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**The Scottish Human Rights Commission** **Submission to the United Nations Committee on the Rights of the Child**

**NHRI report on the United Kingdom’s periodic report under the Convention on the Rights of the Child (CRC)**

**April 2016**

The Scottish Human Rights Commission (SHRC) is the **National Human Rights Institution** (NHRI) for Scotland, accredited with A status by the Global Alliance of NHRIs. SHRC was established by an Act of the Scottish Parliament. It has a general duty to promote awareness, understanding and respect for all human rights and to encourage best practice. SHRC also has a number of powers including recommending such changes to Scottish law, policy and practice as it considers necessary.

SHRC is one of the three NHRIs in the UK. SHRC is a member of the UK’s National Preventive Mechanism (NPM) designated in accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

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1. **Part I. Summary of recommended questions**

**The SHRC recommends that the Committee ask the United Kingdom in relation to Scotland:**

1. What measures it will take to ensure the effective respect, protection and fulfilment of the CRC, including the adoption of human rights budgetary analysis.

2. What measures it will take to ensure non-regression and the protection of children’s rights without discrimination in case of the repeal of the Human Rights Act 1998.

3. What measures it will take to ensure the effective protection of children, in particular Muslim children from stigmatising effects of counter terrorism measures and negative media coverage.

4. How it will guarantee that changes to children’s legal assistance do not limit access to justice for children in Scotland.

5. What is its current view and position in relation to ensuring equal protection for assault for children by repealing the legal defences to corporal punishment including those in the Criminal Justice (Scotland) Act 2003.

6. Furthermore, what it has done to promote positive non-violent forms of discipline via public campaigns as an alternative to corporal punishment.

7. To explain the measures taken to consider whether the use of stop and search, particularly non-statutory searches, by Police Scotland is within the framework of the Convention.

8. What concrete steps have been taken to improve direct contact between prisoners and their children in line with the best interest of the child and what measures have been taken to improve the contact between looked after children and their families.

9. How it will guarantee that the increase demand on mental health-care services do not deprive children of their right to the enjoyment of the highest attainable standard of health and what measures they will put in place to ensure adequate early intervention and prevention measures.

10. To indicate its plans to reduce child poverty and inequality within the current public spending programme, and in light of the new tax and welfare powers devolved to Scotland, how the Scottish Government plans to use these to ensure the realisation of children’s rights.

11. What further steps it is taking to ensure the effective provision of affordable, good quality and culturally adequate housing for children.

12. To explain its plan to raise the minimum age of criminal responsibility from 8 years old and ensure the full implementation of juvenile justice standards, as expressed in the General Comment No. 10 of the Committee on the Rights of the Child

13. To explain what interim, medium and long-term measures are being taken to remedy the situation in Young Offenders Institutions, particularly regarding access to purposeful and open air activities.

**Part II. Introduction, Structure and Sources**

1. SHRC welcomes the opportunity to make its first submission to the Committee on the Rights of the Child (hereafter the Committee) in advance of the United Kingdom review in June 2016. This report covers the legal framework, policies and practices in Scotland. Under the terms of the Scotland Act 1998 all issues which are not explicitly reserved to the UK Parliament are **devolved to the Scottish Parliament**. Consequently areas such as justice and policing, including detention, health and social care, housing, local government, education and training as well as many aspects of transport and environment are within the powers of the Scottish Parliament and responsibilities of the Scottish Government.

2. In terms of human rights, the Scotland Act 1998 requires both the Scottish Parliament and Scottish Government[[1]](#endnote-1) to act compatibly with both the European Convention on Human Rights and EU law when exercising relevant functions. In addition, **‘observing and implementing UK international human rights obligations’** are matters that can be taken forward by the Scottish Parliament or Scottish Ministers.[[2]](#endnote-2) To give proper consideration to this constitutional arrangement is central to ensuring that law, policy and practice in Scotland are fully compliant with the United Nations Convention on the Rights of the Child (CRC).

3. In relation to the previous point and as the Committee is aware, SHRC is leading the development of Scotland’s First [National Action Plan for Human Rights](http://scottishhumanrights.com/ourwork/actionplan) (SNAP) 2013-2017.[[3]](#endnote-3) Children’s human rights are strongly reflected in SNAP and covered in a wide range of areas including education, justice, poverty and the impact of business on children rights. Specific recommendations were made to take forward the previous Concluding Observations and General Comments of this Committee such as equal protection for children from physical and mental assault, access to justice and raising the age of criminal responsibility. The Scottish Government, through its commitment to the implementation of SNAP, has committed to explore the benefits of **incorporation of the UK international obligations** in Scotland (p.43) as well as the development of an action plan to implement the UN Guiding Principles on Business and Human Rights, which will give proper consideration to CRC General Comment No.16. It is crucial to ensure that these commitments are delivered throughout years three to five of SNAP.

Structure of the report:

4.In selecting material for this report we have **followed the List of Issues** (LoI). This report is an update and supplement to our 2015 report (submitted to the Committee in June 2015). The report contains a number of questions that we suggest the Committee put to the UK during its review, in particular relating to Scotland as per our mandate. As the Committee is aware there is a Commissioner for Children and Young People in Scotland and an active civil society that focus on this area in Scotland. The Scottish Government has published a response to the LOI (March 2016), which is available in their website.

Sources:

5. This report draws primarily on a three year research project by SHRC which culminated in the publication of *Getting it Right: human rights in Scotland* in October 2012,[[4]](#endnote-4) and the evidence gathered through the implementation of SNAP as well as our interventions/responses to consultations on proposed legislative changes. It also draws on other institutional and NGOs reports, including reports published by EHRC Scotland, Ombudsmen, inspectorates, and regulators in Scotland. The SHRC would be very pleased to provide any clarification, further information, or other assistance to the Committee before, during or after the forthcoming session.

 **Part III. Background on recommendations**

**Incorporation and implementation - general principles**

6. The UK voluntarily undertook to respect, protect and fulfil the rights in the CRC through the formal process of ratification in 1991. As yet, the UK has not given full domestic effect to CRC in its legal systems. The UK Government, together with the devolved administrations have responsibility for implementing the CRC. The Scottish Parliament opted for a range of specific measures to consider the CRC within the **Children and Young People Scotland Act 2014.** While duties on Ministers and public authorities to *consider* the CRC in decision making were included in the Act, along with requirements for a report to the Scottish Parliament every three years on implementation,[[5]](#endnote-5) it does not incorporate CRC nor does it require impact assessment or child rights-based budgeting. Therefore, CRC remains to be fully incorporated into Scots Law.

7. Further clarity is also needed on the financial implications of the Children and Young People Scotland Act 2014 for both the Children and Young People’s Commissioner Scotland and Local Authorities in Scotland.[[6]](#endnote-6) The Act provides for new powers to the Children Commissioner to undertake investigations with regard to whether service providers have regard to the rights, interests and views of children and young people. The Children Commissioner has expressed concerns about the insufficient resources allocated by the Scottish Parliament to carry out this function.[[7]](#endnote-7)

8. SHRC welcomes the introduction of Children’s Rights and Welfare Impact Assessment (CRWIA) by the Scottish Government, which will help Ministers in fulfilling their duties under Part 1 of the 2014 Act. However, there is a need for children’s rights training to ensure consistency as well as a need to extend them to other public bodies. In this area, the Committee expressed in its 2008 Concluding Observations the lack of consistent budgetary analysis and rights impact assessment in the UK legislation, policy and practice.[[8]](#endnote-8) SHRC agrees and recommends that the UK and Scotland develop **child rights-based budgeting** tools which will help public authorities to understand how far are budgets aligned with human rights priorities and standards, including the progressive realisation of rights, the minimum core content and the use of maximum available resources.

SHRC recommends the Committee ask the United Kingdom what measures it will take to ensure the effective protection and fulfilment of the CRC, including the adoption of rights-based budgeting.

9. As the Committee is aware, the only international human rights treaty that has been incorporated in UK law is the European Convention on Human Rights (ECHR) through the **Human Rights Act 1998** (HRA) and in Scotland also via the Scotland Act 1998. The place of human rights in Britain is at a critical juncture. The current UK Government has included a proposal for a British Bill of Rights to replace the Human Rights Act.[[9]](#endnote-9) The proposal has been couched in adverse language by referring to the “damaging effects of Labour’s Human Rights Act” and the “misuse of human rights laws”.[[10]](#endnote-10) In February 2016, the Prime Minister provided an update to Parliament explaining that the UK Government would shortly be coming up with proposals ‘to change Britain’s position with respect to the European Court of Human Rights by having our own British Bill of Rights.’[[11]](#endnote-11) The Scottish Government and Parliament opposes the repeal of the HRA.[[12]](#endnote-12)

10. SHRC continues to be concerned about the latent regressive character of the proposed human rights framework.[[13]](#endnote-13) It is our view that in the current political environment any new UK Bill of Rights would result in a weaker replacement for the HRA by undermining the

principle of universality as well as reducing government accountability at home, and internationally.[[14]](#endnote-14)

SHRC recommends the Committee ask the United Kingdom what measures it will take in this context to ensure non-regression and the protection of children rights without discrimination of any kind across all jurisdictions in the UK.

**Stigmatisation of Muslim Children**

11. A research report, published last year on young people’s experiences of discrimination and Islamaphobia in Scotland, revealed that while ethnic minority young people feel strongly affiliated with Scotland and ‘Scottish-ness’, experiences of everyday racism can make them feel alienated and excluded.[[15]](#endnote-15) Participants had all experienced anti-Muslim sentiment, either directly or indirectly. The research also highlights the negative impact of the media on fuelling racial-religious stereotypes.[[16]](#endnote-16)

12. Racial hate crime remains the most commonly reported hate crime (despite the number of incidents falling over the last year) with 3,785 race crime charges reported in 2014-15 and a further 569 religious aggravation charges.[[17]](#endnote-17) There is some evidence to suggest that hate crime may be underreported: the Scottish Crime and Justice Survey 2012 -13 suggests that just under two-fifths (39%) of hate crimes were reported to the police in 2012/13.[[18]](#endnote-18) In 2015 research published (by HMICS) found a general lack of awareness among ethnic minority residents about what the term ‘hate crime’ actually means and how to report it.[[19]](#endnote-19)

13. While the rate of racist incidents recorded in Scotland over the past 4 years is lower compared with England, there were proportionately more racist incidents in Scotland due to the higher white population in Scotland.[[20]](#endnote-20) There has also been a corresponding increase in the proportion of charges relating to other offences with a racial aggravation attached to another substantive charge libelled.[[21]](#endnote-21)

14. Although there is a lack of consistent reporting on racist incidents in Scottish schools, the data available reveals that race/ethnicity was the most common form of prejudice based bullying, with the number of incidents increasing from 112 cases 2011/2 to 123 cases 2012/3[[22]](#endnote-22).

SHRC recommends the Committee ask the United Kingdom what measures it will take to ensure the effective protection of children, in particular Muslim children from stigmatisation and negative media coverage across the UK.

**Legal Aid**

15. Developments in civil legal aid and access to justice are concerning, for example the way that a child is assessed for civil and children’s legal assistance changed in 2011 via the Advice and Assistance (Scotland) Amendment Regulations 2010 and the Civil Legal Aid (Scotland) Amendment Regulations 2010. Previously, a child would be assessed in the same way as an adult on the basis of their own personal disposable income and capital. From 31 January 2011, the legal aid board must take into account the financial circumstances of anyone who owes a duty of aliment to a child or young person that applies for legal assistance.[[23]](#endnote-23) SHRC is concerned about the impact of this regulation on children and young people’s access to legal advice and legal aid in Scotland.

SHRC recommends the Committee ask the United Kingdom how it will guarantee that recent and future changes to children’s legal assistance do not limit access to justice for children in Scotland.

**Corporal Punishment**

16. The continuing legality of corporal punishment of children at home has been highlighted as a human rights concern in the UK by a number of children and human rights organisations. Section 51 of the Criminal Justice (Scotland) Act 2003 provides for parents a defence of ‘**justifiable assault’ on children**. This section also sets out certain types of assault that are unjustifiable in relation to children. SHRC is concerned about the impact of this practice on children’s mental and physical wellbeing in Scotland.[[24]](#endnote-24) While the Scottish Government has taken some initiatives to promote positive parenting, they fall short of the public education campaign recommended previously by this Committee in the past.

SHRC recommends the Committee ask the United Kingdom what its current view and position in relation to ensuring equal protection for assault for children by repealing of all legal defences to corporal punishment, including the Criminal Justice (Scotland) Act 2003,and further promote positive non-violent forms of discipline via public campaigns as an alternative to corporal punishment.

**Stop and Search**

17. While there has been moves to cease **non-statutory searches** of children under 12, SHRC continues to express concerns about the practical application of this measures in the case of children and other vulnerable people.[[25]](#endnote-25) Recent research has found that children aged 12 to 17 years are more likely to be searched without reasonable suspicion than older age-groups.[[26]](#endnote-26) This raises serous concerns about the legality and proportionality of the measure and its compliance with the Convention. The practice also raises legitimate questions about acquiescence as it is questionable whether a twelve or thirteen year old would have the knowledge of all the relevant facts, the ability to consent without pressure, and the required confidence to refuse a search request by police officers.

SHRC recommends the Committee ask the United Kingdom to explain the measures taken to consider whether the use of stop and search powers, particularly non-statutory searches, by Police Scotland is within the framework of the Convention.

**Children in Care**

18. There were 15,580 **looked after children** in Scotland as of July 2014, a decrease of 3 per cent from the year before.[[27]](#endnote-27) This is the second year in a row that the number of looked after children has fallen. However, between the years 2001 and 2012 the number of looked after children in Scotland increased. It is also important to highlight that the current figure remains higher than the rest of the United Kingdom. Unlike the rest of the UK, figures for Scotland include children who are looked after at home, however even with these numbers removed, the rate is still higher in Scotland and increasing more steeply than the rest of the UK.[[28]](#endnote-28) Looked after children also tend to be younger in Scotland than the rest of the UK.[[29]](#endnote-29)

19. More children are now being looked after away from home in community settings, including kinship care arrangements (friends/family) which account for 27 per cent of all children in care.[[30]](#endnote-30) Concerns continue to be raised about a failure to legislate for a minimum allowance for kinship carers and discrimination between the support to those offered in kinship care compared with foster care.[[31]](#endnote-31)

20. The Mental Welfare Commission Scotland (MWC) has found a small number of complex cases of looked after young people, who were previously accommodated in residential care, admitted to adult mental health wards and where the provision of appropriate services was ‘challenging’.[[32]](#endnote-32) There is also evidence that this group of children experience poorer mental health requiring increased interventions and specialist services in Scotland.[[33]](#endnote-33)

21. Although the Looked After Children (Scotland) Regulations 2009 require local authorities to promote **contact between a child and any person with parental responsibilities**, the same level of duty is not required by local authorities to promote sibling contact. Civil society has raised concerns about the lack of action from local authorities on facilitating sibling contact, which can have a devastating effect on looked after children.[[34]](#endnote-34)

**Children Affected by Parental Imprisonment**

22. It is estimated that around 16,500 children in Scotland are currently affected by the **imprisonment of a parent** every year and while the prison rate had a small decreased in Scotland last year, it is still one of the largest in Europe (per 100,000

Population). It is estimated that around 63% of prisoners in Scotland have children, inevitably, means that there will continue to be a large number of children affected by parental imprisonment

23. In June 2011 the Scottish Government established a Commission on Women Offenders (CWO) to examine how female offenders are dealt with in the criminal justice system. The CWO found that wo**men prisoners struggle to maintain relationships with their children** while in prison. The CWO also established the adverse effect of imprisonment for children: approximately 30 per cent of children with imprisoned parents will develop physical and mental health problems, and there is a higher risk of these children also ending up in prison.[[35]](#endnote-35)

SHRC recommends the Committee asks the United Kingdom what concrete steps have been taken in Scotland to improve direct contact between prisoners and their children in line with the best interest of the child.

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**Mental Health**

24. The **mental health needs of children and young people** have received increased attention from Scottish Government over the past 8 years. The Scottish Government has set a target for NHS to deliver maximum wait of 18 weeks for a patient’s referral to treatment for specialist Child and Adolescent Mental Health Services (CAMHS) from December 2014.[[36]](#endnote-36) In the last quarter of 2015, 4,469 children and young people started treatment at CAMHS in Scotland, 76% of whom were seen within the 18 week target. During the last quarter of 2015 the 18 week standard was met only by five of the 14 regional health boards.[[37]](#endnote-37)

25. The Mental Welfare Commission for Scotland (MWC) has expressed concern at the increasing number of young people who have been admitted to non-specialist settings in the past year and at the number of repeat admissions to these wards. In 2014/15 there were 207 admissions involving 175 young people to non-specialist beds. Campaign groups have also pointed out that there are only 48 in-patient CAMHS beds in Scotland for Children and Young People, located in three regions units, with no provision North of Dundee.[[38]](#endnote-38) In practice, this means that many children and young people are being treated far away from home, often leaving them isolated from their family and support networks.[[39]](#endnote-39) NHS Health Boards have a legal duty to provide age appropriate services for young people under the age of 18 under the Mental Health (Care and Treatment) (Scotland) Act 2003. There is also concern from Mental Health NGO’s in Scotland that early intervention and preventative services to support children and young people with emerging mental health conditions are poorly resourced and not meeting the needs of this vulnerable group.

26. In relation to **children with autistic spectrum disorder**, the MWC has found that the current arrangements of transitioning from childhood to adulthood for children with autistic spectrum disorder are not adequate. In particular, they found that children are not fully supported and then they often flounder upon entering the adult world when all supports disappear.[[40]](#endnote-40)

SHRC recommends the Committee ask the United Kingdom how it will guarantee that the increase demand on mental health-care services do not deprive children of their right to the enjoyment of the highest attainable standard of health and what measures they will put in place to ensure adequate early intervention and prevention measures.

**Child Poverty**

27. While there has been an overall decline in poverty rates in Scotland over the past ten years,[[41]](#endnote-41) the **child poverty** rate increased by 4 percentage points between the years 2011/2012 and 2012/13. More than one in five (210,000) of Scotland’s children are officially recognised as living in poverty, a level significantly higher than in many other European countries.[[42]](#endnote-42) Child poverty is recorded as highest in Glasgow, Dundee City and North Ayrshire.[[43]](#endnote-43) Furthermore, while 14 per cent of children in Scotland were living in relative poverty before housing costs, this increased to 22 per cent after housing costs, the same percentage as 2012/13. The difference in poverty rates before and after housing costs are attributed to rent values increasing faster than income and changes to the eligibility criteria for housing benefit. Single parents and families with three or more children face a higher risk of being in poverty in Scotland.[[44]](#endnote-44)

28. The Scottish Parliament **Welfare Reform** Committee has predicted that when the welfare reforms come into full fruition by 2018, families with dependent children will lose an average of more than £1,400 a year and lone parents around £1.800 per year.[[45]](#endnote-45) Furthermore, the reforms are thought to put women at greater risk of deeper and sustained poverty, with women representing 92% of lone parents and women tending to be more financially dependent on social security than men[[46]](#endnote-46). Other groups thought to be worst affected include households with four or more children, those from some BME communities, children living with kinship carers, children with disabilities and those with disabled parents.[[47]](#endnote-47)

29. In 2013/14, 56 per cent of children in poverty were living in households with at least one adult in employment.[[48]](#endnote-48) Therefore, increases in employment rates have not necessarily

resulted in improvements in people’s standard of living, and combined low income

and child material deprivation has continued to increase.[[49]](#endnote-49)

SHRC recommends the Committee ask the United Kingdom to indicate its plans to reduce children poverty and inequality within the current public spending programme.

30. Since the 2010 General Election the UK Government has prioritised the reduction of the public debt, pursuing a programme of **austerity and cuts** in public spending. Research supported by the Scottish Parliament indicates that these cuts are anticipated to have the most severe impact on those in the most deprived areas. Particular concern has been raised in relation to the impact on children, women, disabled people and ethnic minorities. SHRC continue to be concerned at the impact of this measures in Scotland, particularly on the disproportionate effect of welfare reform on children.[[50]](#endnote-50)

31. Concluding its inquiry on welfare reform the UK Joint Committee on Human Rights criticised the UK Government for a lack of information on how it had assessed the human rights impact of the new Welfare Reform Act 2012. The Joint Committee further raised concerns that the Welfare Reform Bill (as it was)

 “*may risk breaching human rights in leading to destitution (engaging the prohibition of degrading treatment), discrimination and retrogression in the realisation of economic, social and cultural rights.*”[[51]](#endnote-51)

32. Crucially the UK Government has failed to adequately assess **the impact** of these measures on human rights. In the UK Government’s Summer budget 2015, a further reduction of the welfare budget by £12 billion a year by 2020 was announced.[[52]](#endnote-52) In February 2016, new tax, welfare and borrowing powers were devolved to the Scottish Parliament.[[53]](#endnote-53)

SHRC recommends the Committee to ask the UK Government and all of those involved in the implementation of public spending cuts what measures are taken to ensure that the cumulative impact does not breach the Convention rights, and in light of the new tax and welfare powers devolved, how the Scottish Government plans to use these to ensure the realisation of children’s rights.

**Homelessness**

33. In 2013 the Special Rapporteur on adequate housing visited the UK and concluded that it faces a critical situation in terms of availability, affordability and **access to adequate housing**, particularly in some geographic areas.[[54]](#endnote-54) In particular, there is a shortage of suitable housing for disabled people, gypsy/travellers, victims of domestic abuse, migrants (especially those with no recourse to public funds), and offenders.[[55]](#endnote-55) Addressing homelessness has been a priority for Scotland.[[56]](#endnote-56) However, there are persisting disadvantages faced by certain groups despite the removal of the priority needs test in the Homelessness (Scotland) Act 2003. Overcrowding is also an issue for those without secure accommodation, with A8 nationals[[57]](#endnote-57), refugees and Pakistani and Bangladeshi households being most severely affected.[[58]](#endnote-58)

34. Homelessness is of particular concern in relation to children. It generates displacement from schools and health services and may lead to a series of changes from one temporary accommodation into another.[[59]](#endnote-59) In 2014-15, there was an average of 2,578 households with children in Temporary Accommodations any one night in Scotland, with an average of 4,373 children in temporary accommodation each night as a result of **homelessness.**[[60]](#endnote-60) The median length of stay in temporary accommodation for households with children was 17 weeks, with 11 per cent spending over a year in temporary accommodation. Spending time in temporary accommodation has been shown to have a negative impact on a child’s physical and mental health, as well as their educational attainment. A Scottish Government evidence review also revealed that insecure tenure impacts on educational development and outcomes for children.[[61]](#endnote-61)

35. SHRC raised concerns in its previous submission to this Committee that decent conditions, or habitability, of housing are not adequately ensured in the **current regulatory framework**. The Scottish Government uses two specific measures to track progress on the standard of housing stock. The first is the ‘tolerable standard’ which highlights where it is not reasonable to expect people to continue to live in a house that falls below this standard.[[62]](#endnote-62) While the tolerable standard[[63]](#endnote-63) applies to both the public and private housing sector, there is no coherent or consistent policy or compulsory framework for ensuring or mapping the extent to which the private sector, including privately let properties, comply with the standard. The second measure is the Scottish Housing Quality Standard (SHQS). This standard includes a target that all social landlords must make sure that all their accommodation passes the SHQS by 2015. However, this target does not extend to private owners and private landlords.[[64]](#endnote-64) A more consistent and robust framework is needed to tackle inhabitable housing in the private sector.

36. A particular concern is the lack of a sustainable housing strategy for the Gypsy/Travellers community in Scotland. The Equal Opportunities Committee of the Scottish Parliament has published two reports into discrimination faced by Gypsy/Travelling people the last parliamentary session. *Gypsy/Travellers and Care* was published in 2012, and *Where Gypsy/Travellers Live* was published in 2013.[[65]](#endnote-65) The Committee noted that twelve years on from the first Scottish Parliament inquiry into Gypsy/Traveller life, it is concerning to see that the appalling situation of many Gypsy/Travellers has witnessed little change. The Committee, together with the Commission,[[66]](#endnote-66) has recommended the adoption of a national action plan, including fit-for-purpose **housing strategies which embrace Gypsy/Traveller needs**. The Committee was particularly concerned with the poor living conditions of this community:

 “*When we visited sites we saw some horrendous conditions for ourselves. We*

 *were deeply disturbed to see that families paying rent to their local council were*

 *expected to bathe young* ***children*** *in freezing cold amenity blocks with*

 *extortionate heating costs, and that elderly and disabled people might have to*

 *go outside to a toilet block in the middle of a cold, winter‘s night*.”[[67]](#endnote-67)

SHRC recommends the Committee to ask the United Kingdom what further steps it is taking to ensure the effective provision of affordable, good quality and culturally adequate housing for children in Scotland.

**Childcare**

37. Progress has been made in the last decade to increase the availability and affordability of **childcare in Scotland** and many examples of good practice exist. For example, the Children and Young People Scotland Act 2014 extends childcare to Scotland’s most vulnerable two year olds. However, only 21 per cent of local authorities are able to satisfy the current demand, and therefore without improved infrastructure, it is unlikely that this commitment will be fulfilled.[[68]](#endnote-68)

38. As a consequence, the majority of the costs of childcare still fall on families, with fees being a high proportion of parents’ incomes. Scotland has some of the highest childcare costs in Britain.[[69]](#endnote-69) The UK has one of highest costs of childcare for in the world (26.6% of average family income, compared to an OECD average of 11.8%).[[70]](#endnote-70)

SHRC recommends the Committee to ask the United Kingdom what further steps it is taking to ensure the effective provision of affordable, good quality childcare in Scotland.

**Child Justice**

39. Scotland has one of the lowest **ages of criminal responsibility** in the world at just 8. The Criminal Justice and Licensing (Scotland) Act 2010 raised the minimum age of prosecution from 8 to 12 years. While the majority of civil cases and offending behaviour involving children aged 16 and under are dealt with through the children’s hearing system, the criminalisation of children as young as 8 raises serious concerns. During 2012/13 around 23,726 children and young people, or 4.7% of all those aged eight to 17 in Scotland, were involved in offending behaviour. These young people were charged with around 43,117 crimes.[[71]](#endnote-71) Over 10,000 17 and 18 year olds were dealt with in the adult court system.[[72]](#endnote-72)

40. An Advisory Group was tasked by Scottish Ministers with considering the policy, legislative and procedural implications of raising the minimum age of criminal responsibility from 8 to 12 years. SHRC recommends that any discussion around this should focus on setting a higher age of criminal responsibility rather than accepting the minimum international standard of 12.

SHRC recommends the Committee ask the United Kingdom how it will ensure compliance with the Committee’s General Comment No. 10 in relation to the minimum age of criminal responsibility across the UK.

41. While the quality and improved fabric of the newer prisons in Scotland undoubtedly provides a better environment for **young prisoners** to live in, there continues to be safety and educational issues that require further attention. An inspection of HMYOI Polmont in March 2014 found considerable progress and positive impact on young people. A Young People’s Strategy had been developed to create a learning environment and support young people. However, as recommended by Her majesty’s inspector for prisons in Scotland (HMCIPS) such Strategy should be extend to other YOI such as Cornton Vale and Grampian.[[73]](#endnote-73) Furthermore, access to purposeful activity in some young offenders institutions (YOI) was very poor, particularly in Blair House. [[74]](#endnote-74) Some of these concerns have been expressed previously by both HMIPS and the UK National Preventive Mechanism.[[75]](#endnote-75)

SHRC recommends the Committee ask the United Kingdom to explain what interim, medium and long-term measures are being taken to remedy the situation in Young Offenders Institutions, particularly regarding access to purposeful and open air activities.

References:

1. The Scottish Executive was renamed the Scottish Government under the Scotland Act 2012. [↑](#endnote-ref-1)
2. See Schedule 5 SA 1998. SHRC notes that both the Scottish Government and Parliament should, in compliance with the Scotland Act 1998, observe and implement UK’s international obligations. [↑](#endnote-ref-2)
3. For further information visit <http://scottishhumanrights.com/actionplan> [↑](#endnote-ref-3)
4. An unprecedented three year research project by the Scottish Human Rights Commission, ‘Getting it Right? Human Rights in Scotland’, found that while Scotland has made notable progress, it can do better. It has a relatively strong legal and institutional framework for human rights, some examples of positive strategy and policy direction, but the actual outcomes for people often remain inconsistent. In response the Commission proposed the development of SNAP to help bring about the necessary progress in implementation of human rights at the level of service delivery and practice. [↑](#endnote-ref-4)
5. See part 1 Children and Young People (Scotland) Act 2014, available at:<http://www.legislation.gov.uk/asp/2014/8/contents/enacted>. See also Together - Scottish Alliance for Children's Rights report to this Committee for further background. [↑](#endnote-ref-5)
6. Similarly, when the Scottish Government consulted Local Authorities on the costs associated with the Children and Young People Scotland Bill, they were unclear about the full implications of the bill. See Implementation of the Children and Young People (Scotland) Act 2014 – Update, Education, Children and Families Committee, 6 October 2015 [↑](#endnote-ref-6)
7. For further discussion see report of the Children and Young People's Commissioner Scotland to this Committee, available at: [www.cypcs.org.uk/](http://www.cypcs.org.uk/) [↑](#endnote-ref-7)
8. See for example UN CRC General Comment No. 5 (2003) [↑](#endnote-ref-8)
9. See 2015 Queen’s Speech, available at: <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/430029/queens-speech-briefing-pack.pdf> [↑](#endnote-ref-9)
10. Ibid. For further background see SHRC response to the UK Government appointed Commission of Inquiry on a Bill of Rights at: <http://www.scottishhumanrights.com/resources/policysubmissions/borrpublicationsnov2011> [↑](#endnote-ref-10)
11. Prime Minister David Cameron, 3 February 2016. Available at: <http://www.publications.parliament.uk/pa/cm201516/cmhansrd/cm160203/debtext/160203-0002.htm#160203-0002.htm_spmin2> [↑](#endnote-ref-11)
12. See for example Scotland’s First Minister position in the Herald. Available at: <http://www.heraldscotland.com/politics/scottish-politics/sturgeon-scottish-government-will-oppose-any-attempt-to-scrap-human-right.1431438757> [↑](#endnote-ref-12)
13. For further information visit: <https://www.conservatives.com/~/media/Files/Downloadable%20Files/HUMAN_RIGHTS.pdf> [↑](#endnote-ref-13)
14. SHRC response to the UK Government appointed Commission of Inquiry on a Bill of Rights at <http://www.scottishhumanrights.com/resources/policysubmissions/borrpublicationsnov2011> [↑](#endnote-ref-14)
15. Hopkins, P. et.al. (2015) ‘Faith, Ethnicity and Place: Young Peoples Everyday Geopolitics in Scotland’, Arts and Humanities Council, available at:

<http://research.ncl.ac.uk/youngpeople/> [↑](#endnote-ref-15)
16. Ibid [↑](#endnote-ref-16)
17. Two forms of evidence are required for racial aggravation as a charge by itself, whereas only one form of evidence is required for racial aggravation attached to another substantive charge libelled. See Crown Office statistics on Hate Crime in Scotland 2014/2015 at:

<http://www.crownoffice.gov.uk/images/HateCrimeinScotland2014-15.pdf> [↑](#endnote-ref-17)
18. See The Scottish Crime and Justice Survey (SCJS) 2012 -13 [↑](#endnote-ref-18)
19. See The Coalition for Racial Equality and Rights (CRER) report on Community Cohesion and Safety, available at http://www.crer.org.uk [↑](#endnote-ref-19)
20. Ibid [↑](#endnote-ref-20)
21. Crown Office ‘Hate Crime in Scotland 2014-15’ available at <http://www.crownoffice.gov.uk> [↑](#endnote-ref-21)
22. Brandi Lee at all (2015), Prejudice-based bullying in Scottish schools: a research report, EHRC, available at: http://www.equalityhumanrights.com/en/publication-download/prejudice-based-bullying-scottish-schools-research-report [↑](#endnote-ref-22)
23. Clan Childlaw (2014), ‘Legal Assistance for Children and Young People’, available at:<http://www.clanchildlaw.org/app/uploads/2014/11/Legal-Assistance-for-Children-and-Young-People.pdf> [↑](#endnote-ref-23)
24. A systematic review of research literature on physical punishment, jointly commissioned by Barnardo’s Scotland, Children 1st, the Children and Young People’s Commissioner Scotland and NSPCC Scotland was published in November 2015 The report found strong and consistent evidence from 98 studies that physical punishment damages children’s wellbeing and carries risk of escalation into severe abuse. It highlights evidence that physical punishment increases aggression, antisocial behaviour, depression and anxiety in children and in later life. It found no evidence that a change to the law results in increased criminal proceedings but rather that it facilitates culture change. See ‘Equally Protected? A review of the evidence on the physical punishment of children’ at: <https://www.nspcc.org.uk/globalassets/documents/research-reports/equally-protected.pdf> [↑](#endnote-ref-24)
25. SHRC stop and search position, for further information visit <http://www.scottishhumanrights.com/news/latestnews/stopandsearchfeb15> [↑](#endnote-ref-25)
26. See Kath Murray (2015), Stop and Search in Scotland: a post-referendum update. SCCJR Report 6/2015 [↑](#endnote-ref-26)
27. See 2015 Scottish Government Statistics on looked after children at <http://www.gov.scot/Resource/0047/00474429.pdf> [↑](#endnote-ref-27)
28. See 2014 Scottish Government Statistics on looked after children at <http://www.gov.scot/Topics/Statistics/Browse/Children/TrendLookedAfter> [↑](#endnote-ref-28)
29. Ibid [↑](#endnote-ref-29)
30. See footnote no. 26 [↑](#endnote-ref-30)
31. See for example calls from the Scottish Kinship Care Alliance to treat children in kinship care should as comparable to children in foster care in relation to the same access to services and support; see also STV news coverage: [http://stv.tv/news/east-central/279959-kinship-carers-in-scottish-parliament-protest-over-discrimination](http://stv.tv/news/east-central/279959-kinship-carers-in-scottish-parliament-protest-over-discrimination/) [↑](#endnote-ref-31)
32. Mental Welfare Commission (2015) ‘Young Person Monitoring 2014/15’ report, available at: <http://www.mwcscot.org.uk/media/240702/yp_monitoring_report_2014-15.pdf> [↑](#endnote-ref-32)
33. Ibid [↑](#endnote-ref-33)
34. See for example, Clan Childlaw position at: <http://www.clanchildlaw.org/app/uploads/2015/02/clan-childlaw-stage-3-Sibling-Contact-Briefing.pdf> [↑](#endnote-ref-34)
35. Commission on Women Offenders (2012) report, available at: <http://www.gov.scot/resource/0039/00391828.pdf>; See also Not Seen, Not Heard, Not Guilty report, SCCYP [↑](#endnote-ref-35)
36. Information Services Division/NHS (2016) ‘Child and Adolescent Mental Health Serices Waiting Times in NHS Scotland, Quarter Ending 31 December 2015’, available at: <https://www.isdscotland.org/Health-Topics/Waiting-Times/Publications/2016-02-23/2016-02-23-CAMHS-Report.pdf> [↑](#endnote-ref-36)
37. Ibid. [↑](#endnote-ref-37)
38. See for example the Scottish Children's Services Coalition analysis at: <http://www.thescsc.org.uk/campaigns/child-and-adolescent-mental-health-services-camhs/> [↑](#endnote-ref-38)
39. Ibid. [↑](#endnote-ref-39)
40. Mental Capacity Newsletter, Essex Chambers (February 2016), Available at: <http://www.39essex.com/content/wp-content/uploads/2016/02/MC-Newsletter-February-2016-Scotland.pdf> [↑](#endnote-ref-40)
41. Joseph Rowntree Foundation Report ‘Monitoring Poverty and Social Exclusion in Scotland 2015, available at:<http://www.jrf.org.uk/publications/monitoring-poverty-and-social-exclusion-scotland-2015> [↑](#endnote-ref-41)
42. See latest 2013/14 Poverty and Income Inequality in Scotland figures, Table A1: Relative Poverty in Scottish Households 1994/5 to 2013/14, available at: [www.gov.scot/Publications/2015/06/7453/10](http://www.gov.scot/Publications/2015/06/7453/10) [↑](#endnote-ref-42)
43. Figures from the Child Poverty Action Group, available at: <http://www.cpag.org.uk/content/percentage-children-living-poverty-scotland> [↑](#endnote-ref-43)
44. Scottish Government Strategy on Child Poverty 2014-17, available at: <http://www.gov.scot/Resource/0044/00445863.pdf> [↑](#endnote-ref-44)
45. See Welfare Committee Report (Scottish Parliament) on impact of welfare reform on households Scotland: <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/87136.aspx> [↑](#endnote-ref-45)
46. See Engender Report on Women and Welfare at: <http://www.engender.org.uk/content/publications/engenderwelfareport.pdf> [↑](#endnote-ref-46)
47. See for example Office of the Children’s Commissioner/Landman Economics, An Adequate Standard of Living: A Child Rights Based Quantitative Analysis of Budgetary Decisions 2010-13 and Written evidence submitted by Barnardo’s to the Welfare Reform and Work Bill Committee, Session 2015-6. Available at? [↑](#endnote-ref-47)
48. See Child Poverty Action Group in Scotland figures, available at <http://www.cpag.org.uk/scotland/child-poverty-facts-and-figures> [↑](#endnote-ref-48)
49. Poverty NGOs such as CPAG note that while employment rates may be growing overall, in-work poverty is not decreasing due to factors such as quality and nature of work [↑](#endnote-ref-49)
50. See for example SHRC statement to the UN HRC on Children in 2014 and Written evidence to the Scottish Parliament on Welfare reform in 2013, available at <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/71521.aspx> [↑](#endnote-ref-50)
51. Joint Committee on Human Rights (2011). ‘Legislative Scrutiny: Welfare Reform Bill, summary’. London, UK Parliament. [↑](#endnote-ref-51)
52. See Child Poverty Action Group (Feb 2016) ‘Welfare Reform: The Impact on Families in Scotland’. Available at: <http://www.cpag.org.uk/content/welfare-reform-impact-families-scotland> [↑](#endnote-ref-52)
53. The 2016 agreement between the Scottish Government and the United Kingdom Government on the Scottish Government’s fiscal framework. Available at https://www.gov.uk/government [↑](#endnote-ref-53)
54. See UN Human Rights Council, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, 30 December 2013, A/HRC/25/54 [↑](#endnote-ref-54)
55. See Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context on her mission to the United Kingdom of Great Britain and Northern Ireland (29 August–11 September 2013) [↑](#endnote-ref-55)
56. There were more than 150, 500 people on a council waiting list for a home and 35,764 homeless applications in 2014/15 for Scotland reference? [↑](#endnote-ref-56)
57. A8 country nationals are: Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia [↑](#endnote-ref-57)
58. See The Coalition for Racial Equality and Rights (CRER) report on housing, available at http://www.crer.org.uk [↑](#endnote-ref-58)
59. Shelter (2016) ‘The Use of Temporary Accommodation in Scotland, available at: [www.shelterscotland.org](http://www.shelterscotland.org) [↑](#endnote-ref-59)
60. Ibid [↑](#endnote-ref-60)
61. See Children’s Rights and Wellbeing Impact Assessment – Private Housing (Tenancies)

(Scotland) Bill, available at: <http://www.gov.scot/Resource/0048/00487083.pdf> [↑](#endnote-ref-61)
62. An interesting question for further exploration would be how well the ‘tolerable’ standard of living described here would match up to the standard of habitability contained within the right to an adequate standard of living. It would be within the power of the Scottish Parliament to align the tolerable standard with the standard of habitability as defined in ICESCR. [↑](#endnote-ref-62)
63. The Tolerable Standard was redefined in the Housing (Scotland) Act 2006 which amended the Housing (Scotland) Act 1987 and applies to all houses in Scotland. [↑](#endnote-ref-63)
64. Data is, however, collected and reported for all accommodations which allow for comparison across the housing stock. [↑](#endnote-ref-64)
65. Scottish Parliament ‘Gypsy/Travellers and Care’ report at: <http://www.scottish.parliament.uk/S4_EqualOpportunitiesCommittee/Reports/eor-12-03w-rev2.pdf> and ‘Where Gypsy/Travellers Live’ at: <http://www.scottish.parliament.uk/S4_EqualOpportunitiesCommittee/Reports/eor-13-01w.pdf> [↑](#endnote-ref-65)
66. Ibid [↑](#endnote-ref-66)
67. Ibid [↑](#endnote-ref-67)
68. Daycare Trust and Children in Scotland (2012) The Scottish Childcare Lottery, available at: <http://www.childreninscotland.org.uk/docs/Scottish_Childcare_Lottery.pdf> [↑](#endnote-ref-68)
69. Ibid [↑](#endnote-ref-69)
70. OECD (2011), Doing Better for Families, available at: <http://www.oecd.org/social/soc/doingbetterforfamilies.htm> [↑](#endnote-ref-70)
71. Youth Justice in Scotland, CYCJ (2014), available at: <http://www.cycj.org.uk/wp-content/uploads/2014/09/Youth-Justice-in-Scotland.pdf> [↑](#endnote-ref-71)
72. Ibid [↑](#endnote-ref-72)
73. HMIPS 2013-14 Annual Report, available at: <http://www.scotland.gov.uk/Resource/0045/00454059.pdf> [↑](#endnote-ref-73)
74. HMIPS 2013-14 Annual Report, available at: <http://www.scotland.gov.uk/Resource/0045/00454059.pdf> [↑](#endnote-ref-74)
75. National Preventive Mechanism, Third Annual Report 2011–12, February 2013. Section 3.

End. [↑](#endnote-ref-75)