### UNCRC Concluding Observation

The Committee recommends that the State party introduce, as a standard, video recording of the interview with a child victim or witness during investigation and allow the video recorded interview as evidence in court.<sup>1836</sup>

Interaction with the justice system can cause further trauma, distress and harm to child witnesses due to unnecessarily complex procedures.<sup>1837</sup>

The Victims and Witnesses (Scotland) Act 2014<sup>1838</sup> introduced additional support for vulnerable child victims and witnesses by increasing the age of automatic eligibility for special measures, such as giving evidence via video link, from under 16 to under 18 years-old. This extension also applies to press reporting restrictions for any child concerned in criminal proceedings, whether as a victim, witness or accused. Furthermore, a child victim (or alleged child victim) of specific offences<sup>1839</sup> can now request the gender of the investigating officer who is to carry out the interview. These provisions came into effect on the 1<sup>st</sup> September 2015.

In March 2015 Lord Carloway published the Evidence and Procedure Review Report which considered the use of pre-recorded evidence.<sup>1840</sup> This work was expanded upon in a February 2016 Scottish Courts and Tribunals Service report, which further explored the possibilities of pre-recording evidence of children and vulnerable witnesses. This report recommended that a presumption be introduced that the evidence in chief of a child or vulnerable witness be captured and presented at trial in pre-recorded form, and that the subsequent cross-examination of that witness also be recorded in advance of trial.<sup>1841</sup> These changes can potentially be accommodated within the current legislative framework. Although procedures for pre-recorded evidence are being used in Scotland,<sup>1842</sup> this is not yet standard practice.<sup>1843</sup>

While some moves have been made to better accommodate child witnesses, the Justice for Children alliance<sup>1844</sup> continues to call for significant reform. As it stands, procedures are still embedded in a criminal justice system that is designed for, and by, adults, and which does not have adequate protections for children, many of whom have witnessed or been victims of serious crime or sexual abuse.<sup>1845</sup> This is out of step with recent positive policy changes such as GIRFEC, that place children's rights at the centre and with the ambitions of 'Equally Safe' (see page 66), which recognises the key role of the criminal justice system in keeping women and girls safe from violence and abuse and in supporting their recovery.<sup>1846</sup>

Justice for Children continue to call for reform of the justice system for child victims and witnesses that goes far beyond the use of pre-trial video recording.<sup>1847</sup> The Alliance has made a number of recommendations that focus on making their interaction with the justice system less traumatic and more focussed on their needs.<sup>1848</sup>

## Recommendation

- Scottish Government should consider how best to meet the support needs of child victims and witnesses. Widespread modernisation of current court procedures is needed to ensure processes become more child-centred. Further consideration should be given to role digital technology can play in improving the collection of evidence.
- Scottish Government should consider how to ensure that children are not further traumatised by the process of giving evidence, either as child victims or witnesses.

## 8.4 Optional Protocol to the Convention on the sale of children, child prostitution and child pornography

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### UNCRC Concluding Observation

Ensure that all children up to 18 years of age are protected from all types of offence covered by the Optional Protocol and that domestic legislation throughout the State party, including in its devolved administrations, enables it to establish and exercise extraterritorial jurisdiction, without the dual criminality criterion, over all the offences covered by the Optional Protocol;

Strengthen the National Referral Mechanism for identifying trafficked and exploited children, which is embedded in existing child protection procedures;

Establish mechanisms and procedures to protect the rights of child victims of offences covered by the Optional Protocol, including by establishing a clear obligation of non-prosecution, and ensure that they are treated as victims rather than criminals by the law enforcement and judicial authorities;

Operationalize the provision of a competent and statutory guardian during the criminal justice process;

Revise its legislation to ensure that all children up to 18 years of age are protected from all types of offence covered by the Optional Protocol.<sup>1849</sup>

### Other treaty bodies and UPR recommendations

Similar recommendations have been made by CEDAW in its 2016 Concluding Observations (paragraphs 39, 41 and 55(e))<sup>1850</sup> and by a number of countries in the United Kingdom's 2012 Universal Period Review (paragraphs 110.72-76).<sup>1851</sup>

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In 2014, 732 children were identified as victims or potential victims of trafficking in the UK, up 22% from 2013.<sup>1852</sup> 61% of the reported potential child victims were female, 36% were male and the gender of 3% were not specified.<sup>1853</sup> Girls were most commonly subject to sexual exploitation (49%), while boys were predominantly exploited for criminal purposes (35%).<sup>1854</sup> 12% were aged up to nine years old, 2% were aged between 10 and 11 years, 29% were aged 12 to 15 years and 37% were aged 16 to 17 years.<sup>1855</sup>

There has been a year-on-year increase in the number of trafficked children in Scotland. Nine children were trafficked in 2011. This rose to 32 children in 2015 and a further 20 new cases have already been reported up to September 2016.<sup>1856</sup>

The Human Trafficking and Exploitation (Scotland) Act 2015<sup>1857</sup> was unanimously passed by the Scottish Parliament in October 2015. The 2015 Act introduces a single offence for all types of trafficking. The offences of human trafficking and of slavery, servitude and forced or compulsory labour have the maximum penalty of life imprisonment for anyone who is convicted of these new offences. The 2015 Act places a statutory obligation on Scottish Government to prepare and publish a Trafficking and Exploitation Strategy for Scotland. A consultation on a draft strategy was launched in September 2016<sup>1858</sup> with a view to the final strategy being launched in May 2017.

Specifically, in relation to children, the 2015 Act<sup>1859</sup> puts independent guardianship for trafficked children on a statutory footing (however, the substantive provisions are not yet in force). It requires Scottish Ministers to make arrangements to enable independent child trafficking guardians to be appointed to assist, support and represent unaccompanied child victims of trafficking or those who may be vulnerable to being trafficked. This has been recognised as being pioneering across the UK and is widely welcomed by a number of Together's members.<sup>1860</sup> The 2015 Act also requires local authorities and health boards to apply a presumption of age in cases where a victim of human trafficking appears to be a child but their age is uncertain or undocumented (again, the substantive provisions are not yet in force).<sup>1861</sup> This means that the relevant authority will have to provide support and services in line with their entitlements as children.<sup>1862</sup>

The 2015 Act requires the Lord Advocate to issue guidance to prosecutors about how trafficking victims should be treated if they are alleged to have committed an offence. The Lord Advocate's guidance sets out a clear non-prosecution principle for children who commit an offence as a consequence of being trafficked:

***If there is sufficient evidence that a child aged 17 or under has committed an offence and there is credible and reliable information to support the fact that the child; (a) is a victim of human trafficking or exploitation and (b) the offending took place in the course of or as a consequence of being the victim of human trafficking or exploitation, then there is a strong presumption against prosecution of that child for that offence.***<sup>1863</sup>

## National Referral Mechanism

The National Referral Mechanism is a framework for identifying victims of human trafficking and modern slavery.<sup>1864</sup> Organisations known as ‘first responders’ make referrals to either the Modern Slavery Human Trafficking Unit or the Home Office Immigration and Visas.<sup>1865</sup> A Conclusive Grounds decision is then made whether or not, on the balance of probability, “it is more likely than not” that the individual is a victim of human trafficking or modern slavery.

A review of the Mechanism was undertaken in 2014 which has resulted in the creation of pilot programs to test suggested reform measures, including decision-making by multidisciplinary panels.<sup>1866</sup>

Some of Together’s members observe that it is not always clear in practice whether children trafficked within the UK are being effectively identified and therefore receiving appropriate support. Where children are not being identified as trafficked there may also be opportunities lost to identify networks and/or repeat perpetrators and facilitators of trafficking.

A particular area requiring further clarity concerns the benefits and consequences of the National Referral Mechanism being used for internally trafficked children. Issues to consider include what it means for a child to be formally identified as a victim of trafficking within the UK, and how this decision is to be communicated to and understood by the child.

Another issue noted by Together’s members is that there are problems in relation to the amount of time taken to make decisions regarding trafficked children. For example, there can be issues around sharing of information timeously, particularly in relation to police interviews being shared with the Home Office. These interviews hold significant information to help make a trafficking decision but there are often long delays involved in sharing the information.

## Recommendation

- UK Government should introduce a reformed National Referral Mechanism for identifying trafficked and exploited children which is embedded in existing child protection procedures. It should be a multi-agency model requiring mandatory, accredited and specialist training for all social workers, police and front line professionals and rights of appeal for children.

## 8.5 Children in armed conflict

### UNCRC Concluding Observation

Consider reviewing its position and raise the minimum age for recruitment into the armed forces to 18 years in order to promote the protection of children through an overall higher legal standard;

Reconsider its active policy of recruitment of children into the armed forces and ensure that recruitment practices do not actively target persons under the age of 18 and ensure that military recruiters’ access to school be strictly limited;

In recruiting persons under the age of 18, strengthen its safeguards required by article 3 of the Optional Protocol, in order to ensure that the recruitment is genuinely voluntary and based on fully informed consent of the recruit and their parents and legal guardians, and ensure that recruitment does not have a discriminatory impact on children of ethnic minorities and low-income families;

Ensure that the minimum period of service applied to children who enlist into the army is no longer than that applied to adult recruits.<sup>1867</sup>

The Committee recommends that the State party implement its previous recommendation on the Optional Protocol, on captured child soldiers (CRC/C/OPAC/GBR/CO/1, para. 29), for all children under 18 years old.<sup>1868</sup>

### Other treaty bodies and UPR recommendations

Similar recommendations were made by a number of countries in the United Kingdom’s 2012 Universal Periodic Review (paragraphs 110.6, 110.8 and 110.34).<sup>1869</sup>

### Minimum age for recruitment

The UK is one of fewer than 20 countries in the world to recruit young people under the age of 18-years-old to the Armed Forces. It is the only state in Europe and the only Permanent Member of the UN Security Council to do so.<sup>1870</sup>

Alongside international recommendations made by the UN Committee and through the UPR, the UK's minimum age for recruitment has been criticised in the UK by the Joint Committee on Human Rights (JCHR),<sup>1871</sup> the Commons Defence Committee,<sup>1872</sup> the Equality and Human Rights Commission,<sup>1873</sup> the four Children's Commissioners for Scotland, England, Wales and Northern Ireland<sup>1874</sup> and a wide range of Together's members.<sup>1875</sup> A UK-wide poll in 2014 found that 77% of the general public support a rise in the recruitment age to 18.<sup>1876</sup>

In 2015-16, 1,790 children under the age of 18 were enlisted into the Army from across the UK, accounting for 22% of the army's total enlisted intake for the same period (8,020 recruits).<sup>1877</sup> Although this is a fall from 24% in the previous year,<sup>1878</sup> absolute numbers fell by just ten recruits, which means the fall in percentage is due to an increase in adults enlisting.

16-year-old recruits now outnumber 17-year-olds by a significant margin, constituting 920 and 870 recruits respectively. Many of these youngest recruits would have begun the enlistment process when they were 15 years old before having an opportunity to sit their GCSE exams. Those who enlist aged between 16 and 16¼ can only enlist into frontline combat roles,<sup>1879</sup> where the risk of fatality is highest over the course of their military career.<sup>1880</sup> Research sponsored by Child Soldiers International and ForcesWatch has found that British soldiers who joined the Army at 16 were twice as likely to die, as a consequence of deployment in Afghanistan, as those who enlisted from the age of 18.<sup>1881</sup>

Although you need to be at least 16 years old before you can join the Army, it is possible to start the application process earlier with parents' permission.<sup>1882</sup> The minimum age a person can begin the formal selection process is 15 years 7 months.<sup>1883</sup> A person under the age of 18 can only be enlisted after providing written consent from an 'appropriate person'.<sup>1884</sup> In Scotland, an appropriate person is interpreted as a person with parental responsibilities.<sup>1885</sup>

Table 29. Intake of UK regulars by age (all services) (2012-2016)<sup>1886</sup>

12 months ending	31/03/2012	31/03/2013	31/03/2014	31/03/2015	31/03/2016
Intake aged 16	1480	1000	870	850	1020
% of intake aged 16	10.0%	7.0%	7.3%	6.6%	7.4%
Intake aged 17	1620	1520	1250	1320	1230
% of intake aged 17	11.0%	10.6%	10.5%	10.1%	8.9%
Intake under 18	3110	2520	2120	2170	2250
% of intake under 18	21.0%	17.5%	17.9%	16.7%	16.3%

Table 30. Intake of minors into the Army (2015-2016)<sup>1887</sup>

12 months ending	31/03/2015	31/03/2016
Intake aged 16	810	920
% intake aged 16	9.9%	10.7%
Intake of minors	1820	1780
% intake of minors	22.3%	20.1%
Total intake	8160	8600

Children are not routinely deployed to take part in direct hostilities, but the United Kingdom OPAC Declaration states it will do so for reasons such as 'genuine military need', 'the successful completion of the military mission', 'operational effectiveness' and where 'it is not practicable to withdraw such persons before deployment'.<sup>1888</sup>

Child Soldiers International points out that the United Kingdom deployed children to war zones mistakenly at least 22 times between 2003 and 2010.<sup>1889</sup>

## Recruitment practices

An internal Ministry of Defence document from 2013 states that the Ministry of Defence looks to 16 and 17 year olds to fill recruiting shortfalls, particularly for the Infantry.<sup>1890</sup> Furthermore, UK Government has stated that it intends actively to increase the number of children it recruits into the armed forces. In reply to the UN Committee's List of Issues, the UK Government states that 'Increasing the number of personnel recruited prior to their 18<sup>th</sup> birthday is one of many measures the Army Board endorsed to alleviate the risk of undermanning'.<sup>1891</sup>

## Informed consent

There are reasons to believe that recruitment of young people under the age of 18 is often not based on voluntary and fully informed consent.

One reason is the lack of balanced information during the recruitment process.<sup>1892</sup> Recruitment literature emphasises potential benefits, while omitting or obscuring the potential downsides.<sup>1893</sup>

Another reason is the targeting of vulnerable children from socially disadvantaged backgrounds.<sup>1894</sup> For example, many recruits who are under 18 have poor or no GCSE qualifications and the Army has enlisted recruits with literacy skills at Entry Level 1 (equivalent to the reading age of a 5- to 7-year-old).<sup>1895</sup> In addition, there is evidence of Army recruiters targeting children from the most socio-economically disadvantaged backgrounds,<sup>1896</sup> with a consequent high proportion of recruits with a history of adversity.<sup>1897</sup> This targeting of vulnerable children undermines the notion that armed forces recruitment is carried out with fully informed and genuinely voluntary consent.<sup>1898</sup>

## Recruitment safeguards

A person under the age of 18 can only be enlisted after providing written consent from an 'appropriate person'.<sup>1899</sup> In Scotland, an appropriate person is interpreted as a person with parental responsibilities.<sup>1900</sup>

## Minimum period of service

The Defence Council has the power to set the terms and conditions of enlistment and service in the armed forces.<sup>1901</sup> It is clear that a recruit enlisted to the Army at the age of 16 would have to serve six years before qualifying for transfer to the reserve, while a recruit enlisted at the age of 18 would only have to serve four years.<sup>1902</sup>

## Recommendations

UK Government should raise the minimum age for recruitment into the armed forces to 18 years; and in the interim, strengthen its safeguards in order to meet the standards required by Article 3 of the Optional Protocol on the involvement of children in armed conflict (OPAC), ensuring that, as a minimum:

- Briefing materials for potential child recruits and their parents/guardians explain the risks and legal obligations of enlistment in full;
- Recruiters are obliged to make direct personal contact with parents at the outset of the recruitment process and that parents remain fully involved throughout the process;
- Parents are entitled to withdraw consent to enlistment until a child recruit is 18 years of age;
- The minimum standard of literacy required for enlistment is raised to ensure that recruits are able to comprehend their enlistment papers in full;
- The minimum period of service applied to children at enlistment into the army is not longer than that applied to adult recruits.

Friends make me  
Keep going

It's great  
to be  
watched  
and  
encouraged.

me and play  
FREE  
from your  
problems

I feel happy inside  
because I didn't  
give up

WE  
GET  
FRESH AIR

WIN  
LOSE OR  
DRAW...  
I FEEL PROUD

If you have more  
confidence from  
sport it will  
help you in  
your  
life

when we play outside  
we get  
vitamin D  
and  
fresh  
air!

BEST FRIENDS  
= TEAMWORK !!

# BENEFITS



I'M SWIMMING I FEEL HAPPY  
AND I feel free!



I can do  
different sports  
if I want



I can't  
do this.



I can do this  
2 months later

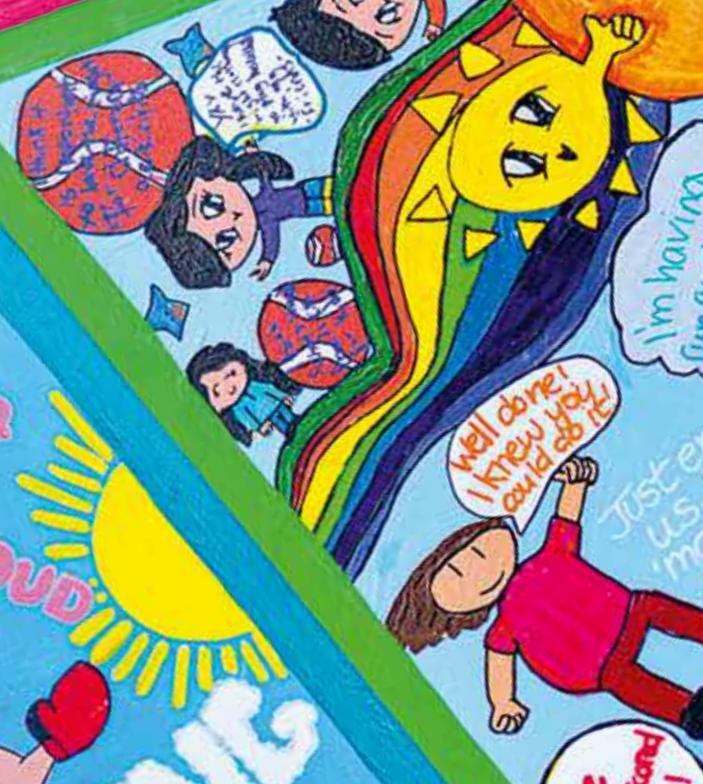


when there is  
a challenge  
I try my  
best at  
it.

that was  
a good  
kick!

I'll teach  
you a  
new move  
tomorrow

BELIEVE,  
I CAN



well done!  
I knew you  
could do it!

I have  
finally found  
a trick!

Me  
too!  
Son!



I'm  
having  
fun  
Dad!

Karate fight  
as a

WE  
BELONG  
WE ALL

## Endnotes: Executive Summary

- <sup>1</sup> CRC/C/GBR/CO/5.
- <sup>2</sup> International Covenant on Civil and Political Rights (ICCPR) (1966).
- <sup>3</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966).
- <sup>4</sup> Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (1984).
- <sup>5</sup> International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) (1965).
- <sup>6</sup> Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979).
- <sup>7</sup> Convention on the Rights of Persons with Disabilities (UNCRPD) (2006).
- <sup>8</sup> Scotland's National Action Plan for Human Rights. <http://bit.ly/2fgeaKG>. [Date accessed: 31.10.16].
- <sup>9</sup> Scotland's National Action Plan for Human Rights (2016). Year Two Report. <http://www.snaprights.info/what-is-snap/year-two-report>. [Date accessed: 31.10.16].
- <sup>10</sup> OHCHR (2016). General Comments. <http://bit.ly/2eYyemB>. [Date accessed: 31.10.16].
- <sup>11</sup> A/HRC/21/9: Para: 110.9.
- <sup>12</sup> A/HRC/21/9: Para: 110.10.
- <sup>13</sup> A/HRC/21/9: Para: 110.32.
- <sup>14</sup> CRC/C/GBR/CO/5: Para: 7(a).
- <sup>15</sup> CRC/C/GBR/Q/5/Add.1: Para 4.
- <sup>16</sup> See speech from Scotland's First Minister on 23/09/2015: <http://bit.ly/2fyGPhK>. [Date accessed 3.11.16].
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- <sup>18</sup> Nicola Sturgeon (9 Dec 2015) in speech to SNAP Human Rights Innovation Forum. <http://bit.ly/2erxGFn> [Date accessed: 26.10.16].
- <sup>19</sup> Together (2016). European and External Relations Committee: The EU Referendum and its Implications for Scotland. <http://bit.ly/2c4xaJB>. [Date accessed: 26.10.16].
- <sup>20</sup> Scottish Government (2016). EU Referendum: Scotland's Place in Europe. <http://bit.ly/2fyORr8>. [Date accessed: 26.10.16].
- <sup>21</sup> CRC/C/GBR/CO/5: Para: 9.
- <sup>22</sup> Children and Young People (Scotland) Act 2014, Part 1. <http://bit.ly/2e5LIOR>. [Date accessed 3.11.16].
- <sup>23</sup> CRC/C/GBR/CO/5: Paras: 10(a),(b).
- <sup>24</sup> CRC/C/GBR/CO/5: Paras: 12.
- <sup>25</sup> Welsh Government paper from the Cabinet Secretary for Communities and Children to the NAFW Children, Young People and Education Committee (2016). <http://bit.ly/2e5tNHZ>. [Date accessed: 26.10.2016].
- <sup>26</sup> CRC/C/GBR/CO/5: Para: 15.
- <sup>27</sup> CRC/C/GBR/CO/5: Paras: 19(a),(b).
- <sup>28</sup> CRC/C/GBR/CO/5: Para: 32.
- <sup>29</sup> CRC/C/GBR/CO/5: Para: 23.
- <sup>30</sup> CRC/C/GBR/CO/5: Para: 30 (d).
- <sup>31</sup> CRC/C/GBR/CO/5: Para: 31(a).
- <sup>32</sup> Children and Young People (Scotland) Act 2014, Section 1(2). <http://www.legislation.gov.uk/asp/2014/8/section/1/enacted>. [Date accessed: 3.11.16].
- <sup>33</sup> CRC/C/GBR/CO/5: Para: 22(b).
- <sup>34</sup> CERD/C/GBR/CO/21-23: Para: 19.
- <sup>35</sup> Roshni (2015). 'Exploiting, Exploited: Child sexual exploitation and radicalisation' p4. <http://bit.ly/2flp8NC>. [Date accessed: 20.10.2016].
- <sup>36</sup> CRC/C/GBR/CO/5: Para: 35.
- <sup>37</sup> Humanist Society Scotland (2016). 'Humanist Society to challenge the Scottish Government in Court over Religious Observance opt-out'. <http://bit.ly/2eikHT8>. [Date accessed: 20.10.2016].
- <sup>38</sup> CRC/C/GBR/CO/5: Paras: 37(a),(b).
- <sup>39</sup> CRC/C/GBR/CO/5: Paras: 37(a),(b).
- <sup>40</sup> Public Petitions Committee (19 February 2013). p1095. <http://bit.ly/2fgll5J>. [Date accessed: 3.11.16].
- <sup>41</sup> CRC/C/GBR/CO/5: Paras: 38(a),(b),(c).
- <sup>42</sup> CCPR/C/GBR/CO/7: Para: 11.
- <sup>43</sup> CERD/C/GBR/CO/21-23: Para: 27.
- <sup>44</sup> A/HRC/21/9: Para: 110.55-57.
- <sup>45</sup> Children's Parliament (2016). 'Police Powers to Stop and Search Children and Young People for Alcohol: Children's Parliament Consultation Final Report' p11. <http://bit.ly/2fgjX2M>. [Date accessed: 21.10.16].
- <sup>46</sup> Children in Scotland. 'Scottish Government Consultation on Police Powers to Search Children and Young People for Alcohol: Response from Children in Scotland'. <http://bit.ly/2flvZGT>. [Date accessed: 21.10.16].
- <sup>47</sup> Who Cares? Scotland (2016). 'Consultation on Police Powers to Search Children and Young People for Alcohol – Response from Who Cares Scotland' p2. <http://bit.ly/2erOg83>. [Date accessed: 21.10.16].
- <sup>48</sup> CRC/C/GBR/CO/5: Paras: 39(b),(c),(d).
- <sup>49</sup> CAT/C/GBR/CO/5: Para: 28.
- <sup>50</sup> Scottish Parliament (2015). National Guidance on Restraint and Seclusion in Schools. <http://bit.ly/2fiPPnZ>. [Date accessed: 8.9.16].
- <sup>51</sup> CRC/C/GBR/CO/5: Paras: 41(a),(b).
- <sup>52</sup> CCPR/C/GBR/CO/7: Para: 20.
- <sup>53</sup> CAT/C/GBR/CO/5: Para:29.
- <sup>54</sup> CEDAW/C/GBR/CO/7: Para:35(e).
- <sup>55</sup> A/HCR/21/9: Para: 110.78.
- <sup>56</sup> A/HCR/21/9: Para: 110.79.
- <sup>57</sup> A/HCR/21/9: Para: 110.80.
- <sup>58</sup> Heilmann, A., Kelly, Y. and Watt, R.G. (2015). Equally Protected? A review of the evidence on the physical punishment of children. Research project was commissioned by NSPCC Scotland, Children 1st, Barnardo's Scotland and the Children and Young People's Commissioner Scotland. <http://bit.ly/2fl2zqR>. [Date accessed: 12.9.16].
- <sup>59</sup> CRC/C/GBR/CO/5: Para: 42(a).
- <sup>60</sup> CRC/C/GBR/CO/5: Para: 43(e).
- <sup>61</sup> CRC/C/GBR/CO/5: Para: 45(a).
- <sup>62</sup> CRC/C/GBR/CO/5: Para: 45.
- <sup>63</sup> CRC/C/GBR/CO/5: Para: 47.
- <sup>64</sup> Hoare, G., Boswell, K. and Kail, A. (2016). Tackling Child Abuse in Scotland. The RS MacDonald Charitable Trust. <http://bit.ly/2erQV1e>. [Date accessed: 13.9.16].
- <sup>65</sup> It is difficult to estimate the prevalence of child sexual abuse. It is possible that a recent increase in reports of child sexual abuse is attributable to greater awareness of the issue, rather than greater prevalence of abuse.
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- <sup>68</sup> Scottish Government (2016). National Action Plan to Prevent and Tackle Child Sexual Exploitation. <http://bit.ly/2f5dtDz>. [Date accessed: 23.9.16].
- <sup>69</sup> Scottish Government (2016). Equally Safe: Scotland's strategy for preventing and eradicating violence against women and girls. <http://bit.ly/2fglFKL> [Date accessed: 14.9.16].
- <sup>70</sup> Scottish Government (2015). Safe, Secure and Prosperous: A Cyber Resilience Strategy for Scotland. <http://bit.ly/2fz6oPQ>. [Date accessed: 26.9.16].
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- <sup>72</sup> Scottish Government (2016). Scotland's National Action Plan to prevent and eradicate Female Genital Mutilation (FGM). <http://bit.ly/2erRYi2>. [Date accessed: 4.10.16].
- <sup>73</sup> Abusive Behaviour and Sexual Harm (Scotland) Act 2016. <http://bit.ly/2e5MZ7T>. [Date accessed: 23.9.16].

- <sup>74</sup> Scottish Government (2016). A Plan for Scotland: The Government's Programme for Scotland 2016-17, p 11. <http://bit.ly/2erRF6Q>. [Date accessed: 19.9.16].
- <sup>75</sup> CRC/C/GBR/CO/5: Paras: 43(d).
- <sup>76</sup> CEDAW/C/GBR/CO/7: Para: 23.
- <sup>77</sup> CRC/C/GBR/CO/5: Para: 50.
- <sup>78</sup> CRC/C/GBR/CO/5: Para: 51.
- <sup>79</sup> E/C.12/GBR/CO/6: Para: 44.
- <sup>80</sup> CEDAW/C/GBR/CO/7: Para: 47.
- <sup>81</sup> Family & Childcare Trust (2015). Fact Sheet. <http://bit.ly/2fl3He5>. [Date accessed: 5.9.16].
- <sup>82</sup> OECD (2011). Doing Better for Families. <http://bit.ly/2erUI46>. [Date accessed: 5.9.16].
- <sup>83</sup> As reported by members of Together.
- <sup>84</sup> The Commission for Childcare Reform (2015). Meeting Scotland's Childcare Challenge. <http://bit.ly/2f5gzY0>. [Date accessed: 5.9.16].
- <sup>85</sup> Fair Funding For Our Kids (2016). Delivery of 600 hrs of free early years and childcare to 3-5 year olds in 2015/16. <http://bit.ly/2eil6ot>. [Date accessed: 6.9.16].
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- <sup>87</sup> Scottish Government (2014). Corporate Parenting. <http://bit.ly/2fg7jn1>. [Date accessed: 9.9.16].
- <sup>88</sup> Henderson, G. & Hanson, L. (2012). Children on Supervision Requirements for Five or More Years: Decisions and Outcomes. <http://bit.ly/2fiRyJl>. [Date accessed: 14.9.16].
- <sup>89</sup> As reported by members of Together.
- <sup>90</sup> Clan Childlaw (2015). Promoting Sibling Contact for Looked After Children. <http://bit.ly/2fglE0m>. [Date accessed: 15.8.16]
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- <sup>92</sup> CRC/C/GBR/CO/5: Paras: 53(a)(b).
- <sup>93</sup> CRC/C/GBR/CO/5: Paras: 55(a),(b).
- <sup>94</sup> A/HRC/21/9: Para: 96.
- <sup>95</sup> As reported by members of Together such as Action for Children and Early Years Scotland; See also, CYPCS (2008). Not Seen, not heard, not guilty: The rights and status of the children of prisoners in Scotland. <http://bit.ly/2erXD7A>. [Date accessed: 19.9.16].
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- <sup>97</sup> Carers Trust (2014). Policy and Legislation in Scotland. <http://bit.ly/2e5Kfrm>. [Date accessed: 22.9.16].
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- <sup>103</sup> CRC/C/GBR/CO/5: Para: 57(a).
- <sup>104</sup> Royal College of Paediatrics and Child Health (2016). Collected through the ' & Us@ 2016 voice bank'. <http://bit.ly/2eipAv7>. [Date accessed: 3.11.16].
- <sup>105</sup> CRC/C/GBR/CO/5: Para: 64(a) and (b).
- <sup>106</sup> Scottish Government (2014). Conduct of Relationships, Sexual Health and Parenthood Education in Schools. <http://bit.ly/2e5KfHU>. [Date accessed: 21.10.2016].
- <sup>107</sup> Scottish Government (2014). Conduct of Relationships, Sexual Health and Parenthood Education in Schools; Section 56-58. <http://bit.ly/2e5KfHU>. [Date accessed: 21.10.2016].
- <sup>108</sup> Scottish Government (2016). Mental Health Statistics. <http://bit.ly/2erVnwZ>. [Date accessed: 18.10.2016].
- <sup>109</sup> CRC/C/GBR/CO/5: Para: 59.
- <sup>110</sup> CRC/C/GBR/CO/5: Para: 67.
- <sup>111</sup> CRC/C/GBR/CO/5: Paras: 71 (c), (d).
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- <sup>116</sup> CERD/C/GBR/CO/21-23: Para: 35.
- <sup>117</sup> CEDAW/C/GBR/CO/7: Paras: 45(c), (d).
- <sup>118</sup> A/HRC/21/9: Para: 110.102.
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- <sup>141</sup> CRC/C/GBR/CO/5: Para: 76.
- <sup>142</sup> CRC/C/GBR/CO/5: Para: 77(g).
- <sup>143</sup> CRC/C/GBR/CO/5: Para: 78(a).
- <sup>144</sup> CCPR/C/GBR/CO/7: Para 23(a).
- <sup>145</sup> CAT/C/GBR/CO/5: Para: 27.
- <sup>146</sup> A/HRC/21/9: Para: 110.94.
- <sup>147</sup> A/HRC/21/9: Para: 110.95.
- <sup>148</sup> CRC/C/GBR/CO/5: Para: 82(a).
- <sup>149</sup> CRC/C/GBR/CO/5: Para: 82(b).
- <sup>150</sup> CRC/C/GBR/CO/5: Para: 83(b).
- <sup>151</sup> CRC/C/GBR/CO/5: Para: 84(b),(c).
- <sup>152</sup> Medact (2016). The Recruitment of Children by the UK Armed Forces: A Critique from Health Professionals, p11. <http://bit.ly/2fgdfwi>. [Date accessed: 26.10.16].

# Endnotes: State of Children's Rights in Scotland 2016

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- <sup>2</sup> CCPR/C/GBR/CO/7: Para: 5(c).
- <sup>3</sup> A/HRC/21/9: Para: 110.9.
- <sup>4</sup> A/HRC/21/9: Para: 110.10.
- <sup>5</sup> A/HRC/21/9: Para: 110.32.
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- <sup>8</sup> See examples illustrated by Children's Rights Alliance for England (2015). UK Implementation of the UN Convention on the Rights of the Child: Civil Society alternative report 2015 to the UN Committee; Wales UNCRC Monitoring Group (2015) Report to the United Nations Committee on the Rights of the Child; Together (Scottish Alliance for Children's Rights) (2015). Implementation of the UN Convention on the Rights of the Child – Scotland: Report to the United Nations Committee on the Rights of the Child.
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- <sup>10</sup> CRC/C/GBR/Q/5/Add.1: Para 3. Para. 3.
- <sup>11</sup> CRC/C/GBR/Q/5/Add.1: Para 4. Para. 4.
- <sup>12</sup> See speech by Scotland's First Minister on 23/09/2015: <http://bit.ly/2fjnyD> [Date accessed: 3.11.16].
- <sup>13</sup> The UN body that reviews compliance with the International Covenant on Civil and Political Rights.
- <sup>14</sup> CCPR/C/GBR/CO/7: Para: 5.
- <sup>15</sup> CRC/C/GBR/CO/5: Para: 31.
- <sup>16</sup> CRC/C/GBR/CO/5: Para: 7(a).
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- <sup>18</sup> *Ibid.*
- <sup>19</sup> Nicola Sturgeon (9th Dec 2015) in speech to SNAP Human Rights Innovation Forum. <http://bit.ly/2foJ0zH> [Date accessed: 26.10.16].
- <sup>20</sup> CEDAW/C/GBR/CO/7: Para: 9.
- <sup>21</sup> Children and Young People (Scotland) Act 2014 pt.1. <http://bit.ly/2ehYJiM> [Date accessed: 3.11.16].
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- <sup>30</sup> Scottish Youth Parliament (2016). Lead the Way. <http://bit.ly/2fyOQTO> [Date accessed: 26.10.16].
- <sup>31</sup> Scottish Government (2016). EU Referendum: Scotland's Place in Europe. <http://bit.ly/2fyORr8> [Date accessed: 26.10.16].
- <sup>32</sup> CRC/C/GBR/CO/5: Para: 88.
- <sup>33</sup> A/HRC/21/9: Para: 110.5.
- <sup>34</sup> UK Government (2014). 5th UK Periodic Report to the UN Committee on the Rights of the Child, Para: 17.
- <sup>35</sup> Joint Committee on Human Rights (2015). The UK's Compliance with the UN Convention on the Rights of the Child <http://bit.ly/2fin2jv> [Date accessed: 3.11.16].
- <sup>36</sup> UK Parliament (2015). The Government's 2010 UNCRC Commitment: Para 38. <http://bit.ly/2fyGAmS> [Date accessed: 26.10.16].
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- <sup>41</sup> CEDAW/C/GBR/CO/7: Para: 11.
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- <sup>1158</sup> ISD Scotland (2016). *Child and Adolescent Mental Health Services Waiting Times NHS Scotland*. <http://bit.ly/2e72Tz7> [Date accessed: 18.10.16].
- <sup>1159</sup> *Ibid.*
- <sup>1160</sup> Explanation of adjustments: "Waiting times for most NHS services are worked out using a calculation that takes into account any periods a person is unavailable and missed or cancelled appointments. These are referred to as adjustments. Some NHS Boards are not able to make all the appropriate adjustments to waiting times for CAMH services so we have included information on what adjustments each NHS Board has made. Waiting time adjustments allow fair reporting of waiting times which have been

affected by factors outside the NHS Board's control. However, the timing of appointments is always based on clinical need. For CAMH services, resetting the waiting time to zero is done for reporting purposes only and does not impact on the timing of any further appointments.

The main adjustments that are made to CAMH services waiting times are:

- If a person is unavailable (for example on holiday), the period for which they are unavailable is subtracted from their total waiting time.

- If a person does not attend an appointment and has to be given another, their waiting time is reset to zero.

- If a person rearranges an appointment, their waiting time is reset to zero on the day they contact the service to rearrange their appointment.

- If a person is offered several appointments and declines them all, their waiting time is reset to zero.

This report also shows unadjusted waiting times. These are the actual times people have waited. Unadjusted waiting times are available for all NHS Boards except for one."

Source: <http://bit.ly/2e71bgU> (p26) [Date accessed: 4.11.16].

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- 1777 This power is introduced by section 68 of the Immigration Act 2016 which gives effect to Schedule 12 and which adds, among other things, paragraph 10B to Schedule 3 of the Nationality, Immigration

- and Asylum Act 2002. Subparagraphs give powers to the Secretary of State that will either prevent a care leaver from accessing support in certain circumstances, or dictate what should be taken into account in determining whether the care leaver requires support. For example, paragraph 10B(4) provides the Home Office with a power to support a care leaver who has a pending human rights appeal or appeal against revocation of refugee status. However, this support will not be available if the Secretary of State has certified that the young person cannot appeal from within the UK. If a young person brings a judicial review in order to challenge their removal, they will not be eligible for support on the basis of the pending appeal while they do so, or while they make other representations to the Home Office. Under paragraph 10B(5), support can be provided to a care leaver if they have exhausted all appeal rights and a person specified in regulations is satisfied that support needs to be provided to the young person. Under paragraph 10B(6), the Secretary of State may specify what the specified person must or may take into account. In this way, the Secretary of State can dictate to them, or to anyone she subsequently identifies is to provide the support, rather than allowing the specified person to use their existing expertise.
- <sup>1778</sup> CRC/C/GBR/CO/5: Paras: 77(g).
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- <sup>1780</sup> It does this by inserting section 33D into the 2014 Act, which allows a landlord or landlady to terminate a tenancy agreement if notified by the Secretary of State that an occupier is disqualified from renting because of their immigration status. If a landlord or landlady does not do so, they are open to criminal prosecution under section 33A of the Act (see above).
- <sup>1781</sup> Section 63 of the Immigration Act 2016 removes an existing restriction on the Secretary of State's power under section 94B of the Nationality, Immigration and Asylum Act 2002.
- <sup>1782</sup> Immigration Act 2016, Section 45 with reference to Schedule 7. <http://bit.ly/2e6YjRu>
- <sup>1783</sup> Section 44 Immigration Act 2016 achieves this by inserting section 24C into the Immigration Act 1971.
- <sup>1784</sup> Section 62 Immigration Act 2016, which amends the Immigration Act 1971.
- <sup>1785</sup> CRC/C/GBR/CO/5: Paras: 77(h).
- <sup>1786</sup> CRC/C/GBR/CO/5: Paras: 76(h).
- <sup>1787</sup> CRC/C/GBR/CO/5: Paras: 79(a).
- <sup>1788</sup> CCPR/C/GBR/CO/7: Para 23(a).
- <sup>1789</sup> CAT/C/GBR/CO/5: Para: 27.
- <sup>1790</sup> A/HRC/21/9: Para: 110.94.
- <sup>1791</sup> A/HRC/21/9: Para: 110.95.
- <sup>1792</sup> Henderson, G., Kurlus, I. & McNiven, G. (2016). *Backgrounds and outcomes for children aged 8 to 11 years old who have been referred to the Children's Reporter for offending*. <http://bit.ly/2e6Yk80> [Date accessed: 26.10.16].
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- <sup>1794</sup> *Ibid.*
- <sup>1795</sup> Scottish Government (2016). *The Report of the Advisory Group on the Minimum Age of Criminal Responsibility*. <http://bit.ly/2e6YkF2> [Date accessed: 26.10.16].
- <sup>1796</sup> *Ibid.*
- <sup>1797</sup> Children's Parliament (2016). *Minimum Age of Criminal Responsibility: Children's Parliament Consultation*. <http://bit.ly/2e6YgFi/> [Date accessed: 26.10.16].
- <sup>1798</sup> SYP (2016). *Criminal Justice Discussion Days: consulting with young people on stop and search powers for alcohol and raising the minimum age of criminal responsibility*. <http://bit.ly/2e73gtg> [accessed 24.10.16].
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- <sup>1800</sup> CRC/C/GC/10: Para: 32.
- <sup>1801</sup> CRC/C/GBR/CO/5: Paras: 79(b).
- <sup>1802</sup> CAT/C/GBR/CO/5: Para: 27.
- <sup>1803</sup> CRC/C/GBR/CO/5: Paras: 78(b).
- <sup>1804</sup> Fiona Dyer, *Young People at Court in Scotland* (2016). *Young People at Court in Scotland*. <http://bit.ly/2e6YkVY> [Date accessed: 26.10.16].
- <sup>1805</sup> *Ibid.*
- <sup>1806</sup> *Ibid.*
- <sup>1807</sup> *Ibid.*
- <sup>1808</sup> Standing Committee for Youth Justice (2016). *Growing up, Moving On: The International Treatment of Childhood Criminal Records*. <http://bit.ly/2e6YIsA> [Date accessed: 26.10.16].
- <sup>1809</sup> This system was introduced by the Police Act 1997 and the Protection of Vulnerable Groups 2007 Remedial Order 2015.
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- <sup>1811</sup> *Ibid.*
- <sup>1812</sup> *Ibid.*
- <sup>1813</sup> Recommendations reflect those made in the 2016 report by the Centre for Youth and Criminal Justice, p 13-14. <http://bit.ly/2e6YkVy> [Date accessed: 26.10.16].
- <sup>1814</sup> CRC/C/GBR/CO/5: Paras: 79(c).
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- <sup>1817</sup> Scottish Government (2015). *Prison statistics and population projections Scotland: 2013-14, Table A3*. <http://bit.ly/2e6Zmka> [Date accessed: 26.10.16].
- <sup>1818</sup> CRC/C/GBR/CO/5: Para: 79(d),(e),(f).
- <sup>1819</sup> CCPR/C/GBR/CO/7: Para: 23.
- <sup>1820</sup> CAT/C/GBR/CO/5: Para: 31 and 32.
- <sup>1821</sup> CEDAW/C/GBR/CO/7: Para: 55.
- <sup>1822</sup> A/HRC/21/9: Para: 110.87.
- <sup>1823</sup> A/HRC/21/9: Para: 110.94.
- <sup>1824</sup> Criminal Procedure (Scotland) Act 1995 s.15(4).
- <sup>1825</sup> Criminal Procedure (Scotland) Act 1995 s.43(1)-(3).
- <sup>1826</sup> Criminal Procedure (Scotland) Act 1995 s.43(4).
- <sup>1827</sup> Criminal Justice (Scotland) Act 2016 s.38(3).
- <sup>1828</sup> Criminal Justice (Scotland) Act 2016 s.39(2).
- <sup>1829</sup> Criminal Justice (Scotland) Act 2016 s.38(1) and s.39(3).
- <sup>1830</sup> Andrew Cubie, *Scots Criminal Law* (3rd edn, Bloomsbury Professional, 2010) 8.22.
- <sup>1831</sup> See *Children's Hearings* (Scotland) Act 2011 s.83.
- <sup>1832</sup> Criminal Procedure (Scotland) Act 1995 s.44.
- <sup>1833</sup> Criminal Justice and Licensing (Scotland) Act 2010.
- <sup>1834</sup> See *Criminal Procedure* (Scotland) Act 1995 s.51(1)(aa).
- <sup>1835</sup> See *Criminal Procedure* (Scotland) Act 1995 s.51(1)(b).
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- <sup>1843</sup> Crown Office and Procurator Fiscal Service (2016). *Women jailed for life for toddler murder*. <http://bit.ly/2e6Y0ul> [Date accessed: 27.10.16].

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- <sup>1849</sup> CRC/C/GBR/CO/5: Paras: 83(a),(b),(c),(d),(e).
- <sup>1850</sup> CEDAW/C/GBR/CO/7: Para: 39, 41 and 55(e).
- <sup>1851</sup> A/HRC/21/9: Para: 110.72-76.
- <sup>1852</sup> National Crime Agency (2015). 'The Nature and Scale of Human Trafficking in 2014'. <http://bit.ly/2eF6ekU> [Date accessed: 26.10.2016].
- <sup>1853</sup> National Crime Agency (2015). 'The Nature and Scale of Human Trafficking in 2014', p 32. <http://bit.ly/2eF6ekU> [Date accessed: 26.10.16].
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- <sup>1857</sup> Human Trafficking and Exploitation (Scotland) Act 2015. <http://bit.ly/2e6Z5hd> [Date accessed 26.10.16].
- <sup>1858</sup> Scottish Government (2016). Consultation on a Human Trafficking and Exploitation Strategy for Scotland. <http://bit.ly/2e716K7> [Date accessed 26.10.16].
- <sup>1859</sup> Human Trafficking and Exploitation (Scotland) Act 2015, s11.
- <sup>1860</sup> Scottish Refugee Council (2015). New legislation will support all children arriving in Scotland alone and separated from their parents. <http://bit.ly/2e756u4> [Date accessed: 26.10.16].
- <sup>1861</sup> Human Trafficking and Exploitation (Scotland) Act 2015, s12.
- <sup>1862</sup> In line with the Children (Scotland) Act 1995 and Children and Young People (Scotland) Act 2014.
- <sup>1863</sup> Crown Office and Procurator Fiscal Service (2015). Lord Advocate's Instructions for Prosecutors when considering Prosecution of Victims of Human Trafficking and Exploitation, Para 7. <http://bit.ly/2e72WuD> [Date accessed 26.10.16].
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- <sup>1865</sup> National Crime Agency (2015). National Referral Mechanism. <http://bit.ly/2e6Yegs> [Date accessed 26.10.16].
- <sup>1866</sup> National Crime Agency (2015). National Referral Mechanism. <http://bit.ly/2e6Yegs> [Date accessed 26.10.16].
- <sup>1867</sup> CRC/C/GBR/CO/5: Paras: 85(a),(b),(c),(d).
- <sup>1868</sup> CRC/C/GBR/CO/5: Para: 87.
- <sup>1869</sup> A/HRC/21/9: Para: 110.6, 110.8 and 110.34.
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- <sup>1873</sup> Equality and Human Rights Commission (2014). UK Government UPR Mid-term Report: Report from the Equality and Human Rights Commission, p 5 <http://bit.ly/2fjNJ9g> [Date accessed 26.10.16].
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- <sup>1875</sup> Together (2015). NGO alternative report to the Committee on the Rights of the Child. <http://bit.ly/2eFaWiA> [Date accessed 26.10.16.]
- <sup>1876</sup> Forces Watch (2014). IPSO Survey. <http://bit.ly/2e70LY1> [Date accessed 26.10.16].
- <sup>1877</sup> Ministry of Defence (2016). "UK Armed Forces Bi-annual Diversity Statistics: 2016". <http://bit.ly/2e6Ynkc> [Date accessed 26.10.16].
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- <sup>1879</sup> Child Soldiers International (2014). Eligibility Reference Guide, p 8. <http://bit.ly/2e714Cl> [Date accessed 26.10.16].
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- <sup>1881</sup> Gee, D. and Goodman, A. (2013). 'Young Age at Army Enlistment is Associated with Greater War Zone Risks: An Analysis of British Army Fatalities in Afghanistan', p 1. <http://bit.ly/2e6Yg84> [Date accessed: 26.10.16].
- <sup>1882</sup> The British Army (n.d.). 'How to Join'. <http://bit.ly/2e72wnU> [Date accessed: 26.10.16].
- <sup>1883</sup> Child Soldiers International (2014). Eligibility Reference Guide, p 7. <http://bit.ly/2e714Cl> [Date accessed 26.10.16]. This document is an informal guide that is not meant to replace "Recruiting Group Instructions" or "Recruiting Group Guidelines".
- <sup>1884</sup> Armed Forces (Enlistment) Regulations SSI 2009/2057 reg.5(1).
- <sup>1885</sup> Armed Forces (Enlistment) Regulations SSI 2009/2057 reg.5(2)(b).
- <sup>1886</sup> UK Government (2016). Biannual Diversity Statistics. <http://bit.ly/2e70W5l> [Date accessed: 26.10.16].
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- <sup>1890</sup> UK Government (2013). Policy of recruiting under-18s (U18), p 2. <http://bit.ly/2e6ZqjU>. [accessed 09.09.16]. A short but useful commentary on this document can be found at <http://bit.ly/2e735hP> [Date accessed 26.10.16].
- <sup>1891</sup> Replies of the United Kingdom of Great Britain and Northern Ireland to the list of issues, see: <http://bit.ly/2e6Ypsk> [Date accessed 26.10.16].
- <sup>1892</sup> Medact (2016). The Recruitment of Children by the UK Armed Forces: A Critique from Health Professionals, p 11. <http://bit.ly/2e726hn> [Date accessed 26.10.16].
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- <sup>1899</sup> Armed Forces (Enlistment) Regulations SSI 2009/2057 reg.5(1).
- <sup>1900</sup> Armed Forces (Enlistment) Regulations SSI 2009/2057 reg.5(2)(b).
- <sup>1901</sup> Armed Forces Act 2006 s.329(1).
- <sup>1902</sup> Army Terms of Service Regulations SSI 2007/3382 reg.11.

## Appendix 1:

### *Selected recommendations made through the Universal Periodic Review and international treaty bodies*

The UK is also signatory to six other United Nations human rights treaties, including the International Covenants on Civil and Political Rights (ICCPR) and Economic, Social and Cultural Rights (ICESCR), as well as conventions against torture (CAT), racial discrimination (ICERD), discrimination against women (CEDAW) and the rights of persons with disabilities (UNCPRD). In addition to reviews from specific treaty bodies, an overarching review of the UK's human rights record takes place every five years through the Universal Periodic Review (UPR). Through this process, UN member states make recommendations relating to the UK's human rights record, many of which concern children's rights.

This appendix details specific UPR recommendations and treaty body Concluding Observations that are included in the *State of Children's Rights* report 2016 and have been assessed to have the most impact on the rights of children and young people. This appendix is not intended to be exhaustive. It is important to note that there are very many other recommendations and Concluding Observations that may also have relevance to the rights of children and young people. The UN Committee on the Rights of Persons with Disabilities is yet to make Concluding Observations to the UK.

#### Universal Periodic Review (recommendations made in 2012)

UPR Para. No.	Recommendation	See report chapter:
110. 4	Lift multiple reservations to international human rights treaties, including the ICESCR and the Optional Protocols to the CRC (Belarus). UK mid-term report: Enjoys the support of the UK in part.	General measures of implementation
110. 5	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 (Slovakia). UK mid-term report: Enjoys the support of the UK, in that the UK has considered, but rejected, ratification - will be kept under review.	General measures of implementation
110. 6	Consider withdrawing its declaration to Article 1 of the Optional Protocol to the Convention on the Right of the Child on Involvement of Children in Armed Conflict, and raise the armed forces minimum recruitment age to 18 (Slovenia). UK mid-term report: Does not enjoy the support of the UK.	Special protection measures
110. 8	Withdraw its interpretive statement on the OP to the CRC on the involvement of children in armed conflict (Russia). UK mid-term report: Does not enjoy the support of the UK.	Special protection measures
110. 9	Incorporate fully, as a matter of urgency, the principles and provisions of the CRC into domestic law (Slovakia). UK mid-term report: Does not enjoy the support of the UK.	General measures of implementation
110. 10	Take all measures necessary to fully implement the CRC (France). UK mid-term report: Enjoys the support of the UK.	General measures of implementation
110. 11	Consider withdrawing its interpretive declaration on article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination, as recommended by the Committee on Racial Discrimination as well as take measures aimed at eliminating racial discrimination, incitement of racial hatred (Algeria). UK mid-term report: Does not enjoy the support of the UK.	General measures of implementation
110. 17	Protect the children and families of migrants and refugees, and accede to the ICRMW (Morocco). UK mid-term report: Does not enjoy the support of the UK.	Special protection measures
110. 30	Consider the effect and continued relevance of its remaining reservations to the Convention on the Rights of Persons with Disabilities, and consider the possibility of withdrawing them (New Zealand). UK mid-term report: Enjoys the support of the UK, in that the UK has considered, but is not withdrawing, its reservations - will be kept under review.	General measures of implementation
110. 31	Withdraw reservations made upon the ratification of the CRPD (Hungary). UK mid-term report: Does not enjoy the support of the UK.	General measures of implementation
110. 32	Continue to ensure that human rights principles are integrated in domestic laws (Qatar). UK mid-term report: Enjoys the support of the UK.	General measures of implementation
110. 34	Introduce law that will criminalize use of children in military actions (Uzbekistan). UK mid-term report: Enjoys the support of the UK in part.	Special protection measures
110. 41	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 (Norway). UK mid-term report: Enjoys the support of the UK.	Disability, basic health and welfare

110. 42	Continue efforts in enhancing the welfare of all segments of society and protect their rights (Nepal). UK mid-term report: Enjoys the support of the UK.	Disability, basic health and welfare
110. 46	Adopt and implement a concrete plan of action realizing recommendations of treaty bodies and UN human rights mechanisms, and international human rights obligations (Iran). UK mid-term report: Enjoys the support of the UK.	General measures of implementation
110. 49	Review national legislation to ensure equality and non-discrimination (Egypt). UK mid-term report: Enjoys the support of the UK.	General principles
110. 50	Continue stepping up its efforts in tackling discrimination and inequality for all its citizens (Indonesia). UK mid-term report: Enjoys the support of the UK.	General principles
110. 51	Continue efforts to combat discrimination on any ground and violence against women and girls (Cuba). UK mid-term report: Enjoys the support of the UK.	General principles
110. 52	Give priority attention to the questions of gender equality and discrimination against women (Uzbekistan). UK mid-term report: Enjoys the support of the UK.	General principles
110. 53	Take effective measure to eliminate discrimination on the grounds of race, religion and nationality and to guarantee the rights of Muslims, Roma people and migrant workers (China). UK mid-term report: Enjoys the support of the UK.	General principles
110. 54	Take further steps to address ethnic profiling in practice (Greece). UK mid-term report: Does not enjoy the support of the UK.	General principles
110. 55	Revise the policies that involve racial and ethnic profiling such as “stop and search” practice (Brazil). UK mid-term report: Does not enjoy the support of the UK.	General principles/ Civil rights and freedoms
110. 56	Investigate allegations that stop and search orders disproportionately fall on persons belonging to ethnic, religious and other minorities and introduce adequate safeguards in this regard (Austria). UK mid-term report: Enjoys the support of the UK in part.	General principles/ Civil rights and freedoms
110. 57	That the law enforcement authorities put an end to stop and search practices based on religious and ethnic profiling (Pakistan). UK mid-term report: Does not enjoy the support of the UK.	General principles/ Civil rights and freedoms
110. 58	Put an end to the use of religious profiling in combating terrorism by inserting legal safeguards against abuse and the deliberate targeting of certain religious groups (Malaysia). UK mid-term report: Enjoys the support of the UK in part.	General principles
110. 59	Take all appropriate measures to combat prejudices and negative stereotypes, which may result in racial discrimination or incitement to racial hatred (Turkey). UK mid-term report: Enjoys the support of the UK.	General principles
110. 60	Implement ECRI’s recommendation to continue to monitor hate crimes and to work with the community to increase understanding of the impact of such offences, and to pursue efforts to improve the police gathering of evidence of racist motivations (Turkey). UK mid-term report: Enjoys the support of the UK.	General principles
110. 61	Put in practice a national strategy to eliminate discrimination against caste, through the immediate adoption of the Equality Law of 2010 that prohibits such discrimination, in conformity with its international human rights obligations, including CERD’s General Recommendation 29 and recommendations of the Special Rapporteur on Contemporary Forms of Racism (Nicaragua). UK mid-term report: Does not enjoy the support of the UK.	General principles
110. 62	Adopt Government policies and legislations to address the pay gap between men and women (Sudan). UK mid-term report: Enjoys the support of the UK.	General principles
110. 63	Consider policies and legal provisions to encourage equal pay practices (India). UK mid-term report: Enjoys the support of the UK.	General principles
110. 64	Take measures to address the existing wage gap between men and women (Algeria). UK mid-term report: Enjoys the support of the UK.	General principles
110. 65	Revitalize endeavours intended for eradication of the wage gap between men and women that has reportedly stalled (Ukraine). UK mid-term report: Enjoys the support of the UK.	General principles
110. 66	Consider strengthening policies to combat discrimination in all areas, notably in employment and education (Morocco). UK mid-term report: Enjoys the support of the UK.	General principles
110. 72	Increase efforts to combat trafficking in persons, particularly to protect women and children (Spain). UK mid-term report: Enjoys the support of the UK.	Special protection measures
110. 73	Continue making progress in applying the strategy on trafficking in persons adopted in July 2011 (Colombia). UK mid-term report: Enjoys the support of the UK.	Special protection measures

110. 74	Implement the EU Directive on trafficking in human beings by April 2013 and sign the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Australia). UK mid-term report: Enjoys the support of the UK.	Special protection measures
110. 75	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 (USA). UK mid-term report: Enjoys the support of the UK in part.	Special protection measures
110. 76	Take all measures to ensure that all trafficked people are able to access the support and services they are entitled to, including free legal aid and access to their right to compensation (Greece). UK mid-term report: Enjoys the support of the UK in part.	Special protection measures
110. 78	Reconsider its position about the continued legality of corporal punishment of children (Sweden). UK mid-term report: Does not enjoy the support of the UK.	Violence against children
110. 79	Take measures to ensure the freedom of children from physical punishment in accordance with the Convention on the Rights of the Child (Norway). UK mid-term report: Does not enjoy the support of the UK.	Violence against children
110. 80	Introduce a ban on all corporal punishment of children as recommended by the CRC and other treaty bodies (Finland). UK mid-term report: Does not enjoy the support of the UK.	Violence against children
110. 87	Take concrete steps to further reduce overcrowding of prisons, including through the increased application of alternative sentencing for juvenile offenders (Austria). UK mid-term report: Enjoys the support of the UK.	Special protection measures
110. 94	Consider the possibility of raising the minimum criminal age and refrain from the practice of keeping children in custody (Belarus). UK mid-term report: Does not enjoy the support of the UK.	Special protection measures
110. 95	Consider the possibility of raising the age of criminal responsibility for minors (Chile) (see also children). UK mid-term report: Does not enjoy the support of the UK.	Special protection measures
110. 96	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 (Slovakia). UK mid-term report: Enjoys the support of the UK.	Family environment and alternative care
110. 101	Provide more resources for reforming the welfare system in order to make it better able to tackle poverty and worklessness, and reduce negative impact on social vulnerable groups (Vietnam). UK mid-term report: Enjoys the support of the UK.	Disability, basic health and welfare
110. 102	Strengthen measures aimed at reducing serious inequalities in access to health, education and employment, which still exist despite the adoption of the Equality Act (Spain). UK mid-term report: Does not enjoy the support of the UK.	Disability, basic health and welfare
110. 103	Guarantee the enjoyment of economic, social and cultural rights, particularly health, education and adequate housing (Cuba). UK mid-term report: Enjoys the support of the UK.	Disability, basic health and welfare
110. 106	Adopt a strategy so that children of vulnerable groups are not excluded from the education system (Costa Rica). UK mid-term report: Enjoys the support of the UK.	Education, leisure and cultural activities
110. 111	Continue adopting measures to prevent cases of indefinite detention of migrants, and guarantee all their rights (Chile). UK mid-term report: Enjoys the support of the UK in part.	Special protection measures
110. 112	Adopt necessary measures to prevent indefinite detention of migrants, and provide all legal safeguards to detained migrants (Honduras). UK mid-term report: Enjoys the support of the UK in part.	Special protection measures
110. 113	Adopt necessary measures to avoid criminalization of irregular migration, de-facto indefinite detention without the provision of all legal safeguards for undocumented migrants and asylum seekers (Ecuador). UK mid-term report: Enjoys the support of the UK in part.	Special protection measures
110. 114	In line with the British Government commitment to the universality of human rights, prohibit the indefinite detention of migrants, seek alternatives to their detention and ensure that such detention is for the shortest possible duration (Mexico). UK mid-term report: Enjoys the support of the UK in part.	Special protection measures
110. 115	Take necessary measures to avoid any use of detention of asylum seekers during the process of determining their refugee status (Argentina). UK mid-term report: Does not enjoy the support of the UK.	Special protection measures

Convention on the Elimination of Discrimination Against Women (Concluding Observations made in 2013)

CEDAW Para. No.	Concluding Observation	See report chapter:
11	Withdraw and narrow current reservations. It also reiterates its position that some of the reservations have the character of interpretive declarations and may no longer be necessary.	General measures of implementation
23	(a) Ensure effective access by women, in particular women victims of violence, to courts and tribunals.	General principles
33	(a) Continue to engage with the media to eliminate stereotypical imaging of women and their objectification in the media, especially in advertising.	General principles
35	(a) Ratify the Istanbul Convention and criminalize forced marriage. (b) Increase efforts to protect women, including black and ethnic minority women, against all forms of violence, including domestic violence, and so-called "honour killings". (d) Step up efforts to train police officers in order to eliminate prejudices concerning the credibility of victims of domestic violence. Continue public campaigns to raise awareness of all forms of violence against women, including black and ethnic minority women. (e) Revise legislation to prohibit corporal punishment of children in the home.	Violence against children
37	The Committee reiterates that the State party should ensure the full implementation of its legislation on female genital mutilation. The Committee recommends that the State party ensure that the Crown Prosecution Service is provided with the support necessary to effectively prosecute perpetrators of this offence, including by supporting the action plan on improving prosecutions for female genital mutilation released by the Director of Public Prosecutions in November 2012.	Violence against children
39	(a) To adopt a comprehensive national framework to combat trafficking in women and girls. (b) To identify any weaknesses in the National Referral Mechanism and ensure that victims of trafficking are properly identified and adequately supported and protected.	Special protection measures
45	(a) Consider introducing mandatory age-appropriate education on sexual and reproductive rights in school curricula, including issues such as gender relations and responsible sexual behaviour, targeting adolescent girls in particular. (b) Enhance measures to prevent, punish and eradicate all forms of violence against women and girls, including bullying and expressions of racist sentiments, in educational institutions. (c) Step up career guidance activities to encourage girls to pursue non-traditional paths and improve the gender awareness of teaching personnel at all levels of the education system. (d) Take coordinated measures to encourage increased participation by girls in science, technology, engineering and mathematics, and in apprenticeships.	General principles/ Disability, basic health and welfare/Violence against children/ Education, leisure and cultural activities
47	(a) Step up efforts to promote the use of flexible working arrangements and introduce shared parental leave to encourage men to participate equally in childcare responsibilities.	Family environment and alternative care
49	Provide affordable childcare and mitigate the impact of the proposed reforms of the welfare system on the costs of childcare for low-income families and the increased burden of care that this places on women.	Family environment and alternative care
53	(a) Strengthen the implementation of programmes and policies aimed at providing effective access to health care for women, especially women with disabilities, older women, women seeking asylum and Traveller women. (b) Pay special attention to the health needs of women with disabilities, ensuring their access to prenatal care and all reproductive health services.	Disability, basic health and welfare
55	(b) Continue to develop alternative sentencing and custodial strategies, including community interventions and services, for women convicted of minor offences. (e) To ensure that the authorities, including prison staff, are able to recognize women who may have been trafficked so as to avoid their criminalization, and to provide adequate services for their integration into society.	Special protection measures
57	(b) Provide access to justice and health care to all women with insecure immigration status, including asylum seekers, until their return to their countries of origin.	Special protection measures
59	(a) Continue to provide training on gender-sensitive approaches in the treatment of victims of violence to officers who are in charge of immigration and asylum applications.	Special protection measures
61	(a) Step up efforts to eliminate discrimination against ethnic minority women and improve access to social services, including health care, education and employment. (b) Provide adequate sites designated for use by Traveller women and members of their families.	General principles / Disability, basic health and welfare

## UN Convention Against Torture (Concluding Observations made in 2013)

CAT Para. No.	Recommendation	See report chapter:
26	Ensure that electrical discharge weapons are used exclusively in extreme and limited situations – where there is a real and immediate threat to life or risk of serious injury – as a substitute for lethal weapons and by trained law enforcement personnel only. The State party should revise the regulations governing the use of such weapons with a view to establishing a high threshold for their use and expressly prohibiting their use on children and pregnant women. The Committee is of the view that the use of electrical discharge weapons should be subject to the principles of necessity and proportionality and should be inadmissible in the equipment of custodial staff in prisons or any other place of deprivation of liberty. The Committee urges the State party to provide detailed instructions and adequate training to law enforcement personnel entitled to use electric discharge weapons, and to strictly monitor and supervise their use.	Violence against children
27	Raise the minimum age of criminal responsibility and ensure the full implementation of juvenile justice standards, as expressed in general comment No. 10 (2007) on children's rights in juvenile justice of the Committee on the Rights of the Child (paras. 32 and 33). The State party should ensure full implementation of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) (General Assembly resolution 40/33, annex) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) (General Assembly resolution 45/112, annex).	Special protection measures
28	Ensure that restraint against children is used only as a last resort and exclusively to prevent harm to the child or others and that all methods of physical restraint for disciplinary purposes be abolished. The Committee also recommends that the State party ban the use of any technique designed to inflict pain on children.	Violence against children
29	Prohibit corporal punishment of children in all settings in Metropolitan territory, Crown Dependencies and Overseas Territories, repealing all legal defences currently in place, and further promote positive non-violent forms of discipline via public campaigns as an alternative to corporal punishment.	Violence against children
31	Ensure that children with mental disabilities shall not, under any circumstances, be detained in police custody, but directed to appropriate health institutions.	Special protection measures
32	The Committee recommends that the State party pay due attention to the recommendations of the Commission on Women Offenders (Scotland) and, in particular, ensure effective diversion from the criminal justice system for petty non-violent offenders, increase the use of community sentences, and implement changes to the prison regime to further reduce deaths and incidents of self-harm.	Special protection measures

## International Covenant on Civil and Political Rights (Concluding Observations made in 2015)

ICCPR Para. No.	Concluding Observation	See report chapter:
5	(c) Ensure that any legislation passed in lieu of the Human Rights Act 1998, were such legislation to be passed, would be aimed at strengthening the status of international human rights, including the provisions of the Covenant, in the domestic legal order and provide effective protection of those rights across all jurisdictions.	General measures of implementation
6	The Committee reiterates its recommendation (CCPR/C/GBR/CO/6, para. 7) that the State party review its remaining reservations to articles 10, 14 and 24 of the Covenant with a view to withdrawing them.	General measures of implementation
10	The State party should strengthen its efforts to prevent and eradicate all acts of racism and xenophobia, including in the mass media and on the Internet, in accordance with articles 19 and 20 of the Covenant and the Committee's general comment No. 34 (2011) on freedoms of opinion and expression, by, inter alia: (a) Effectively implementing and enforcing the existing relevant legal and policy frameworks on combating hate crimes; (b) Introducing new awareness-raising campaigns aimed at promoting respect for human rights and tolerance for diversity; (c) Improving the reporting of cases of incitement to discrimination, hostility or violence, and of cases of hate crimes; (d) Thoroughly investigating alleged cases of incitement to discrimination, hostility or violence, and alleged hate crimes, prosecuting the perpetrators and, if they are convicted, punishing them with appropriate sanctions, and providing victims with adequate remedies, including compensation.	General principles
11	The State party should: (a) Repeal non-statutory stop and search powers in Scotland and pursue its efforts aimed at improving the process of selecting targets under statutory mandates, so as to ensure conformity with the Covenant, engage in training of law enforcement officers, undertake comprehensive data-gathering about the application of stop and search powers and improve the transparency of the process; (b) Implement, as a matter of priority, the recommendation by the Policing Board to the Police Service of Northern Ireland (PSNI) concerning the inclusion on the PSNI's recording form of the community background of persons stopped and searched under the Justice and Security (Northern Ireland) Act 2007; (c) Ensure the operation of robust independent scrutiny and oversight of any stop and search powers in the United Kingdom with a view to ensuring that such powers are not exercised in an arbitrary or discriminatory manner and are fully compliant with the State party's obligations under articles 2, 9, 12, 17 and 26 of the Covenant.	Civil rights and freedoms
13	The State party should strengthen measures aimed at preventing and combating violence against women, including domestic violence and sexual abuse by, inter alia: (b) Encouraging reporting of domestic violence cases, inter alia by informing women of their rights and the existing legal avenues through which they can receive protection; (c) Ensuring that all domestic violence cases, in all UK territories and dependencies, are thoroughly investigated, that perpetrators are prosecuted and, if convicted, punished with appropriate sanctions; (d) Ensuring that victims have access to effective remedies and means of protection, including to strong police protection, adequate emergency shelter, rehabilitative services, legal assistance and other support services.	Violence against children
16	The State party should take robust measures to prevent self-inflicted deaths (suicides), including suicides and self-harm in custody, inter alia by: a) Studying and addressing the root causes of the problem, continuing improving the identification of persons at risk of suicide and self-harm and operating effective early prevention strategies and programmes; b) Providing adequate training to prison officials on suicide and self-harm prevention; c) Ensuring adequate protection of, and appropriate mental health and other support services to, prisoners; d) Combating bullying in custody facilities effectively; e) Ensuring that cases of suicide and self-harm are independently and thoroughly investigated and lessons learned; f) Giving due consideration to the Harris Review Report and to implementing its recommendations.	Disability, basic health and welfare
20	The State party should review its legislation on anti-social behaviour orders (ASBOs), including the definition of anti-social behaviour, in order to ensure that it complies with the provisions of the Covenant. In particular, the State party should ensure that young children are not detained as a result of breaching the conditions of their ASBOs and that the rights of children and adults subject to ASBOs are respected.	Civil rights and freedoms
20	The State party should take practical steps, including through legislative measures where appropriate, to put an end to corporal punishment in all settings, including the home, throughout United Kingdom and all Crown Dependencies and Overseas Territories, and repeal all existing legal defences across the State party's jurisdiction. It should encourage non-violent forms of discipline as alternatives to corporal punishment, and conduct public information campaigns to raise awareness about its harmful effects.	Violence against children
21	Review detention policy with regard to asylum-seekers, especially children. Take immediate and effective measures to ensure that all asylum-seekers who are detained pending deportation are held in centres specifically designed for that purpose, consider alternatives to detention, and end the detention of asylum-seekers in prisons. Ensure that asylum-seekers have full access to early and free legal representation so that their rights under the Covenant receive full protection. (from 2008).	Special protection measures
23	The State Party should: a) Raise the minimum age of criminal responsibility in accordance with international standards and ensure the full implementation of international standards for juvenile justice; b) step up its efforts with a view to further reducing the number of children in the juvenile justice system; c) ensure that detention on remand of child defenders is used only as a measure of last resort and for the shortest possible period of time.	Special protection measures

International Convention on the Elimination of Racial Discrimination  
(Concluding Observations made in 2016)

CERD Para. No.	Recommendation	See report chapter:
10	The Committee recommends that the State party undertake meaningful and broad public consultation on its proposal to revise its human rights legislation and ensure that any changes to the current human rights framework strengthens the protection of human rights, and in particular the rights of individuals protected under article 1 of the Convention. It also recommends that the State party expedite the process of adopting the Bill of Rights for Northern Ireland, and ensure that it is in line with the provisions of the Convention and other international human rights standards.	General principles
14	Given the importance of collecting accurate and updated disaggregated data to develop effective policies to combat racial discrimination and to monitor the impact of measures taken, the Committee recommends that the State party ensure that the governments of Northern Ireland, Scotland, Wales, the British Overseas Territories and the Crown dependencies systematically collect and publish disaggregated data on the enjoyment of rights by members of ethnic minorities in all fields of life, and to include such information in the next periodic report. The Committee also recommends that the State party: (a) Carefully review the impact of existing policies and programmes aimed at promoting integration so as to ensure that they do not constitute indirect discrimination; (b) Consider adopting a detailed action plan with concrete targets, monitoring mechanisms and sufficient resources, including temporary special measures, to secure the adequate advancement of certain ethnic groups to ensure that persons belonging to such groups are able to enjoy their rights on an equal footing, taking into account the Committee's general recommendation No. 32 (2009) on the meaning and scope of special measures in the International Convention on the Elimination of All Forms of Racial Discrimination.	General principles
15	The Committee is seriously concerned at the sharp increase in the number of racist hate crimes especially in England, Wales and Northern Ireland in the weeks prior to and following the referendum on the membership of the European Union held on 23 June 2016. In particular, the Committee is deeply concerned that the referendum campaign was marked by divisive, anti-immigrant and xenophobic rhetoric, and that many politicians and prominent political figures not only failed to condemn it, but also created and entrenched prejudices, thereby emboldening individuals to carry out acts of intimidation and hate towards ethnic or ethno-religious minority communities and people who are visibly different. The Committee remains concerned that despite the recent increase in the reporting of hate crimes, the problem of underreporting persists, and the gap between reported cases and successful prosecution remains significant. As a result, a large number of racist hate crimes seem to go unpunished. It also remains concerned at the negative portrayal of ethnic or ethno-religious minority communities, immigrants, asylum-seekers and refugees by the media in the State party, particularly in the aftermath of terrorist attacks, as well as the rise of racist hate speech on the Internet. Notwithstanding these challenges, the Committee regrets that the State party continues to maintain its interpretative declaration on article 4 of the Convention (arts. 2, 4 and 6).	General principles
16	The Committee recommends that the State party, including the governments of Northern Ireland, Scotland, Wales, the British Overseas Territories and the Crown dependencies: (a) Investigate all reported acts of racist hate crimes, prosecute and punish the perpetrators with sanctions commensurate with the gravity of the offence, and provide effective remedies to victims; (b) Systematically collect disaggregated data on hate crimes, ensure that measures to combat racist hate crimes are developed with the meaningful participation of affected groups, and undertake a thorough impact assessment of the measures adopted to ensure their continued effectiveness; (c) Adopt concrete measures, in consultation with affected groups, to increase the reporting of racist hate crimes by ensuring that the reporting mechanism is transparent and accessible, and that victims have trust in the police and the justice system; (d) Taking into account the Committee's general recommendation No. 35 (2013) on combating racist hate speech, adopt comprehensive measures to combat racist hate speech and xenophobic political discourse, including on the Internet, particularly with regard to the application of appropriate sanctions, and ensure that public officials not only refrain from such speech but also formally reject hate speech and condemn the hateful ideas expressed so as to promote a culture of tolerance and respect; (e) Take effective measures to combat racist media coverage, taking into account the Committee's general recommendation No. 35 (2013) on combating racist hate speech, and ensure that such cases are thoroughly investigated and, where appropriate, sanctions are imposed. 17. The Committee also reiterates its recommendation that the State party withdraw its interpretative declaration on article 4 of the Convention.	General principles
19	The Committee urges the State party to review the implementation and evaluate the impact of existing counter-terrorism measures, and in particular the "Prevent duty" under the Counter-Terrorism and Security Act 2015, to ensure that there are effective monitoring mechanisms and sufficient safeguards against abuse, and that they are implemented in a manner that does not constitute profiling and discrimination on the grounds of race, colour, descent or national or ethnic origin, in purpose or effect.	General principles

21	The Committee calls upon the State party to ensure that individuals belonging to ethnic minorities in England, Northern Ireland, Scotland and Wales, as well as its overseas territories and Crown dependencies have fair and effective access to legal aid to seek justice. It recommends that the State party undertake a thorough assessment of the impact of the reforms to the legal aid system to ensure that individuals belonging to ethnic minorities are not disproportionately affected.	General principles
23	Recalling its general recommendation No. 34 (2011) on racial discrimination against people of African descent, the Committee recommends that the State party consider adopting a national action plan to combat discrimination against persons of African descent, in partnership and consultation with communities of African descent, with concrete targets, implementation mechanisms and adequate resources. The Committee also encourages the State party to prepare and implement a suitable programme of measures and policies for the implementation of the International Decade for People of African descent, proclaimed by the General Assembly in its resolution 68/237, taking into account General Assembly resolution 69/16 on the programme of activities	General principles
25	Develop a comprehensive strategy, in consultation with members of Gypsy, Traveller and Roma communities, to ensure a systematic and coherent approach in addressing the challenges that they continue to face in the fields of health, education, housing and employment, and ensure its effective implementation by adopting specific action plans and effective oversight and monitoring mechanisms to track progress, with adequate human and financial resources; (b) Ensure the provision of adequate and culturally appropriate accommodation and stopping sites as a matter of priority throughout the State party and regularly publish the net increase of pitches for Gypsies and Travellers created through the Traveller Pitch Fund; (c) Ensure that representatives of Gypsy and Traveller communities are adequately consulted before any measures that affect their situation, such as the Housing and Planning Bill 2015, are implemented; (d) Ensure that any changes in the definition of a Gypsy or Traveller, including for planning purposes, are made with effective consultation with the Gypsy and Traveller communities and that their views are duly taken into account, and that such changes do not adversely affect their rights, including the rights of people who have stopped travelling permanently.	Disability, basic health and welfare/ Education, leisure and cultural activities
27	Recalling its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recommends that the State party ensure that the governments of Northern Ireland, Scotland and Wales, regularly review the impact of stop and search powers on persons belonging to visible ethnic minority groups, and take effective measures to ensure that such powers are used in a lawful, non-arbitrary and nondiscriminatory manner on the basis of reasonable suspicion, with rigorous monitoring and review mechanisms.	Civil rights and freedoms
29	The Committee recommends that the State party ensure that the overrepresentation of persons belonging to black and ethnic minority groups at all stages of the criminal justice system in England, Northern Ireland, Scotland and Wales is thoroughly investigated, and take concrete measures to effectively address racial prejudice and bias in the criminal justice system, taking into account the Committee's general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system.	General principles
31	The State party should take effective measures to ensure the accessibility, availability and quality of health care services to persons belonging to ethnic minorities throughout its jurisdiction. The Committee stresses the particular importance of adopting measures to effectively address the overrepresentation of persons of African Caribbean descent treated in psychiatric institutions and the disproportionate use of restraint, seclusion and medication.	Disability, basic health and welfare
35	The Committee recommends that the State party: (a) Strengthen efforts to eliminate all racist bullying and harassment in the State party's schools, including by requiring schools to collect qualitative and quantitative data on bullying and school exclusions on grounds of race, colour, descent, or national or ethnic origin, and to use the data to develop concrete strategies; (b) Ensure that schools comply with their public sector equality duty under the Equality Act 2010 and Section 75 of the Northern Ireland Act 1998 to challenge racist bullying and to promote respect for diversity, including through the training of educational personnel; (c) Ensure that the school curricula across its jurisdiction contain a balanced account of the history of the British Empire and colonialism, including slavery and other grave human rights violations.	Violence against children

## International Covenant on Economic, Social and Cultural Rights (Concluding Observations made in 2016)

ICESCR Para. No.	Recommendation	See report chapter:
19	The Committee reminds the State party of its obligations under the Covenant to use the maximum of its available resources with a view to progressively achieving the full realization of economic, social and cultural rights. The Committee draws the State party's attention to the recommendations contained in its open letter of 16 May 2012 to States parties on economic, social and cultural rights in the context of the economic and financial crisis, with regard to the criteria for austerity measures. Such measures must be temporary, necessary, proportionate and not discriminatory, must not disproportionately affect the rights of disadvantaged and marginalized individuals and groups and respect the core content of rights. In that context, the Committee recommends that the State party review its policies and programmes introduced since 2010 and conduct a comprehensive assessment of the cumulative impact of these measures on the enjoyment of economic, social and cultural rights by disadvantaged and marginalized individuals and groups, in particular women, children and persons with disabilities, that is recognized by all stakeholders.	Disability, basic health and welfare
21	The Committee recommends that the State party review the impact of the reforms to the legal aid system with a view to ensuring access to justice and the provision of free legal aid services, in particular for disadvantaged and marginalized individuals and groups. The Committee takes note of the information provided by the State party on the ongoing review of the employment tribunal fees and recommends the elimination of such fees.	General principles
23	The Committee recommends that the State party bring into force the relevant provisions of the Equality Act that refer to the public authorities' duty with respect to socioeconomic disadvantage, as well as with respect to the prohibition of intersectional discrimination, in order to enhance and guarantee full and effective protection against discrimination in the enjoyment of economic, social and cultural rights. The Committee recalls its previous recommendation (see E/C.12/GBR/CO/5, para. 16) and urges the State party to provide the same access to an independent equality body and a similar level of protection to rights holders with regard to all grounds of discrimination for all individuals in all jurisdictions of the State party, including Northern Ireland. In this respect, the Committee draws the attention of the State party to its general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights.	General principles
25	The Committee recommends that the State party increase the level of support provided to asylum seekers, including through the daily allowance, in order to ensure that they enjoy their economic, social and cultural rights, in particular the right to an adequate standard of living. The Committee reiterates its previous recommendation (see E/C.12/GBR/CO/5, para. 27) and encourages the State party to ensure that asylum seekers are not restricted from accessing employment while their claims are being processed.	Special protection measures
27	The Committee recommends that the State party: (a) Intensify its efforts to increase the level of representation of women in decision-making positions, in both the public and private sectors; (b) Adopt effective measures to eliminate the persistent gender pay gap, including by addressing the significant vertical and horizontal gender-based segregation in the labour market, which results in women occupying lower-paid positions and facing obstacles to their enjoyment of career opportunities on an equal footing with men; (c) Increase its efforts to ensure equal remuneration for work of equal value, without distinction of any kind.	General principles
28	The Committee draws the attention of the State party to its general comment No. 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights.	General principles
32	The Committee recommends that the State party: (a) Take all appropriate measures to progressively reduce the use of temporary employment, precarious self-employment and "zero hour contracts", including by generating decent work opportunities that offer job security and adequate protection of labour rights; (b) Ensure that the labour and social security rights of persons in part-time work, precarious self-employment, temporary employment and "zero-hour contracts" are fully guaranteed in law and in practice.	Disability, basic health and welfare
33	The Committee draws the attention of the State party to its general comment No. 23 (2016) on the right to just and favourable conditions of work	Disability, basic health and welfare

35	The Committee recalls its previous recommendation (see E/C.12/GBR/CO/5, para. 22) and urges the State party to: (a) Adopt all necessary measures to ensure that all migrant workers, including migrant domestic workers, enjoy the same conditions as other workers as regards remuneration, protection against unfair dismissal, rest and leisure, limitation of working hours, social security and maternity leave protection; (b) Protect migrant workers and migrant domestic workers from all forms of exploitation and abuse, including through the effective implementation of the Modern Slavery Act 2015; (c) Improve the complaint mechanisms and legal assistance provided to migrant workers; (d) Ensure effective inspection mechanisms for monitoring the conditions of work of migrant workers and migrant domestic workers.	Special protection measures
37	The Committee recommends that the State party ensure that the national minimum wage is periodically reviewed and set at a level sufficient to provide all workers and their families with a decent standard of living. It also recommends that the State party extend the protection of the national minimum wage to those under the age of 25.	General principles/ Disability, basic health and welfare
41	The Committee calls upon the State party to: (a) Review the entitlement conditions and reverse the cuts in social security benefits introduced by the Welfare Reform Act 2012 and the Welfare Reform and Work Act 2016; (b) Restore the link between the rates of State benefits and the costs of living and guarantee that all social benefits provide a level of benefit sufficient to ensure an adequate standard of living, including access to health care, adequate housing and food; (c) Review the use of sanctions in relation to social security benefits and ensure that they are used proportionately and are subject to prompt and independent dispute resolution mechanisms; (d) Provide in its next report disaggregated data on the impact of the reforms to social security on women, children, persons with disabilities, low income families and families with two or more children.	Disability, basic health and welfare
42	The Committee draws the attention of the State party to its general comment No. 19 (2007) on the right to social security.	Disability, basic health and welfare
44	The Committee recommends that the State party increase its efforts to ensure the availability, accessibility and affordability of childcare services throughout the State party, particularly in Scotland and Northern Ireland. The Committee also recommends that the State party review the system of shared parental leave and modify it with a view to improve the equal sharing of responsibilities within the family and in the society.	Family environment and alternative care
46	The Committee requests the State party to include in its next periodic report information on the impact of the implementation of the national strategy on gender-based violence, particularly with regard to violence against women and girls with disabilities.	Violence against children
48	The Committee recommends that the State party take steps to introduce measures to guarantee targeted support to all those living in poverty or at risk of poverty, in particular persons with disabilities, persons belonging to ethnic, religious or other minorities, single-parent families and families with children, and adopt an anti-poverty strategy in Northern Ireland. The Committee also urges the State party to develop a comprehensive child poverty strategy and reinstate the targets and reporting duties on child poverty. In that regard, the Committee draws the attention of the State party to its statement on poverty and the International Covenant on Economic, Social and Cultural Rights, adopted on 4 May 2001 (E/C.12/2001/10).	Disability, basic health and welfare
50	The Committee recalls its previous recommendation (see E/C.12/GBR/CO/5, para. 29) and urges the State party to: (a) Adopt all necessary measures to address the housing deficit by ensuring a sufficient supply of housing, in particular social housing units, especially for the most disadvantaged and marginalized individuals and groups, including middle- and low-income individuals and households, young people and persons with disabilities; (b) Take specific measures to deal with the inability of renters in the private rental sector to pay rents on account of the limits imposed on housing allowance and effectively regulate the private rental sector, including through security of tenure protection and accountability mechanisms; (c) Take corrective measures to address bad housing, including substandard housing conditions and uninhabitable housing; (d) Ensure adequate access to culturally appropriate accommodation and stopping sites for the Roma, Gypsy and Traveller communities, as appropriate; take steps to avoid all forms of discrimination in the provision of accommodation; and repeal the Unauthorised Encampments (Northern Ireland) Order 2005; (e) Intensify its efforts to address the challenges to overcoming persistent inequalities in housing for Catholic families in North Belfast, including through meaningful participation by all actors in decision-making processes related to housing.	Disability, basic health and welfare

54	The Committee recommends that the State party develop a comprehensive national strategy for the protection and promotion of the right to adequate food in order to address food insecurity in all jurisdictions of the State party and to promote healthier diets. This should include policies in support of breastfeeding in accordance with the resolutions of the World Health Assembly, including breastfeeding breaks or breastfeeding facilities in educational institutions and workplaces. The Committee also recommends that the State party introduce higher taxes on junk foods and sugary drinks and consider adopting strict regulations on the marketing of such products, while ensuring improved access to healthy diets. The Committee refers the State party to its general comment No. 12 (1999) on the right to adequate food and the Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security adopted by the Food and Agriculture Organization of the United Nations as well as to the International Code of Marketing of Breast-milk Substitutes.	Disability, basic health and welfare
56	The Committee recommends that the State party take steps to ensure that temporary migrants and undocumented migrants, asylum seekers, refused asylum seekers, refugees and Roma, Gypsies and Travellers have access to all necessary health-care services and reminds the State party that health facilities, goods and services should be accessible to everyone without discrimination, in line with article 12 of the Covenant. The Committee draws the State party's attention to its general comment No. 14 (2000) on the right to the highest attainable standard of health.	Special protection measures
58	The Committee recommends that the State party ensure the effective implementation of the duty introduced by the Health and Social Care Act 2012 and allocate sufficient resources to the mental health sector. The Committee urges the State party to continue its efforts to guarantee the effective implementation of the mental health legislation in all jurisdictions of the State party and to ensure the accessibility, availability and quality of mental health care, including for persons in detention.	Disability, basic health and welfare
64	The Committee recommends that the State party take all necessary measures to reduce the attainment gaps, particularly among children belonging to low-income families, including by reconsidering the austerity programmes adopted and effectively implementing measures aimed at reducing de facto discrimination and segregation of students based on their religion, national or social origin, as well as their economic background.	General principles
66	The Committee recommends that the State party take all necessary steps to reduce higher education fees, with a view to making higher education equally accessible to all, in accordance with capacity, and by progressively introducing free higher education.	General principles

## Appendix 2:

### Credits

The *State of Children's Rights* report 2016 represents an overall consensus of opinion of NGOs 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:

Aberdeen City Council	Highland Children's Forum
Aberdeenshire Council	Inclusion Scotland
Aberlour Childcare Trust	IPA International
Action for Children	Just Play – Angus Council
Action for Sick Children Scotland	Keys to Inclusion
Amnesty Scotland	Kings Oak Nursery
Article 12 in Scotland	LGBT Youth Scotland
ASH Scotland	Mindroom
Balnacraig School	National Deaf Children's Society
Barnardo's Scotland	NSPCC Scotland
Befriend a Child	OLA/Out of School Care
Befriending Networks	One Parent Families Scotland
BEMIS	Parenting Across Scotland
Boarding School Action	Partners in Advocacy
Capability Scotland	Play Scotland
Carers Trust	Positive Realities
CELCIS	Possibilities for Each and Every Kid (PEEK)
Centre for Youth and Criminal Justice	Quarriers
Child Poverty Action Group (CPAG)	Queens Nursing Institute Scotland
Child Soldiers International	Rape Crisis Scotland
Children 1st	Respectme
Children and Young People's Commissioner for Scotland	Roshni
Children in Scotland	Royal Caledonian Education Trust (RCET)
Children's Parliament	Royal College of Paediatrics and Child Health (Scotland)
Clan Childlaw	SACRO – Bright Choices
Disability Agenda Scotland	Safe Strong Free
Down's Syndrome Scotland	Save the Children
Dyslexia Ayrshire	Scottish Refugee Council
Early Years Scotland	Scottish Women's Aid
Eighteen and Under	Scottish Youth Parliament
ENABLE Scotland	Smart Play Network
Engender	Starcatchers
Families First St. Andrews	UNICEF UK
Families Outside	Waverley Care
Family Fund	Who Cares? Scotland
Fast Forward	YouthLink Scotland
Fife Gingerbread	YPeople
First Steps Playgroup	Zero Tolerance
Girlguiding Scotland	

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*‘Working to promote the  
full implementation of  
the UN Convention on  
the Rights of the Child in  
Scotland’*

November 2016



**together**

Scottish Alliance for  
Children’s Rights

**Together**

Scottish Alliance for Children’s Rights  
Level 1  
Rosebery House  
9 Haymarket Terrace  
Edinburgh EH12 5EZ

[www.togetherscotland.org.uk](http://www.togetherscotland.org.uk)  
[info@togetherscotland.org.uk](mailto:info@togetherscotland.org.uk)  
0131 337 9015

*Design by  
Ministry*

[www.ministrydesign.co.uk](http://www.ministrydesign.co.uk)