

Submission to the Joint Committee on Human Rights Inquiry into the UK's compliance with the United Nations Convention on the Rights of the Child

March 2015

My role as Scotland's Commissioner for Children and Young People is to promote and safeguard the rights of children and young people in Scotland by promoting awareness and understanding of children's rights, keeping under review the law, policy and practice relating to the rights of children and young people, promoting best practice and undertaking research, having regard to the United Nations Convention on the Rights of the Child (UNCRC), encouraging the involvement of children and young people in my work and consulting them about work I intend to undertake.

I welcome the Joint Committee for Human Rights' short Inquiry into the UK's compliance with the United Nations Convention on the Rights of the Child (UNCRC) and am pleased to provide written evidence. Given the upcoming examination of the UK by the United Nations Committee on the Rights of the Child, this Inquiry is timely. As I have previously expressed to the Committee, I hope that the report produced by the Committee will reflect the whole of the UK's compliance with the UNCRC and in particular the distinct way the stated list of issues directly affects children in Scotland. Key to this is the need to take account of the intricacies of devolution across the four UK jurisdictions, including the differences in health and education systems and legal processes. The Committee should be clear that voices, views and experiences of children and young people across the whole of the UK carry equal weight in both national and international reporting and monitoring processes.

In my response I provide a general overview of key achievements and concerns in Scotland and then focus on the state of children's rights for those groups highlighted by the Committee.

Key achievements in Scotland

Significant progress has been made to bring children's rights to the fore of policy and practice in Scotland, not least through the Children and Young People (Scotland) Act 2014. This Act places duties on Ministers to keep under consideration whether there are any steps which they could take which would or might secure better or further effect of the UNCRC requirements and take steps identified as appropriate. Scottish Ministers must also take account of any relevant views of children of which they are aware and must promote public awareness and understanding of the rights of children. The Act also places reporting duties on public authorities regarding what steps they have taken to secure better or further effect within their areas of responsibility of the UNCRC requirements as well as an extension of the powers of this office to carry out investigations on behalf of individual children and young people. As part of these duties the Scottish Government is developing a Child Rights and Wellbeing Impact Assessment, to record how decisions that impact on children and young people in Scotland have been reached, and provide a basis for ongoing monitoring and evaluation.

We have also seen significant improvements in terms of an expansion of aftercare and continuing care provisions for children who are looked after and care experienced, the enfranchisement of 16 and 17 year olds during the independence referendum and a commitment to expand the franchise for Scottish elections, and a rights-based approach taken to key policy documents such as the National Care Standards and the Continuous Professional Development package on children's rights and the UNCRC for staff in schools in Scotland. I am also pleased to see a shift in culture change, whereby meaningful participation of children and young people is becoming an important part of service delivery for children's organisations, including through the use of my office's 7 Golden Rules.¹

Children's rights however are still too often ignored and their voices are lost and there is much more that can and must be done to ensure that Scotland is fully compliant with the UNCRC.

Key children's rights concerns in Scotland

Below I have identified five key children's rights concerns in Scotland, which must be urgently addressed in order to improve the UK's compliance with the UNCRC.

1. The UNCRC has not been incorporated in Scotland.

Despite calls from this office, the Scottish Human Rights Commission, Together (Scottish Alliance for Children's Rights) and a large number of NGOs, the Scottish Government decided not to take the opportunity to fully incorporate the UNCRC into Scots Law. During Edward Timpson MP's evidence session to the Committee on 25th February 2015 it was stated that "a public sector duty to have regard to the UNCRC has already been introduced in Wales and is coming into Scotland." The Children and Young People (Scotland) Act 2014 does not however, place a duty on the public sector to have due regard to the UNCRC in Scotland. Rather, public authorities must publish a report of steps taken to secure better or further effect of the UNCRC requirements.

Additionally some of Scotland's domestic legislation and policies directly contravene the UNCRC, such as the continued use of non-statutory stop and search, the low age of criminal responsibility, the defence of 'justifiable assault' and the inequitable and inconsistent use of eligibility criteria for service provision, including for children with a disability.²

There often appears to be a lack of strategic oversight and policy coherence in terms of policies relating to children—for example, engagement with children and young people is not routinely captured in a centralised mechanism by the Scottish Government.

Finally, although the Scottish Government is developing a model for a Child Rights and Wellbeing Impact Assessment, the Scottish Government has only completed one such assessment recently, on the Human Trafficking and Exploitation (Scotland) Bill.

¹ Scotland's Commissioner for Children and Young People, 7 Golden Rules for Participation.

<http://www.sccyp.org.uk/education/golden-rules>

² Stalker, K., et al, *It always comes down to money. Recent changes in service provision to disabled children, young people and their families in Scotland*, Scotland's Commissioner for Children and Young People, September 2013.

<http://www.sccyp.org.uk/ufiles/It-always-comes-down-to-money.pdf>

2. Children and young people are not aware of their rights and their voices are not heard.

My office is contacted frequently by children and young people and their families who are not being listened to or who are being ignored in decisions affecting them. I have identified two primary concerns relating to children's participation:

- There is no strategic or cohesive approach being applied across Scottish Government or public bodies and not all engagement is meaningful'
- The views of the most vulnerable and marginalised children are not routinely captured. This may include children with a disability, younger children, gypsy/travellers, and black and minority ethnic children and young people.

With regards to the Children and Young People (Scotland) Act 2014, the Scottish Government must produce guidance for Scottish Ministers on how to implement their duties relating to the voice and participation of children and young people.

3. Children's rights in Scotland are negatively impacted by child poverty and the exacerbating effects of austerity.

A recent meeting of the European Network of Children's Ombudspersons (ENOC), focused on the impact of poverty and austerity on the realisation of children's rights. The position statement notes³ that "living in poverty does not simply affect children's experience during childhood, it also frequently serves to curtail the life chances available to them as adults."⁴

It is clear that in Scotland, as elsewhere in the UK, austerity measures and welfare reform are affecting the most vulnerable and are disproportionately affecting children and young people. Contact a Family's 'Counting the Costs' campaign⁵ revealed that disabled children and their families are being forced to go without food and heating because of their rising bills and benefit cuts.

The Scottish National Action Plan for Human Rights (SNAP) states, "budget decisions do not generally take human rights into account and a combination of welfare reform measures are thought to risk increasing poverty."⁶

I am concerned that the Scottish Government is not allocating "maximum available resources for the implementation of children's rights..." and am keen to ensure that as the Scottish Government implements changes relating to increased devolution that the Scottish Budget fully reflects children's rights. Child rights-based budgeting and impact assessments must be a key element of this.

4. Poor access to high-quality child and adolescent mental health services is stopping some children and young people from realising their right to health.

Access to appropriate mental health services for children is a significant problem in Scotland. Childline states that between 2013 and 2014 they received more than 37,000 calls from Scottish children and young people with issues like depression and low self-

³ ENOC [2014] Position Statement on 'Children and Austerity'.

⁴ Innocenti Research Centre [2007] Child poverty in perspective: an overview of child well-being in rich countries. Unicef.

⁵ <http://www.cafamily.org.uk/news-and-media/contact-a-family-launches-counting-the-costs-campaign/>

⁶ <http://www.scottishhumanrights.com/application/resources/documents/SNAP/SNAPpdfWeb.pdf>

esteem.⁷ The Mental Welfare Commission reports that admissions to non-specialist inpatient settings have risen for a second year in 2013-14 and in a few complex cases there was a need for cross-border transfer.⁸ Scottish Government statistics reveal that between October and December 2014 over 4,100 children and young people started treatment at CAMH services in Scotland. 86% were seen within the Scottish Government target of 26 weeks and 78.9% within the Scottish Government target of 18 weeks. Five Health Boards did not meet the 26 week target.⁹

I am concerned by reports of long waiting times, insufficient numbers of trained staff, a lack of specialist facilities and treatment in inappropriate settings and support the calls for significant investment in order to improve CAMHS in Scotland and ensure that children can access the services that they need.¹⁰

Access to advocacy for children with a mental health disorder is a statutory right, yet in large areas of Scotland, children requiring services due to a learning disability or mental health issue do not have access to independent advocacy. Children's and advocacy organisations report that they are increasingly being required to prioritise adults facing compulsory measures, but children are being detained and receiving treatment without access to independent advocacy.¹¹

Children and young people should have timely access to appropriate mental health services and there should be a fully qualified, sustainable workforce to deliver on all aspects of the mental health service provision for children and young people in Scotland.

5. Children and young people in Scotland do not have equal protection before the law.

Children have the same right as adults to respect for their human dignity and physical integrity and to equal protection under the law, in the home and elsewhere. Section 51 of the Criminal Justice (Scotland) Act 2003 prohibits adults from delivering blows to the head, shaking and using an implement to 'punish' children. Yet this legislation permits a 'justifiable assault' of a child.

Section 51 of the Criminal Justice (Scotland) Act 2003 is in contravention of the UN Committee on the Rights of the Child's continual call to remove the "reasonable chastisement" defence and prohibit all corporal punishment in the family and in any other contexts not covered by existing legislation. I have called for the Scottish Government to urgently address this in the forthcoming Criminal Justice (Scotland) Bill in order to ensure that the right of children and young people to live free from violence is protected.

⁷ NSPCC, *ChildLine Review Under Pressure*, 2014. <http://www.nspcc.org.uk/globalassets/documents/annual-reports/childline-review-under-pressure.pdf>

⁸ Mental Welfare Commission for Scotland, *Young Person monitoring 2013/2014*, 2014. http://www.mwscot.org.uk/media/203515/young_person_monitoring_2013_2014.pdf

⁹ ISD Scotland, *Child and Adolescent Mental Health Services Waiting Times in Scotland*, February 2015. <https://isdscotland.scot.nhs.uk/Health-Topics/Waiting-Times/Publications/2015-02-24/2015-02-24-CAMHS-Report.pdf?16479128600>

¹⁰ Scottish Children's Services Coalition, *Briefing in advance of Scottish Government debate on mental health*, January 2015. http://www.thescsc.org.uk/scsc_publications_157_2801268531.pdf

¹¹ Scottish Independent Advocacy Alliance, *A Map of Advocacy across Scotland 2013-2014*, 2014 <http://www.siaa.org.uk/wp-content/uploads/2014/10/Advocacy-Map-201314.pdf>

The state of children's rights for the groups highlighted by the Committee

The rights of migrant children and children who have been trafficked

The Scottish Guardianship service reports that asylum seeking families in Scotland continue to live on very low incomes and are forced to move accommodation regularly. This can prevent children from settling into their local school and community or may necessitate long commutes which are unaffordable for asylum seeking families.¹²

I have warmly welcomed the recent introduction of the Human Trafficking and Exploitation (Scotland) Bill and hope that the measures contained within the Bill and the proposals for a Strategy will help to tackle human trafficking and will better enable to protection of the rights and meet the needs of those who have been trafficked to ensure that a victim-centred, rights-based approach to human trafficking is embedded in both policy-making and practice across Scotland.

However, I am concerned by the lack of reference to the rights and vulnerability of trafficked, exploited and separated children on the Bill. The Bill provides an opportunity to identify how the specific rights, vulnerabilities and needs of these children are taken into account and should be clear that duty-bearers must act in accordance with international and national law within the context of Scotland's existing legislative and child protection framework. This is particularly important for 16 and 17 year olds, where it must be clear that they are children foremost and should not be dealt with in the adult processes of identification, protection and support.

I have therefore called for the Bill: to specifically take into account the vulnerabilities of children; to define a child as under 18 years of age; to provide clarity over services for 16 and 17 year olds and for all children within the context of child protection; to make provision for the non prosecution of children and young people who may have committed crimes as a direct consequence of being trafficked; and to place the guardianship service on a statutory footing. I have also called for the Bill to contain a clause relating to the presumption of age whereby children whose age is disputed are treated as children until an age assessment has been completed.¹³

Children in custody

Although there have been some improvements in recent years, in terms of the minimum age of prosecution and with regard to the removal of criminal records the age of criminal responsibility at 8, in Scotland is woefully low.

The Scottish Prison Service has launched a vision for young people in custody,¹⁴ which aims to ensure that all young people in custody are enabled to prepare for a positive future.

¹² Scottish Refugee Council, *She Endures With Me: An Evaluation of the Scottish Guardianship Service Pilot*, 2013
www.scottishrefugeecouncil.org.uk/assets/6798/Final_Report_2108.pdf

¹³ In my 2014 evidence to the Scottish Parliament's Justice Committee, available here:
[http://www.sccyp.org.uk/ufiles/Human-Trafficking-and-Exploitation-\(Scotland\)-Bill.pdf](http://www.sccyp.org.uk/ufiles/Human-Trafficking-and-Exploitation-(Scotland)-Bill.pdf)

¹⁴ Scottish Prison Service, *Vision for Young People in Custody*, 2014.
<http://www.sps.gov.uk/Corporate/Publications/Corporate12.aspx>

Children's access to justice and legal aid

In Scotland, children and young people falling outside the Children's Hearing System face a significant barrier in terms of accessing justice.

Part 2 of the Children and Young People (Scotland) Act 2014 extended the powers of this office to investigate rights violations on behalf of individual children and young people. At present the exact nature of these new powers are under consideration by the Scottish Parliament. It is vital for this office to be fully resourced so that children and young people can obtain access to child-friendly complaints processes and methods of redress.

Finally, children and young people's access to legal aid has been recently curtailed through changes to the Advice and Assistance (Scotland) Amendment Regulations 2010 and the Civil Legal Aid (Scotland) Amendment Regulations 2010. If a child applies for assistance, consideration must now be given to financial circumstances of those who owe a duty of aliment to that child or young person. These changes place severe limitations on a child's access to justice and compromises both confidentiality and independence (the ability of the child in his/ her own right to access justice).

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