

# RESPONDENT INFORMATION FORM

United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)



Consultation on the Scottish Government's Draft Delivery Plan 2016-2020

**Please Note** this form **must** be returned with your response to ensure that we handle your response appropriately

## 1. Name/Organisation

**Organisation Name (if applicable)**

Children and Young People's Commissioner, Scotland

**Title** Mr  Ms  Mrs  Miss  Dr

(Please tick as appropriate)

**Surname**

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### 3. Permissions - I am responding as...

**Individual / Group/Organisation**

Please tick as appropriate

- (a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

**Please tick as appropriate**

Yes  No

- (b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

**Please tick ONE of the following boxes**

Yes, make my response, name and address all available

**or**

Yes, make my response available, but not my name and address

**or**

Yes, make my response and name available, but not my address

- (c) The **name** and **address** of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

**Please tick as appropriate**

Yes  No

- (d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

**Please tick as appropriate**

Yes

No

## CONSULTATION QUESTIONS

The questions below cover the outcomes, commitments, themes and next steps set out in the delivery plan.

You can respond to these questions online at the consultation [webpage](#). Or you can complete this questionnaire and email or post it to Cathy Hewit. Please let Cathy know if you would like to respond to the consultation in an alternative format (email: [catherine.hewit@scotland.gsi.gov.uk](mailto:catherine.hewit@scotland.gsi.gov.uk), tel: 0300 244 4000). Further details about the consultation are on p3 of the delivery plan.

### Outcomes

Section 2 of the delivery plan sets out four outcomes the Scottish Government and its partners are working towards. The outcomes are:

1. Equal and inclusive access to the physical and cultural environment, transport and suitable, affordable housing.
2. Equal and inclusive access to healthcare provision and support for independent living, with control over the best use of resources, including support for disabled children.
3. Equal and inclusive access to education, paid employment and an appropriate income and support whether in or out of work.
4. Equal and inclusive access to the justice system without fear of being unfairly judged or punished, and with protection of personal and private rights.

**Q1: Do you agree or disagree that together these four outcomes cover the key areas of life the Scottish Government and its partners must focus on to achieve the rights of disabled people?**

Agree

Disagree

Neither agree nor disagree

**Q2: Please comment here on your response above, or if you have any other comments on the outcomes**

Q 2 Whilst the four outcomes above are to be welcomed, the Delivery Plan as a whole fails to take sufficient account of the lived experiences of disabled children and young people. As such, it fails to tackle some of their key issues. This is despite the introduction stating that the Government is '*supporting disabled children and young people and their families from birth through to school and in to the world of work.*

Only outcome 2 provides the level of detail that I would expect from such a document, yet every right enshrined in the UNCRPD applies to children and young people. Even when they have the same impairments as adults, disabled children and young people face additional challenges. Extra measures are often required and particular attention given to ensure that

they are protected, have access to services and are fully included in society. Moreover, by virtue of their age, they are usually more dependent on others. This means that States must take all appropriate measures to promote their independence and ensure that they are able to access services and achieve their full potential to allow them to participate fully in society

Disabled children and young people are also largely absent in the other outcomes, particularly in areas such as justice, leisure and social activities, youth work, transport, relationships and general communication..

My response to the Scottish Government's Draft Delivery Plan is informed by :

- Research commissioned by my office in 2012<sup>1</sup> which has helped to influence and provide a steer for my current strategic plan 2012 – 2016. This '*critical review and analysis of current research and policy relating to disabled children and young people in Scotland*' remains extremely relevant. It has helped me to identify specific issues affecting the inclusion of disabled children and young people for my work over the last four years and has highlighted areas which still give cause for great concern.
- Enquiries received by our office which have flagged up specific concerns relating to the rights of disabled children and young people. These have been raised by parents, children's rights officers, health professionals and advocacy workers amongst others.
- Meetings with stakeholders working with and for disabled children and young people often as a result of Conferences I have participated in or approaches made to be when I have visited schools or spoken with practitioners. This includes visits to mainstream and 'special' schools to organisations advocating and providing services for families of children with complex needs.
- Workshops undertaken by my Participation and Education team which have brought home the lived experiences of disabled children and young people (from their own perspectives), concerns about issues affecting them, and practical ideas about how these could be addressed.
- Further desk top research undertaken to inform my forthcoming Strategic Plan. This took the form of a review which focused on 'the voice of the child'. It summarises the views of children and young people in Scotland as reported in a selection of recent publications, and has been structured with reference to the reporting clusters defined by the UN Committee on the Rights of the Child (UNCRC). These clusters are a thematic grouping of articles from the UNCRC and draw on the reporting guidelines for State Parties. There is a specific 'cluster' on basic health, disability and welfare', but issues relating to disabled children and their rights are covered in other clusters e.g. family environment and alternative care, education, leisure and culture and special protection measures such as youth justice/ children in conflict with the law. I have also undertaken direct engagement work with disabled children undertaken Children's Parliament with disabled children to inform the strategic plan

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Stalker, K; Moscardini L, A critical review and analysis of current research and policy relating to disabled children and young people in Scotland (2012)

With regard to the last two bullet points, I hope that the Scottish Government has allowed enough time, and brought in the correct expertise to allow for meaningful consultation with disabled children and young people on this Delivery Plan, as well as ensuring that this document was shared across the relevant Divisions in Scottish Government. Only then will we have a plan which truly reflects the experiences and aspirations of disabled children and young people. I know that Inclusion Scotland has been funded to carry out some of this work and my office has benefited from their expertise.

I regret not having had the opportunity to consult directly with children and young people on the Draft Delivery Plan. Although the deadline has been extended a little, I would have preferred to have had more time to allow me to conduct meaningful engagement with children on the questions raised and on the commitments pledged. I remain committed to ensuring that the rights of disabled children and young people are realised in Scotland and would be happy to be involved in any subsequent follow up to this work. This is of course the start of the process and I hope that the voices of disabled children and young people will play a key part in any further work and in the development of the plan. This is sadly lacking in the current draft.

I recognise that there has been considerable effort at all levels of government in Scotland to include disabled children and young people in decisions affecting them and am well aware of the many groups and organisations which continue to commit their resources, energy and commitment to make inclusion a reality for every disabled child and young person. However, despite all this, many disabled children and young people do not enjoy the same chances as their peers and inclusion remains an aspiration for many rather than a reality.

### ***Looked After Children and Young People***

Disabled children and young people represent a significant group in the looked after system. Organisations such as CELCIS and IRISS note that disabled children constitute a significant group in the looked after system; they are more likely to be looked after, remain in care for longer and have a higher risk of being placed inappropriately in comparison to non-disabled children. They also make the point that whilst in care there may be particular barriers to achieving permanency and stability for disabled looked after children and have called for better monitoring of this group of children in order to numbers of disabled looked after children, where they are placed and how this is working out. The need for better communication with these disabled children is also seen as vitally important.<sup>2</sup>

I am particularly interested in school leaver destinations, for all disabled young people and in particular for looked after young disabled people to establish how many young people are still in institutional / residential care or inappropriate care settings after school.

### ***Sexual Health and Relationships***

Another gap within the Delivery Plan is romantic and sexual relationships. This was flagged up in the Stalker and Moscardini Review (2012), with reference to work conducted by the Long Term Conditions Alliance Scotland in 2010. The point was made that many disabled

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<sup>2</sup>Permanence and stability for disabled looked after children (2011)

<http://www.iriss.org.uk/resources/permanence-and-stability-disabled-looked-after-children>

young people have little knowledge of issues relating to sex, such as consent or contraception; this raises concerns about personal safety. They would have liked to know more but felt they should not ask as they associated sexuality with naughtiness.

### ***Right to Privacy***

The child/ young person's right to privacy does not feature in the Delivery Plan, yet featured prominently in discussion with children and young people to inform the 2012 Stalker et al report and has been a major issue in all the work we have conducted with disabled children and young people.

### ***Participation in Public Life***

There is also little focus on participating in public life, both for adults and children. This is particularly acute for children as they are invariably seen as appendages of the State, their parents or the community they live in. Much of this stems from perceptions and assumptions which see the child as having limited capacity to participate in related activities. It is already the case for disabled adults and is compounded for disabled children and young people, whether this be with regard to intimate care needs or conducting relationships.

### ***Other Groups Under-Represented in the Delivery Plan***

Certain groups of disabled children and young people such as those with mental health issues and those from BME communities are also absent from the Delivery Plan, as well as those with additional protected characteristics. These groups need to be included in the Delivery Plan.

### ***UK State Examination by the UN Committee of the Rights of the Child***

I should also note that in May 2015, four UK Children's Commissioners submitted our Fifth Periodic Report of the United Kingdom of Great Britain and Northern Ireland to the Committee on the Rights of the Child. Disabled children and young people contributed to that submission and their voices are represented in the report. It is worth recognising and emphasising the links between the UNCRPD and the UN Convention on the Rights of the Child (UNCRC), both ratified by the UK, and making these explicit in the Delivery Plan. One suggestion could be to identify the relevant UNCRC rights and place them alongside the UNCRPD rights which feature at the beginning of each outcome. Given the potential impact of the Delivery Plan on children and young people, conducting a CRWIA (see my responses to Q 5 and to Outcome 2, commitment 26) would be very helpful in identifying gaps and the benefits and potential impacts on specific groups of disabled children and young people

The rights of disabled children are specifically recognised in article 23 UNCRC, which emphasises the rights of disabled children to a '*full and decent life in conditions which promote dignity, promote self reliance and facilitate the child's active participation in the community.*' The UNCRPD and its Optional Protocol expand on these rights and introduce specific obligations to remove barriers that prevent the social inclusion and independence of disabled people, including children and young people. It also features a wide range of provisions that require States to remove the barriers that impede the meaningful participation of children in young people. It is worth noting that apart from the UNCRC, the number of references about children and young people's rights in the UNCRPD Treaty is second only to

the UNCRC among the UN's core human rights instruments<sup>3</sup>. Its preamble states....

*r. Recognizing that children with disabilities should have full enjoyment of all human rights and fundamental freedoms on an equal basis with other children, and **recalling obligations to that end undertaken by States Parties to the Convention on the Rights of the Child***

Article 7 which relates specifically to children with disabilities' further recommends that

*1. States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.*

*2. In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.*

*3. States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right.*

Both these treaties challenge the medical model of disability which locates the problem with the individual and focus on the human rights of disabled children and young people and adults. They recognise that it is not an individual's impairments that are 'disabling', but societal attitudes, structural issues and the 'disabling environment'. The onus is put on the State and others to guarantee their rights and provide redress if these rights are violated. I am pleased to see that the Draft Delivery Plan reflects this.

## Commitments

The following section invites your comments on the commitments the Scottish Government is making to help achieve the four outcomes.

There are a lot to consider and there is no requirement for you to provide an opinion on all of them if you do not wish to.

### **Outcome 1 - Equal and inclusive access to the physical and cultural environment, transport and suitable, affordable housing**

**Q3: Do you agree or disagree that the commitments (1-16) described at Section 2.1 of the delivery plan will help the Scottish Government make progress towards outcome 1?**

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<sup>3</sup> Children's Rights and the UN Committee on the Rights of Persons With Disabilities(Dec 2015)

Agree

Disagree

Neither agree nor disagree X

**Q4: If you would like to make specific comments on any of the commitments intended to contribute to achieving outcome 1, please do so here. If not please skip to next question.**

(Please refer to Section 2.1 for fuller descriptions of the commitments)

Commitment (Outcome 1)	Comment
1. Transport accessibility	<p>This is an important area for disabled children and young people as transport accessibility opens up a world of opportunities. Disabled children and young people's fulfilment of rights and opportunities are often limited due to the localities they live in. The physical environment of the local community can also be a barrier for those with mobility issues. Many young disabled people also rely on their parents when transport is an issue, which can be restrictive as it will depend on their availability and willingness to get involved.</p> <p><u>Points raised by children and young people:</u></p> <ul style="list-style-type: none"><li>▪ The cost of activities and transport is high and young people feel that mainstream services do little to assist participation – the financial support needs of disabled young people are often overlooked.<sup>4</sup></li><li>▪ Young disabled people have raised issues including getting on and off public transport, the accessibility and availability of transport, and the quality of roads and pavements.<sup>5</sup></li></ul> <p>The above has clear links to article 31 UNCRC which calls on States Parties to respect and promote the right of the child to participate fully in cultural and artistic life and to encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity. It also calls for the recognition of the right of the child to</p>

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<sup>4</sup> Article 12 (2015) *I witness: The UNCRC in Scotland*

<sup>5</sup> Ibid

	rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts. Transport accessibility is central to all of this. A lack of suitable transport provision can lead to isolation for disabled children and young people.
2. Design for Ageing	
3. Raising awareness of accessible design	<p>It is important to address issues other than wheelchair access, such as the needs of those on the autistic spectrum or BSL users.</p> <p>Article 12's report to the UNCRC Committee on the Rights of the Child<sup>6</sup> included a recommendation from young disabled people which stated that '<i>the disabled population be adequately represented when building new developments including consideration of pavements, access to cash machines and play parks.</i>'</p> <p><b>Scottish Awards for Quality</b></p> <p>The Scottish Awards for Quality could also be expanded to consider inclusive communication.</p>
4. Homes which are more accessible	
5. Accessible housing	
6. A new help guide aimed at boosting accessible design	<p>I simply wish to draw attention to the need to involve children and young people in decisions that affect them and the benefits for both parties in doing so. The children and young people focused examples below may provide some pointers</p> <p><b>School Toilets</b></p> <p>My office has engaged children and young people to lead reviews of the standards and qualities of their own school toilets and in developing improvement plans with adults in the school community. This approach has led to improvement and re-design of some school toilet facilities which have furthered</p>

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<sup>6</sup> Article 12 (2015) / witness: *The UNCRC in Scotland*

	<p>children’s rights to dignity, safety and health. My ‘Flushed with Success Active Enquiry Model’ used to support this is one approach that can effectively inform accessible design from a child’s/ children’s rights perspective.</p> <p><b>Other examples</b></p> <p>The work of PAMIS to promote design and implementation of ‘Changing Places Toilets’ has also been informed by the lived experience of disabled children, young people and adults and is extremely helpful.</p> <p>The resources created by Planning Aid Scotland to promote children and young people’s participation in planning processes are also useful</p> <p>The Eco-City approach delivered by Children’s Parliament that places children at the heart of community design in partnership with professionals is a model of excellence.</p> <p>All the above methodologies, approaches and resources should be considered and, where required, adapted to ensure the fullest participation of disabled children and young people in planning for accessible design</p>
7. A new help guide to assist tourism businesses	
8. A new help guide setting out key accessibility hints and tips	
9. Access statement online tool builder	
10. Widening access and increasing opportunities for disabled people to engage in culture, heritage and the arts	<p>I would like to raise a number of points here:</p> <p>The Delivery Plan highlights Creative Scotland’s Plan to undertaking a review of equalities, diversity and inclusion in the arts, screen and creative industries and ensure that the findings from this review inform all areas to Creative Scotland’s work. It is essential that disabled children and young people are involved in this work. We should also be talking about seizing such an opportunity to create inspirational role models</p>

	<p>for disabled children and young people. Children growing up today will see many more disabled people in key roles e.g. TV. films etc. This has to be seen as a positive in terms of increasing inclusion.</p> <p><b><i>BSL (Scotland) Act</i></b></p> <p>The Committee on Economic, Social and Cultural Rights in its General Comment 2 states that ‘children play a fundamental role as the bearers and transmitters of cultural values from generation to generation. This has particular significance for BSL users. I welcomed the passage of the BSL (Scotland) Act (2015). It is a piece of legislation of which Scotland should be very proud. I am also delighted to welcome the involvement of young BSL users in taking this forward through the Deaf Sector Partnership (DSP). I hope that this will lead to a better understanding of the needs of Deaf and Deafblind BSL users, including children and young people.</p> <p><b><i>National Youth Work Strategy</i></b></p> <p>The National Youth Work Strategy 2014 – 2019 is also worth noting with regard to equal access to youth work for disabled young people. See my comments to no 1 (transport accessibility)</p>
11. Recording and reporting of workforce diversity information	It would be useful to take account of internships in this regard.
12. Improving access to the historic environment and collections relating to the historic environment	
13. Disability Inclusion in Sport	<p>Disabled children and young people tell us that they are often reliant on their parents to get them to venues, but that because of costs associated with bringing up a disabled child, sport is given lower priority and is often seen as luxury. Disabled children and young people still continue to experience difficulty accessing mainstream social and recreational’ sport opportunities. As they get older, young people also prefer less</p>

	'organised' settings such as fast food outlets, which are not always accessible to these young people (see Stalker and Moscardini Review 2012)
14. Action plan to promote disabled people's participation in sport and physical activity	See also no 1 (transport)  I am encouraged that SportScotland has committed to working with disabled people to develop and action plan on existing initiatives to promote disabled people to promote disabled people's participation at all levels of sport and physical activity. I hope that children and young people have a role in taking this forward, so that their views can be heard and would urge the Scottish Government and SportScotland to take this into account.
15. Sportscotland investments	
16. One Scotland awareness raising campaign	This commitment is somewhat vague. I would be interested to know how disabled children and young people will be involved in the awareness raising campaign (vis a vis the barriers facing disabled people in society) and if there are opportunities for them to do so. It is likely that they will suggest areas which might otherwise not be considered.  How will this be taken forward in schools?

**Q5: Are there any additional commitments and/or ways that you would strengthen the outcome 1 commitments that you have not already mentioned in any comments above?**

Outcome 1 commitments could be strengthened by

***A systematic approach to children's rights and consideration of how the UNCRPD relates to the UNCRC***

Since June 2015, Scottish Government officials have started to use the Child Rights and Wellbeing Assessment framework to help to meet Ministerial duties under Part 1 of the Children and Young People (Scotland) Act 2014, and in relation to the articles of the UNCRC. I appreciate that work on the UNCRPD Draft Delivery Plan preceded this, but given that it is still draft, I would urge the Scottish Government to ensure that a Child Rights and Wellbeing Impact Assessment (CRWIA) is now conducted. This will help to assess where areas could

be strengthened or altered in the plan. CRIAs (or CRWIAs) can be very helpful in this regard as they allow policy makers to assess the impact on children and young people and their rights (and wellbeing) of policies at different stages of the process i.e. from project development through to implementation. It enables the impact of each commitment made to be predicted, monitored and, if necessary, avoided or mitigated.

In my answer to Question 2, I noted that the UNCRPD places a responsibility on States Parties to ensure that 'children with disabilities should have full enjoyment of all human rights and fundamental freedoms on an equal basis with other children, and recalling obligations to that end undertaken by States Parties to the Convention on the Rights of the Child'. Article 7 UNCRPD reinforces this point. My office would be happy to provide support or advice in this regard.

### ***Public transport***

#### ***- Bullying***

With regard to transport, young disabled people have told me that they are often afraid of using public transport because of their fear of being bullied. (this ties in with the commitment regarding hate crimes).

#### ***- Inclusive communication/s***

A further issue is a lack of understanding around inclusive communication. For example, there is little thought given to BSL users when the tannoy announces a change of platform and signage (although getting better in some places) is not universally accessible. Article 9 of the Convention requires countries to identify and eliminate obstacles and barriers and ensure that persons with disabilities can access their environment, transportation, public facilities and e-services, and information and communications technologies. Specific measures are need to taken to eliminate disability discrimination as well as the social isolation of disabled people. One way of doing this is provide accessible public transport. Thought should also be given to adopting a universal symbol signage system across all modes of transport. (see [Q for further comment on inclusive communication](#))

#### ***- Early Years***

The final point I wish to make is the need to improve and transform our approach to children in their earliest years – from pre-birth through to their entry into formal education. This is a priority for my office, yet there is little mention of the early years in the document as a whole, and one which cuts across all four outcomes.

**Outcome 2 - Equal and inclusive access to healthcare provision and support for independent living, with control over the best use of resources and support for disabled children**

**Q6: Do you agree or disagree that the commitments (17-35) described at Section 2.2 of the delivery plan will help the Scottish Government make progress towards outcome 2?**

Agree

Disagree

Neither agree nor disagree

**Q7: If you would like to make specific comments on any of the commitments intended to contribute to achieving outcome 2, please do so here. If not please skip to next question.**

(Please refer to Section 2.2 for fuller descriptions of the commitments)

Commitment (Outcome 2)	Comment
17. Health Inequalities of people with learning disabilities data collection	This is an important area for disabled children and young people and I welcome its inclusion in the Draft Plan.
18. Advocacy	<p>All children and young people have the right to have their views, wishes and feelings taken into account when decisions are made about their lives (article 12, UNCRC). This is particularly important for disabled children and young people and the importance of high quality independent advocacy cannot be stressed enough. The advocacy process itself can improve a child or young person's confidence and self esteem and enhance their independence. This is particularly important for children and young people with communication needs or severe learning disabilities, where assumptions are often made that the child is lacking capacity and is unable to express a view or contribute to complex decision making. There is much evidence to show that this is not the case, but rather the contrary if they are supported and enabled to do so through advocacy.</p> <p>Elsley (2010) in her study of advocacy support for children and young people in Scotland<sup>7</sup> found significant gaps in provision for those who were disabled or had mental health issues as well as for children and young people in the looked after system. For these children and young people, the principle principle that advocacy support is free from conflicts of</p>

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<sup>7</sup> Elsley, S. (2010) *'Advocacy makes you brave': Advocacy support for children and young people in Scotland*, Edinburgh: The Scottish Government.

	<p>interest is particularly relevant</p> <p>Elsley also reported inconsistency in the type of service and the geographical coverage available to these groups, noting in particular that insufficient support was available to young people moving onto adult services. The 2012 report by Stalker and Moscardini referred to in Q2 noted that the paucity of independent advocacy for disabled children has serious implications for both their social inclusion and the wider realisation of their rights.</p> <p>This same report also makes the point that that in many cases parents act as the child’s main advocates, <i>‘fighting to secure mainstream services and ‘ordinary’ opportunities’</i>. However, some children perceived their parents as over protective, which can reduce opportunities and lead to social isolation. There was evidence of children resisting adult (‘parents and teachers’) views of their relative incapacity and need for protection although little indication that they achieved greater independence as a result. Advocacy can play a crucial part here.</p> <p>In relation to this, I have commented on the Schedule to the Education (Scotland) Bill currently going through the Scottish Parliament. I expressed disappointment that the new legislation, if passed, will introduce a new capacity test which children will have to undertake before being able to exercise their right. Along with the Equality and Human Rights Commission, the Scottish Human Rights Commission, ENABLE, Together (the alliance for Children’s rights in Scotland) and Govan Law Centre, I have been urging the Scottish Government not to proceed with these proposal as they serve to place barriers to children accessing their rights. (See also Outcome 3, commitment 36)</p>
19. The New framework for Hearing the Citizen Voice	
20. Routes to Inclusion – ‘Engaging disabled	

people and their organisations'	
21. Allied Health Professionals and Independent Living – delivery plan	
22. NHS - 2 year internship for disabled graduates in partnership with NHSScotland and Glasgow Centre for Inclusive Living Equality Academy	
23. NHS Scotland Learning Disability Employment Programme	
24. Disability Inclusion Promotional Campaign	
25. Measure compliance of NHS Boards on embracing equality diversity and human rights in the NHS in Scotland	
26. Child Rights and Wellbeing Impact Assessment (CRWIA) for all policy development affecting children	This is an important development and I welcome its inclusion. As noted earlier, the timing issues may have prevented the Government doing a CRWIA for this piece of work, but if not, it would be helpful to publish this alongside the Delivery Plan.
27. Fund for projects to support disabled children and their families	Reference is made to the Disabled Children and Young People's Advisory Group. My understanding is that this group's particular focus was around the guidance and implementation of the Children and Young People (Scotland) Act 2014. I would be extremely interested to hear how this group has informed the Draft Delivery Plan, along with details on how the group will continue to advise on policy development as stated in this commitments
28. Information Hub	<p>I agree that parents and carers of disabled children and young people often struggle to find the information that they need about their rights, support services, health and benefits.</p> <p>My participation and education team recently met with parents of very young disabled children, to talk about work with the 0-2s that we will shortly be commencing. This provided valuable information about access to services and barriers faced by these parents.</p> <p><i>'Sometimes it is really difficult to be the</i></p>

	<p><i>parent of a newborn baby with disabilities. It might be completely new to you, and you don't know who to ask, or where to go, for advice and support. It can leave you feeling lonely and isolated</i></p> <p><i>'When I am on my own I often lose confidence but I pick myself back up and try to get on with it'</i></p> <p>'When I know my child isn't getting the help and support they really need to develop. I feel helpless and useless. I travel miles to get care and services in a different local authority that are actually available close to me but he doesn't qualify for them. (i.e. hydrotherapy, physiotherapy)</p> <p>When asked ' What isn't available that should be? - the answers included.... <i>'Knowing what support groups that are in the local area specific to the needs of you and your baby'</i></p> <p><i>'Information about what is already out there to be available to us'</i></p> <p><i>'Easy access to services when we need it'</i></p> <p>The commitment is an important one, but it is lacking in detail. How does the government intend to develop better information and find out the information needs of disabled children and their families?</p> <p>This commitment also highlights the fact that many of these commitments are not stand alone and link to other commitments and outcomes, as well as the ' cross cutting themes' outcomes. It might be worth undertaking an exercise to flesh this out.</p>
29. Transitions Test of Change Project	
30. Child Internet Safety stakeholder group	More detail is required on this commitment
31. Review of inclusion of people with learning disabilities or autistic spectrum disorders under the Mental Health (Care and Treatment) (Scotland) Act 2003.	I agree with the commitment to a review and see this as long overdue.

32. Consult on Scottish Law Commission's review of the Adults with Incapacity Act and thereafter carry out a scoping exercise in relation to a wider review of the Adults with Incapacity legislation.	
33. Review of policies on guardianship and consider circumstances in which supported decision making can be promoted	
34. An integrated children's rights and equalities impact assessment for the Scottish Children's Reporter Administration	I support this commitment
35. Enhanced learning and development framework for foster carers	<p>I have stressed the need for improving the support for disabled children and young people in the looked after children throughout my response, so I am pleased to see this running in tandem with improvements to support looked after disabled children and young people.</p> <p>A recent enquiry to my office illustrated the need for support to foster carers of disabled children and young people. This particular case concerned a foster carer who was seeking permanence for her disabled fostered child, but her funding had been cut by the local authority. She is now re-considering permanence as an option, as she feels she is unable to provide for this child in the way that she should. The need for good permanency planning is essential.</p> <p>I would appreciate more detail on this commitment</p>

**Q8: Are there any additional commitments and/or ways that you would improve the outcome 2 commitments that you have not already mentioned in your answers above?**

***Mental Health Provision***

In 2008, the Committee on the Rights of the Child recommended that additional resources and improved capacities be employed to meet the needs of mental health problems

throughout the UK, with particular attention to those at greater risk. This is an area of great concern, but it is not referred to in the document. In the UK Commissioners joint report to the UN Committee on the Rights of the Child, we highlighted the particular vulnerabilities of children and young people with mental health needs. The importance of this has been recognised recently in the recent announcement of additional £54m to be given to CAMHs as this demonstrates a commitment by the Scottish Government to addressing this, but question why it does not feature in the Delivery Plan. Many organisations are undertaking some excellent work on this e.g. 'See Me' with schools and the new mental health campaign which the Scottish Youth Parliament is now considering.

### ***Children transitioning to adulthood***

There are also major issues for children transitioning to adulthood (\*and not just with regard to health). Disabled young people continue to experience unsatisfactory transitions from children's to adult services or to independent living. In the Commissioners' report I highlighted particular Scottish issues with regard to health e.g. children are waiting too long or appropriate packages of care to be put into place; those whose life expectancy is expanding due to medical advances are finding that there is a lack of service provision for them. Children and young people also report that their voices are not being listened to, nor are they being asked for their views. The transition process in particular is often not explained to them in an accessible way and the jump to adult services is often too steep. Children are being placed in inappropriate places such as adult wards due to a lack of service provision and transition does not start early enough. A commitment must be made to address the numerous issues around transitioning into adult for disabled children and young people.

These issues are often exacerbated for those in the looked after system. IRISS refers to a lack of planning, inadequate information and consultation with young people, and restricted housing and employment options and poor support after leaving care are cited (Rabiee et al, 2001). The point is also made that services for disabled care leavers are not always co-ordinated and planned with mainstream leaving care services<sup>8</sup>.

Key to this is better interagency planning to ensure continuity and improve monitoring of looked after disabled children as they reach their teenage years so that planning starts and continues early. The main focus of transition planning should be listening to the wishes and feelings of disabled young people and seeking to fulfil their aspirations.

### ***Administration of medication in schools***

I am extremely encouraged that The Cabinet Secretary for Education and Lifelong Learning has committed to the review of guidance on the Administration of Medicines in Schools as my office, along with the EHRC has been involved in this issue or some considerable time. Our particular experience has mainly been around two groups; those with type 1 diabetics, particularly young children unable to self-administer insulin; and those with severe and complex medical needs which need to be attended to during the school day. The main issues appear to be around the employment and training of support staff and other

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<sup>8</sup> IRISS Insights, *Permanence and stability for disabled looked after children* (May 2011)

professionals (or volunteers) administering medication in schools, clarity around indemnification and insurance and the roles of health and education staff. I look forward to seeing progress in this area as children's rights e.g. the enjoyment of the highest attainable standard of health and their right to an education directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential are being compromised.

**Outcome 3 - Equal and inclusive access to education, employment and an appropriate income whether in or out of work**

**Q9: Do you agree or disagree that the commitments (36-48) described at Section 2.3 of the delivery plan will help the Scottish Government make progress towards outcome 3?**

Agree                       Disagree                       Neither agree nor disagree

**Q10: If you would like to make specific comments on any of the commitments intended to contribute to achieving outcome 3, please do so here. If not please skip to next question.**

(Please refer to Section 2.3 for fuller descriptions of the commitments)

Commitment (Outcome 3)	Comment
36. Continued commitment to implement additional support for learning	<p>See also Outcome 2 Number 18 response.</p> <p>I welcome the Scottish Government's continued commitment to effective implementation of additional support or learning, but this must be sufficiently funded to ensure effective implementation. I have received many letters from parents on cuts to funding and how this has affected ASL support. This is also an issue I flagged up in the joint Commissioners' report.</p> <p>I have particular concerns in two areas:</p> <p>1. The schedule to the Education (Scotland) Bill which seeks to extend rights to children aged 12-15 years in relation to the Education (Additional Support for Learning) (Scotland) Act 2004. Whilst I welcome the policy intention, my view is that the way in which the Scottish Government is seeking</p>

to extend these rights is deeply flawed. Rather than freely extending rights to children, the Bill places a number of barriers that may prevent them from doing so. In order to exercise their rights, a child must successfully negotiate two assessments; 1.) a 'capacity assessment', carried out by the Local Education Authority or an Additional Support Needs Tribunal and then 2.) an 'adverse effect on well-being' assessment. The Government sees these as being necessary to safeguard the well-being of a child. I believe that they are unnecessary. Rather than empowering children, they ensure that the balance of power remains in the hands of adults. I noted that the Age of Legal Capacity Act (Scotland) Act 1991 will be turned on its head for this group of children. Rather than having a presumption of capacity at 12, the presumption is that no child has capacity. The onus is placed on the child to prove their capacity via the 'capacity assessment which is a major departure from current practice. The Scottish Government has also stated that the 'adverse effect on well-being assessment is also there to ensure that they can 'cope' with the experience of exercising their rights. If it is deemed not to be in the child's 'best interests', even if the child has capacity, the child will not be allowed to exercise their rights and someone else will have to do so on their behalf (e.g. a parent). My view is that what is needed is appropriate support for the child to help them through the process. It is arguably more damaging to children to say that they cannot access their rights where they feel capable of doing so (and they have capacity to do so), than allowing them to exercise their rights and then subsequently finding the process too difficult for them.

I also noted that the 'best interests assessment' also directly conflicts with the concept of legal capacity i.e. if children has legal capacity to exercise rights, then it is

	<p>for them to determine whether it is in their best interests to do so, and to take into account if and how their wellbeing may be affected. That is part of what it means to have rights – deciding whether and how best to use them.</p> <p>I have called for a presumption of capacity at 12 to apply to all children exercising rights extended by the Education (Scotland) Bill.</p> <p>2. The level of variation among local authorities in the proportion of looked children assessed as having additional support needs under the Act. Looked after children are presumed to have additional support needs' yet there are few assessments and CSPs for this group of children and the variations are too large to be explained by differences in the populations of children in different areas. There is also a concern about the level of variation in the proportion of children assessed for a CSP. Most looked after children already have more than one 'appropriate agency' involved in their lives (e.g. Education and Health) and it is reasonable to expect a high number of these to be assessed as being in need of a CSP. This must be a priority area for the Scottish Government and should feature in the Delivery Plan.</p>
<p>37. Anti-Bullying – respectme and review and refresh of the 'National Approach to Anti-bullying for Scotland's Children and Young'</p>	<p>I am pleased to see this commitment supported by the Government. Respectme is doing excellent work as are ENABLE whose new campaign 'Be The Change' is challenging the use of abusive language towards people who have learning disabilities.</p> <p><b>Accessibility strategies</b></p> <p>With regard to young people, Education (Disability Strategies and Pupil Educational Records) (Scotland) Act 2002 requires those bodies responsible for the</p>

	<p>provision of school education to take account of their planning for pupils or prospective pupils with disabilities and also to produce accessibility strategies.</p> <p>Section 85 of the Equality Act 2010 also places duties on responsible bodies to prevent discrimination against disabled pupils.</p> <p>Many of these accessibility plans are inconsistent, yet there could be potential here to address issues such as bullying (and indeed the built environment). Both of these statutory obligations should be better monitored, resourced and enforced.</p>
38. Overarching commitment from Fair Work Directorate	
39. Investment in Developing the Young Workforce and further investment to support young people with barriers to employment including disability	<p>The difficulties around transition to adulthood for disabled young people is continually raised as being a serious issue. It is essential that we address social, systemic and structural difficulties which are often faced by disabled young people at this time of their lives.</p> <p>I have also heard numerous accounts of young people volunteering for a considerable length of time, without this leading to paid employment. This needs to be addressed and initiatives which promote access to employment of disabled young people supported and enhanced.</p> <p>A further issue is about school leaver destinations and how accurate they are. I touch upon this in question 18.</p>
40. Supported Employment Model	
41. Supported Businesses	
42. Establishment of a Fair Work Convention	
43. Disability Employment Services in Scotland	<p>Poor disability awareness has been reported to me by young people on a number of occasions, particularly with relation to Job Centre staff. I know that</p>

	Inclusion Scotland's submission makes this point and I am in complete agreement. This points to a crucial need for disability awareness training.
44. Ensuring flexible and integrated support is put in place to support individuals with particular needs, including disabled people into work	Further detail is needed on this commitment
45. Abolish fees for employment tribunals and consultation re barriers that disabled people face when raising a claim at an Employment Tribunal	
46. Disability Benefits Advocacy Support	
47. Future reform of local taxation will take into account the particular needs expressed by disabled people	Yes
48. Establishment of a social security system that treats people with dignity and respect during their time applying for, being assessed and receiving disability benefits.	In the UK Children's Commissioners' report to the UN Committee on the Rights of the Child, we (the Commissioners) highlighted the fact that disabled children and young people and those living with a disabled family member have been and continue to be disproportionately affected by Welfare Reform/ Government spending decisions made since 2010. This has resulted in a regression of disabled children's rights. The Scottish Government have helped to mitigate against these measures, but more can be done

**Q11: Are there any additional commitments and/or ways that you would strengthen the outcome 3 commitments that you have not already mentioned in your answers above?**

A further commitment should be on the education of Deaf children in our schools. In my submission to the British Sign Language (Scotland) Act, I made the point that Deaf children and young people currently have to rely on BSL level 2 teachers to access their education, which is something that would not be accepted for any other group of children.

I stressed the need to extend the pool of proficient teachers and interpreters. If this does not happen the situation will remain dire. Unsurprisingly these children will often have a higher level of fluency than the teacher in the language they are being taught. In addition, it is not unusual for teachers of specialist subjects relying on communication

support workers to interpret a subject they have limited knowledge in.

I was delighted to welcome the BSL Act, but the results of implementation will only be seen in the long term. This is a situation which must be given priority.

**Outcome 4 - Equal and inclusive access to the justice system without fear of being unfairly judged or punished, and with protection of personal and private rights**

**Q12: Do you agree or disagree that the commitments (49-54) described at Section 2.4 of the delivery plan will help the Scottish Government make progress towards outcome 4?**

Agree

Disagree

Neither agree nor disagree

**Q13: If you would like to make specific comments on any of the commitments intended to contribute to achieving outcome 4, please do so here. If not please skip to next question.**

(Please refer to Section 2.4 for fuller descriptions of the commitments)

<b>Commitment (Outcome 4)</b>	<b>Comment</b>
49. Review of legal aid contributions for disabled people	The way a child is assessed for civil and children's legal assistance was altered in January 2011, through the Advice and Assistance Amendment Regulations (2010) and the Civil Legal Audit Scotland Regulations (2010). A solicitor assessing a child or young person who applies for civil or children's legal assistance must now take into account the financial circumstances of anyone who owes an aliment to that child or young person. This has an impact on their access to independent legal advice. Disabled young people without sufficient means should be able to obtain legal advice and assistance, and where litigation is contemplated, legal representation, free of charge in any case where a child's best interests are engaged. Tis should take into account appropriate support where required.
50. Encourage reporting of hate crimes against disabled people	I am pleased to see that Police Scotland is encouraging third party reporting around hate crime and being proactive about doing so. In

	many cases - and particularly for young disabled people, victims/witnesses of Hate Crime do not feel comfortable speaking directly to the Police.
51. Accessible information	
52. Accessibility of sites and services	My understanding is that only covers physical accessibility for the seven sites? This requires so much more. In order to ascertain what the needs is, a through auditing process should be set up. Consideration should be given to those on the autistic spectrum and those with hearing impairments.
53. Develop and deliver a 'pilot' improvement project focusing on preventing and removing disability hate crime from society	
54. Engage with DPOs to explore extent of violence against disabled women and girls, in the context of our ambitions under Equally Safe	

**Q14: Are there any additional commitments and/or ways that you would improve the outcome 4 commitments that you have not already mentioned in your answers above?**

## Themes

Section 3 of the delivery plan outlines three 'cross-cutting' themes – which are ways of working – and which will underpin all that we do to deliver each of the outcomes. The themes are:-

- Disabled people are empowered to participate fully
- Communication is accessible and inclusive of all
- The barriers facing disabled people are known, understood and addressed

**Q15: Do you agree or disagree that these are the most important themes that the Scottish Government needs to build in to the way it works across all activity to achieve the rights of disabled people?**

Agree

Disagree

Neither agree nor disagree X

**Q16: Please comment here on your response above, or if you have any further comments on the themes**

As it stands, the Draft Delivery Plan contains some firm commitments, yet other commitments are no more than vague promises, lacking in detail. The need for fully resourced commitments should be considered.

My main reservation however is regarding what appears to be a lack of consideration of children and young people's rights, yet this is essential because of their particular vulnerabilities/ age. Whilst there will be some crossover, this document needs to be children's rights proofed. Others have spoken about the PANEL Principles and I agree that this would be a good starting point and an excellent framework from which to consider the rights of disabled children and young people.

I would imagine that as the plan develops and progresses, monitoring and evaluating mechanisms and frameworks will be put in place in order to assess progress and evidence impact. My question to you is how each commitment will be measured and assessed in accordance with the above.

***Participation***

All too often children and young people tell us that they have been asked to take part in an activity, but that they are often left waiting or feedback. Participation must be meaningful and conducted by skilled professionals.

My 'see me, read me, hear me, sign me' approach delivers core information to children in a range of accessible ways. The 7 Golden Rules for Participation – developed with children – is a key resource, the contents of which are communicated in line with this approach, using text, pictures, BSL, audio and specially created symbols. I would be happy to share our work with the Scottish Government

***Inclusive Communication***

Making communication inclusive has been an important part of my work. For example, over the last year, the team has met with disabled children and young people (and their families) in a variety of settings (e.g. nurseries, schools, support groups, youth work organisations) to discuss how our office materials could be more accessible.

I also recommend the recommendations contained in 'The 'Joe' Report - Making Scotland an Inclusive Communication Nation for him and for everyone else<sup>9</sup>, funded by the Scottish Government. One of its key recommendations calls for 'A national standard or regulation is developed for inclusive communication'.

This report written by the Inclusive Communication in Scotland (ICiS) project on behalf of

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<sup>9</sup> (<http://www.cen.scot.nhs.uk/files/ICIS-Report.pdf>)

Communication Forum Scotland (CFS) has produced a valuable document, with children and young people being part of the expert group which provided advice on the project.

My final comment here refers to the need for skilled independent advocacy (as noted earlier in my submission)

### ***Raising awareness***

Many disabled young people tell us of negative experiences and the poor attitudes from members of the public – from the Job Centre Plus to teachers to passengers on trains. We would support Inclusion Scotland’s call for a large scale and on-going public campaign similar to ‘see me’ and for this to include disabled children and young people. Crucially, and as referred to in the report, the parents we have spoken to would have welcomed disabled role models to speak to them when their children were small. Negative attitudes from professionals and particularly from health professionals has also been raised as an issue, (particularly the emphasis on the medical model).

We also need to hear directly from children and young people with multiple protected characteristics, a point I have raised earlier in my submission.

## **Next steps and any further comments**

**Q17: Section 5 of the delivery plan details the next steps for the Scottish Government’s approach to making the UNCRPD a reality for disabled people in Scotland. Do you have any comments on this section, or anything additional you would like to see added here?**

**Q18: Are there any other comments you would like to make on the overall delivery plan, to inform its further development and implementation?**

There is much to welcome in the Plan and I appreciate the work that has gone into this document and the support given to disabled people’s organisations to ensuring that the Plan reflects their concerns. In my submission, I have referred to a number of Government policies and funded projects which have helped to make a real difference to the lives of disabled children and young people. Many of these need to be built upon and taken forward

I think I have covered my main concerns in the document, the two main ones being, the need for proper resourcing to take forward these commitments and the lack of reference to

children and young people/ children and young people's rights. As noted, there needs to be better linkage between the two Treaties (the UNCRC and the UNCRPD) in the final Delivery Plan. It may be an idea to look at the UNCRPD Concluding Observations to see how they marry up. Other useful documentation include the General Comments produced by the UN Committee on the Rights of the Child, particularly General Comments especially:

- General comment No. 7 (2005): Implementing child rights in early childhood
- General Comment No 9 (2006): The rights of children with disabilities
- General Comment No.12 (2009) on the right to be heard
- General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)
  
- General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24)
- General Comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art. 31)

### **Data**

My final comment relates to data and ensuring that this is relevant and accurate.

In 2011 the Scottish Government published a *'Report of the National Review of Services for Disabled Children'* in which they stated that *"There is also likely to be a number of disabled children who are not captured by either education or health systems. This therefore suggests that while valuable data on disabled children exist in a variety of places, there remains no known single collation of data about the number, or nature of assessments of disabled children and young people in Scotland"*.

This statistical gap whilst acknowledged was not reflected in the Action Plan from that Review.

The Scottish Government currently state on their website

*"The Scottish Government does not currently have information on disability in relation to children and families. Information that was previously labelled as 'disability' does not meet the definition of disability outlined in the Equality Act 2010 and is more accurately described as additional support needs. The Scottish Government hope to implement a new disability question by 2015/16."*

It would be helpful to know if a new disability question has been introduced, and where it would be located. Accuracy will depend on school staff using a broad and inclusive definition in line with the Equality Act when completing their returns.

### **Requirement to record information in line with the Equality Act (2010) and the (Additional Support for Learning) (Scotland) Act 2009**

The Equality Act 2010 requires schools to take active steps to avoid discrimination. Pupil data on ethnicity, disability, gender, faith, young carer status and age must be accurate and reviewed annually. The Education (Additional Support for Learning) (Scotland) Act 2009 requires local authorities to collect data on learners with additional support needs,

and new provisions in respect of learners who are looked after.

All Scottish local authorities now use the SEEMIS system to record school data, including most of the data required under the Equality Act. However, the questions relating to disability in SEEMIS are not cognisant of the definition of disability used in the Equality Act 2010 and use a medical model of disability. Pupils are recorded as either assessed or declared disabled. Assessed disabled means that a professional has made an assessment. Declares disabled means that the pupil has been identified as disabled but this has not been confirmed by a professional. Whilst the introduction of a new disability question in the census, supported by an update to SEEMIS would be welcomed The Education (Additional Support for Learning) (Scotland) Act 2009 requires education authorities to collect data on learners with additional support needs and this is also done through SEEMIS.

Not all pupils with additional support needs will be disabled, for example young carers, looked after children and those with English as an additional language. Both disability and Additional Support for Learning data is reported each year as the Pupil Census: <http://www.gov.scot/Topics/Statistics/Browse/School-Education/PubPupilCensus> The large disparity between the number of pupils recorded as being declared or assessed disabled (15,156 in 2014) and having additional support needs (140,472 in 2014) suggests the former is far from an accurate figure.

Whilst the inclusion of a single question on disability in the Pupil Census is welcomed, accurate statistics will depend on school staff using a broad and inclusive definition of disability, in line with the Equality Act 2010, when completing their returns.

At the moment, people are directed to a number of sources of data, not all of which are current. Back in 2009, the 'For Scotland's Disabled Children' project attempted to map existing data and statistics to find out as much as possible about disabled children in Scotland. That data is now nearly 7 years old. Other sources include the 2011 Census, National Records of Scotland, and DWP figures which break down those in receipt of DLA and those in receipt of PIP