

**Universal Periodic Review
United Kingdom of Great Britain and Northern Ireland
Fourth Cycle
Response from the Children and Young People's Commissioner Scotland**

March 2022

Established by the Commissioner for Children and Young People (Scotland) Act 2003, the Commissioner is responsible for promoting and safeguarding the rights of all children and young people in Scotland, giving particular attention to the United Nations Convention on the Rights of the Child (UNCRC). The Commissioner has powers to review law, policy and practice and to take action to promote and protect rights.

The Commissioner is fully independent of the Scottish Government.

Introduction

We welcome the opportunity to submit to the Universal Periodic Review of the United Kingdom of Great Britain and Northern Ireland (UK). This response is informed by our work, the views of children in Scotland, our [Independent Child Rights Impact Assessment on the pandemic](#), and the "[A Place in Childhood Report](#)."

In 2019, there were 1 million children in Scotland - [about 18% of Scotland's population](#). Since the UK's last review, the pandemic has significantly affected the lives and human rights of children in Scotland. Deep and persistent inequalities remain and have increased in some areas, particularly poverty, food insecurity, and mental health.

Child poverty

Poverty is the single biggest issue affecting children's rights in Scotland and children have told us it is the most important issue for them. Data show that [over half \(53%\) of children in Scotland](#) lived in poverty at least once over a 12-year period. Currently, over 25% of children live in poverty and 16% live in [persistent poverty](#).

Poverty has a lifelong impact on children and their outcomes and affects the full range of children's human rights, including to life, physical and mental health, an adequate standard of living, and education. A lack of child rights-based approach, social security cuts and welfare reform, and the [rising cost of living](#) mean [child poverty numbers are increasing](#).

Most of the benefits with the potential to have the largest impact on child poverty [are reserved to the UK government](#),¹ which does not adopt a child rights-based approach to poverty. Despite [the UN Committee on the Rights of the Child's recommendation](#),

¹ Within the UK, some functions of central government are devolved to the independent executive and legislatures of the Northern Irish, Scottish and Welsh administrations. More information can be found [here](#). Social security remains primarily an issue "reserved" to the UK government, but some functions are devolved to Scotland.

the UK government has not undertaken a comprehensive assessment of the cumulative impact of social security and tax credit reforms introduced, and has introduced several changes detrimentally affecting children and their families.

The UK government limits support for families with more than two children receiving [Child Tax Credit](#) and the total amount of support received through the Benefit Cap.² Since its introduction in 2013, the Benefit Cap has fallen from £26,000 to £20,000 per year for a couple or single-parent household. The [Welfare Reform and Work Act 2016](#) prevents parents claiming the child element in tax credits or [Universal Credit](#)³ for third or subsequent children born after 06 April 2017. [Exceptions exist](#) for this limit, including where the mother can show the child was conceived because of non-consensual intercourse.

The £20 uplift in Universal Credit during the pandemic helped lift people out of poverty quickly. However, this ended in October 2021 despite concerns raised by [international](#) and [domestic](#) human rights experts.

The Scottish government has some devolved social security powers and used them during the pandemic, including increasing funding for crisis grants. However, Scottish government measures to reduce child poverty are not progressing quickly enough and Scotland is not on track to meet the [statutory targets on child poverty by 2030](#). We welcome the [Tackling Child Poverty Delivery Plan 2022-26](#), the increase in [Scottish Child Payment](#), and the commitment to take steps under devolved social security powers to mitigate the Benefit Cap.

Recommendations

- The UK and Scottish governments should:
 - o adopt a child rights-based approach to child poverty reduction and ensure that children are actively and meaningfully engaged in the development of laws and policies concerning them.
- The UK government should:
 - o undertake an assessment of the cumulative impact of the full range of social security and tax reforms on children and their families.
 - o re-instate the £20 uplift to Universal Credit and adopt measures to reverse welfare reform that negatively affect children and their families, including the Benefit Cap; and implement the UN Special Rapporteur on Extreme Poverty and Human Rights' [recommendations](#).

Food insecurity

Food insecurity is a [longstanding problem](#) for children UK-wide. It affects children's physical and mental health, lifelong development, and educational outcomes. [Children](#)

² The 'benefit cap' is a cap on the maximum level of welfare benefit that can be paid to a household whatever the size, which disproportionately affects families with children and particularly those with a larger number of children.

³ Universal Credit is a monthly payment for those on low income, out of work, or unable to work to help with living costs.

[experiencing food insecurity](#) are more likely to face adverse health outcomes, developmental risk, obesity, and malnutrition.

[Three of the main causes](#) of food insecurity are low income, benefit delays, and benefit changes. These, combined with increasing housing, food, and fuel costs, mean many families are reliant on foodbanks and free school meals.

Prior to 2021, there was [no single nationwide government measure for hunger](#) in the UK and quality disaggregated data remains lacking at devolved or UK level. Prior to the pandemic, [an estimated 1.9 million children](#) experienced food insecurity across the UK. In 2019, 720,504 children UK-wide, including 80,623 in Scotland, [received food from 1,200 foodbanks](#),⁴ with a 13% increase in food bank use in Scotland to feed children between 2018/19 and 2019/20. In January 2021, [2.3 million children in the UK](#) lived in households that had experienced food insecurity in the previous 6 months⁵ and 10% of households with children reported food insecurity in January 2021.

[Scottish Government analysis](#)⁶ found that 25% of children lived in households with marginal, low, or very low food security in 2019/20. [Children experiencing poverty](#) were less likely to have high food security: just 48% of those in relative poverty and 49% of those in absolute poverty lived in high food security households.

Food insecurity [has worsened](#) since the pandemic and there are no comprehensive data on the number of children affected since March 2020. In Scotland, during school closures, alternatives to free school meals were provided. Delivery was inconsistent, particularly the availability of direct cash payments, which have the highest rates of take-up by parents. The value of substitution also [varied across local authorities](#).⁷

Recommendations

The UK and Scottish governments should:

- Review eligibility criteria and adequacy of financial support.
- Collect, analyse, and monitor data on the extent and impact of food insecurity on children across the UK, disaggregated by nation, and introduce targeted measures.
- Regularly monitor and assess the effectiveness of policies and programmes on food security, including school meal programmes and foodbanks, and programmes addressing infants and young children.

⁴ This represented around two-thirds of foodbank provision.

⁵ 12% of households with children

⁶ Most of the figures in these data tables come from Department for Work and Pensions, 2021, *Family Resources Survey: financial year 2019 to 2020*, <https://www.gov.uk/government/statistics/family-resources-survey-financial-year-2019-to-2020>. The Family Resources Survey includes ten questions on household food security but the questions do not directly ask about the food security of children. Social Market Foundation, 2020, *Measuring and mitigating child hunger in the UK*;

<https://www.smf.co.uk/wp-content/uploads/2020/12/Measuring-mitigating-child-hunger-Dec-20.pdf>

⁷ The amount varied from £10-£20 per week.

Mental health

[Mental health](#) is a priority issue facing children in Scotland who are unable to access appropriate mental health treatment. This has [worsened due to the pandemic](#) with increased delays in access to services and support and the pandemic's direct impact on mental health. As one child told the Commissioner in May 2021, "What I've seen is young people's mental health going down the drain. It's been really damaging." In response to a [2021 survey of 1000 young people](#) aged 16-24 in Scotland about mental health, 72% said they have struggled with their mental health.

The mental health system was under significant pressure pre-pandemic and children faced considerable delays in and barriers to accessing quality mental health care. The numbers of children experiencing mental health problems and youth suicide levels had also [increased considerably](#). The reasons are complex and varied. [Causes include](#) bullying, abuse or witnessing violence, social media, academic pressures, illness, parental separation or divorce, and bereavement.

The mental health system is "[complex and fragmented](#)" and difficult to navigate, which affects children and their carers' access to support. [Causes include](#):

- a focus on specialist care and crisis response instead of on early intervention and prevention
- a lack of individualised approach, and
- limited access to information, advice and sources of support for varied needs and available services.

Children have [called for improvements](#) in these areas and for children to be involved in developing mental health initiatives.

Provision of mental health services is insufficient at community level (Tier 2)⁸ with resources in some areas focussed on Child Adolescent Mental Health Services (CAMHS) and inpatient services. Inadequate community provision has resulted in increased and, in the absence of other services, inappropriate CAMHS referrals. Referrals to CAMHS pre-pandemic had increased, but high referral thresholds, and significant waiting times [hindered access](#). Children [in rural communities](#) struggle to access quality mental health care. Furthermore, [access to early intervention supports](#), including school counselling, primary mental health workers and specialist support, are inconsistent and vary nationwide.

Despite [Scottish Government allocation of resources for mental health support](#), particularly to reduce waiting times, greater investment is required. Furthermore, there

⁸ Community provision for children with less severe mental health problems such as anxiety and depression.

are a [lack of comprehensive, quality, disaggregated data](#) around mental health service provision for children, including total expenditure, allocation of funding, reasons for rejected referrals and outcomes.

Mental health in schools is concerning, particularly given the impact of pandemic-related measures on children's education. Children have experienced over two years of [significant disruption](#) to and [uncertainty about their education and exams](#), resulting in stress and negative mental health impacts. Academic pressure, social media, and bullying are also [key causes](#). The [Scottish Government's commitment](#) to provide an additional 350 counsellors in secondary schools to ensure access to counsellors is available in every secondary school is unlikely to be adequate given the increased need resulting from the pandemic.

Recommendations

The Scottish government should:

- Conduct more research around children's mental health, including underlying determinants, and collate the necessary data to ensure rigorous monitoring of children's needs, treatments, and outcomes.
- Ensure that early intervention and prevention services are available and accessible for all children and support and develop therapeutic community-based services.
- Implement a comprehensive strategy to improve Child and Adolescent Mental Health Services.
- Engage with children concerning mental health treatment and ensure access to advocacy services.

Justice

There is an inconsistent approach to the definition of a 'child' in Scots law. In some areas of Scots law, a 'child' is defined as someone under 16, meaning 16- and 17-year-olds are considered as adults in some settings and denied some of their human rights and child protection safeguards.

Although [legislation](#) has recently been enacted to raise the minimum age of criminal responsibility in Scotland to 12, this remains lower than the international standard.

Children are being deprived of their liberty in Scotland after being subject to a Deprivation of Liberty Order in the Courts in England and Wales. These orders are not automatically recognised under Scots law. This creates a 'second class' of "looked-after" children in care in Scotland, who are not subject to the full oversight, support, and protections of Scots law and policy. This practice is incompatible with the UN Convention on the Rights of the Child (UNCRC) and the European Convention on Human Rights (ECHR). [Scottish Government's proposals](#) to address this problem remain [incompatible with the UNCRC and ECHR](#).

Recommendations

The Scottish government should:

- Amend legislation to ensure that all under-18s are defined and recognised as children.
- Increase the minimum age of criminal responsibility to at least 14.
- Publish disaggregated data concerning the numbers of all children deprived of their liberty in Scotland, including in privately managed settings.
- Ensure no child is deprived of their liberty except in accommodation which is authorised, regulated, and complies with Scots law and human rights standards.

Trafficking and migrant, asylum-seeking and refugee children

We have grave concerns about the compliance of the UK government's [Nationality and Borders Bill](#) with international human rights obligations. The [age assessment components](#) are incompatible with the rights of children in the ECHR and the UNCRC. In particular, we have concerns about the use of 'scientific methods' as a routine component of age assessment procedures and the granting of exceptional powers to the Secretary of State in their determination. Furthermore, the Bill's lack of detail raises human rights concerns about implementation in line with human rights obligations.

In Scotland, asylum-seeking children are affected by their parents' [No Recourse to Public Funds \(NRPF\) status](#). Despite [duties on local authorities](#) to support children, no specific funds are allocated for implementation and children and their families [continue to struggle](#) to access an adequate standard of living, including accommodation.

Child victims of human trafficking in Scotland are sometimes detained in the criminal justice system without the necessary human rights and child protection safeguards in violation of the principle of non-punishment.

Recommendations

The UK and Scottish governments should:

- Ensure that the rights of all children, including asylum seekers, are fully protected and that they access the services and receive the support they need, including through systematic, disaggregated data collection.
- Amend the Nationality and Borders Bill to ensure it complies with international human rights obligations, including removing proposals to use new scientific methods for age assessment.
- Ensure that all child victims of trafficking receive the support and human rights protections to which they are entitled.

Children human rights defenders

Children human rights defenders (CHRDs) in Scotland face multiple barriers to exercising their human rights, including a lack of platform and support to defend human rights, lack of access to age-appropriate information, power imbalances with adults, and not being taken seriously when expressing their views. Human rights and child rights education are not compulsory in schools, which means children do not always know what their human rights are and how to defend them.

Despite obligations under the UNCRC, children remain excluded from many decision-making processes concerning them or are not involved in a meaningful way. They [have consistently told us](#) that they feel that their participation in processes is tokenistic, often intended to meet diversity requirements, and that they are sometimes heard but do not feel their opinions and lived experiences are considered meaningfully. One told us in December 2021, “I’m often feeling like a tick box exercise. [...] Far too often decisions are made about young people that not a single young person has had a chance to look over.”

In 2019, a group of CHRDs advising the Commissioner [made several recommendations](#) on how to better support CHRDs, including by improving children’s participation in relevant decision-making processes.

Recommendations

The UK and Scottish governments should:

- Recognise children as human rights defenders and support and protect them.
- Make children’s human rights education part of the core curriculum in schools.
- Engage with children in decision-making processes relevant to them in a meaningful way. This includes:
 - establishing child-friendly structures, mechanisms, and guidance, including complaints mechanisms
 - transforming processes to be more accessible and inclusive, and
 - training personnel.

International and domestic human rights legislation

Despite the [UN Committee on the Rights of the Child’s](#) recommendations, the UNCRC has not been incorporated into domestic legislation and remains nonjusticiable in UK courts. In March 2021, the Scottish Parliament voted unanimously to directly incorporate the UNCRC into Scots law through the [United Nations Convention on the Rights of the Child \(Incorporation\) \(Scotland\) Bill](#). Following a legal challenge by the UK Government, the Supreme Court decided in October 2021 that some aspects of the Bill are outwith the legislative competence of the Scottish Parliament. Incorporation of the UNCRC into Scots law remains the best way to uphold children’s rights in Scotland and must proceed without delay.

[UK government proposals](#) to reform the [Human Rights Act 1998](#) will significantly weaken the protection of children's rights in the UK. The proposals will negatively impact on the ability of children and their representatives to enforce their rights and impair the interpretation of certain rights, particularly the right to respect for private and family life.

The UK government has not ratified several UN human rights protocols protecting children's human rights.

Recommendations

- The Scottish government should make the necessary amendments to the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill so the legal protections in the Bill can come into force.
- The UK government should:
 - o maintain the Human Rights Act in its current form.
 - o ratify the Optional Protocol to the United Nations Convention on the Rights of the Child on a Communications Procedure and the Optional Protocol to the UN International Covenant on Economic, Social and Cultural Rights.

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