

Optional Protocol to the Convention on the Rights of the Child. Submission to the open-ended intergovernmental working group Children and Young People's Commissioner Scotland

May 2025

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.

The Commissioner welcomes the proposal for a new optional protocol to the UNCRC on the right to education, including a right to pre-school education and to free public secondary education. Our view is that the right to secondary education should recognise the diversity of education available at this level in different member states. Where states have a school leaving age below 18, we welcome a right for the child to remain in state-funded education until either they wish to leave or finish the final year of secondary schooling.

What are the main barriers to public pre-primary education available free for all in law, policy and practice in your country and what is their impact on the rights of the child.

The Scottish Government has funded 1,140 hours per year (30 hours per week in term time) of early learning and childcare to all 3 and 4 year olds since 2021.¹ This also extends to 2 year olds in priority groups, including recipients of certain social security benefits and children who have been in alternative care (including kinship care). Whilst take up of places for 3 and 4 year olds is high (estimated at 97%), only around 50% of parents of eligible 2 year olds take up their placement.

The Scottish Government commissioned research in 2017 to better understand the barriers to uptake of places for 2 year olds. They highlighted a range of issues, including a lack of flexibility in times of sessions; transport, particularly in rural and island communities; confidence of parents including about separation from their child; potential stigma due to the targeted nature of provision; and complexity of application processes (i.e. having to provide evidence of benefits). In some cases, professionals identified that the family were instead engaging with more specialist support services. Initiatives that improved take-up were highlighted – including personal contact with parents; discussion by the health visitor at the 27-30 month developmental check; and better data linkage to identify eligible families.²

¹ Scottish Government. Early Education and Care. <https://www.gov.scot/policies/early-education-and-care/>

² Scottish Government, 2017. *Drivers and barriers to uptake of Early Learning and Childcare amongst 2 year olds*. <https://www.gov.scot/binaries/content/documents/govscot/publications/research-and-analysis/2017/03/drivers-barriers-uptake-early-learning-childcare-amongst-2-year-olds/documents/00512948-pdf/00512948-pdf/govscot%3Adocument/00512948.pdf>

Funded early learning and childcare in Scotland is provided by a mixture of state-run nursery classes (either attached to a primary school or in a standalone nursery school) and provision by private nursery schools and registered childminders. Private providers and childminders often provide more flexibility for working parents. Placements at state-run nursery classes have become more flexible, including an increase in “wrap around” provision covering the full hours between 8am and 6pm, together with most school holidays, although this is at additional cost to parents.³

A lack of appropriate spaces for disabled children and those with other support needs continues to be a barrier to access⁴, although initiatives have been undertaken to increase the ability of nurseries to provide appropriate support.⁵

What are the main barriers to public secondary school available free for all in law policy and practice in your country?

Secondary school in Scotland lasts for 6 years from S1 (age 11-12) to S6 (age 17-18) and is free of charge to all pupils. National exams start in S4 (usually National Qualifications), S5 (Highers) and S6 (Highers and/or Advanced Highers). Highers are the usual university entrance qualification and some children progress from secondary school to university after S5.

The school leaving age in Scotland is 16. A small number of children each year leave in December of S4, before sitting national qualifications. Others leave school at the end of S4 or S5 to attend further education colleges or take up an apprenticeship, or employment. These are often positive destinations and provide important flexibility. However, a small but persistent proportion (around 4%) of school leavers are not in a positive destination 3 months after leaving school⁶ and around 1% of 16 year olds and 3% of 17 year olds are recorded as not participating in education, employment or training.⁷

There is criticism in Scotland of too much focus on academic qualifications in secondary schools. The need to diversify the curriculum to meet the needs of children remaining in school during S5 and S6 has been recognised and is supported by collaboration between schools and further education colleges. However, the focus on academic attainment and a lack of alternative options in S5 and S6 can be a barrier to remaining in secondary school education for some children.

³ Parent Club. *Early learning and childcare funded hours: what's your child entitled to?*.

<https://www.parentclub.scot/articles/whats-your-child-entitled-to>

⁴ Early Years Scotland, 2025. *Willingness v capacity – what are the implications?*

<https://earlyyearsscotland.org/willingness-v-capacity-what-are-the-implications/>

⁵ The Scottish Centre for Children with Motor Impairments, 2023. *Early Learning and Childcare – Children with profound and multiple learning disabilities*. <https://www.craigalbert.org.uk/elc-pmld-report>

⁶ Scottish Government, 2024. *School leaver attainment and destinations*.

<https://www.gov.scot/news/school-leaver-attainment-and-destinations-7/>

⁷ Skills Development Scotland, 2024. *Annual Participation Measure*.

<https://www.skillsdevelopmentscotland.co.uk/publications-statistics/statistics/annual-participation-measure?page=1&statisticCategoryId=7&order=date-desc>

The number of children remaining in school until S6 has declined in recent years, from 61.2% in 2019 to 57% in 2024. The number leaving at the end of S4 has increased from 11.9% to 14.4%.⁸

Our view is that children should have an entitlement to remain in state education – in secondary school – until the end of S6, with the school leaving age of 16 providing them with the choice to pursue alternatives such as college or apprenticeships. Continued attendance at secondary school, across all levels, must be seen as a child's right and not a privilege.

We have heard of children from a variety of backgrounds being “encouraged” to transition from state secondary schools as they reach school leaving age of 16. These examples have been from children with long term medical conditions, those with poor attendance (including for medical reasons), those with mental health conditions and children in alternative care.⁹

We supported asylum seeking children aged 16 and 17 who were refused placements in state secondary schools and were instead offered very limited provision at colleges, to argue for better access to education.¹⁰ This resulted in the Student Awards Agency Scotland changing their residence conditions for funding for further and higher education for asylum seekers without indefinite leave to remain (including 16 and 17 year olds attending college).¹¹

Children who cannot attend school for health reasons (including long term illness and mental health conditions) are entitled to alternative education provision,¹² which is usually delivered through local authority interrupted learner services or, where they are in hospital, by hospital—based services. The number of children accessing these services has more than doubled since 2019, with over 13,000 children having interrupted learning support in 2024.¹³ The extent to which this is individualised to meet the needs of the child is variable and access can be limited. Some children receive as little as one hour of formal education per week.

A recent advancement in Scotland has been the development of iSgoil – an online school programme for children not attending mainstream school. Whilst this has received positive feedback, it is currently unable to meet the demand for its services and its waiting list has been closed.¹⁴ When schools were closed during the Covid-19

⁸ Scottish Government. 2025. *Summary Statistics for Attainment and Initial Leaver Destinations*, No. 7: 2025 edition. <https://www.gov.scot/publications/summary-statistics-for-attainment-and-initial-leaver-destinations-no-7-2025-edition/pages/section-4-school-leaver-attainment-in-national-qualifications/>

⁹ A forthcoming report by Who Cares? Scotland, commissioned by our office, will explore care experienced children's education rights.

¹⁰ CYPSC, 2023. “*Hear Our Stories*”, say young unaccompanied asylum seekers and refugees. <https://www.cypsc.org.uk/news-and-stories/hear-our-stories-say-young-unaccompanied-asylum-seekers-and-refugees/>

¹¹ SAAS. 2025. *Asylum seekers and those granted asylum in the UK*.

<https://www.saas.gov.uk/guides/residence-non-eea-nationals/asylum-seekers-granted-in-the-uk>

¹² Scottish Government, 2015. *Education of children unable to attend school due to ill health: guidance*. <https://www.gov.scot/publications/guidance-education-children-unable-attend-school-due-ill-health/>

¹³ Times Educational Supplement, 2025. ‘*Interrupted learning*’ pupil support more than doubles post-Covid. <https://www.tes.com/magazine/news/general/interrupted-learning-pupil-support-soars-post-covid>

¹⁴ iSgoil, 2025. <https://e-sgoil.com/i-sgoil/>

pandemic, a significant amount of online education materials were developed by individual teachers, by schools, by local authorities and through funding of eSgoil,¹⁵ (an online service originally developed to address teacher shortages in remote island schools). Underutilisation of online teaching presents a significant lost opportunity to learn from the pandemic, and better support children unable to attend school in the long or short term.

The Child Poverty Action Group (CPAG) have run a long-term Cost of the School Day campaign which has highlighted that, although state education is nominally free in Scotland, there are nonetheless significant costs associated. They have exposed significant barriers to attendance and to full participation in school. These include the cost of school uniform, fees for extra-curricular activities and trips (including those forming part of the curriculum i.e. in art or drama), “dress down” days for charity and other celebrations and the cost of school meals for those not eligible for free provision. They have recently estimated the average cost to parents for secondary school at more than £2,300 per year.¹⁶

School uniform forms a significant proportion of that cost, despite school uniform not being compulsory in Scotland.¹⁷ We highlighted this in our response to the Scottish Government’s consultation on statutory guidance on school uniform. In secondary schools, we highlighted the cost of mandated items such as blazers which were only available via specific providers; different uniforms for older pupils, restrictive policies on footwear (requiring children to have multiple pairs i.e. different shoes for PE) and requiring or “strongly encouraging” items with the school logo. Strict uniform policies can also discriminate against disabled children and exceptions can be stigmatising.¹⁸

We also raised concerns, which were confirmed by the experiences of our Young Advisors, that some children were being excluded (formally, or informally) or otherwise penalised for not wearing correct uniform. Rules were often inconsistently applied – with some children more likely to be singled out. Our Young Advisors reported that they felt that girls were subject to more rules than boys (i.e. skirt length or heel height) but also that it was unfair that boys had to wear long trousers even in hot weather.¹⁹

The Scottish Government issued updated school uniform guidance in 2024, however we are concerned that we still hear of instances, including via our Young Advisors, of this not being fully implemented by schools.²⁰

¹⁵ e-Sgoil, 2022. *The e-Sgoil Story*. <https://www.e-sgoil.com/about-us/our-story/>

¹⁶ CPAG, 2025. Parents pay £1,000 per year to send child to state primary school, £2,300 for secondary kids. <https://cpag.org.uk/news/parents-pay-ps1000-year-send-child-state-primary-school-ps2300-secondary-kids>

¹⁷ Scott, J. 2016. *Education Law in Scotland*. W Green, Edinburgh. p218-9

¹⁸ CYPSCS, 2022. *Statutory school uniform consultation*. <https://www.cypscs.org.uk/resources/stat-school-uniform/>

¹⁹ Ibid.

²⁰ Scottish Government, 2024. *School uniform and clothing: Guidance for schools and education authorities*. <https://www.gov.scot/publications/school-uniform-clothing-guidance-schools-education-authorities/>

What are examples of innovative and sustainable financial mechanisms to support the full and effective implementation of public pre-primary and secondary education available free to all children in your country.

Scotland has had a long history of providing free school meals to families on low incomes, but over the last ten years this has been extended to all children in the first five years of primary school (P1-5), with the long-term intention to extend it to all children in primary and to pilot it in secondary school. The programme has been curtailed in recent years, and future expansion is to be targeted to local authority areas of higher deprivation.

Means tested free school meals are still available for children in P6-7 and secondary school whose families are in receipt of certain benefits or have an income of less than £850 a month. The income threshold has been unchanged for a considerable period and means that not all children in poverty are eligible for means tested free school meals.²¹

The Education Maintenance Allowance (EMA) was introduced across the UK from 1999 and although subsequently abolished elsewhere, it is still available in Scotland to children aged 16 and 17 from families on low incomes who are in full time education (either school or college).²² The rate of £30 is unchanged from the original higher rate of EMA in 1999 and the value has effectively halved since introduction.

Since 2022, children (and young people under the age of 22) have been entitled to free bus travel throughout Scotland. Although school pupils living more than 3 miles from their school are entitled to free travel to and from school provided by their education authority, the national free bus travel entitlement for under 22s provides access to travel outwith school hours and for children attending college.²³ We supported calls for this to be extended to ferries in island communities.²⁴

There continue to be aspects of social security which can present a barrier to children remaining in education beyond age 16, or be a barrier to pursue alternative educational pathways. The Scottish Child Payment of £27.15 per child per week for low income families, is only payable for children under 16.²⁵ Whilst parents with children attending secondary school receive child benefit (and means tested benefits) until they leave S6, not all those attending college do not – even when they are studying the same or equivalent qualifications.²⁶

²¹ Scottish Government, 2025. *Check who can get free school meals*. <https://www.mygov.scot/primary-school-meals>

²² Scottish Government, 2024. *What EMA is*. <https://www.mygov.scot/ema>

²³ Transport Scotland. *Young Persons' (Under 22s) Free Bus Travel*. <https://www.transport.gov.scot/concessionary-travel/under-22s-free-bus-travel/>

²⁴ Transport Scotland. *Ferry Vouchers*. <https://www.transport.gov.scot/concessionary-travel/ferry-vouchers/>

²⁵ Scottish Government, 2022. *Scottish Child Payment How it works*. <https://www.mygov.scot/scottish-child-payment>

²⁶ CPAG. *Parents claiming for young people in further education or training*. <https://cpag.org.uk/welfare-rights/benefits-scotland/more-info/families-factsheets/parents-young-people> (Note, in England, 6th Form colleges are treated as schools for these purposes).