

Comments on the 42nd National Report of the United Kingdom on the Implementation of the European Social Charter

June 2023

Theme: Children, Families and Migrants

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The power to enter some places of detention as part of an inquiry,

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The Commission is one of three NHRIs in the UK. The Commission is also 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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Executive Summary and Overview

- This report has been prepared to support the European Committee of Social Rights' ('the Committee') consideration of the 42nd National Report on the implementation of the European Social Charter submitted by the United Kingdom in April 2023. The Committee is examining the UK's compliance with Articles 7, 8, 16 and 17 of the Convention – parts of the Convention which concern children, families and migrants.
- The evidence in this report highlights areas across:
 - Scottish practice relating to child protection (Article 7),
 - Women's economic protection (Article 8),
 - Families' social, legal and economic protection (Article 16), including domestic abuse and violence against women and girls, economic and social safety nets (including childcare, social security, housing, energy, food, employability and health and wellbeing);
 - The rights of mothers and children to social and economic protection (Article 17), including children in conflict with the law, child poverty and education; and
 - The rights of migrant workers (Article 19).
- There are an array of issues which the Committee may wish to further interrogate the information in the state report as it relates to Scotland.
- In a number of areas, there is insufficient evidence or data collected, published or broken down to a useful level that would allow an objective assessment to determine how well the Scottish Government is complying with its obligations under the treaty.
- Worrying data is however available about the numbers of children who are victims of human trafficking, sexual crimes and exploitation – including online. While the Scottish Government has introduced new guidance, the scale of the harms indicated by the data indicates that this alone is not sufficient.
- The Commission notes that employment law and maternity and parental pay and legal protections are reserved to Westminster. However the Scottish Government does have levers available to it via areas of devolved competence – to increase the level of protection for people in Scotland. Addressing financial barriers to shared parental leave would be consistent with other national level policies such as the Gender Pay Gap Action Plan.

- There has been a significant amount of progress on law and policy to protect women and children from domestic abuse and other forms of gender-based violence over the course of the reporting period. In particular, the Domestic Abuse (Scotland) Act 2018 and Equally Safe National Strategy have promoted a human-rights approach. However, there are issues with the availability of appropriate support including refuge accommodation and a persistent relationship between levels of homelessness and domestic abuse. The Committee may wish to examine how the Scottish Government intends to respond to recommendations on the management of sexual offences cases to ensure that court processes are much less traumatic for victims to navigate.
- In 2018, the Scottish Government created Social Security Scotland and began the roll out of devolved social security payments. While this has improved domestic law's connection to the right to social security, there is further opportunity to strengthen this through the planned incorporation of human international rights standards into Scots law, announced by the Scottish Government in 2021.
- In the meantime, there are a number of mitigations and sources of extra funds to support families and migrants at risk of poverty or destitution and the Committee may wish to ask the Scottish Government how it plans to meet the commitments it has made to these groups in various policy frameworks.
- Despite increasing consensus that the way the criminal justice system responds to children and young people – both those under 16 and 16 and 17 year olds – needs to change, there are still too many children placed in inappropriate settings or without the right support. Further, there is a shortage of dedicated mental health support for children and young people in Young Offenders Institutions or secure care and a lack of community-based alternatives to deprivation of liberty.
- The UNCRC was also intended to be incorporated after a Bill was passed by the Scottish Parliament in 2021. However after the Supreme Court ruled parts of the Bill went beyond the limits of the Scottish Parliament's powers, the Scottish Government committed to bringing the Bill back to be amended so it could become law. So far, this commitment has not been delivered.
- Finally, in relation to the challenges in supporting migrants and refugees in Scotland, innovative ways to support migrants with No Recourse to Public Funds have been demonstrated throughout the pandemic and the Committee may wish to ask the Scottish Government to build on these. Learning is available from targeted support available for child asylum seekers and

refugees in Scotland. That notwithstanding, there remain considerable concerns about the UK's immigration policies and the impact on people in Scotland, including at the Dungavel detention centre, which is managed by the UK Government.

- A full list of issues that we encourage the Committee to raise with the Scottish Government is found at Section 8 of this report.

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1. Introduction, structure and scope of this report

1.1. Introduction

The Scottish Human Rights Commission ('the Commission') is pleased to submit this report in support of the European Committee of Social Rights' consideration of the 42nd National Report on the implementation of the European Social Charter submitted by the United Kingdom in April 2023.¹

The Commission's mandate covers the promotion and protection of human rights in areas of law and policy devolved under the Scotland Act ('referred to as devolved matters or competencies'). All areas of law that are not explicitly reserved to the UK Parliament ('reserved matters or competences') are within the legislative competency of the Scottish Parliament, subject to compliance with the European Convention on Human Rights. Scotland has a separate legal system, courts and tribunals, education system, National Health Service (NHS) and a range of public bodies responsible for public services.

Implementation of human rights treaties ratified by the UK falls within devolved competence, while accountability under international law for compliance with obligations remains with the UK Government.

The Children and Young People's Commissioner for Scotland (CYPCS) is a sister organisation to the SHRC, established via the Commissioner for Children and Young People (Scotland) Act 2003. It delivers the monitoring function for all the enjoyment of all children's rights in Scotland under the UNCRC. We have consulted with CYPCS in the drafting of this report, including on the issues of: children in conflict with the law, alternative care, poverty and mental health.

1.2. Structure

In this paper, relevant issues are grouped in an article-by-article analysis of the European Social Charter articles under examination – these are articles 7, 8, 16, 17, and 19. In selecting material for this report we have prioritised matters that on our analysis:

- that are the most pressing and /or
- issues raised by the state report and /or
- where the Committee has requested information and/ or
- additional information (based on a previous conclusion) and/or
- where the Commission has carried out particular work on the issue which may assist the Committee.

The Committee's scrutiny concerns the relevant period **1 January 2018 to 31 December 2021**. The Commission acknowledges that the Committee may not consider material beyond the relevant period and has endeavoured to limit our material to the reference period. In some cases, however, this paper refers to developments from 2022 and 2023 to provide deeper context and support domestic audiences to engage with our analysis.

2. General comments on context during reporting period

Between 2018 and 2021 several significant developments occurred that had broad impacts for the rights of all people in Scotland, including children, families and migrants.

In January 2020, the UK concluded the withdrawal from the EU following the 2016 'Brexit' referendum. The UK Withdrawal Agreement included no continuing application of the European Charter of Fundamental Rights and Freedoms in the UK and no freedom of movement for new EU migrants. The Scottish Parliament voted to pass the Continuity Bill in 2020², which would have given legal weight to the Scottish Government's stated ambition to 'keep pace' with EU law in devolved contexts, however, the Bill was ruled out of competence by the UK Supreme Court.³ The UK Parliament passed the UK Internal Market Act in 2020, which introduces principles of mutual recognition and non-discrimination into UK trade law to reduce barriers to free trade. The Scottish Government has criticised the Bill as constraining devolution.

The UK and Scotland, like all countries, were affected by the COVID-19 pandemic, which has had numerous direct and indirect impacts on both the human rights of individuals and across policy at every level. Official statistics collection and analysis was disrupted for the period 2020-2021, to varying levels impacting accuracy of trend analysis. Some groups of people were more acutely impacted by COVID-19 and by non-clinical interventions introduced to protect public health. COVID-19 has compounded austerity measures⁴ which already disproportionately impacted marginalised or vulnerable groups.⁵ A public inquiry will now examine all aspects of the pandemic response in Scotland.⁶

The UK Government had proposed a repeal and replacement of the Human Rights Act, which incorporates the ECHR into domestic law in all parts of the UK.⁷ The Commission disputes the Government's claims about the Human Rights Act and supports its full retention. The UK Government has now confirmed that it will not proceed with the reforms.

In Scotland, there is cross-party support for expanding domestic human rights frameworks. The Scottish Parliament unanimously passed the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill in 2021. The Bill was subsequently challenged by the UK Government, and some provisions found by the Supreme Court to be outwith competence, preventing it from coming into force without revision.⁸ Amended legislation to incorporate the UN Convention on the Rights of the Child is now pending.⁹

In 2021 the Scottish Government announced its intention to bring forward new human rights legislation. The proposed Bill will include specific rights, subject to devolved competence, from: the International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); the Convention on the Elimination of All Forms of Racial Discrimination (CERD); the Convention on the Rights of Persons with Disabilities (CRPD) as well as rights for older people and LGBTI+ people and a right to a healthy environment.

These proposals would enable domestic courts to review compliance with international standards and the Scottish Government has indicated this will include new obligations for public bodies, including the Scottish Government and Scottish Parliament, to demonstrate compliance across devolved policy, such as duties to conduct human rights impact assessments. The Commission has called for the legislation to ensure the strongest protection possible for human rights, including Economic, Social and Cultural (ESC) rights, including ensuring that the duties contained in article 2.1 ICESCR are enshrined in the law.¹⁰

Beyond 2021, the Commission has recently analysed the impact of rising living costs and the implications for economic, social and cultural rights in our recent submission to the UN Committee on Economic, Social and Cultural Rights.¹¹

The Commission recommends that the Committee ask the Scottish Government:

- **How it will improve the collection and publication of disaggregated data on intersectionality to enable appropriate monitoring and scrutiny of policies.**
- **How it will ensure the full protection of ESC rights for all people without discrimination through its planned incorporation legislation and supporting policy and practice.**
- **To what extent the UNCRC incorporation and proposed human rights framework will give effect to ESC rights of children and young people in Scotland.**

- **How it will ensure that lessons learned exercises such as the COVID-19 Inquiry consider the economic, social and cultural rights of children, families and migrants.**

3. Article 7: The right of children and young persons to protection

3.1. The employment of children and young people

Employment law is a reserved matter i.e. within the legislative purview of the UK Parliament. The Scottish Government cannot legislate for differentiated employment rules, including the statutory level of minimum wage and employment conditions.¹² In Scotland, unlike England, school leavers¹³ can enter full time employment from the age of 16. Children between 13 and school leaving age may not engage in work that puts at risk their safety, health, development or education.¹⁴ Local Authority byelaws govern specific rules about children’s employment and there is no national level information on the numbers, patterns or conditions of such employment. There is currently no official data on non-compliance or sanctions.

Minimum wage levels (‘National Living Wage’) are set by the UK Government on the advice of the Low Pay Commission (LPC).¹⁵ Workers over the age of 23 are entitled to a higher minimum wage than those aged 18 to 22 and employees between the ages of 16 and 18 or in the first year of an apprenticeship are entitled to less than half the rate of workers over the age of 23.¹⁶

A Living Wage Scheme¹⁷ encouraging higher pay based on ‘the real living wage’ values is financially supported by the Scottish Government, and has seen increasing voluntary commitments from employers, despite economic pressures.¹⁸ This is independently annually calculated by The Resolution Foundation based on living costs.¹⁹ The Living Wage in Scotland is the same for everyone if you are aged 18 or over and you work for an accredited Living Wage employer.ⁱ

However, though limited, opportunities for incentives and accountability for positive working conditions have not been fully grasped by the Scottish Government. Levers such as the Scottish Government’s “Fair Work” policy and Business Pledge rely heavily on voluntary commitment and greater use of procurement and grant-making could be better utilised to improve fair working practices. The Fair Work First Guidance from 2021 asks recipients of Scottish Government grants, funds and contracts to commit to Fair Work Principles, but leaves discretion to how this is evaluated by internal decision makers and encourages a continuous improvement

ⁱ Real living wage is currently £10.90 (for those aged 18 or over); National Living wage (set by UK government) is £10.42 for those aged 23 or over; National Minimum Wage (set by UK government) is £10.18 (21-22); £7.49 (18-20); £5.28 (Under 18 and Apprentice).

approach, largely built around self-reporting. For example, the standard procurement process indicates that “bidders for Scottish Government may be asked, when relevant and proportionate to what is being purchased, to describe how, in performing the contract they will meet the Fair Work First criteria.”²⁰

Employability, skills and training are devolved to Scotland (see Section 5.2.6. Employability for further information). Since the introduction of the Apprenticeship Levy,ⁱⁱ the Scottish Government has used additional resources raised to support a Scottish Modern Apprenticeship scheme. Statistics indicate that the number of Modern Apprenticeship starts rose by 16 per cent over 2021.²¹ The success of Modern Apprenticeships continues to be undermined by significant gender segregation – in 2020, males represented 75.5 per cent of participants in STEM frameworks while women account for 97 per cent of childcare apprentices and 93 per cent of hairdressing apprentices.²² Disabled people and ethnic minorities also appear to be underrepresented in a majority of streams.²³

The Commission recommends that the Committee ask the Scottish Government:

- **How it will improve data collection, analysis and publication of young people’s employment across local authorities, including data on sanctions for non-compliance.**
- **What measures are being implemented in Scotland to ensure that business enterprises comply with their responsibilities to respect and remedy human rights breaches caused or contributed to by their activities.**
- **How Scottish policy frameworks and practices such as Fair Work First or the Business Pledge can be strengthened to promote children’s rights in line with the UN CRC.**
- **How it intends to address gender segregation in its employability programmes and Modern Apprenticeship Scheme.**

ⁱⁱ The Apprenticeship Levy is an amount the UK Government requires employers to pay if they have an annual pay bill of more than £3 million or are a specific type of employer to support training programmes.

3.2. Protection of Children from Sexual Exploitation and Abuse

The UK ratified the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (the Lanzarote Convention) in 2018.²⁴ The National Guidance for Child Protection in Scotland describes the responsibilities and expectations for anybody involved in protecting children. The Guidance has direct read across to Article 34 of the UNCRC and has specific provisions, advice and signposting for a broad range of harms, including child trafficking and child criminal exploitation and child sexual exploitation.

More could be done however to raise awareness of the guidance and its provisions in relation to child sexual exploitation and human trafficking and development of targeted resources including mandatory training for law enforcement officers and prison personnel, the judiciary and first responders.

Data on sexual crimes committed against a child is not systematically collected or released as official data.²⁵ Information obtained by the National Society for the Prevention of Cruelty to Children (NSPCC) under Freedom of Information found that Police Scotland had recorded 5,311 sexual offences against children in 2019/20.²⁶

The Scottish Government has committed to piloting a 'Bairns' Hoose' based on the Barnahus model which would bring together child protection, justice, and health support and services to child victims and witnesses of abuse and harm.²⁷ While a draft vision and standards were published in 2022,²⁸ there are a number of gaps or areas where clarity is lacking.²⁹ For example, it is still unclear if the Bairns Hoose will be a physical location.³⁰

Online exploitation

Regulation of the internet is reserved to UK level however it is possible to carry out behaviours treated as crimes under Scots law in online spaces. Between 2015 and 2021, referrals to Police Scotland relating to offences targeting children online increased by 511%.³¹ Online abuse perpetrated in Scotland can also be reported to the Child Exploitation and Online Protection (CEOP) centre at the National Crime Agency. The Scottish Government participates in the UK Council for Internet Safety Early Warnings System Group and an Scottish Online Safety Education Group chaired by the NCA-CEOP.

The UK Government has proposed an Online Safety Bill, following a 2019 Online Harms White Paper.³² The Bill was introduced in 2021 and its content has been much debated. If passed, the Bill would create a new duty of care for online platforms towards their users, requiring them to take action against both illegal and 'legal but harmful' content with potentially significant sanctions for platforms that fail

to comply.³³ Children's organisations in Scotland have welcomed much of the intention behind the Bill³⁴ while warning that the definitions of harm are vague and insufficient.³⁵

3.3. Protection from other forms of exploitation

Specified public authorities in Scotland are obliged to notify the Home Office about all potential victims of human trafficking and slavery via the UK National Referral Mechanism.³⁶ There were 293 adults in Scotland referred to the UK National Referral Mechanism in 2021 of which 31 were associated with sexual harms / crimes.³⁷ For the same period, where age was known, 104 cases referred concerned children.³⁸ The proportion of conclusive cases is not separated for Scotland.³⁹ However, between coming into force and 31 March 2021, the Crown Prosecution Service received 61 cases from Police Scotland which included charges under the Human Trafficking and Exploitation (Scotland) Act 2015. Prosecutors took action in 35 of the cases but only 4 resulted in a conviction of a charge under the Act.⁴⁰ Referrals to the UK NRM fell dramatically between 2019 and 2021, possibly due to the COVID-19 pandemic and related public health measures that reduced social contact.

There has been widespread criticism⁴¹ about the NRM, both in terms of time taken to process referrals and flaws in the decision making. In 2020, the median time taken from referral to a Conclusive Grounds decision was 339 days (while it should be done no later than 45 days).⁴² A 2021 Freedom of Information Request from After Exploitation revealed that 255 out of 325 negative decisions were reversed.⁴³

The Human Trafficking and Exploitation (Scotland) Act (2015) for the first time, introduced a single offence for all kinds of trafficking, consolidating and strengthening existing law in Scotland. The Act required the Scottish Ministers to develop a Scottish Trafficking and Exploitation Strategy for Scotland (2017).⁴⁴ Implementation of the Strategy is being delivered through a partnership working across all Action Areas and the Child Trafficking Strategy Group. Four annual reports have been produced to highlight collective efforts.⁴⁵

The Child Trafficking Strategy Group (CTSG) which meets quarterly, brings together elements of the three action areasⁱⁱⁱ relating to children who are, or may be, victims of human trafficking and exploitation. Action Area 1 focuses on improving the identification of victims for the purposes of support and recovery. Within this action

ⁱⁱⁱ Action Areas: 1. Identify victims and support them to safety and recovery; 2. Identify perpetrators and disrupt their activity; 3. Address the conditions that foster trafficking and exploitation.

area, work has continued on the implementation of Section 11 of the Human Trafficking and Exploitation (Scotland) Act 2015 to launch the statutory Independent Child Trafficking Guardian (ICTG), supported by the work of Guardianship Scotland: National Child Trafficking Support service.⁴⁶

At 31 March 2021, the Scottish Guardianship Service (Guardianship Scotland as of April 1st 2023) was supporting 290 young people across Scotland. Between 1 April 2020 and 31 March 2021, 94 children and young people were referred to the service, including 9 through the National Transfer Scheme.⁴⁷

Under the Human Trafficking Act, the Lord Advocate has issued Guidelines which make clear that there is unlikely to be public interest in prosecuting victims of human trafficking accused of criminal activity carried out as a consequence of trafficking or exploitation.⁴⁸ Non-prosecution of trafficking victims is legislated for under Section 8 of the Human Trafficking and Exploitation (Scotland) Act 2015,⁴⁹ however victims of trafficking have continued to face criminal charges in Scotland. Between 2016 and 2020, 155 potential trafficking survivors faced criminal charges (predominantly linked to drug offences), 21 of whom were children.⁵⁰ In 2021, the Children and Young People's Commissioner raised concern about trafficked children being prosecuted in the adult justice system.⁵¹

The Scottish Government has also introduced guidance for businesses to identify and prevent human trafficking and exploitation across their operations⁵² and has recently consulted on extending obligations to Scottish public bodies for the publication of modern slavery statements as part of work to improve transparency in supply chains.⁵³ However the prosecution rates suggest that despite a national Trafficking and Exploitation Strategy,⁵⁴ opportunities to maximise protection for survivors⁵⁵ under the 2015 Act - especially following the passage of the UK Nationality and Borders Act⁵⁶- have not been maximised.

Significant concerns have been raised this year by UN experts⁵⁷, as well as UK human rights organisations, about unaccompanied asylum seeking children going missing from hotels⁵⁸. ECPAT notes that 4600 children have been accommodated in hotels since July 2021, with 440 missing episodes and 200 children who have never been found.⁵⁹ The Commission has been unable to identify any disaggregated data to quantify the scale of this issue in Scotland.

The Commission recommends that the Committee asks the Scottish Government:

- **How it intends to improve the effectiveness of existing policy and law to prevent and respond to the exploitation of children, including sexual exploitation.**

- **What action it will take to end the risk of children and young people being brought into the criminal justice system as a result of human trafficking.**
- **For further information on actions to implement and ensure the full effectiveness of the 'Bairns' Hoose' proposals.**

4. Article 8: The right of employed women to protection of maternity

4.1. Maternity leave

Conditions of work, including maternity and paternity rights, are reserved to Westminster. All pregnant employees, regardless of length of service, are entitled to 52 weeks' maternity leave, consisting of 26 weeks ordinary maternity leave (OML) followed by 26 weeks additional maternity leave (AML). Statutory Maternity Pay amounts to:

- Six weeks pay at 90 per cent of average weekly wages
- 33 weeks at either 90 per cent of average weekly earnings, or £172.48 a week - whichever is lower.
- The remainder (13 weeks) unpaid.

Some employers offer enhanced maternity pay and conditions as part of terms and conditions of employment. Statutory Paternity Leave is limited to two weeks paid time off.

Shared Parental Leave was introduced in 2015, which allows up to one year's leave to be split between parents, but has thus far failed to meet the financial and care needs of families or to disrupt gendered patterns of earning and childcare distribution. Shared Parental Leave is currently paid at £172.48 or 90 per cent of weekly earnings, whichever is lower. This is the same as Statutory Maternity Pay (SMP)⁶⁰ except that during the first 6 weeks SMP is paid at 90 per cent of whatever you earn (with no maximum). As men remain on average the higher wage earners for most families this is financially unviable for many. As a consequence, there has been very low take up (around 2 per cent) of the arrangements by fathers.⁶¹ Evidence has shown that countries with effective paternity leave policies are often those that offer well-paid, flexible but non-transferable policies.⁶²

As with living wage obligations (see section 3.1. The employment of children and young people), there is more that the Scottish Government could do to use its voluntary commitments and standards, internal employment conditions and grant-making and procurement to encourage better take up of shared parental leave or higher maternity pay.

During the period of the COVID-19 pandemic, the UK Government introduced a 'furlough' that allowed employers to place employees on leave and reclaim the cost of the employee's salary up to 80 per cent from Government. In principle, maternity rights were unaffected by the introduction of furlough, however the Trade Unions Congress (TUC) reported incidents where women were required to start their

maternity leave early or received 80 per cent of their maternity pay, instead of the full amount.⁶³ Pregnant women who were key workers at additional risk of catching COVID-19 were entitled to receive 100 per cent of their normal pay if unable to work on health and safety grounds, however the TUC also reported incidents where employers had placed them on furlough at 80 per cent of weekly pay or refused requests to work from home.

The Commission recommends that the Committee ask the Scottish Government:

- **What measures they are taking to address the barriers to shared parental leave, including within the civil service and other public bodies.**
- **Whether it will use employability programmes to support women who were pregnant or gave birth during the pandemic who wish to upskill or return to paid work.**

5. Article 16: the right of the family to social, legal and economic protection

5.1. Violence against women and girls

National policy frameworks concerning gender-based violence against women and girls is concentrated in a national strategy.⁶⁴ The Equally Safe strategy is jointly overseen by the Scottish Government and Local Government and is built on the analytical approach outlined by the on the Elimination of Discrimination Against Women (CEDAW Committee) Committee and in the Istanbul Convention, framing gender-based violence (GBV) as a cause and consequence of women's inequality.

5.1.1. Domestic abuse

Having signed the Convention in 2012, the UK concluded its ratification of the Istanbul Convention in July 2022. In the intervening period and crucially in the last few years of the reporting period, a number of measures to improve domestic legal and policy protection for victims of gender-based violence have been pursued to prepare for the UK's full compliance.⁶⁵ In Scotland, legal reform of criminal law has been ongoing. The Domestic Abuse (Scotland) Act 2018,⁶⁶ which came into effect in 2019, reformed the law in a number of ways:

- Established domestic abuse as a course of conduct offence rather than an incident;
- Shifts the focus away from evidence of injury towards evidence that the perpetrator's "course of behaviour would be likely to cause the complainer to suffer physical or psychological harm";
- Established a presumption that courts will impose Non-Harassment Orders unless they explain why victims would be safe without one and extends Non-Harassment Orders to Children; and
- Recognises the harm done to children as additional victims rather than solely witnesses of abuse towards their parent / carer through a statutory aggravator. The National Guidance for Child Protection includes further detail for practitioners.

Critically, the new law makes clear that domestic abuse may include physical, sexual or psychological violence and controlling behaviour.⁶⁷ The new law has been broadly welcomed by campaigners and experts⁶⁸ although a review has recently warned that implementation is being undermined by a lack of resource and capacity.⁶⁹ There is an urgent need for the Scottish Government to support greater awareness-raising for victims and survivors of domestic abuse, to encourage reporting and ensure that the broader scope of the protections provided by the Act are understood (e.g. economic abuse).

Rates of domestic abuse remain high – 17 per cent of women have experienced the use of force from a partner / former partner.⁷⁰ 80 per cent of domestic abuse incidents in 2020-21 had a female victim/male perpetrator.⁷¹ Disabled women are twice as likely to experience men’s violence than non-disabled women.⁷² Lockdown magnified the risk factors for domestic abuse and made it even more difficult for victim-survivors to access support.⁷³ The Scottish Government made additional funding available for national and local services over the course of the pandemic⁷⁴ however existing funding is insufficient to provide a comprehensive service to all who need it.⁷⁵

Referral rates across different support and advocacy organisations fluctuated significantly with scaling demand as lockdown ended. Women’s refuge providers reported difficulties in moving women and families out of temporary accommodation and into more suitable settings.⁷⁶ The most common cause of homelessness for women is domestic abuse and law reform to protect victims at risk of homelessness due to domestic abuse has also been explored. The shortage of affordable alternative accommodations, including refuge accommodation, for anyone suffering domestic abuse means that victims face an impossible choice between staying in an abusive home and homelessness.⁷⁷

While there is some research on LGBT+ people’s experience of domestic abuse, more is required to fully understand people’s experiences. Women’s Aid has highlighted that members of the LGBT+ community can face additional abuse experiences such as fear of being ‘outed’⁷⁸ and research by the ‘Voice Unheard’ project with LGBT+ young people, found that 47.1 per cent of young people said that fear of homophobia, biphobia or transphobia would make them less likely to access domestic support services.⁷⁹ Research by the Scottish Trans Alliance found high levels of domestic abuse experienced by transgender people (80 per cent of respondents⁸⁰ had experienced emotional, sexual or physical abuse from a partner or ex-partner.

There are widespread gaps in Scotland in providing specialist services for Black and minority ethnic women experiencing domestic violence (especially asylum-seeking, refugee and trafficked women). Furthermore, UK research reveals that the number of families with No Recourse to Public Funds (NRPF) is increasing (including in Scotland).⁸¹ An Inquiry by the Equalities and Human Rights Committee of the Scottish Parliament (EHRiC) in 2017 on NRPF,⁸² highlighted that women and children survivors of domestic abuse who have insecure immigration status and NRPF are at ‘acute’ risk of suffering destitution due to hostile immigration policies.

Adequate funding is also necessary to ensure that women and children receive support to access the services they require. Training for prosecutors, sheriffs, local authorities and law enforcement is also required to ensure that the law is robustly enforced and accurate statistical records in relation to domestic violence exist.

5.1.2. Violence Against Women and Girls, misogyny and hate crime

National policy frameworks for violence against women are underpinned by the Equally Safe Strategy on Violence Against Women and Girls, which makes explicit the causal relationship between women's inequality and violence against women.⁸³ Equally Safe also contains the Scottish Government and Local Authorities' approach to so-called 'honour-based' violence. The strategy has been described as world leading. However over the pandemic there were concerns from women's organisations that key commitments had been missed or erroneously claimed to have been completed.⁸⁴

Following the passage of the Hate Crime and Public Order (Scotland) Act 2021, an Independent Working Group was established by the Scottish Government to assess possible gaps in the criminal law to adequately respond to prejudice-based harms committed against women and girls, including harassment, abuse and violence.⁸⁵

The Commission's view is that human rights law provides substantive authority for further action to protect women and girls from gender-based violence.⁸⁶ That said, any new law must be sufficiently foreseeable and interference with the right to freedom of expression must be proportionate both in respect of the proposed legislation and in its every day application. In particular, law must be sufficiently predictable and interference with freedom of expression must be proportionate to the need to respond to gender-based violence against women and girls, articulated as misogyny in the legislation.

5.1.3. Sexual violence and abuse

Although Scotland is experiencing record low police recorded crime, reported sexual crimes continue to rise.⁸⁷ For rape cases that reach trial the conviction rate is around 51 per cent compared to 91 per cent for all other crimes.⁸⁸ The Scottish Government commissioned a review of the management of sexual offences cases undertaken by senior judge Lady Dorrian⁸⁹ and has committed to considering the recommendations for how such cases can be better conducted through the courts.^{iv} The recommendations include piloting judge-only trials for sexual offences, a specialist court, anonymity for victims, and giving victims a right to legal representation when specific evidence is led.

^{iv} Currently being considered by the Victims, Witnesses, and Justice Reform (Scotland) Bill

Recommendations

The Commission recommends that the Committee ask the Scottish Government:

- **How all relevant public bodies will be appropriately financed and trained to enforce the Domestic Abuse (Scotland) Act 2018.**
- **How it will utilise and build on the Equally Safe Strategy to prevent violence against women and children in Scotland, including by improving specialist provision for LGBT people, Black and ethnic minority women, disabled people and individuals with complex needs. (equally safe)**
- **How it will ensure that all services to support women and children who experience gender-based violence are available and accessible to all survivors, regardless of immigration status.**
- **What it is doing in response to the recommendations of the Independent Working Group on Misogyny and Criminal Justice.**
- **What it is doing to improve access to affordable accommodation that meets the needs of women and children who have experienced domestic abuse and to reduce their risk of homelessness.**
- **What steps it intends to take in response to the review of the management of sexual offences conducted by the Lord Justice Clerk, including actions on access to justice for victims of rape and sexual assault and the use of the not proven verdict.**

5.2. Economic protections for families

5.2.1. Childcare

The Scottish Government has increased funded childcare provision from 600 hours to 1,140 hours per year, for all 3 and 4 year olds and for eligible 2 year olds.[∨] The full 1,140 hours entitlement is estimated to save families over £350 per child per month (£4,500 a year). However, rollout was delayed due to COVID-19 and a number of childcare providers have reported concerns about their sustainability.⁹⁰

[∨] Around 25% of 2 year olds meet the criteria.

There remain significant gaps for older children, disabled children and a lack of flexible options, affecting parents who work atypical hours and in particular single parents.⁹¹ In addition, parents who receive childcare cost support through the social security system, must now pay upfront.⁹²

Low-pay across the childcare sector affects the largely female workforce⁹³ and is contributing to a decline in the Scottish childminder workforce.⁹⁴

The Commission recommends that the Committee ask the Scottish Government:

- **How it will improve the flexibility of the 1140 hours offering to ensure sufficient provision for families who work irregular hours.**

5.2.2. Financial support for families

Social security

Social security in Scotland remains largely legislated for and administered at UK level, including the majority of income replacement benefits, including Universal Credit (UC), the UK's main income replacement support, pension-related entitlements and Child Benefit. Since 2016, Scotland has had legislative and delivery responsibility for around 15 per cent of total social security-spend, including disability support payments, and powers to create new benefits.

The new Social Security Scotland agency and system were established by the Social Security (Scotland) Act 2018.⁹⁵ This legislation took a welcome human rights based approach, citing rights to social security on the face of the Act^{vi}, but failed to include an obligation to comply with international standards or a requirement to demonstrate due regard, which would have filled a critical accountability gap in relation to the right to social security. The Scottish Parliament has the opportunity to strengthen the obligations associated with social security policy as part of the planned incorporation of ICESCR.

The Scottish Government has pursued a number of measures to include social security recipients in the design of new payments and administration, including a co-designed Social Security Charter that emphasises human dignity and rights, and a lived experience reference group. However there is widespread concern that the

^{vi} One of the principles of social security in Scotland is that it should contribute to reducing poverty.

Scottish Government's understandable focus on the "safe and secure transition" of responsibility has impeded innovative redesign and delayed transfer to the new agency.⁹⁶

Many concerns have been raised about the adequacy of entitlements in the UK,^{vii} and devolution of some payments to Scotland has not resulted in significant increases between UK and Scottish entitlement values. The Committee previously expressed concern about the adverse impacts of reforms⁹⁷ and the Commission remains concerned that the two-child limit on UC and other entitlements and its exceptions present an ongoing challenge to women's and children's human rights.^{viii} Early consideration of how a minimum income guarantee could be introduced in Scotland to ensure a minimum, adequate income for all is underway but timescales and options are currently unclear.

UC was temporarily increased by £20 per week during the pandemic and sanctioning was paused. The uplift was withdrawn in October 2021, despite analysis showing that the reduction would push 60,000 adults and 20,000 children into poverty.⁹⁸ A freeze on the value of welfare payments was in place between 2015 and 2020, reducing the value of income from UK welfare payments.⁹⁹ As a result, the typical claimant is six per cent worse off than they would have been without the freeze.¹⁰⁰

Following the partial devolution of social security in 2016, Scotland has limited flexibilities around the administration of UC; options to pay housing elements directly to landlords and to make payments fortnightly have already been introduced, which enable greater control over household budget management. Analysis shows that both measures are popular but undermined by low awareness.¹⁰¹ A third flexibility to split household awards between members of a couple has been in development since 2017.¹⁰² Anti-poverty groups and women's organisations argue that separate payments are necessary for women's financial independence.¹⁰³

^{vii} Measures include the social security cap for more than two children, the so called "rape clause", where women can claim for a third or subsequent child if it was conceived "as a result of a sexual act which you didn't or couldn't consent to" or "at a time when you were in an abusive relationship, under ongoing control or coercion by the other parent of the child"; a five week wait for a claimants 1st payment of Universal Credit; the social security sanction regime and the so called "bedroom tax" - also known as under occupancy charge or spare room subsidy) means that you will receive less in Housing Benefit or Housing Costs Element in a Universal Credit claim if you live in a Housing Association or Council property and you are deemed to have one or more spare bedrooms.

^{viii} The two-child limit restricts the child element of UC to the first two children born in a family. Subsequent children are entitled to no financial support, unless one of three exceptions applies – multiple birth, kinship care or the child was conceived by coercion or force. This requires women to disclose rape and domestic abuse to receive income support for her child.

There is a lack of disaggregated data across the UK welfare system which limits the ability to determine the progressive realisation of the right. Because eligibility for many payments sits at household level it can be difficult to determine how individuals are affected. Social Security Scotland has introduced automatic data collection from 2019, however there are outstanding gaps, especially around race, that make it difficult to assess take-up variation.¹⁰⁴

Mitigation and crisis support

The Scottish Government has undertaken some effort to mitigate the impact of inadequate benefit levels since devolution of powers in 2016, however, take up of devolved benefits is inconsistent.¹⁰⁵ While new benefits offering additional income have been created, others replace existing UK-wide payments with no change to payment levels, such as disability assistance payments.

Mitigation policies have included specific support for families at greater risk of poverty, for example introduction of Best Start Grants, Best Start Foods, the Scottish Child Payment and School Clothing Grants. Scottish local authorities also operate a Scottish Welfare Fund (SWF) that enables grants to be made to households in crisis. Applications increased sharply at the start of the pandemic (50 per cent between March 2019 and 2020). The Scottish Government increased funding for the SWF in 2020, however, a consistent underspend is present in a majority of local authorities.¹⁰⁶

In response to the pandemic, additional payments were made to support families via an additional Coronavirus Carer's Allowance Supplement. An initial payment was made in June 2020, with a second payment in December 2021, doubling the Carer's Allowance Supplement payments carers received in these months. Social Security Scotland was also granted further discretion to accept late applications for the Scottish Child Payment where the delay related coronavirus.¹⁰⁷

The Scottish Government has utilised devolved social security powers to introduce a Scottish Child Payment, which provides a payment for each child in households eligible for UC and other low-income benefits.^{ix} The Payment was worth £10 per child per week at launch and was increased the payment to £25 per week per eligible child from November 2022. Initially only children under the age of six could receive the payment due to delays in transferring necessary data between the UK

^{ix} The two child limit does not apply to the Scottish Child Payment nor other Social Security Scotland Entitlements.

Government and the Scottish Government. The Scottish Government has now extended the age eligibility from six to 16.

Eligibility of migrants

As immigration is reserved, migrants are not entitled to all Scottish nor all UK benefits. Certain exceptions apply, primarily to refugees. EU migrants in Scotland with Settled Status continue to be eligible for social security on the same basis as prior to the Withdrawal Agreement. Non-UK citizens in Scotland with a No Recourse to Public Funds (NRPF) condition attached to their visa are not entitled to benefits including UC, Housing Benefit and Child Benefit.¹⁰⁸

For Scottish entitlements, applicants must normally be ordinarily resident in Scotland, not subject to a visa condition and for Scottish Child payment and other 'passport' or 'top up' entitlements, in receipt of a qualifying UK benefit. It is not known how many people in the UK have a NRPF condition applied to them, because the Home Office does not collect information on the number of people who have an NRPF condition applied to them, nor do they monitor how many people with an NRPF condition are in the UK at any one time.¹⁰⁹

According to Scottish Government data,¹¹⁰ the average number of people seeking asylum in Scotland over the last ten years, is around 5000, the majority of whom are based in Glasgow. Recent research¹¹¹ has estimated that around 1000 people who have been refused asylum in Scotland live at risk of destitution.

A three-year strategy to improve support for people with No Recourse to Public Funds (NRPF) living in Scotland was published by the Scottish Government and COSLA (the umbrella body for local government in Scotland) in 2021.¹¹² Ending Destitution Together includes proposals to establish a pilot Hardship Fund to support people with NRPF across Scotland who are facing crisis situations. The strategy also commits to explore opportunities to ensure people are included in any new benefits developed through the extended social security powers. The strategy has not yet been evaluated. However, the Scottish Government has published a first year progress report, which reports that in 2020-2021 the British Red Cross operated a Hardship Fund which supported almost 2,300 people in Scotland, of which just over 700 were people subject to NRPF.¹¹³ The Scottish Government provided £160,000, which included support for 200 people subject to NRPF. These figures will be used to develop the future Scottish Fund.

Recommendations

The Commission recommends that the Committee ask the Scottish Government:

- **How it plans to ensure the adequacy of devolved benefit and social security entitlements for all in Scotland.**
- **How has the ‘safe and secure transition’ and emphasis on mitigation of reductions considered ESC rights in Scotland.**
- **How have negative impacts on families, disabled people, women and minority ethnic communities’ rights have been responded to in social security design and implementation in Scotland.**
- **How it will implement the measures in the Destitution Strategy to ensure people with NRPF have access to maximum financial support possible.**

5.2.3. Housing support for families

Housing Costs

The cost of housing is a significant challenge across Scotland.^x There is a significant lack of affordable housing in both private and social rental sectors in both urban and rural areas. Rental prices increasingly extend beyond available support, in 15 out of the 18 rental markets in Scotland there is a monthly shortfall between rents and the amount of LHA tenants can receive.¹¹⁴ In the immediate term, 1.5 million people in Scotland report that they struggle with the condition, security, suitability, or affordability of their home.¹¹⁵ Over half (51 per cent) of minority ethnic people living in poverty are in unaffordable housing, which means they are spending more than 30 per cent of their income on their housing. This is compared to 44 per cent for white people in poverty.¹¹⁶

In order to maximise supply of affordable housing, the Scottish Government has committed to increase social and affordable housebuilding with 110,000 affordable homes, including 70 per cent for social rent by 2032.¹¹⁷ Shortages of affordable housing across all tenures are particularly acute in urban areas¹¹⁸ but are also affecting rural areas, with 76 per cent of those in the Highlands and Islands reporting a shortage of rental properties.¹¹⁹

^x An eviction moratorium was instituted in response to the COVID-19 pandemic, which was followed by a short term prohibition on private rent increases and evictions in response to the rapid escalation in living costs. The current Scottish Government has indicated plans to bring forward new legislation on private rents to increase private rental security and affordability.

A national Housing to 2040 strategy¹²⁰ sets out the Scottish Government's long-term approach to improving housing affordability, security and quality, including common housing standards across all tenures. While this is welcome, enforcement is intended to come into effect progressively between 2025 and 2030. In the immediate term, legal standards vary by tenure and include a range of exceptions. In 2019, around 2 per cent of all homes (around 400,000) fell below tolerable standards.¹²¹ Disrepair to critical elements stood at 52 per cent.

The availability of accessible and culturally adequate housing is particularly limited.¹²² There are 61,000 properties awaiting adaptation, with 10,000 people on the waiting list for adapted houses and there is a particular shortage of housing suitable for families with a disabled child. Only one per cent of housing is wheelchair accessible.¹²³

Gypsy/Traveller communities experience significant barriers to culturally appropriate housing,¹²⁴ including due to stigma and discrimination.¹²⁵ Minimum Standards for Gypsy / Traveller sites¹²⁶ in Scotland were set out in 2015. Progress towards these standards was reviewed in 2018 and found to be inconsistent, with many reviews by residents not matching the positive reviews provided by site providers.¹²⁷

The Commission welcomed the Gypsy/Traveller Action Plan 2019-2021,¹²⁸ but noted that an impact evaluation was required with meaningful participation from Gypsy/Travellers' Communities. This was subsequently expanded and extended to 2023 to account for delays associated with the Covid-19 impact but no evaluation has yet been published.¹²⁹ In June 2021 the Scottish Government also made a commitment of £20 million to local authorities to establish model sites for better accommodation for Gypsy/Traveller communities.¹³⁰

The New Scots Refugee Integration Strategy (2018-2022) sets out an approach to support the vision of a welcoming Scotland, which aims to coordinate the efforts of organisations and community groups across Scotland who are involved in supporting refugees and asylum seekers. The Strategy aims to support both refugees (who have been granted refugee status or another form of humanitarian protection); people seeking asylum and people whose application for asylum has been refused, but who remain in Scotland.

The Strategy notes that there is no specific programme of funding allocation to the implementation of the New Scots strategy and in the current economic context that this is unlikely to change. Therefore, partners are encouraged to make the best use of existing resources. However, in March 2023 the Scottish Government announced¹³¹ that additional funding had been secured from the European Union Asylum, Migration and Integration Fund (AMIF)¹³² to support work to integrate refugees across Scotland.

A Refugee Integration Service for Scotland helps refugees arriving in Scotland to find accommodation. This service continues to be provided by the Scottish Refugee Council.¹³³ People who have recently been awarded refugee status are at a higher risk of homelessness as asylum accommodation is withdrawn after a 28-day 'move on' period following granting of status. It has been suggested that local authorities could do more to support this transition.¹³⁴

Homelessness

The shortage of homes contributes to unaffordability and the homelessness rate. One household is made homeless every 19 minutes,¹³⁵ many being families with children.¹³⁶ Households in Scotland who experience homelessness spend an average of 207 days in temporary accommodation, with days increasing year on year.¹³⁷

Most of the homelessness since 2010 has been attributed to the ending of assured short-hold tenancy in the private rented sector¹³⁸ while the most common cause of homeless for women is domestic abuse. In addition to shortages of accommodation, the impact of welfare reforms leading to rent arrears has been linked to evictions.¹³⁹

Young people have always been one of the groups at a higher risk of homelessness in normal times, something which has been exacerbated further by COVID-19¹⁴⁰. Homelessness particularly affects young people,¹⁴¹ especially LGBT+ young people.¹⁴² Without additional housing, including temporary respite, for anyone suffering domestic abuse, Scotland runs the risk of forcing a choice between an abusive home and homelessness.¹⁴³

Scotland has progressive housing and homelessness legislation, but practice often fails to match policy.¹⁴⁴ In 2022, *X v Glasgow City Council* confirmed that local authorities are under an absolute legal duty to provide suitable temporary accommodation for homeless households in Scotland and must meet the needs of disabled children.¹⁴⁵ However, there remains longstanding failures to meet the statutory duty to offer temporary accommodation to all those entitled to it.¹⁴⁶

Concern over both homelessness and inadequate provision of housing have been repeatedly raised by a variety of United Nations (UN) Treaty Body Committees¹⁴⁷, as well as by the UN Special Rapporteurs on Extreme Poverty and Human Rights¹⁴⁸ and Adequate Housing.¹⁴⁹ An estimated 256 people died while experiencing homelessness in Scotland in 2020, an increase of 40 deaths when compared to the previous year.¹⁵⁰

Emergency responses during the pandemic included providing temporary accommodation for individuals sleeping rough.¹⁵¹ While the intention was positive, it is clear that some of the temporary accommodation provided, including hotel rooms, was unsuitable for medium-term habitation, causing mental stress.¹⁵²

The Commission recommends that the Committee ask the Scottish Government:

- **How Scottish housing policy and legislation is being met in practice and how are they ensuring the progressive realisation of the right to adequate housing.**
- **Whether the policy and legislation ensures that significant number of individuals are prevented from being deprived basic shelter.**
- **How it plans to address the length of time families are spending in temporary accommodation.**

5.2.4. Energy costs and housing habitability

Rising energy costs undermine the right to adequate housing habitability. Even before recent energy price rises began to bite, six in 10 households on low incomes (62 per cent) reported that their costs increased during the pandemic.¹⁵³

The Fuel Poverty (Targets, Definition and Strategy) (Scotland) Act 2019 introduced statutory targets for Scottish Ministers on fuel poverty reduction and introduced a new definition of fuel poverty which better aligned fuel poverty with relative income poverty.^{xi} However since the targets were introduced, affordability of energy has decreased,¹⁵⁴ and research has warned that it will worsen over the next year.¹⁵⁵

5.2.5. Access to food

The right to food is not realised for everyone in Scotland.¹⁵⁶ Household food insecurity is unacceptably high and a large number of the people who are food insecure are children. Pre-pandemic, food insecurity levels were at 9 per cent, higher among younger adults (13 per cent)¹⁵⁷ and single parents in particular (21 per cent). There has been legislative progress on improving access to food with the Good Food Nation (Scotland) Act 2022,¹⁵⁸ although limited in scope to progressively realise the right to food.¹⁵⁹

For households with a disabled person who were advised to take additional precautions to manage their risk of catching COVID-19 (“shielding”) access to food was particularly precarious between 2020 and 2022. One survey of 800 disabled

^{xi} It also requires Scottish Ministers to produce a comprehensive strategy to show how they intend to meet the targets.

people in Scotland found that 67 per cent had had problems accessing food either for themselves or the people that they cared for.¹⁶⁰

Reliance on charitable food provision increased steadily between 2008 and 2020.¹⁶¹ The Scottish Government has introduced a draft strategy to end foodbank reliance, noting that they are “not an appropriate or long-term response to poverty.”¹⁶² Access to culturally or medically appropriate food cannot be assured through charitable provision; many foodbanks do not offer baby formula for families of infant children. However most recent data shows that although foodbank use in Scotland dropped dramatically in 2021,¹⁶³ demand between April and September 2022 increased by 34 per cent.¹⁶⁴

Recommendations

The Commission recommends that the Committee ask the Scottish Government:

- **What measures the Scottish Government is taking or intending to take to improve access to affordable, high quality and culturally appropriate food, especially during a period of crisis.**
- **What measures are being applied to ensure the affordability, accessibility and sustainability of the right to food? In particular, what measures are being implemented that guarantee access to minimum essential food that ensures freedom from hunger.**

5.2.6. Employability support

Unemployment rates in Scotland are amongst their lowest since records began,¹⁶⁵ however around 60 per cent of adults living in poverty in Scotland live in working households.¹⁶⁶ Although employment is reserved (see section 3.1. The employment of children and young people), Scotland has powers in relation to support and training to support employability. The Scottish Government’s views on the role of employment in addressing poverty in Scotland is set out at policy level in the National Strategy for Economic Transformation (NSET).¹⁶⁷

5.3. Social protections for families

5.3.1. Health and wellbeing

Prior to 2020, mental health services were already struggling to meet demand and the pandemic has negatively impacted on the mental health of many, including groups already reporting higher prevalence of mental health issues - women¹⁶⁸, children and young people¹⁶⁹ older people,¹⁷⁰ and adults living in deprived areas.¹⁷¹

Treatment targets are consistently missed for children and for adults.¹⁷² A review by the national audit body in 2018 of Child and Adolescent Mental Health Services (CAMHS) concluded that:

*“in practice... mental health services for children and young people are largely focused on specialist care and responding to crisis. The system is complex and fragmented, and access to services varies throughout the country. This makes it difficult for children, young people, and their families and carers to get the support they need”.*¹⁷³

A high level of rejected referrals (23.5 per cent) was recognised but analysis of cause is limited due to data quality.

Whole-family support

The Scottish Government action on children, young people and family wellbeing is supported by the GIRFEC policy framework – Getting It Right for Every Child.¹⁷⁴ A refreshed GIRFEC was published in 2022, updating existing materials. GIRFEC links to the Scottish Government’s flagship initiative for looked after children and young people - the Promise^{xii175} - which makes clear the importance of family support – the range of services to help families meet their individual needs.

The Promise (see section 6.1. Children in Care) also highlights a need for expanded universal whole-family support through an expansion of universal services. The Promise has particular emphasis on families in and on the ‘edges’ of care, however the principles for holistic family support are not exclusive to families in that situation.¹⁷⁶ In 2022, the Scottish Government published a routemap and national principles for delivering the Vision and developed Principles of Holistic Whole Family Support to promote consistent standards of practice.¹⁷⁷

Existing whole-family support is a broad category of services and policies to help families meet their individual needs. Third sector organisations have warned that cuts to local authority services, financial safety nets and increasing individual costs have undermined the capacity of parents to manage and families to thrive.¹⁷⁸ The Children (Scotland) Act 1995 and the Children and Young People (Scotland) Act 2014 provide that a range of services and support must be available to children and families to help them stay together unless it is unsafe to do so. However social work – a key element of family support – is currently facing significant challenges. One in

^{xii} ‘The Promise’ refers to commitments arising from the Independent Care Review.

four graduating social workers leave within six years citing factors such as stress and high caseloads.¹⁷⁹

Local authority outsourcing of family support to external providers of targeted family support has led to debates about appropriateness of conditionality requirements to access particular programmes.¹⁸⁰ Precarious funding and the impact on staff of resulting insecure employment continues to be a cause for concern.¹⁸¹

The Commission recommends that the Committee ask the Scottish Government:

- **To describe what it is doing to address the concerns regarding the availability of services to address children and young people's mental health and how it intends to improve the monitoring of both treatment type, effectiveness and relevant equalities data.**

6. Article 17: the right of mothers and children to social and economic protection

6.1. Rights of Children in Care

Scotland has high rates of Looked After¹⁸² children at 131 per 10,000 children.¹⁸³ In 2022 12,596 children were formally in care – or ‘Looked After,’ including 1,284 in some form of residential setting, of which 48 were in secure accommodation.¹⁸⁴ Looked After children live in several settings – including at home, with extended family, foster care and residential care. The nature of the care and contact is underpinned by a dedicated care plan¹⁸⁵ which should be developed with involvement of the child, their parents and prospective carers.

The most common concerns recorded at child protection case conference were domestic abuse (16%), neglect (15%), parental mental health problems (14%), parental substance use (15%), and emotional abuse (13%).¹⁸⁶ Most cases involved multiple cases for concern. While poverty is not itself a ground for concern, children growing up in poverty are overrepresented on the child protection register and are more likely to be removed from their family environment. Research from 2017 suggests that children in the most deprived 10% of small neighbourhoods were around 20 times more likely to be looked after or on the child protection register than children in the least deprived 10%.¹⁸⁷ Concern has been raised about the higher proportion of children removed from women with learning disabilities.¹⁸⁸

Care of ‘Looked After’ children is managed by local authorities¹⁸⁹ however the wider system is “complex and fragmented.”¹⁹⁰ Most residential homes are run by local authorities, though some are run by the voluntary or independent sector.¹⁹¹ An Independent Care Review was commissioned by the Scottish Government in 2016 and ran between 2017 and 2020.¹⁹² The review¹⁹³ found that despite good intentions, far too many children and families within the care system have experienced a fractured system that operates only when facing crisis.¹⁹⁴

The Independent Care Review recommended a new set of ‘Rules’ updating and clarifying the regulatory structures around care based fundamentally on the UN CRC but also reflecting “a holistic understanding of children and family lives with associated definitions and entitlements.”¹⁹⁵ A new oversight board for Keeping The Promise of the Independent Care Review has been established with the strategic goal that “Scotland's children and young people will grow up loved, safe and respected”. However, the Promise Oversight Board has reported that delivering the original aims of the delivery Plan 21-24 are no longer realistic due to COVID-19, the cost-of-living crisis and other challenges over the last three years.¹⁹⁶

The Independent Review also made clear that Scottish providers must stop selling care placements to Local Authorities outside of Scotland.¹⁹⁷ Children from England and Wales may be placed in Scottish Care Facilities and the numbers of cross boarder placements have been steadily rising, including Children on Deprivation of Liberty Orders.¹⁹⁸ The Children and Young People's Commissioner has outlined significant concerns¹⁹⁹ that such placements are incompatible with the requirements of international human rights law, policy, and standards due to the lack of appropriate safeguards.^{xiii} The Commissioner's view is that such placements are seldom in the best interests of the children involved.²⁰⁰

Data focused on secure places reports that in 2018 there were five secure accommodation settings in Scotland with total capacity of 84 secure places.²⁰¹ Only one was run directly by the local authority and the remaining four were run by independent, charitable organisations under a national contract managed by Scotland Excel on behalf of the Scottish Government and the 32 Scottish local authorities. The Plan 2021-2024 for the Promise outlines an intention to enhance community-based alternatives to secure care so that detention is a last resort however there is no evidence of a significant shift to realise this ambition.

Children may only be placed in secure accommodation where one of more of the 'secure care criteria') are met: a) that the child has previously absconded and is likely to abscond again and, if the child were to abscond, it is likely that the child's physical, mental or moral welfare would be at risk; b) that the child is likely to engage in self-harming conduct; and c) that the child is likely to cause injury to another person.²⁰² There are currently no official statistics on the causes of referral for young people are placed in Secure Care, though the majority have been placed by a Children's Hearing.

With the planned incorporation on the UN CRC into Scots Law, a child's rights approach to policy has increasingly been visible across relevant care-frameworks. This has been built on with the Children (Scotland) Act 2020 which is intended to implement guidance from the UN Committee on the Rights of the Child²⁰³ to presume capacity to have a view and for expression of views to be communicated non-verbally, for example through facial expression or play.²⁰⁴ However, access to independent advocacy which often supports care experienced children to meaningfully engage and be heard is patchy and often limited by long waiting lists.²⁰⁵

^{xiii} In 2022, the Scottish Government issued regulations to convert English deprivation of liberty orders into Scottish compulsory supervision orders.

Care experienced young people report losing access to the even limited support structures available when they leave the care system²⁰⁶ and that provision of meaningful help is often patchy, varying by setting or local authority.²⁰⁷ In a survey run by the NGO Who Cares Scotland, 100% of respondents felt that their care experience had negatively impacted on their mental health.²⁰⁸ 77% felt they had been unable to access support. Care Experienced school leavers continue to have lower attainment than other school leavers.²⁰⁹

The Scottish Parliament has passed the Children (Scotland) Act 2020, supported by the Looked After Children (Scotland) Amendment Regulations 2021, which require local authorities to keep children together with their siblings where it is safe to do so, supporting contact where siblings cannot live together, and supporting siblings' participation in Children's Hearings. A Siblings: Staying Together and Connected National Implementation Group was also convened by the Scottish Government to support implementation of guidance.²¹⁰ The group notes challenges to implementing the principle of sibling placement / contact relates to wider policy challenges, for example, the availability of large enough housing for bigger families, social worker caseloads and the practical challenges of supporting children to engage with complex processes.

Recommendations

The Commission recommends that the Committee ask the Scottish Government:

- **How it will ensure that all human rights of children, young people and their carers and /or families are protected and fully realised by any reforms of the Scottish care system.**

6.2. Children in conflict with the Law

The Commission welcomed the Age of Criminal Responsibility (Scotland) Act 2019²¹¹, which raised the minimum age of criminal responsibility from 8 to 12 years old in Scotland. However, this is still two years below the minimum international standard of 14,²¹² and the Committee on the Rights of the Child has recently recommended further law reform.²¹³

6.2.1. Remand

Scotland has a high rate of imprisonment and particular high rates of prisoners on remand.²¹⁴ 16-17 year olds continue to be placed in adult prisons. Fifty per cent of young people aged 16-20 in prison and 47 per cent of 18-20 year olds in prisons are awaiting trial at time of writing.²¹⁵ This compared to 25 per cent for people aged 21 and over.²¹⁶ Annual figures confirm that the proportion of under 21s on remand has

continued to increase in recent years, from 44 per cent in 2020-21 to 48 per cent in 2021-22 and to 54 per cent in 2022-21,²¹⁷ although the number of young people in prison has fallen considerably from a peak of 1,040 in 2007-08 to 225 in 2020-2021.^{xiv} Court backlogs caused by the pandemic also means that young people are more likely to be remanded for lengthier periods of time. In December 2022, the Commission expressed concern about the ‘crisis’ in remand in Scotland and set out our view that reforms must be expedited.²¹⁸

The disproportionate use of remand for young people and the fact that many children who are remanded in custody do not ultimately receive a custodial prison sentence has been widely criticised.²¹⁹ The Children and Young People's Centre for Justice (CYCJ) has noted that factors considered by the Sheriff when determining whether or not to grant bail for young people go beyond a risk to public safety.²²⁰

Remand can also impact on a child’s ability to rehabilitate back into their community, ‘derail positive progress’ and cause loss of opportunity,²²¹ as well affecting tenancy agreements, jobs and benefits claims.²²² Those remanded in prison have fewer opportunities to access support services and purposeful activity such as education, work and rehabilitation programmes, which results in increased time spent in cell, negatively impacting on health and wellbeing.²²³ Her Majesty’s Inspectorate of Prisons for Scotland report, on the provision of mental health services for young people entering and in custody at Polmont Young Offenders Institution in 2019, noted that the highest risk of suicide was present for those who were traumatised, young, being held on remand and in the first three months of custody.²²⁴

A Bail and Release from Custody Bill²²⁵ was introduced to the Scottish Parliament on 8th June 2022 which seeks to reform the way remand is used in Scotland, focusing on those who pose most risk to public safety. However, various organisations in Scotland have raised concerns about the lack of explicit reference to safeguards for children within the bill,²²⁶ an absence of a Children’s Rights impact assessment²²⁷ and a lack of regard to the impact of remand on children of incarcerated parents.²²⁸

6.2.2. Suitability of prisons for young people

In 2022 the Scottish Government confirmed its position that under-16 year olds should not be held in Young Offender’s Institutions (there are currently no under 16 year olds in the Scottish Prisons System.)²²⁹ However under-16 years can still proceeded against in Scottish Court on the instruction of the Lord Advocate,

^{xiv} The numbers fell slightly again to 193 in 2021-2022

although since June 2019, there has been a presumption that all cases jointly reported to the Children's Reporter and the Court will be referred to the Reporter for consideration at a Children's Hearing.²³⁰ Official statistics on convictions show that 7 children age 15 and under were convicted of an offence in the Scottish Courts and Tribunal Services in 2020-21.²³¹ The Scottish criminal justice system currently treats 16 and 17 year olds as adults.

The Children (Care and Justice) (Scotland) Bill is currently (July 2023) being considered by the Scottish Parliament and proposes changes to the Children's Hearing system extending referrals from age 16 to 18. Compulsory Supervision Orders can currently extend to a child's 18th birthday when it is in their best interest. However 16 and 17 years have no access to the Children's Reporter or Secure Care unless they are already subject to a Compulsory Supervision Order under the Children's Hearing System.

The Children's Hearing System (CHS) is viewed by experts as a more appropriate setting to consider youth justice issues than a youth court. The CHS takes a welfare-centred approach and enables young people involved to have their voice included and to better understand proceedings. It also allows for a full inquiry into the circumstances of the young people involved, which makes it more likely to lead to their needs being met.²³²

There is growing consensus in Scotland that prison is not an appropriate environment for 16 and 17 years-olds.²³³ Her Majesty's Inspector of Prisons has called for the removal of all under-18s from prison custody, including those on remand, arguing that secure care and intensive residential community-based alternatives should be used instead.²³⁴ However at time of writing, there are six 16 and 17 year olds within the Scottish prison system.²³⁵ The Scottish Government's Youth Justice Action Plan states that no 16 and 17 year olds should be held in Young Offenders Institutions (YOI).²³⁶ If passed, the Children (Care and Justice) (Scotland) Bill would prevent anybody under the age of 18 from being imprisoned in Scotland.

It is also recognised that care-experienced young people are disproportionate likely to experience the criminal justice system.²³⁷ The Independent Care Review (The Promise) committed to the development of sufficient community-based alternatives to detention consisting of 'small, safe, trauma-informed environments' by 2024.²³⁸ In response, the Scottish Government published Secure Care Pathways and Standards,²³⁹ which sets out what support children should expect from professionals when they are in a secure or community care. Implementation is intended to ensure that support is provided before, during and after a stay in secure care and that the rights of children and young people are respected.

One of the issues covered in the Pathways and Standards is the use of restraint and seclusion. A lack of adequate guidance has resulted in children being inadequately protected from harm. The Children and Young People's Commissioner Scotland has repeatedly called for the publication of holistic, human rights based statutory guidance which applies across all settings²⁴⁰.

6.2.3. Mental Healthcare Provision in Prison and Secure Care

Survey data from the Centre for Youth and Criminal Justice in 2019 revealed significant levels of mental ill-health were prevalent amongst young people within secure care institutions in Scotland^{xv}, noting that only 36 per cent of children having received support from the Child and Adolescent Mental Health Service (CAMHS) and only four per cent from the Forensic CAMHS in the year prior to their admission.²⁴¹ A 2019 inquiry by the Scottish Parliament Justice Committee²⁴² into secure care and prison places for children and young similarly noted the very high levels of Adverse Childhood Experiences (ACES) and mental health needs amongst young people entering secure care.

Mental health provision in secure care is the responsibility of the local health board in which the institution is based, with varying provision found across different regions.²⁴³ For example, in some health board areas 16 and 17 year olds are not eligible for CAMHS support, while there is only one forensic CAMHS team in the whole of Scotland based in Glasgow. Transfers between different localities and types of establishments can therefore cause disruptions to treatment and care.²⁴⁴

A 2017 Scottish Parliament Inquiry into healthcare in prisons²⁴⁵ documented slow progress in driving forward improvements to prisoner healthcare, citing longstanding issues around retention in healthcare staff, particularly GPs, clinical psychologists and mental health nurses. Recent research published by the Scottish Government shows continued unmet mental health needs in Scottish prisons, with the prevalence of mental health conditions higher in the younger age groups.²⁴⁶

The Covid-19 pandemic further compounded poor mental health outcomes for young people in detention, with restrictions resulting in the suspension of in-person family visits, disruptions to daily activities such as education programmes, and increased time spent in cells.²⁴⁷ The absence of positive face-to-face contact and affection, boredom and loneliness were cited by young people to be key issues affecting their

^{xv} The Centre's survey indicated that, in the year prior to admission, 35 % of children had attempted suicide with 53 % experiencing suicidal thoughts. Staff within secure care also noted that in 24 % of cases, there was a suspected, undiagnosed mental health concern.

well-being during that time.²⁴⁸ Although an early release programme for prisoners was instigated to reduce the prison population, those on remand were not eligible and only one young person was released under this initiative.²⁴⁹ The Commission welcomed the announcement of a public inquiry into the handling of the pandemic and has called for a human rights based approach to be taken in conducting the inquiry.²⁵⁰

An Independent Review (2021) co-chaired by the SHRC, Her Majesty's Inspectorate of Prisons Scotland (HMIPS) and third sector organisations Families Outside²⁵¹ into the handling of deaths in prison custody delivered 27 recommendations, including that an independent body carry out an investigation into every death in custody. The Commission is concerned that progress on the implementation of recommendations has been slow, with only three recommendations completed and one partially completed a year on from publication.²⁵² The Commission believes the recommendations of the review should equally apply to deaths in mental health detention.²⁵³

Research shows that 24 young people under the age of 25 died in prison in Scotland between 2009 and 2019, two of whom were under the age of 18.²⁵⁴ Half of these young people were on remand at the time of death. One young person under the age of 18 also died in secure care during the same period.²⁵⁵

Recommendations

The Commission recommends that the Committee ask the Scottish Government:

- **What action it intends to take to bring the age of criminal responsibility into line with international consensus.**
- **What action it is taking to ensure that no child is detained in appropriate settings such as prisons, and to ensure that there are appropriate community-based alternatives to secure care.**
- **To explain what it is doing to address the lack of mental health support in YOI and Secure Care facilities in Scotland for children and young people who come into conflict with the law.**

6.3 Right to assistance (asylum)

Immigration is a reserved matter, however, some aspects of support for refugees are within devolved powers. The pandemic demonstrated clearly that there is more room for collaboration between the Scottish Government, third sector and local authority partners to minimise risk of homelessness and destitution even where immigration

status presents a challenge. A three-year strategy to improve support for people with No Recourse to Public Funds (NRPF) living in Scotland was published by the Scottish Government and COSLA (the umbrella body for local government in Scotland) in 2021.²⁵⁶

The use of NRPF conditions for those with temporary migration status causes particular risk of poverty and destitution for some migrants.²⁵⁷ They were ineligible for most coronavirus financial support and cannot access UC and other income-related benefits.²⁵⁸ Women with NRPF and their children who's immigration status is contingent on an abusive partner are unable to access support necessary to ensure their safety.

Third sector organisations the Scottish Refugee Council and Aberlour collectively deliver the Scottish Guardianship Service (SGS), which provides tailored support for unaccompanied and asylum seeking children in Scotland. Section 11 of the Human Trafficking and Exploitation (Scotland) Act places the provision of guardianship on a statutory footing. Once this section fully comes into force, all children who have no parent or caregiver in the UK, who have been identified as trafficked or are considered to be vulnerable to such (often through migrating alone to Scotland), will be eligible to receive a guardian. The responsibility for coordinating services for child victims of human trafficking and exploitation lies primarily with the relevant local authority, guided by the National Guidance for Child Protection in Scotland.

Though largely beyond the reference period, the Commission has publicly indicated our concerns about the UK Government's actions to reform immigration and asylum.²⁵⁹ The Illegal Migration Bill has been heavily criticised globally, including by the UN Refugee Agency (the UNHCR) which described it as amounting to a ban on asylum and therefore a clear breach of the 1951 Refugee Convention. The Bill's provisions also undermine the protections of the Human Rights Act and threaten to put the UK in breach of the European Convention on Human Rights, and other binding international treaties such as the Convention on the Rights of the Child.²⁶⁰ The Children and Young People's Commissioner has warned that that the Bill is likely to "create a two-tier system of support for children with vulnerabilities, including asylum-seeking children and child victims of trafficking, whereby only 'Scottish' children will have access to statutory children protection mechanisms and support."²⁶¹ This is because the proposals disapply provisions of the Human Trafficking and Exploitation (Scotland) Act 2015 (sections 9(1), 9(3) and 10(1))

Dungavel Immigration Removal Centre in Lanarkshire was opened in 2011 and is currently the only immigration detention centre in Scotland. It is operated by the UK Government. Dungavel previously housed under 18s, but since 2010, the policy directive has been that only adult asylum seekers should be housed in immigration

detention.^{xvi} However, figures obtained by the BBC²⁶² show that children were being placed in Dungavel after 2010 and there are outstanding concerns about age disputed young people. Despite having a capacity of 125, only 28 people were detained there during the last inspection visit in 2021.²⁶³ The Commission has longstanding concerns about the excessive length of detention at Dungavel and other UK detention centres.^{xvii}

6.4 Child Poverty

Scotland has high rates of child poverty when compared with other European states in both absolute and relative terms. The most recent available official data indicates that that 24 per cent of children (240,000 children each year) were living in relative poverty after housing costs were considered in 2017-20.²⁶⁴ Under the Child Poverty Act 2019, there are statutory targets to reduce child poverty to under 18 per cent by 2023/24 and to under 10 per cent by 2030.²⁶⁵ The Child Poverty Action Plan 2022, outlines support for six priority family groups as at highest risk of child poverty: lone parent families, minority ethnic families, families with a disabled adult or child, families with a younger mother (under 25), families with a child under 1, and larger families (3+ children).²⁶⁶ However analysis indicates, even prior to the economic prospectus changes of 2022, that the Scottish Government is not on track to meet the targets and that child poverty rates may in fact rise without significant policy change.²⁶⁷

A lower relative cost of housing in Scotland indicates slightly lower child poverty rates in Scotland compared to the rest of the UK²⁶⁸, however analysis shows that 49 per cent of households with dependent children in Scotland find themselves in the two most serious categories of financial stress.²⁶⁹ Nearly half of minority ethnic children live in poverty.²⁷⁰ While the Scottish Government has invested in targeted social security support through the Scottish Child Payment (SCP) (see section

^{xvi} Now reflected in s.5 of the Immigration Act 2014, which limits the time children can be held in immigration detention centres to 24 hours (72 as part of a family unit.) The Illegal Migration Act 2023 s11.2(2l) allows the Secretary of State to make regulations specifying time limits that apply in relation to the detention of an unaccompanied child in relation to removal. The new Act allows the Secretary of State to make arrangements for the removal of under-18 year olds. The UK Government says this will be on a case-by-case basis: [Illegal Migration Bill: children factsheet - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/illegal-migration-bill-children-factsheet). Once a child turns 18 the Secretary of State is required to arrange their removal from the UK. The Home Office is also empowered to “provide or arrange accommodation and support for unaccompanied children, if necessary, until a local authority receives them into their care.” Unaccompanied child migrants will not be eligible for asylum unless they travel to the UK by ‘legal routes’, in practice removing almost all possibility of asylum claims.

^{xvii} See: <https://www.scottishlegal.com/articles/human-rights-commission-calls-for-dungavel-review-scottishhumanrights.com/media/2303/shrc-submission-upr-2022-vfinal.pdf>

5.2.2.), modelling suggests that meeting the interim targets through social security would require an SCP of £40 per week and to meet the final targets an estimated £165 per week at a cost in the region of £3 billion a year.²⁷¹ The escalating cost of living renders these figures already behind the CPI increase.

Other measures referred to in the strategy include action to improve availability of affordable childcare, action to address high housing costs and employability support are also noted in the Child Poverty Strategy. Sixty-eight per cent of children in poverty live in households where one, or both, parents are working. Addressing child poverty requires intervention at devolved and UK levels, such as welfare and employment. Women are more likely to be in working poverty than men.²⁷² Between 2017 and 2020 the poverty rate in Scotland was highest for single women with children.²⁷³

The Commission recommends that the Committee ask the Scottish Government:

- **what measures it has implemented to achieve its interim and final statutory Child Poverty targets.**

6.5. Education

6.5.1. Bullying and discrimination in schools

Anti-LGBT+,²⁷⁴ racist bullying, sexism and misogynistic behaviours and other forms of prejudice-related harassment, including Islamophobia,²⁷⁵ are prevalent in education settings across Scotland. Failure to prevent and adequately respond to this situation, represents discrimination.²⁷⁶ During lockdown, 47 per cent of children and young people in Scotland reported seeing/experiencing online bullying,²⁷⁷ while cyberbullying continues to be an ongoing issue.²⁷⁸ A national approach to recording bullying incidents has been established by Scottish Government.^{xviii}

As of 2021, Scottish schools must embed LGBT+-inclusive teaching across the curriculum.²⁷⁹ Despite the existence of national policy and guidance for teachers,

^{xviii} The SEEMiS system for monitoring recorded incidents was recently reviewed (published February 2023) by Education Scotland. The review found that the national definition of bullying was open in interpretation which undermined users ability to agree shared approaches with their stakeholders. The review confirmed that bullying is not systematically recorded and a third of schools do not monitor incidents at whole school level. See: [Approaches to recording and monitoring incidents of bullying in schools \(education.gov.scot\)](https://www.education.gov.scot/publications/2023/02/20230201-approaches-to-recording-and-monitoring-incidents-of-bullying-in-schools/)

civil society have reported that LGBT+-inclusive education is patchy across schools, with particular concerns raised that faith based schools do not fully engage.²⁸⁰ Concerns also persist about the ways in which racist behaviour is recognised, addressed and recorded in schools which can lead to low confidence in reporting incidents.²⁸¹ Work is underway to replicate this approach in relation to race (Race Equality and Anti-Racism in Education Programme), however there has been no update on progress.²⁸² The programme focuses on four key areas of curriculum reform: racism and racist incidents in schools; diversity in the teaching profession; educational leadership; and professional learning.²⁸³ There have been growing calls for, and commitments made to, decolonising the curriculum in both schools and universities,²⁸⁴ with new resources being developed.²⁸⁵

Scottish Gypsy/Traveller children and young people have the lowest attendance and highest exclusion record of any ethnic group. Transition to senior school is also low.²⁸⁶ Many disabled children and young people encounter physical and support barriers to education, affecting both mainstream and special schools. An independently chaired Disabled Children and Young People Advisory Group (DCYPAG) advises the Scottish Government on disabled children, young people and their families.

An investigation by the Children and Young People's Commission in 2018 raised human rights concerns around the use of restraint and seclusion in Scotland's schools.²⁸⁷ The investigation found that an absence of policies or at times conflicting policies had contributed to confusion about how to handle and respond to children expressing their feelings non-verbally and that use of restraint and seclusion was not adequately monitored. Judicial review proceedings followed in 2019²⁸⁸ following which the Scottish Government committed to produce human rights based guidance on restraint and seclusion and review the effectiveness of that guidance.²⁸⁹ xix

6.5.2. Attainment and performance support

Addressing the poverty-related attainment gap remains the Scottish Government's priority in education.²⁹⁰ Progress since 2016 has been inconsistent.²⁹¹ Pre-pandemic there was evidence that exam performance was improving overall, local variation

^{xix} Although draft guidance was consulted upon on 2022 ([Physical intervention in schools: draft guidance - gov.scot \(www.gov.scot\)](#)) this guidance is non-statutory and was criticised as unfit for purpose by stakeholders. The Scottish Government has not yet responded to the consultation results. A Private Members Bill is currently (July 2023) under consultation in the Scottish Parliament which aims to legislate to put guidance on a statutory basis and improve monitoring and recording of incidents ([daniel-johnson-final-cd.pdf \(parliament.scot\)](#)).

was acute across all measures. Education and skills spending was increased from £4.3 billion to £4.15 in 2021/2022,²⁹² however much of the real-terms increase has been targeted additions through the Scottish Government's Attainment Scotland Fund as opposed to general increase in education spending.²⁹³ An additional £215 million of targeted funding for the attainment gap was announced in 2021-22.

Although education spending has increased in recent budgets, with targeted funding for addressing the attainment gap, the reality of many pupils' lived experience is that impact on attainment requires a wider preventative focus. Children cannot learn when they are hungry at school and struggle to thrive when unable to afford basic equipment.²⁹⁴

Schooling in Scotland was disrupted by the COVID-19 pandemic and public health requirements to work from home ('lockdown'.) While education resources were moved online, access to online learning was not consistent across all local authorities and progress on developing online learning was slow. A return to in-person learning was prioritised by public health policies.²⁹⁵ However, children and young people had varying experiences of learning at home and upon return to school that have long term effects for learning and wellbeing.²⁹⁶

An OECD report on the Scottish education system from 2021 indicated issues with short-termism, exam systems that are inconsistent with the voiced ethos of Scottish education,²⁹⁷ a lack of robust performance data, teacher capacity and a lack of leadership.²⁹⁸ In response to mounting concern about the lack of progress in closing the poverty related attainment gap and system bias revealed by emergency COVID-19 exam arrangements,^{xx} the Scottish Government has set out intentions for broad education reform. A "national conversation" on education reform is underway, seeking welcome and widespread public participation.²⁹⁹ The Scottish Government is also considering an independent review of qualifications and assessments; reform of education bodies and post-school education and training.³⁰⁰ However, the content and aim of the reform agenda remains exceptionally vague at this time.

^{xx} In 2020, teacher estimated grades temporarily substituted in-person examinations. An invigilation system aimed to ensure consistency that was "fair and credible", but resulted in the Scottish Qualification Authority lowering grades in a quarter of cases, disproportionately affecting pupils at schools in the most deprived areas.

^{xx} Grades were revised to reflect teacher estimates in all cases.

There is a large attainment gap between pupils with Additional Support Needs (ASN)^{xxi} and pupils without ASN.³⁰¹ In the past decade there has been a 24.6 per cent cut in cash terms³⁰² in resources for pupils with ASN³⁰³ and a 16.3 per cent decrease (an all-time low) in ASN staff, whilst numbers of pupils with ASN has escalated dramatically.³⁰⁴ The Education (Additional Support for Learning) (Scotland) Act 2004³⁰⁵ requires education authorities to identify, provide for and review the additional support needs of all their pupils.³⁰⁶ An independent review of Additional Support for Learning in 2020 found that implementation of this act was inconsistent, and made a suite of recommendations for the Scottish Government and partners to improve access to additional support for learning for all children who are entitled to it.³⁰⁷

The Scottish Government's Programme for Government (2021): A fairer, greener Scotland 2021-2022³⁰⁸ detailed a commitment by Scottish Ministers to delivering a National Transition to Adulthood Strategy during this parliamentary term. This will aim *"to support disabled young people as they make the transition to adult life, and provide them and those who look after them with joined up guidance and support to unlock better educational and employment opportunities and health outcomes"*. In 2022, the Scottish Government commissioned a literature review of Scottish, UK and international evidence on the main challenges and experiences faced by young disabled people during their transition to adulthood. The research also includes a review of evidence of best practice when supporting people on this journey.³⁰⁹

This work is being taken forward by a National Transition to Adulthood Strategy Working Group – an external working group created to bring together organisations who can play a key role in contributing towards the development, and support the implementation, of Scotland's first National Transitions to Adulthood Strategy for disabled young people.³¹⁰

Human Rights Education

Human rights based education is not obligatory in Scotland, though scope is provided for it within the Curriculum for Excellence. There is some evidence to suggest that human rights education is delivered more widely in Scotland than other parts of the UK,^{xxii} with greater awareness of the UNCRC and confidence in taking a

^{xxi} ASN includes disabled children and those with a wide range of other support needs, for example care experience, bereavement or English as an additional language.

^{xxii} This has been attributed to the fact that it is embedded national measures such as the Curriculum for Excellence, GIRFEC and mentioned in the General Teaching Council requirements.

human rights approach evidenced amongst school staff.³¹¹ Local Authority funding is made available to some schools in Scotland to deliver the Rights Respecting Schools Awards (RRSA).³¹² As of May 2022, the Scottish Government now provides funding for all schools in Scotland to participate in UNICEF's Rights Respecting Schools Award.³¹³

Research has shown that where children attend Rights Respecting Schools (or schools working towards the award), they have reported feeling safer at school, more respected by adults and more engaged in their education.³¹⁴ However, access to human rights education remains dependent on the 'individual school, willingness of teachers and resources available'³¹⁵ meaning it is not yet universally available.

Further and higher education and ongoing learning

Higher Education fees continue to be paid for by the state for Scottish domiciled students at Scottish Universities.³¹⁶ Following a successful judicial review of the policy,³¹⁷ the Scottish Government must amend the law to prevent discrimination against an individual on the basis of their immigration status under the Human Rights Act. Efforts to widen access to further and higher education have been supported by a Commissioner on Fair Access since 2016.³¹⁸ Statistics show that in 2020/2021, 16.7 per cent of Scottish domiciled full-time first degree students at Scottish universities came from the 20 per cent most deprived³¹⁹ areas in the country, a disproportionately low figure.³²⁰

The Commission recommends that the Committee ask the Scottish Government:

- **What measures will it take to improve educational attainment in Scotland, including non-exam related measures?**
- **What measures it will take to protect children and young people from restraint and seclusion in health, education and social care settings?**
- **How proposed reforms of the Scottish education system and education bodies will advance the human rights of children and young people and how the Scottish Government plan to involve children and other rights holders in the development of any reforms to the Scottish education system?**

6.6. Other

In 2019, the Scottish Parliament passed the Children (Equal Protection from Assault) (Scotland) Act 2019, which came fully into force on 7 November 2020. The Act removes the defence of 'reasonable chastisement' in cases of physical punishment

of children by parents or caregivers. The Commission welcomed the Act, however, we noted that this change was only one step towards a comprehensive strategy for the prevention and elimination of violence against children and respect for human rights. The Commission believes that any legislative measures must be accompanied by a national strategy to promote positive alternative methods to support parents and influence social attitudes over time.

7. Article 19: the right of migrant workers and their families to protection and assistance

Immigration is a reserved matter and visa requirements are set out by the Home Office in line with UK-wide legislation. Scotland's population is rising at a slower rate than the rest of the UK³²¹ and the demographic profile aging more rapidly, with net migration in 2020-21 recorded at 27,800.³²² The Scottish Government has actively sought to encourage non-Scottish workers to move to Scotland as part of its economic strategy,³²³ however, it has no powers to alter visa requirements, something the Scottish Government has proposed to change.³²⁴

UK nationals who attempt to access family reunification rights must meet significant income requirements and visa fees which are prohibitive. Their family members must demonstrate that they have met pre-entry language requirements, often requiring them to purchase expensive English tests accepted by the Home Office. Family members of migrant workers can also access right to remain in the UK, however this is conditional on the employment of their family member.

The Scottish Government published the New Scots Refugee Integration Strategy,³²⁵ the second national strategy for refugee integration, supported by a the New Scots Refugee Integration Delivery Project. Funding for the Delivery Project was provide by the EU's Asylum, Migration and Integration Fund up to December 2022.

Despite Scottish Government Policy articulating a generally pro-immigration stance, migrants and minority communities report that they encounter racist and discriminatory treatment at similar levels to the rest of the UK. Research has suggested the disconnect between rhetoric and experience contributes to racism being more easily discounted or under-reported in Scotland.³²⁶

8. Full list of recommendations to the Committee

The Commission recommends that the Committee ask the Scottish Government:

General Context

- How it will improve the collection and publication of disaggregated data on intersectionality to enable appropriate monitoring and scrutiny of policies.
- How it will ensure the full protection of ESC rights for all people without discrimination through its planned incorporation legislation and supporting policy and practice.
- To what extent the UNCRC incorporation and proposed human rights framework will give effect to ESC rights of children and young people in Scotland.
- How it will ensure that lessons learned exercises such as the COVID-19 Inquiry consider the economic, social and cultural rights of children, families and migrants.

Article 7: The right of children and young persons to protection

- How it will improve data collection, analysis and publication of young people's employment across local authorities, including data on sanctions for non-compliance.
- What measures are being implemented in Scotland to ensure that business enterprises comply with their responsibilities to respect and remedy human rights breaches caused or contributed to by their activities.
- How Scottish policy frameworks and practices such as Fair Work First or the Business Pledge can be strengthened to promote children's rights in line with the UN CRC.
- How it intends to address gender segregation in its employability programmes and Modern Apprenticeship Scheme.
- How it intends to improve the effectiveness of existing policy and law to prevent and respond to the exploitation of children, including sexual exploitation.

- What action it will take to end the risk of children and young people being brought into the criminal justice system as a result of human trafficking.
- For further information on actions to implement and ensure the full effectiveness of the 'Bairns' Hoose' proposals.

Article 8: The right of employed women to protection of maternity

- What measures it is taking to address the barriers to shared parental leave, including within the civil service and other public bodies.
- Whether it will use employability programmes to support women who were pregnant or gave birth during the pandemic who wish to upskill or return to work.

Article 16: the right of the family to social, legal and economic protection

- How all relevant public bodies will be appropriately financed and trained to enforce the Domestic Abuse (Scotland) Act 2018.
- How it will utilise and build on the Equally Safe Strategy to prevent violence against women and children in Scotland, including by improving specialist provision for LGBT people, Black and ethnic minority women, disabled people and individuals with complex needs. (equally safe).
- How it will ensure that all services to support women who experience gender-based violence are available and accessible to all survivors, regardless of immigration status.
- What it is doing in response to the recommendations of the Independent Working Group on Misogyny and Criminal Justice.
- What it is doing to improve access to affordable accommodation that meets the needs of women and children who have experienced domestic abuse and to reduce their risk of homelessness.
- What steps it intends to take in response to the review of the management of sexual offences conducted by the Lord Justice Clerk, including actions on access to justice for victims of rape and sexual assault and the use of the not proven verdict.

- How it will improve the flexibility of the 1140 hours offering to ensure sufficient provision for families who work irregular hours.
- How it plans to ensure the adequacy of devolved benefit and social security entitlements for all in Scotland.
- How has the 'safe and secure transition' and emphasis on mitigation of reductions considered ESC rights in Scotland.
- How have negative impacts on families, disabled people, women and minority ethnic communities' rights have been responded to in social security design and implementation in Scotland.
- How it will implement the measures in the Destitution Strategy to ensure people with NRPF have access to maximum financial support possible.
- How Scottish housing policy and legislation being met in practice and how are they ensuring the progressive realisation of the right to adequate housing.
- Whether the policy and legislation ensures that significant number of individuals are prevented from being deprived basic shelter.
- How it plans to address the length of time families are spending in temporary accommodation.
- What measures the Scottish Government is taking or intending to take to improve access to affordable, high quality and culturally appropriate food, especially during a period of crisis.
- What measures are being applied to ensure the affordability, accessibility and sustainability of the right to food? In particular, what measures are being implemented that guarantee access to minimum essential food that ensures freedom from hunger.
- To describe what it is doing to address the concerns regarding the availability of services to address children and young people's mental health and how it intends to improve the monitoring of both treatment type, effectiveness and relevant equalities data.

Article 17: the right of mothers and children to social and economic protection

- How it will ensure that all human rights of children, young people and their carers and /or families are protected and fully realised by any reforms of the Scottish care system.
- To describe what it is doing to address the concerns regarding the availability of services to address children and young people's mental health and how it intends to improve the monitoring of both treatment type, effectiveness and relevant equalities data.
- What action it intends to take to bring the age of criminal responsibility into line with international consensus.
- What action it is taking to ensure that no child is detained in appropriate settings such as prisons, and to ensure that there are appropriate community-based alternatives to secure care.
- To explain what it is doing to address the lack of mental health support in YOI and Secure Care facilities in Scotland for children and young people who come into conflict with the law.
- What measures it has implemented to achieve its interim and final statutory Child Poverty targets.
- What measures will it take to improve educational attainment in Scotland, including non-exam related measures.
- What measures it will take to protect children and young people from restraint and seclusion in health, education and social care settings.
- How proposed reforms of the Scottish education system and education bodies will advance the human rights of children and young people and how the Scottish Government plan to involve children and other rights holders in the development of any reforms to the Scottish education system.

Annex: methodology and sources

The evidence relied on in this report has largely been identified in preparation for the Commission's parallel report to the UN Committee on Economic, Social and Cultural Rights, publishing in January 2022.³²⁷ A civil society roundtable focused on the impacts of the 2022 economic situation for communities in Scotland helped focus the content of our report on key areas of most acute concern in the current social and fiscal climate. The report has also been informed by evidence from the Commission's research database and our engagement with policy process and participatory work up to 2023. This builds on research undertaken for its report to the Universal Period Review in 2022 – including a series of civil society workshops held between November and December 2021.

Further evidence has also been drawn from the Commission's COVID-19 focused publications; other Commission sources, such as: responses to consultations about proposed legislative change; and many external sources including reports published by NGOs, Ombudsmen, inspectorates and regulators. The Commission would be pleased to provide any clarification, further information, or other assistance to the Committee

The Commission's analysis of human rights impacts of the pandemic and related public health measures has also informed this submission.

Endnotes

¹ See: United Kingdom 42nd National Report on the implementation of the European Social Charter submitted by THE GOVERNMENT OF THE UNITED KINGDOM: Articles 7, 8, 16, 17, and 19 for the period 01/01/2018 – 31/12/2021. Available at: rm.coe.int/rap-cha-gbp-42-2023/1680aae2d9.

² See: <https://www.gov.scot/news/parliament-backs-eu-continuity-bill/>

³ The UK Withdrawal From The European Union (Legal Continuity) (Scotland) Bill – A Reference by the Attorney General and the Advocate General for Scotland [2018] UKSC 64. See: [THE UK WITHDRAWAL FROM THE EUROPEAN UNION \(LEGAL CONTINUITY\) \(SCOTLAND\) BILL – A Reference by the Attorney General and the Advocate General for Scotland - The Supreme Court](#)

⁴ See:

- <https://tfn.scot/news/protesters-turn-out-against-universal-credit-cut>
- <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23881>

⁵ **Disabled people**

- <https://www.erics.scot/wp/wp-content/uploads/2021/10/HRHE-and-disabled-peoples-rights-Final-Sept-2021.pdf>
- <https://www.jrf.org.uk/report/poverty-scotland-2021>
- <https://wbg.org.uk/wp-content/uploads/2021/03/Covid-19-and-economic-challenges-for-disabled-women.pdf>

Children and young people

- <https://www.jrf.org.uk/report/poverty-scotland-2021>;
<http://www.healthscotland.scot/population-groups/children/child-poverty>
- <https://www.scottishhumanrights.com/media/2211/coe-european-social-charter-2021-shrc.pdf>

Women

- https://wbg.org.uk/wp-content/uploads/2021/10/Social-security_-Autumn-2021-pre-Budget-Briefing-1-1.pdf
- <https://www.gov.scot/publications/fairer-scotland-women-gender-pay-gap-action-plan/>
- <http://www.healthscotland.scot/health-inequalities/fundamental-causes/poverty/overview-of-poverty>

Lone parents

- <https://data.gov.scot/poverty/>
- https://wbg.org.uk/wp-content/uploads/2021/10/Social-security_-Autumn-2021-pre-Budget-Briefing-1-1.pdf

Minority ethnic households

- <https://www.jrf.org.uk/report/review-poverty-and-ethnicity-scotland>
- <https://www.runnymedetrust.org/blog/the-colour-of-money-race-and-economic-inequality>

⁶ See: [Scottish Covid-19 Inquiry \(covid19inquiry.scot\)](#)

⁷ The UK Government recently withdrew the Bill of Rights Bill and announced it would not proceed with the proposals.

⁸ The Scottish Government has recently (June 2023) announced its plans to reintroduce the Bill to the Scottish Parliament for reconsideration with amendments in response to the Supreme Court Judgement.

⁹ See: [Children's rights - Human rights - gov.scot \(www.gov.scot\)](#)

¹⁰ See: https://www.scottishhumanrights.com/media/2343/2022_09_14-shrc-hr-bill-legal-framework-executive-summary.pdf

¹¹ See: scottishhumanrights.com/media/2406/icescr-pswg-for-publicationv2.pdf

¹² See: Working Time Regulations 1998

¹³ See: [School leaving age - GOV.UK \(www.gov.uk\)](#)

¹⁴ See: Children and Young Persons (Scotland) Act 1937 (section 28) states that children, who are over 13 and under school leaving age (16), are allowed to work but only if, for example, their safety, health, development and education are not put at risk. It also states that subject to the provisions of this section and of any byelaws made thereunder, no child shall be employed for more than thirty-five

hours or, if they are under the age of fifteen years, for more than twenty-five hours in any week in which they are not required to attend school

- 15 See: [Low Pay Commission summary of findings 2022 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)
- 16 See figures for 2021 at [The National Minimum Wage in 2021 - GOV.UK \(www.gov.uk\)](https://www.gov.uk)
- 17 See [What is the real Living Wage | Living Wage Scotland \(scottishlivingwage.org\)](https://scottishlivingwage.org)
- 18 See <https://www.povertyalliance.org/real-living-wage-increases-to-10-90-in-scotland/>
- 19 See <https://scottishlivingwage.org/what-is-the-real-living-wage/>
- 20 See: [Fair Work First Guidance: Supporting the implementation of Fair Work First in workplaces across Scotland \(www.gov.scot\)](https://www.gov.scot)
- 21 See: [Statistics | Skills Development Scotland](https://www.gov.scot)
- 22 See: [Policymakers \(closethegap.org.uk\)](https://closethegap.org.uk)
- 23 See: [Modern Apprenticeships | Equality and Human Rights Commission \(equalityhumanrights.com\)](https://equalityhumanrights.com)
- 24 See:
 - <https://www.coe.int/en/web/portal/-/the-uk-ratifies-the-lanzarote-convention-to-protect-children-against-sexual-violence>
- 25 See: <https://www.gov.scot/publications/recorded-crime-scotland-2021-2022>
- 26 See: <https://tfn.scot/news/child-sexual-offences-rise-by-a-third-over-five-years>
- 27 See: [A Stronger & More Resilient Scotland: The Programme for Government 2022-23 \(www.gov.scot\)](https://www.gov.scot)
- 28 See: Updated in 2023, [Bairns' Hoose - Scottish Barnabus: vision, values and approach - gov.scot \(www.gov.scot\)](https://www.gov.scot)
- 29 See: https://www.togetherscotland.org.uk/media/3266/socrr23_final.pdf
- 30 See: [children-1st-response-to-bairns-chose-consultation-november-22.pdf \(children1st.org.uk\)](https://www.children1st.org.uk)
- 31 See: [Nearly 2,000 online child abuse offences recorded in Scotland | Glasgow Times](https://www.glasgowtimes.co.uk); [Reports of online child abuse continue to increase - Police Scotland](https://www.scotland.nhs.uk)
- 32 See: [Online Harms White Paper - GOV.UK \(www.gov.uk\)](https://www.gov.uk)
- 33 See: [Online Safety Bill - Parliamentary Bills - UK Parliament](https://www.parliament.uk)
- 34 See: [Children's rights in the digital world: the UK's opportunity to create ground breaking legislation - The Children and Young People's Commissioner Scotland \(cypcs.org.uk\)](https://www.cypcs.org.uk)
- 35 See: [Online Safety Bill – is it a missed opportunity? | Together Scotland](https://www.together.scot.nhs.uk)
- 36 See: [National referral mechanism guidance: adult \(Northern Ireland and Scotland\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk)
- 37 See: [Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, end of year summary, 2021 - GOV.UK \(www.gov.uk\)](https://www.gov.uk) data table Table 5 - Number of individuals referred to the NRM that were potentially exploited as adults, by nationality, country of responsible police force and exploitation type (2021)
- 38 *Ibid.* Table 6 – Number of individuals referred to the NRM that were potentially exploited as children, by nationality, country of responsible police force and exploitation type (2021)
- 39 *Ibid.* Table 16 - Number of positive and negative NRM conclusive grounds decisions made per quarter, by age group at exploitation
- 40 See: [Trafficking and Exploitation Strategy – Fourth Annual Progress Report \(www.gov.scot\)](https://www.gov.scot)
- 41 See: [The National Referral Mechanism: A Five Year Review | ECPAT UK](https://www.ecpat.org.uk)
- 42 See: [Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, end of year summary, 2020 - GOV.UK \(www.gov.uk\)](https://www.gov.uk)
- 43 See: [New data: Majority of trafficking claims found to be 'positive' after reconsideration – After Exploitation](https://www.gov.uk)
- 44 See: [Trafficking and Exploitation Strategy \(www.gov.scot\)](https://www.gov.scot)
- 45 See: [Trafficking and Exploitation Strategy – Fourth Annual Progress Report \(www.gov.scot\)](https://www.gov.scot)
- 46 See [Trafficking and Exploitation Strategy – Fourth Annual Progress Report \(www.gov.scot\)](https://www.gov.scot)
- 47 See [Trafficking and Exploitation Strategy – Fourth Annual Progress Report \(www.gov.scot\)](https://www.gov.scot)
- 48 See: [Lord Advocate's instructions: Non-prosecution of victims of human trafficking | COPFS](https://www.copfs.gov.uk)
- 49 [Human Trafficking and Exploitation \(Scotland\) Act 2015 \(legislation.gov.uk\)](https://www.legislation.gov.uk)
- 50 See: [Trafficked children locked in Scots jails in breach of rights law, activists say | The National](https://www.thenational.scot)
- 51 [Statement: Trafficked children detained in Young Offenders Institutions - The Children and Young People's Commissioner Scotland \(cypcs.org.uk\)](https://www.cypcs.org.uk)

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- ⁵² See: [Slavery and human trafficking: guidance for businesses - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/guidance-for-businesses-slavery-and-human-trafficking/guidance-for-businesses-slavery-and-human-trafficking.pdf)
- ⁵³ See: [Transparency in supply chains - extension: inclusion of Scottish public bodies - consultation - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/transparency-in-supply-chains-extension-inclusion-of-scottish-public-bodies-consultation/transparency-in-supply-chains-extension-inclusion-of-scottish-public-bodies-consultation.pdf)
- ⁵⁴ See: [Trafficking and Exploitation Strategy – Fourth Annual Progress Report \(www.gov.scot\)](https://www.gov.scot/publications/trafficking-and-exploitation-strategy-fourth-annual-progress-report/trafficking-and-exploitation-strategy-fourth-annual-progress-report.pdf)
- ⁵⁵ See <https://www.scottishrefugeecouncil.org.uk/scottish-parliament-votes-against-the-borders-bill/>
- ⁵⁶ See: [Nationality and Borders Act 2022 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2022/12/section-1)
- ⁵⁷ See: [UK: Protect unaccompanied children seeking asylum say UN experts | OHCHR](https://www.ohchr.org/en/press-releases/2022/04/uk-protect-unaccompanied-children-seeking-asylum-say-un-experts)
- ⁵⁸ See: [Over 100 charities call for action on children going missing from Home Office hotels, at risk of trafficking and exploitation | ECPAT UK](https://www.ecpat.org.uk/news/over-100-charities-call-for-action-on-children-going-missing-from-home-office-hotels-at-risk-of-trafficking-and-exploitation)
- ⁵⁹ For example, see:
- [Legal limbo: unaccompanied children in hotels denied care and protection | Helen Bamber](https://www.justicescotland.org.uk/publications/legal-limbo-unaccompanied-children-in-hotels-denied-care-and-protection)
 - [Letter to Prime Minister - Children in Hotels .docx \(justrightscotland.org.uk\)](https://www.justicescotland.org.uk/publications/letter-to-prime-minister-children-in-hotels)
- ⁶⁰ See <https://www.gov.uk/maternity-pay-leave/pay>
- ⁶¹ See: Shared parental leave take-up may be as low as 2% (February 2018) BBC News <http://www.bbc.co.uk/news/business-43026312>
- ⁶² See: ['Parental leave: Where are the fathers?' \(March 2016\) Policy Brief, Organisation for Economic Co-operation and Development \[accessed: 29 April 2018\].](https://www.oecd.org/development/policy-briefs/parental-leave-where-are-the-fathers/)
- ⁶³ See: [Pregnancy, maternity and work during the Covid-19 crisis | TUC](https://www.tuc.org.uk/news/pregnancy-maternity-and-work-during-the-covid-19-crisis)
- ⁶⁴ See: Supporting documents - Equally Safe: Scotland's strategy to eradicate violence against women - gov.scot (www.gov.scot)
- ⁶⁵ See: <https://www.gov.uk/government/publications/istanbul-convention-implementation-progress-report-2021/istanbul-convention-5th-progress-report-2021-accessible-web-version>
- ⁶⁶ See: [Domestic Abuse \(Scotland\) Act 2018 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2018/12/section-1)
- ⁶⁷ See: [Domestic Abuse \(Scotland\) Act 2018 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2018/12/section-1) section 2.
- ⁶⁸ See: [Scotland set to pass 'gold standard' domestic abuse law | Domestic violence | The Guardian](https://www.theguardian.com/scotland/2018/sep/12/scotland-set-to-pass-gold-standard-domestic-abuse-law)
- ⁶⁹ See : [Domestic abuse court experiences - perspectives of victims and witnesses: research findings - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/domestic-abuse-court-experiences-perspectives-of-victims-and-witnesses-research-findings/domestic-abuse-court-experiences-perspectives-of-victims-and-witnesses-research-findings.pdf)
- ⁷⁰ See:
- <http://www.healthscotland.scot/health-inequalities/what-are-health-inequalities>
- ⁷¹ See:
- <https://www.parliament.scot/~/media/committ/2558>
- ⁷² See:
- <https://www.zerotolerance.org.uk/vaw-facts/>
 - <https://www.parliament.scot/~/media/committ/2558>
- ⁷³ See:
- [https://www.gov.scot/publications/coronavirus-covid-19-domestic-abuse-forms-violence-against-women-girls-during-phases-1-2-3-scotlands-route-map-22-11-august-2020/](https://www.gov.scot/publications/coronavirus-covid-19-domestic-abuse-forms-violence-against-women-girls-during-phases-1-2-3-scotlands-route-map-22-11-august-2020/coronavirus-covid-19-domestic-abuse-forms-violence-against-women-girls-during-phases-1-2-3-scotlands-route-map-22-11-august-2020.pdf)
<https://www.togetherscotland.org.uk/news-and-events/news/2020/07/covid-19-examining-the-impact-of-the-pandemic-on-violence-against-women-and-girls/>
 - <https://www.cypcs.org.uk/coronavirus/independent-impact-assessment/pandemic-impact-domestic-abuse/>
 - https://safelives.org.uk/Safe_at_Home_Scotland
- ⁷⁴ See: [gov.scot/news/support-for-victims-of-domestic-violence-during-covid-19-outbreak/](https://www.gov.scot/news/support-for-victims-of-domestic-violence-during-covid-19-outbreak/)
- ⁷⁵ [Violence Against Women and Girls - Independent Strategic Review of Funding and Commissioning of Services: report - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/violence-against-women-and-girls-independent-strategic-review-of-funding-and-commissioning-of-services-report/violence-against-women-and-girls-independent-strategic-review-of-funding-and-commissioning-of-services-report.pdf)
- ⁷⁶ Scottish Women's Aid (2020) Crisis and Resilience: the impact of a global pandemic on domestic abuse survivors and service providers in Scotland.
- ⁷⁷ See: <https://homelessnetwork.scot/2020/04/26/inequality-homelessness-covid-19/>
- ⁷⁸ See: *Speaking Out: Recalling Women's Aid in Scotland: 40 Year of Women's Aid in Scotland* (2017) Women's Aid: https://womenslibrary.org.uk/gwl_wp/wp-content/uploads/2017/12/Speaking-Out-40-years-of-Womens-Aid-1.pdf
- ⁷⁹ See: 'Safe Lives' blog on LGBT young people's experience of domestic abuse (Feb 2017): https://safelives.org.uk/practice_blog/lgbt-young-peoples-experiences-domestic-abuse

⁸⁰ See: *Out of Sight, Out of Mind? Transgender People's Experience of Domestic Abuse* (2013), Scottish Transgender Alliance: https://www.scottishtrans.org/wp-content/uploads/2013/03/trans_domestic_abuse.pdf

⁸¹ See:

- [NRPF Connect data report 2020 to 2021 | NRPF \(nrpfnetwork.org.uk\)](https://www.nrpfnetwork.org.uk/nrpf-connect-data-report-2020-to-2021)
- [nrpf-connect-data-summary-briefing-note.pdf \(nrpfnetwork.org.uk\)](https://www.nrpfnetwork.org.uk/nrpf-connect-data-summary-briefing-note.pdf)

⁸² <https://sp-bpr-en-prod-cdnep.azureedge.net/published/EHRIC/2017/5/22/Hidden-Lives---New-Beginnings--Destitution--asylum-and-insecure-immigration-status-in-Scotland/3rd%20Report.pdf>

⁸³ See: [Equally Safe strategy - Violence against women and girls \(VAWG\) - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/equally-safe-strategy-violence-against-women-and-girls-vawg-2016/pages/1-10.aspx)

⁸⁴ See: <https://www.engender.org.uk/content/publications/CEDAW---FOLLOW-UP-TO-CONCLUDING-OBSERVATIONS-SCOTLAND.pdf>

⁸⁵ In 2022, the Group recommended a new Misogyny and Criminal Justice Act that would cover:

- the harassment of an individual woman or girl, or a specific group of women and girls by behaving in a threatening, sexual or abusive way that is likely to cause them to experience fear, alarm, degradation, humiliation or distress
- Behaviour that is sexual or abusive and that may cause women or girls to experience fear, alarm, degradation, humiliation or distress
- Creation of a statutory aggravation for certain existing offences which are motivated by, or demonstrate misogyny
- Sending of threatening or abusive communications invoking rape, sexual assault or disfigurement to a woman or girl, or a group of women and girls to intimidate or silence women, especially online, with the effect of discouraging women from participating in public debate
- Criminalising threatening or abusive language or communication of threatening or abusive materials intending to stir up hatred of women and girls.

⁸⁶ See: [misogyny-bill-consultation-response-final-version-commission-approved-28june23.pdf \(scottishhumanrights.com\)](https://www.scottishhumanrights.com/misogyny-bill-consultation-response-final-version-commission-approved-28june23.pdf)

⁸⁷ See:

- <https://www.gov.scot/binaries/content/documents/govscot/publications/factsheet/2020/03/monthly-safer-communities-and-justice-briefs/documents/2021/monthly-safer-communities-and-justice-brief-march-2021/monthly-safer-communities-and-justice-brief-march-2021/govscot%3Adocument/Justice%2Bstatistics%2B-%2BMonthly%2BSafer%2BCommunities%2Band%2BJustice%2BBrief%2B-%2BMarch%2B2021.pdf>
- <https://www.zerotolerance.org.uk/cmsplus/content.php?pagename=vaw-facts>

⁸⁸ See: [Statistics and Key Information | Rape Crisis Scotland](https://www.rapescotland.org.uk/statistics-and-key-information)

⁸⁹ See: [Introduction - Improving victims' experiences of the justice system: consultation - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/introduction-improving-victims-experiences-of-the-justice-system-consultation/pages/1-10.aspx)

⁹⁰ See: Early Learning and Childcare Statistics 2021 (careinspectorate.com); [Supporting long-term sustainability in the sector - Financial sustainability health check of the childcare sector in Scotland - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/supporting-long-term-sustainability-in-the-sector-financial-sustainability-health-check-of-the-childcare-sector-in-scotland/pages/1-10.aspx)

⁹¹ See [https://www.gov.scot/publications/tackling-child-poverty-third-year-progress-report-annex-b-child-poverty-families-disabled-adult-child/](https://www.gov.scot/publications/tackling-child-poverty-third-year-progress-report-annex-b-child-poverty-families-disabled-adult-child/pages/1-10.aspx)

⁹² See: [Universal Credit childcare costs - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/universal-credit-childcare-costs)

⁹³ See: <https://www.parlamaid-alba.scot/~media/committ/664>

⁹⁴ See: [Childminding workforce trends qualitative research report - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/childminding-workforce-trends-qualitative-research-report/pages/1-10.aspx)

⁹⁵ See: [Social Security \(Scotland\) Act 2018 \(legislation.gov.uk\)](https://www.gov.uk/government/legislation/social-security-scotland-act-2018)

⁹⁶ See: <https://www.audit-scotland.gov.uk/news/scottish-benefits-roll-out-successful-but-challenges-remain>

⁹⁷ See the Committee's previous recommendation E/C.12/GBR/CO/6 para 41.

⁹⁸ See: [Tackling poverty and building a fairer country - debate: Social Justice Secretary's speech - 8 June 2021 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/tackling-poverty-and-building-a-fairer-country-debate-social-justice-secretarys-speech-8-june-2021/pages/1-10.aspx)

⁹⁹ The UK Government has outlined plans to resume moving benefit claimants to Universal Credit by the end of 2024.

¹⁰⁰ See: [The benefit freeze has ended, but erosion of the social security safety net continues • Resolution Foundation](#)

¹⁰¹ See: [Introduction - Universal Credit Scottish choices: evaluation - gov.scot \(www.gov.scot\)](#)

¹⁰² See: [FOI-18-01007 - Paper shared with stakeholders prior to 15 December meeting.pdf \(www.gov.scot\)](#)

¹⁰³ See: Comments from UN Special Rapporteur on Extreme Poverty in 2018, including “If you got a group of misogynists together in a room and said ‘how can we make a system that works for men but not women?’ they wouldn’t have come up with too many other ideas than what’s in place.” Reported at <https://www.telegraph.co.uk/news/2018/11/16/welfare-system-cruel-misogynistic-un-expert-warns-damning-report/>

¹⁰⁴ See: [Ethnicity, poverty, and the data in Scotland | JRF](#)

¹⁰⁵ See: [Take-up rates of Scottish benefits: October 2022 - gov.scot \(www.gov.scot\)](#)

¹⁰⁶ See: [Poverty and Inequality Commission Scottish Welfare Fund Briefing - Poverty per cent Inequality Commission \(povertyinequality.scot\)](#)

¹⁰⁷ Scottish Child Payment Regulations 2020

¹⁰⁸ See: [Public funds - GOV.UK \(www.gov.uk\)](#)

¹⁰⁹ See [From-Pillar-to-Post-Feb-2019.pdf \(rst.org.uk\)](#)

¹¹⁰ See: [No Recourse to Public Funds and Destitution - Ending destitution together: strategy - gov.scot \(www.gov.scot\)](#)

¹¹¹ See [From-Pillar-to-Post-Feb-2019.pdf \(rst.org.uk\)](#)

¹¹² See: [Ending Destitution Together: A Strategy to Improve Support for People with No Recourse to Public Funds Living in Scotland 2021-2024 \(www.gov.scot\)](#)

¹¹³ See: [Workstream One: Essential Needs - Ending Destitution Together: progress report – year one 2021 to 2022 - gov.scot \(www.gov.scot\)](#)

¹¹⁴ See: https://www.parliament.scot/S5_Social_Security/Inquiries/SSCS519SSH20_Crisis.pdf

¹¹⁵ At present an estimated 50,000 children live in poverty only after housing costs, therefore the cost of housing is locking these children into poverty. See: <https://www.parlamaid-alba.scot/~media/committ/663>

Over half (51%) of minority ethnic people living in poverty are in unaffordable housing, compared to 44% for white people in poverty. See: <https://www.jrf.org.uk/report/review-poverty-and-ethnicity-scotland>

Women’s housing situation differs from that of men, and is generally poorer, in terms of affordability, ownership, safety and overcrowding. See:

- https://wbg.org.uk/wp-content/uploads/2021/10/Housing_-_Autumn-2021-pre-Budget-Briefing-1-1.pdf
- https://scotland.shelter.org.uk/media/press_releases/scotlands_housing_system_failing_15million_people

One fifth of renters say they must decide between paying rent or bills/food. See: <https://fraserofallander.org/coronavirus-impact-on-economy-society-17-experts/>

¹¹⁶ See: Ethnicity, poverty and the data in Scotland – JRF Oct 2021

¹¹⁷ See: [Affordable Housing Supply Programme - More homes - gov.scot \(www.gov.scot\)](#)

¹¹⁸ See: Scottish Government (2021) Housing statistics quarterly update: June 2021. Edinburgh: Scottish Government. See: <https://www.gov.scot/publications/housing-statistics-scotland-quarterly-update/>

¹¹⁹ See: <https://www.hie.co.uk/research-and-reports/our-reports/2022/october/13/myliferesearch/>

¹²⁰ See: <https://www.gov.scot/collections/housing-to-2040/>

¹²¹ See: <https://www.gov.scot/publications/scottish-house-condition-survey-2019-key-findings/pages/8/>

¹²² See the Committee’s previous recommendation E/C.12/GBR/CO/6 para 50

¹²³ See: <https://www.gov.scot/binaries/content/documents/govscot/publications/strategy-plan/2021/03/housing-2040-2/documents/housing-2040/housing-2040/govscot%3Adocument/housing-2040.pdf>

¹²⁴ See: [Gypsy/Travellers - accommodation needs: evidence review - gov.scot \(www.gov.scot\)](#)

¹²⁵ See: [Improving Gypsy/Traveller sites: progress summary - gov.scot \(www.gov.scot\)](#)

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- ¹²⁶ See <https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2015/05/improving-gypsy-traveller-sites-guidance-minimum-sites-standards-site-tenants/documents/00477976-pdf/00477976-pdf/govscot%3Adocument/00477976.pdf>
- ¹²⁷ See <https://www.gov.scot/binaries/content/documents/govscot/publications/progress-report/2018/05/improving-gypsy-traveller-sites-guidance-minimum-sites-standards-site-tenants-9781788518949/documents/00535542-pdf/00535542-pdf/govscot%3Adocument/00535542.pdf>
- ¹²⁸ See: <https://www.gov.scot/publications/improving-lives-scotlands-gypsy-travellers-2019-2021/>
- ¹²⁹ See: [Improving the lives of Gypsy/Travellers: 2019-2021 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/improving-lives-scotlands-gypsy-travellers-2019-2021/)
- ¹³⁰ See <https://www.gov.scot/news/improving-accommodation-for-gypsytraveller-communities/>
- ¹³¹ See <https://www.gov.scot/news/supporting-new-scots/>
- ¹³² See: [Asylum, Migration and Integration Fund \(2021-2027\) \(europa.eu\)](https://european-council.europa.eu/media/en/press-areas/pages/press-release-2021-11-10-11.aspx)
- ¹³³ See <https://scottishrefugeecouncil.org.uk/direct-support/support-for-new-refugees/>
- ¹³⁴ See: [hrcs-upr-workshops-summary-march-2022-vfinal.pdf \(scottishhumanrights.com\)](https://www.scottishhumanrights.com/wp-content/uploads/2022/03/hrcs-upr-workshops-summary-march-2022-vfinal.pdf)
- ¹³⁵ See: https://scotland.shelter.org.uk/housing_policy/key_statistics/homelessness_facts_and_research
- ¹³⁶ 11,804 children were in households assessed as homeless in 2020-202 ; See: https://scotland.shelter.org.uk/housing_policy/key_statistics/homelessness_facts_and_research and <https://www.gov.scot/publications/homelessness-scotland-2020-2021/>
- ¹³⁷ [Homelessness in Scotland 2021-22 \(www.gov.scot\)](https://www.gov.scot/publications/homelessness-scotland-2020-2021/)
- ¹³⁸ See: <https://fraserofallander.org/fai-publications/fraser-economic-commentary/coronavirus-impact-oneconomy-society-17-experts/>
- ¹³⁹ See: <https://www.scottishhousingnews.com/article/uk-welfare-cuts-having-major-impact-on-rent-arrears>
- ¹⁴⁰ See: <https://fraserofallander.org/fai-publications/fraser-economic-commentary/coronavirus-impact-oneconomy-society-17-experts/>
- ¹⁴¹ See: <https://fraserofallander.org/fai-publications/fraser-economic-commentary/coronavirus-impact-oneconomy-society-17-experts/>
- ¹⁴² See: <https://homelessnetwork.scot/wp-content/uploads/2020/04/Equalities-Homelessness-and-Covid-19v160420.pdf>
- ¹⁴³ See: <https://homelessnetwork.scot/wp-content/uploads/2020/04/Equalities-Homelessness-and-Covid-19v270420-PUBLISHED.pdf>
- ¹⁴⁴ Shelter reports that a household is made homeless every eighteen minutes in Scotland, with many being families with children. See https://scotland.shelter.org.uk/housing_policy/key_statistics/homelessness_facts_and_research
- ¹⁴⁵ See: [2022cs0h35.pdf \(scotcourts.gov.uk\)](https://www.scotcourts.gov.uk/2022cs0h35.pdf)
- ¹⁴⁶ See: Scottish Government (2018) Homelessness in Scotland 2017-2018. <https://www.gov.scot/publications/homelessness-scotland-2017-18/> ; Scottish Housing Regulator (2018) Housing people who are homeless in Glasgow, <https://www.housingregulator.gov.scot/landlord-performance/national-reports/thematic-work/housing-people-who-are-homeless-in-glasgow> ; Shelter Scotland (2017) Evidence of Gatekeeping in Glasgow City Council, https://scotland.shelter.org.uk/professional_resources/policy_library/evidence_of_gatekeeping_in_glasgow_city_council
- ¹⁴⁷ The CESCR in 2016, See: https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E/C.12/GBR/CO/6per cent Lang =En; The CRC in 2016, See: https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/GBR/CO/5per cent Lang =En; CEDAW in 2019, See: https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GBR/CO/8per cent L ang=En and CRPD in 2017, See: https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/GBR/CO/1per cent Lan g=En
- ¹⁴⁸ See: P Alston, 'Statement on Visit to the United Kingdom, by Professor Philip Alston, United Nations Special Rapporteur on extreme poverty and human rights' (OHCHR, 2018) https://www.ohchr.org/documents/issues/poverty/eom_gb_16nov2018.pdf
- ¹⁴⁹ See [UN Special Rapporteur on adequate housing concludes UK visit | UNA UK](https://www.unhcr.org/refugees-and-returnees/2022/01/un-special-rapporteur-on-adequate-housing-concludes-uk-visit)

- 150 See: [Homeless Deaths 2020](#)
- 151 See: [The Scotland Homelessness 2021 | Crisis UK](#)
- 152 Although Scottish Government did not collect separate data on the numbers accommodated on this basis, key stakeholders reported that around 600 people were accommodated in emergency hotels in Glasgow alone at the peak.
- 153 See: [Poverty in Scotland 2021 | JRF](#)
- 154 See: [The rising cost of living and its impact on individuals in Great Britain - Office for National Statistics \(ons.gov.uk\)](#)
- 155 It has been suggested that three-quarters of all households in Scotland could struggle with energy affordability in 2023 without significant work to lower the energy price – see: [Poverty Gap widens as low income families shoulder increasing household debts – TFN- 21st October 2021 by Robert Armour; https://www.dailyrecord.co.uk/news/politics/four-million-scots-face-being-27774717](#)
- 156 See the Committee’s previous recommendation E/C.12/GBR/CO/6 para 54.
- 157 See: <https://www.gov.scot/publications/scottish-health-survey-2019-volume-1-main-report/documents/>
- 158 See: <https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/good-food-nation-scotland-bill/introduced/bill-as-introduced.pdf>
- 159 The Commission has argued that it is disappointing that the Bill is not framed in terms of the ambition to achieve a just transition to a fair, healthy and sustainable food system, and does not require that food plans set out the steps that will be taken to eradicate hunger and progressively realise the rights to food, health, equality, and a healthy environment. See: <https://www.scottishhumanrights.com/media/2269/gfn-response-final.pdf>
- 160 See: [Inclusion Scotland \(2020\), Covid-19 Initial Findings Report](#)
- 161 There has been a 43% increase in the number of food parcels distributed 2016-2020 in Scotland
- 162 See: [Ending the need for food banks: consultation on a draft national plan - gov.scot \(www.gov.scot\)](#)
- 163 See: <https://www.trusselltrust.org/news-and-blog/latest-stats/mid-year-stats/>
- 164 34% increase in the total number of parcels distributed compared to the same period in 2021/22,
- 165 See: [Unemployment rate Scotland 2022 | Statista](#)
- 166 See: [Poverty in Scotland - Poverty per cent Inequality Commission \(povertyinequality.scot\)](#)
- 167 See: [Scotland’s National Strategy for Economic Transformation - Delivery Plans October 2022 - gov.scot \(www.gov.scot\)](#)
- 168 See: <https://www.gov.scot/publications/scottish-health-survey-2019-volume-1-main-report/pages/5/>
- 169 See:
- <https://nationalperformance.gov.scot/scotlands-wellbeing-impact-covid-19-chapter-1-introduction>
 - <https://www.mentalhealthtoday.co.uk/news/therapy/one-in-three-say-they-don-t-have-the-skills-to-deal-with-their-mental-health-finds-mind>
 - <https://digitalpublications.parliament.scot/ResearchBriefings/Report/2021/10/15/ff1f3d0e-f5db-4d5b-a3e1-ca8e9de6f7db>
 - <https://spice-spotlight.scot/2021/06/23/life-in-the-pandemic-for-lesbian-gay-bisexual-transgender-lgbt-people-in-scotland/>
- 170 See: <https://www.ageuk.org.uk/globalassets/age-scotland/documents/policy-and-research/high-4967-scotinfrom-age-scotland-big-survey---summary.pdf>
- 171 Adults living in the most deprived areas in Scotland are approximately twice as likely to have common mental health problems as those in the least deprived areas (22% versus 11%); See:
- http://www.parliament.scot/S5_HealthandSportCommittee/Inquiries/201609_MH029_NHS_Health_Scotland.pdf
- Major risk factors for mental health problems include poverty, poor education, unemployment, social isolation/exclusion and major life events. See:
- <https://www.scotpho.org.uk/comparative-health/burden-of-disease/overview/>
- 172 See: [Psychological therapies waiting times - Quarter ending March 2023 - Psychological therapies waiting times - Publications - Public Health Scotland](#)
- 173 See: audit-scotland.gov.uk/uploads/docs/report/2018/nr_180913_mental_health.pdf
- 174 See: [Getting it right for every child \(GIRFEC\) - gov.scot \(www.gov.scot\)](#)
- 175 See <https://thepromise.scot/>
- 176 See: <https://thepromise.scot/resources/2020/the-promise.pdf>
- 177 See: [Holistic whole family support: routemap and national principles - gov.scot \(www.gov.scot\)](#)
- 178 See: <https://childreninScotland.org.uk/call-21-invest-in-relationship-based-whole-family-support/>

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- 179 See: <https://socialworkscotland.org/wp-content/uploads/2022/05/Setting-the-Bar-Full-Report.pdf>
- 180 See: <https://www.sdf.org.uk/concerns-raised-again-about-dundee-projects-conditional-support-to-women/>
- 181 See: [Funding & procurement – SCVO](#)
- 182 See: Defined in [Looked after children - gov.scot \(www.gov.scot\)](#)
- 183 See: [Looked After Children - Children's Social Work Statistics, Scotland 2020-21 - gov.scot \(www.gov.scot\)](#)
- 184 See: [Children's Social Work Statistics Scotland: 2021 to 2022 - gov.scot \(www.gov.scot\)](#)
- 185 See: Looked After Children (Scotland) Regulations 2009
- 186 See: [Looked after children - Children's Social Work Statistics Scotland: 2021 to 2022 - gov.scot \(www.gov.scot\)](#)
- 187 See: [Inequalities in child welfare intervention rates - Nuffield Foundation](#)
- 188 See: <https://www.engender.org.uk/files/our-bodies,-our-rights-identifying-and-removing-barriers-to-disabled-womens-reproductive-rights-in-scotland.pdf>
- 189 See <https://www.legislation.gov.uk/ukpga/1995/36>
- 190 See [the-promise.pdf \(thepromise.scot\)](#)
- 191 See: [Scotland's care system for children and young people: subject profile | Scottish Parliament](#)
- 192 See: [Care Review Reports – Independent Care Review](#)
- 193 See: [Independent Care Review – The root and branch review of Scotland's care system.](#)
- 194 See: [The-Promise.pdf \(carereview.scot\)](#)
- 195 See: [Independent Care Review – The root and branch review of Scotland's care system.](#)
- 196 See: [promise-oversight-board-report-two.pdf \(thepromise.scot\)](#)
- 197 See: [Care Review Reports – Independent Care Review](#)
- 198 In 2023, around 50% of placements in Scotland are from outside of Scotland, according to evidence provided to the Education, Children and Young People Committee. See: <https://www.parliament.scot/api/sitecore/CustomMedia/OfficialReport?meetingId=15238>
- 199 See: [Scottish Government's Policy Position Paper on Cross-border Placements of Children and Young People - The Children and Young People's Commissioner Scotland \(cypcs.org.uk\)](#)
- 200 See: [Cross-border placements - The Children and Young People's Commissioner Scotland \(cypcs.org.uk\)](#)
- 201 See: [evidence-framework.pdf \(thepromise.scot\)](#)
- 202 Section 9(4)Secure Accommodation (Scotland) Regulations 2013
- 203 UN Committee on the Rights of the Child, General Comment No 12, The right of the child to be heard, CRC/C/GC/12 (2009), para 21
- 204 See [Out of the mouths of babes | Law Society of Scotland \(lawscot.org.uk\)](#)
- 205 See: [socrr23_final.pdf \(togetherscotland.org.uk\)](#)
- 206 Improved access to through care is currently being considered by the Scottish Parliament under public petition, PE1958: Extend aftercare for previously looked after young people, and remove the continuing care age cap See: [PE1958 Extend aftercare for previously looked after young people and remove the continuing | Scottish Parliament Website](#)
- 207 See: [pe1958-notes-on-lived-experience-discussion_.pdf \(parliament.scot\)](#)
- 208 See: Who Cares Scotland? (2022), Mental Health Report: Tend Our Light
- 209 See: Scottish Government (2021), Achievement of Curriculum for Excellence (CfE) Levels 2020-21; Scottish Government (2021), Summary Statistics for Attainment and Initial Leaver Destinations, No. 3: 2021 Edition
- 210 See: [Siblings - Staying Together and Connected National Implementation Group: executive summary report - gov.scot \(www.gov.scot\)](#)
- 211 See: [Age of Criminal Responsibility \(Scotland\) Act 2019 \(legislation.gov.uk\)](#)
- 212 See: Committee on the Rights of the Child General Comment No. 24: [docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsqIkirKQZLK2M58RF%2f5F0vEnG3QGKUxFivhToQfjGxYjV05tUAlgpOwHQJsFPdJXCiixFSrDRwow8HeKLLh8cgOw1SN6vJ%2bf0RPR9UMtGkA4](#)
- 213 See: [tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FCO%2F6-7&Lang=en](#)

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- ²¹⁴ For example, see [People in prison awaiting trial at 'crisis' point - BBC News](#). The pandemic combined with a backlog in court cases has exacerbated this- see [Community justice: Sustainable alternatives to custody : Sustainable alternatives to custody \(audit-scotland.gov.uk\)](#)
- ²¹⁵ See SPS Prison Population (2023) [Prison Population Weekly Time Series 07 Jul 2023](#).
- ²¹⁶ See SPS Prison Population (2023) [Prison Population Weekly Time Series 07 Jul 2023](#).
- ²¹⁷ See SPS Prison Population (2023) [Prison Population Annual Population](#).
- ²¹⁸ [People in prison awaiting trial at 'crisis' point - BBC News](#)
- ²¹⁹ See for example:
- [The Scandal of Remand in Scotland: A Report by Howard League Scotland – May 2021 | Howard League Scotland](#)
 - [Children-on-remand-voices-lessons.pdf \(howardleague.org\)](#)
 - [“Not cut out for prison”: Depriving children of their childhood - CYPSCS](#)
- ²²⁰ Additional factors include a lack of a fixed abode/ appropriate place of safety for individuals in the community or the absence of support services from social work or the third sector, a history of offending or breaching orders etc. See: [Use and impact of bail and remand with children in Scotland \(cycj.org.uk\)](#)
- ²²¹ See: [Use and impact of bail and remand with children in Scotland \(cycj.org.uk\)](#)
- ²²² See: [19th Kilbrandon Lecture – 27th January 2022 – Dr Claire Lightowler - YouTube](#). See also: [People in prison awaiting trial at 'crisis' point - BBC News](#)
- ²²³ See:
- <https://howardleague.scot/news/2021/may/scandal-remand-scotland-report-howard-league-scotland-%E2%80%93-may-2021>
- ²²⁴ See: [Report on Expert Review of Provision of Mental Health Services at HMP YOI Polmont | HMIPS \(prisonsinspectoratescotland.gov.uk\)](#)
- ²²⁵ See: [Bail and Release from Custody \(Scotland\) Bill – Bills \(proposed laws\) – Scottish Parliament | Scottish Parliament Website](#)
- ²²⁶ For example, see responses from CYCJ and Child Clan Law: [Bail and Release from Custody \(Scotland\) Bill - CYCJ's response - Children and Young People's Centre for Justice Response 203533347 to Bail and Release from Custody \(Scotland\) Bill - Scottish Parliament - Citizen Space](#)
- ²²⁷ See response from CYPSCS: [20220927_CYPSCS.pdf](#)
- ²²⁸ For example, see responses from Howard League Scotland and Families Outside [20220908_HowardLeagueScotland.pdf](#), [Response 790563653 to Bail and Release from Custody \(Scotland\) Bill - Scottish Parliament - Citizen Space](#)
- ²²⁹ See SPS Prison Population (2023) [Prison Population Weekly Time Series 07 Jul 2023](#).
- ²³⁰ See: <https://www.copfs.gov.uk/images/2019%2006%2013%20Joint%20Agreement%20COPFS%20and%20SCRA%20Decision%20Making%20in%20Jointly%20Reported%20Cases.pdf>
- ²³¹ See: <https://www.gov.scot/publications/criminal-proceedings-scotland-2020-21/documents/> Table 5(a) People convicted by sex and age, 2011-12 to 2020-21
- ²³² See <https://www.cycj.org.uk/lessons-learnt-from-the-childrens-hearing-system/#:~:text=The%20system%20allows%20for%20a%20full%20inquiry%20into,likely%20to%20lead%20to%20their%20needs%20being%20met>.
- ²³³ See: Children's Care and Justice Bill Proposals [3. Introduction - Children's Care and Justice Bill - policy proposals: consultation - gov.scot \(www.gov.scot\)](#), see also page 7 of : [Criminal Justice Social Work Statistics in Scotland: 2020-21 \(www.gov.scot\)](#)
- ²³⁴ See: HMIPS Annual Report 2022: [HM Chief Inspector of Prisons for Scotland: Annual Report 2021-22 | HMIPS \(prisonsinspectoratescotland.gov.uk\)](#)
- ⁴⁴ See: [keepthepromise-youth-justice.pdf](#)
- ²³⁵ See SPS Prison Population (2023) [Prison Population Weekly Time Series 07 Jul 2023](#).
- ²³⁶ See: [A Rights-Respecting Approach to Justice for Children and Young People: Scotland's Vision and Priorities – Action Plan 2021-2022 \(www.gov.scot\)](#)
- ²³⁷ See: [plan-21-24.pdf \(thepromise.scot\)](#)
- ²³⁸ See <https://thepromise.scot/>

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- 239 See <https://www.securecarestandards.com/>
- 240 See: [Report of the Children's Commissioners of Northern Ireland, Scotland and Wales to the United Nations Committee on the Rights of the Child](#). <https://www.cypcs.org.uk/resources/joint-report-crc2022/>
- 241 'Secure Care and Prison places for children and young people in Scotland' (26 Nov 2019), Scottish Parliament Justice Committee, available at: <https://digitalpublications.parliament.scot/Committees/Report/J/2019/11/26/Secure-care-and-prison-places-for-children-and-young-people-in-Scotland>
- 242 See: [Secure care and prison places for children and young people in Scotland \(azureedge.net\)](#)
- 243 Ibid.
- 244 See: <https://www.scottishhumanrights.com/media/2211/coe-european-social-charter-2021-shrc.pdf>
- 245 See: [Healthcare in Prisons \(azureedge.net\)](#)
- 246 See: [Understanding the Needs of Scotland's Prison Population: A synthesis report \(www.gov.scot\)](#)
- 247 See: [Monitoring places of detention during COVID-19 - 12th Annual Report of the UK's National Preventative Mechanism 2020-21 \(publishing.service.gov.uk\)](#)
- 248 See: ['Spend time with me': Children and young people's experiences of COVID-19 and the justice system \(strath.ac.uk\)](#)
- 249 Statistics available at: [COVID-19 Information Hub \(sps.gov.uk\)](#)
- 250 See: [Commission welcomes new Scottish COVID-19 inquiry Chair and commitment to embed human rights \(scottishhumanrights.com\)](#),
- 251 See:
- <https://www.prisoninspectorscotland.gov.uk/publications/independent-review-response-deaths-prison-custody>
 - <https://www.gov.scot/news/death-in-custody-review/>
- 252 See: [Progress report on Independent Review of the Response to Deaths in Prison Custody \(scottishhumanrights.com\)](#). See also: [Independent Review of the Response to Deaths in Prison Custody: progress report - follow up - gov.scot \(www.gov.scot\)](#)
- 253 See: <https://www.scottishhumanrights.com/media/2284/investigating-deaths-during-mh-detention-20220214-final.pdf>
- 254 See: [Rights Respecting? Scotland's approach to children in conflict with the law - Children and Young People's Centre for Justice \(cycj.org.uk\)](#)
- 255 Ibid.
- 256 See: [Ending Destitution Together: A Strategy to Improve Support for People with No Recourse to Public Funds Living in Scotland 2021-2024 \(www.gov.scot\)](#)
- 257 See: <https://www.gov.scot/publications/ending-destitution-together/pages/9/>
- 258 See: <https://wbq.org.uk/wp-content/uploads/2021/03/Covid-19-and-economic-challenges-for-disabled-women.pdf>
- 259 See: [Opposition continues as UK Illegal Migration Bill set to become law \(scottishhumanrights.com\)](#)
- 260 See: [Commission opposes UK government's Illegal Migration Bill \(scottishhumanrights.com\)](#)
- 261 See: [Illegal Migration Bill: House of Lords briefing - The Children and Young People's Commissioner Scotland \(cypcs.org.uk\)](#)
- 262 See: [Child refugees 'still being held' at Dungavel centre - BBC News](#)
- 263 See: [Report on an unannounced inspection of Dungavel Immigration Removal Centre by HM Chief Inspector of Prisons 19-21 July and 2-5 August 2021 \(justiceinspectors.gov.uk\)](#)
- 264 See: [Poverty and Income Inequality in Scotland 2017-20 - gov.scot \(www.gov.scot\)](#)
- 265 See: [Child Poverty \(Scotland\) Act 2017 \(legislation.gov.uk\)](#)
- 266 Currently 8 in 10 children living in poverty belong to one of these groups: lone parents, minority ethnic families, families with a disabled adult or child, families with young mothers aged under 25, families with a child under one and larger families (3+ children). See: [Tackling Child Poverty Delivery Plan 2022-26 - gov.scot \(www.gov.scot\)](#)
- 267 See: <https://www.resolutionfoundation.org/publications/wrong-direction-can-scotland-hit-its-child-poverty-targets/> and <http://uwsoxfampartnership.org.uk/wp-content/uploads/2019/06/On-Target-July-2019-Web-FINAL.pdf>
- 268 See: [Poverty in Scotland - gov.scot \(www.gov.scot\)](#)
- 269 See: <https://www.ippr.org/blog/covid-19-how-are-families-with-children-faring-so-far>

270 See:

- [Poverty in Scotland 2021 | JRF](#)
- [Poverty in scotland 2022 0.pdf](#)

271 See: <https://fraserofallander.org/wp-content/uploads/2021/06/Child-Poverty-Final.pdf>

272 See: [leafletpov \(closethegap.org.uk\)](http://leafletpov (closethegap.org.uk))

273 See: [Poverty and Income Inequality in Scotland 2017-20 \(data.gov.scot\)](#)

274 See: <https://www.stonewallscotland.org.uk/scotland-research/education/school-report-scotland>

275 See: <https://www.tes.com/magazine/news/general/intensification-islamophobia-scottish-schools>
<https://anassarwar.co.uk/islamophobia-public-inquiry/>

276 Scotland's national approach to addressing bullying makes little reference to misogyny or gender based harassment. See:

https://archive2021.parliament.scot/S5_Equal_Opps/General%20Documents/Children_in_Scotland_-_commissioned_by_EHRiC.pdf

277 See: [TIE-ONLINE+IN+LOCKDOWN-FULL+REPORT.pdf \(squarespace.com\)](#)

278 [hrcs-upr-workshops-summary-march-2022-vfinal.pdf \(scottishhumanrights.com\)](#)

279 See: <https://www.gov.scot/news/milestone-for-equality-in-schools/>

280 See: [hrcs-upr-workshops-summary-march-2022-vfinal.pdf \(scottishhumanrights.com\)](#)

281 See: [Race Equality and Anti-Racism in Education Programme - Stakeholder Network Group minutes June 2021: racist incidents and racist bullying workstream - gov.scot \(www.gov.scot\)](#)

282 See: <https://www.gov.scot/publications/race-equality-and-anti-racism-in-education-programme-stakeholder-network-group-minutes-november-2021/?msclkid=8827005ea6d811ec80e7f03e6448e235>

<https://education.gov.scot/education-scotland/news-and-events/news/race-equality-resource-launched-by-the-cabinet-secretary-for-education/?msclkid=8826dfe7a6d811ec9f53f7505e2af2f5>

283 See: [Anti-Racism in Education Programme - gov.scot \(www.gov.scot\)](#)

284 For example, see:

- [University of Glasgow - MyGlasgow - MyGlasgow News - Decolonising the Curriculum reading list now live](#)
- [Decolonising the Curriculum in HE: Event Recordings | The University of Edinburgh; Anti-Racism in Education Programme - gov.scot \(www.gov.scot\);](#)
- <https://www.theguardian.com/uk-news/2021/aug/26/teachers-in-scotland-given-guidance-on-decolonising-the-curriculum>

285 For example, see [Addressing inclusion - Effectively challenging racism in schools | Learning resources | National Improvement Hub \(education.gov.scot\)](#)

286 See: <https://www.gov.scot/publications/scotland-sustainable-development-goals-national-review-drive-action/>; <https://www.gov.scot/publications/gypsy-travellers-scotland-comprehensive-analysis-2011-census/pages>

287 See:

- <https://www.cypcs.org.uk/investigations/investigation-restraint-and-seclusion/>

288 See:

- <https://www.cypcs.org.uk/investigations/investigation-restraint-and-seclusion/>

289 See: [Scottish Government heeds calls to protect children from unlawful restraint and seclusion in schools - The Children and Young People's Commissioner Scotland \(cypcs.org.uk\)](#)

290 See: <https://www.gov.scot/publications/closing-poverty-related-attainment-gap-report-progress-2016-2021/pages/9/> and https://policyscotland.gla.ac.uk/wp-content/uploads/2020/06/Black_ScottishAttainmentandCovid_20200904.pdf

291 See: <https://www.audit-scotland.gov.uk/publications/improving-outcomes-for-young-people-through-school-education>

292 See: [Scottish Budget 2022-23 \(www.gov.scot\)](#)

293 For further information on the Attainment Challenge Fund, see

<https://www.gov.scot/publications/attainment-scotland-fund-evaluation-fourth-interim-report-year-5/>

294 See: [published](#)

295 See: [Coronavirus \(COVID-19\): Scotland's route map through and out of the crisis - gov.scot \(www.gov.scot\)](#)

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- ²⁹⁶ See: [Scotland's Wellbeing: The Impact of COVID-19 - Chapter 5: Children, Education | National Performance Framework](#)
- ²⁹⁷ See: [What is Curriculum for Excellence? | Curriculum for Excellence | Policy drivers | Policy for Scottish education | Scottish education system | Education Scotland](#)
- ²⁹⁸ See: [Improving Schools in Scotland: An OECD Perspective - OECD](#)
- ²⁹⁹ See: [National Discussion Scottish Education - Scottish Government - Citizen Space \(consult.gov.scot\)](#)
- ³⁰⁰ See: [Education reform - Schools - gov.scot \(www.gov.scot\)](#)
- ³⁰¹ See: <https://www.gov.scot/publications/summary-statistics-attainment-initial-leaver-destinations-no-3-2021-edition/>
- ³⁰² Spend per pupil has decreased notably – with the 24.6% decrease in funding represents £4276 to £3224 in cash terms.
<https://www.heraldscotland.com/politics/19403336.per-pupil-funding-children-additional-support-needs-drops/>
<https://tfn.scot/news/cash-shortfall-sees-support-for-learning-disabled-children-slashed-as-number-rise>
- ³⁰³ See: Education (Additional Support for Learning) (Scotland) Act 2004 (as amended 2009) places duties on education authorities to identify, provide for and review the additional support needs of all their pupils. A statutory Code of Practice accompanies the Act.
- ³⁰⁴ See: <https://www.audit-scotland.gov.uk/publications/children-and-young-people-who-need-additional-support-for-learning>
- ³⁰⁵ See: <https://www.legislation.gov.uk/asp/2004/4/contents>
- ³⁰⁶ See: [Supporting Children's Learning Code of Practice - Scottish Government - Citizen Space \(consult.gov.scot\)](#)
- ³⁰⁷ See: [Review of additional support for learning implementation: report - gov.scot \(www.gov.scot\)](#)
- ³⁰⁸ See [A Fairer, Greener Scotland: Programme for Government 2021-22 - gov.scot \(www.gov.scot\)](#)
- ³⁰⁹ See [Transitions to adulthood for disabled young people: literature review - gov.scot \(www.gov.scot\)](#)
- ³¹⁰ See <https://www.gov.scot/groups/disabled-young-people-national-transitions-to-adulthood-strategy-strategic-working-group/>
- ³¹¹ See: [Respect, equality, participation: exploring human rights education in Great Britain \(equalityhumanrights.com\)](#)
- ³¹² In 2014, the Scottish Government provided funding to UNICEF UK for two seconded posts to encourage uptake of the Rights Respecting Schools Awards (RRSA), with a view that 50% of all schools in Scotland should receive this award- see: [Respect, equality, participation: exploring human rights education in Great Britain \(equalityhumanrights.com\)](#)
- ³¹³ See: <https://www.unicef.org.uk/rights-respecting-schools/funding-for-schools-in-scotland/>
- ³¹⁴ See: [Rights-based Education: Rights in the Classroom – Together \(Scottish Alliance for Children's Rights\) \(togetherscotland.blog\)](#)
- ³¹⁵ See: [Rights-based Education: Rights in the Classroom – Together \(Scottish Alliance for Children's Rights\) \(togetherscotland.blog\)](#)
- ³¹⁶ See the Committee's previous recommendation E/C.12/GBR/CO/6 para 66
- ³¹⁷ See: [2022csoh64.pdf \(scotcourts.gov.uk\)](#)
- ³¹⁸ See: [Commissioner for Fair Access - gov.scot \(www.gov.scot\)](#)
- ³¹⁹ A number of definitions of deprivation are used in Scottish policy context. An overview of how poverty is measured in Scotland can be read here:
<https://www.gov.scot/binaries/content/documents/govscot/publications/statistics/2020/01/poverty-methodology/documents/summary-on-how-sg-measures-poverty/summary-on-how-sg-measures-poverty/govscot%3Adocument/Summary%2Binformation%2Bon%2Bhow%2Bthe%2BScottish%2BGovernment%2Bmeasures%2Bpoverty.pdf>
- ³²⁰ See: <https://www.sfc.ac.uk/publications-statistics/statistical-publications/2022/SFCST062022.aspx>
- ³²¹ See: [Scotland's population growth slowest since 2003 | National Records of Scotland \(nrscotland.gov.uk\)](#)
- ³²² This is consistent with 2018-19 following a fall in 2019-20, possibly related to the COVID-19 pandemic. See [Total Migration to or from Scotland | National Records of Scotland \(nrscotland.gov.uk\)](#)

³²³ See: [Scotland's National Strategy for Economic Transformation - Delivery Plans October 2022 - gov.scot \(www.gov.scot\)](https://www.gov.scot)

³²⁴ See: [Migration: helping Scotland prosper - gov.scot \(www.gov.scot\)](https://www.gov.scot)

³²⁵ See: [New Scots Refugee Integration Strategy 2018 - 2022 \(www.gov.scot\)](https://www.gov.scot)

³²⁶ See: [Immigration: how Scotland sees itself and how migrants actually experience it \(theconversation.com\)](https://theconversation.com)

³²⁷ See: [icescr-pswg-for-publicationv2.pdf \(scottishhumanrights.com\)](https://scottishhumanrights.com)