

Report on the application of the International Covenant on Economic, Social and Cultural Rights (ICESCR) in Scotland

1. Introduction

1.1 The responsibilities and powers of the Children and Young People's Commissioner Scotland are set out in the Commissioner for Children and Young People (Scotland) Act 2003 as amended by the Scottish Parliamentary Commissions and Commissioners etc Act 2010 and the Children and Young People (Scotland) Act 2014. The Commissioner is appointed by the Queen on the recommendation of the Scottish Parliament and is independent of the Scottish Government.

1.2 The Commissioner works to ensure that children and young people in Scotland freely enjoy their rights under the UN Convention on the Rights of the Child (CRC) and lead lives where: they are free from discrimination; their best interests are always taken into account; they have the opportunity to maximise their development; and their views are given due regard in decisions that affect them.

1.3 The Commissioner recognises the interdependence of human rights and, for example, notes that the UN Committee on the Rights of the Child draft General Comment No. 19 (2016) "On Public Spending and the Rights of the Child (Article 4)"¹, will assist the State Party to fulfil its obligations to progressively realise economic, social and cultural rights to the maximum extent of available resources.

1.4 This submission emphasises five key themes: child poverty, children safe from harm, discrimination, mental health and care experienced children and young people. The themes were identified, following analysis of children and young people's views, contained in a range of reports/consultation documents. One of the barriers to children realising their rights is the ongoing austerity and financial pressures on the local delivery of children's and wider services.

1.5 The process of involving children and young people in decision-making' is key if government is to progressively realise rights. To help improve decision making the Commissioner has produced numerous tools and resources to ensure the voices and experiences of children are routinely incorporated into the decision making process. For example "The Golden Rules" help adults working with children or young people to become aware of their right to meaningful participation, under Article 12, CRC. Such tools are also designed to raise children and young people's awareness of their right to be involved in and consulted as part of key decision making processes, when decisions are being made that directly affect them

1.6 While some important challenges to children enjoying their rights are common across the UK, such as child poverty and immigration, the nature of devolved powers

enables the Scottish Parliament to respect, protect and fulfil children's rights in numerous ways. While recognising that it is the UK State Party that remains ultimately responsible for the implementation of the ICESCR across its territory, the Scottish Government has devolved responsibilities on key rights and can report to the Committee on progress.

1.7 Scotland is moving in the right direction towards improved realisation of children's rights contributing to better outcomes for children and young people. Nonetheless much still requires to be done and in some areas there are new challenges in ensuring that our international obligations for children's rights are realised in Scotland.

2. General Measures of Implementation

2.1 The UK has not signed the Optional Protocol to the ICESCR on the competence of the Committee to receive and consider communications.

The Commissioner recommends that the UK government signs and ratifies the Optional Protocol on a Communications Procedure.

2.2 The Commissioner welcomed the Concluding Observation that the UK should "establish an institutional framework for future cooperation with national human rights institutions and civil society in the preparation of its reports to the Committee and the follow-up"². Such a framework could oversee the adoption of a national strategy and action plan for the implementation of ICESCR throughout the UK's territories.³

The Commissioner recommends the establishment of an institutional framework at a UK and Scottish level, which has the participation of children and young people, to oversee the delivery of an ICESCR national action plan.

2.3 In its Concluding Observations on the UK, the Committee recommended "that the State party take effective measures to increase awareness of economic, social and cultural rights among the public at large as well as among judges, public officials, police and law enforcement officials, medical practitioners, and other health care-related professionals, including by lending adequate support to civil society and national human rights institutions in their efforts in relation to awareness raising. It also recommended that the State party take steps to improve awareness of the Covenant rights as justiciable human rights and not merely rights as part of the "Welfare State". Such a campaign has not happened although there is an increased awareness of the UNCRC due to deliberate and concrete steps taken by the Scottish Government eg publication of 'Do the right thing Progress Report 2012' and information for children and staff on the CRC. The Scottish Government delivered a human rights information campaign via social media 'Fly the Flag for Human Rights from November – December 2015'⁴. The impact of this campaign is currently being evaluated. The Scottish Human Rights Commission will report separately on its delivery of Scotland's National Action Plan on Human Rights (SNAP).

As a precursor to establishing an institutional framework and a national action plan, the UK and Scottish Governments should take effective measures to increase awareness of economic, social and cultural rights amongst the public

at large as well as among judges, public officials, police and law enforcement officials, medical practitioners, and other health care-related professionals.

The addition of welfare to the devolved powers of the Scottish Parliament raises the opportunity for specific action by the Scottish Government on establishing ICESCR rights as justiciable human rights and not merely rights as part of the Scottish ‘Welfare State’.

2.5 The Commissioner agrees that the ICESCR “norms must be recognised in appropriate ways within the domestic legal order, appropriate means of redress, or remedies, must be available to any aggrieved individual or group, and appropriate means of ensuring governmental accountability must be put in place.”⁵ The Commissioner believes that the appropriate mechanism to give effect to the UK and Scotland’s international obligations, is to incorporate human rights treaties.

2.6 The recent UK Supreme Court decision in *SG v Secretary of State for Work and Pensions* [2015] UKSC 16 highlighted the need for legislative incorporation of the UNCRC and ICESCR. While the Court found that the imposition of a ‘cap’ on the amount of benefits payable to families without consideration of the best interests of children was contrary to Article 3 CRC, this did not render it unlawful in domestic law. There was therefore no legal remedy for this finding of a violation of the CRC by the UK’s highest court. The case had to be argued on the grounds of discrimination against women as there was no specific protection for children’s rights, or economic and social rights in this context in UK law.

2.7 The Scotland Act 1998 permits the Scottish Government to incorporate human rights treaties in respect of devolved matters. There is an increase in the range of devolved powers as a result of the Scotland Act 2016 eg in respect of welfare, employment support and the power to set rates of income tax⁶. The CRC is not incorporated into Scots law although the Children and Young People (Scotland) Act 2014 places duties on Ministers and public authorities to keep under consideration steps to further children’s rights, and they must report on progress made every three years, which includes plans for the next three year period. The Scottish Government did not support proposals for the full incorporation of the CRC into Scottish law, or otherwise advance enforceable legal protections for children’s rights.

The Commissioner recommends that the Scottish Government fully incorporate UN ratified treaties and their protocols into Scots law. This should be accompanied by tangible and measurable commitments, and progress benchmarks so children and young people can better realise their human rights.

2.8 Effective and accessible redress is key to the equal enjoyment of ICESCR rights. The Commissioner currently has the power to investigate complaints from groups of children and young people. From January 2017, this power will be expanded to investigate complaints from individual children and young people⁷. In order to prepare for this role, three reports were submitted to the Scottish Parliament in 2015, one of which contained the views of children and young people which concluded:

- children and young people face significant difficulties in bringing complaints
- while complaints bodies and regulators would welcome complaints from children and young people, these are rarely made in practice.⁸

2.9 A model of operation has been developed to take account of children and young people's desire to seek local resolution where possible. It is anticipated that only a small number of investigations will be carried out each year, primarily because the legislation does not permit the Commissioner to duplicate the work of another person eg the Scottish Public Sector Ombudsman and the Scottish Housing Regulator.

Sufficient human and financial resources must be made available to ensure that this function can be effectively delivered for Scotland's one million children and young people.

2.10 In Scotland, the way a child is assessed for civil and children's legal assistance was altered in January 2011.⁹ A solicitor assessing a child or young person who applies for civil or children's legal assistance must now take into account the financial circumstances of anyone who owes an obligation of aliment¹⁰ to that child or young person. This affects their access to independent legal advice. The income of parents is now taken into consideration even although the dispute relates to a child's rights. The impact of cumulative changes is that children and young people are denied access to an enforceable remedy before national courts and tribunals, where their rights have been breached. For example in the report 'Improving youth football in Scotland', it was noted that previously, legal aid was awarded on the basis of the child's income but now "Without legal aid, people are reluctant to pursue cases so the system is unchallenged and individual cases not subject to scrutiny."¹¹ "This has had the effect of denying some children and young people a voice in key decisions affecting them."¹² One of the conclusions in the report was that "A child or young person may also require legal advice; consideration needs to be given as to how to ensure that this is made freely available to the child or young person regardless of the parents' income."¹³ The need for systemic reform is borne out in child contact decisions after the adult relationship has ended, particularly where there is a history of domestic abuse. Where a child can only access independent legal advice via a parent, rather than in their own right, leads to accusations that the child is being manipulated in some way. As such, the child's voice is lost.

Children and families without sufficient means should be able to obtain legal advice, assistance, and where litigation is contemplated, legal representation free of charge in any case where a child's best interests are engaged.

2.11 The Commissioner has developed a children's rights impact model to scrutinise decisions, policies or legislation. Benefits include that that children's rights can be progressively realised to the maximum extent of available resources and that any damaging effects on children and young people can be avoided. The Scottish Government uses a Children's Rights and Wellbeing Impact Assessment model to assess policy and draft legislation. The Scottish Government has started publishing some of the CRWIAs which is welcome but this voluntary arrangement should be placed on a statutory basis¹⁴.

The UK and Scottish Governments should be required by legislation to routinely and comprehensively undertake child rights impact and wellbeing assessments of proposed policies and legislation and regular child rights impact analysis of policies and legislation already in effect.

2.12 More needs to be done by national and local governments to engage and involve children in decision-making. Further participation work should improve outcomes for children and they should have a say in decisions about their own lives, rather than only at the policy or strategic level. Whilst law and policy requires children to be enabled to participate in decision making relating to their care, education and in decisions that affect them, there is inconsistent practice across Scotland. Whilst there is a significant commitment to engaging with children and young people, the evidence base is poor across the 8 CRC 'cluster areas'¹⁵. Two significant issues are the need to listen to the views of children in families where there is a history of domestic abuse¹⁶ and the views of children with disabilities.¹⁷

The UK and Scottish Governments should renew their commitment to implement Article 12 of the CRC and ensure they provide the resources and mechanisms to enable all children, including younger children and those whose voices are less likely to be heard, to have their experiences understood and their voices heard to participate in strategic and individual decision-making processes at the local and national levels. Children should be expressly told and be able to recognise how their views and experiences have influenced decisions that are made about them. Including the voices and opinions of children will deliver progressive realisation of economic, social and cultural rights.

2.13 In 2013, the Commissioner proposed amendments to the Children and Young People (Scotland) Bill that would have incorporated Articles 3 and 12 of the UNCRC, thereby requiring children's best interests to be treated as a primary consideration across all governmental and other public authority decision-making (except where a higher standard, i.e. paramountcy applies). This was not supported by the Scottish Government, and the Scottish Parliament also rejected the amendments.

The UK and Scottish Governments must ensure that the best interests of the child is a primary consideration in all legislation and administrative and judicial decisions concerning the child, except where a higher standard already applies. Best interests should be determined by an individual assessment of the child and his or her needs and circumstances, giving due weight to the child's views.

All children who are without the care of a parent/guardian (including children for whom the local authority has parental responsibility) should have a named independent representative with statutory authority who actively defends their best interests.

2.14 In the Lols, the Committee asked for 'additional information on the new Bill of Rights intended to replace the Human Rights Act 1998 and whether it will provide adequate protection of all ICESCR rights'. The UK Children's Commissioners are concerned that plans to replace the UK Human Rights Act 1998 (HRA) with a British Bill of Rights will be regressive and will 'break the formal link between British courts and the European Court of Human Rights'. The HRA has been vital in promoting and protecting the rights of children in Scotland and the European Court of Human Rights has had an important role in developing the protection offered to children by the ECHR. The consultation on the proposals has been repeatedly delayed and has still

to be launched. The Commissioner is concerned at the lack of political commitment by the UK Government to domestic guarantees for human rights, and opposes abolition of the HRA as it is likely to substantially dilute the protection that the HRA provides for children's rights in the UK, especially on reserved issues.¹⁸

2.15 The Scottish Parliament, the elected government of Scotland does not support any weakening of human rights protection in Scotland, and the UK and expressed: 'its confidence and support for, the Human Rights Act as a successful and effective implementation of the ECHR in domestic law, believes that the principles and values that inform the ECHR, the rights and freedoms that it enumerates and the Acts that incorporate it into law, should be a source of unity and consensus...'¹⁹

There should be no diminution of children's rights protection in UK law. Any new Bill of Rights should build upon, rather than reduce, the protection of the fundamental rights of all children in the jurisdiction without discrimination, as well as providing effective judicial remedies including through the European Court of Human Rights. In its response to the Lols, the UKG has undertaken to 'fully consult on proposals before legislation is introduced and will provide resources to facilitate a thorough debate' and we expect children and young people will be effectively included.

2.16 The Committee asked for "information on measures taken, including legislative, regulatory, policies and guidance, to ensure that corporations respect economic, social and cultural rights throughout their operations..."²⁰. The importance of regulation of private companies arose in a report submitted to the Scottish Parliament in May 2015 'Improving Youth Football in Scotland - I would like to have control over my life and do what I want to do', which was produced in response to a Public Petition submitted to the Scottish Parliament in 2010.²¹ The report focused on children and young people's participation in youth football, their experience of the 'youth registration process' and the impact it has on their lives and on their family life. Developing children and young people's football talent is an accepted norm and the extent of involvement by Government and Governing Bodies in that process in Scotland is significant e.g. financial investment via SportScotland and providing facilities via local authorities, such as school pitches.

2.17 Despite children and young people being involved in commercial arrangements with private companies that operate the professional football teams, there appears to be a gap in regulatory activity by Government and Governing Bodies in ensuring that the best interests of the child and a young person are respected, protected and fulfilled. In the youth football registration process, currently, too many children are signing what they believe is a 'contract' from as young as 10 years, but their choice and control do not appear to features in the current system. Children and young people's understanding of their 'contractual' obligations is narrow but precise – they cannot move to another professional club without their existing club's permission.

The youth registration process is an agreement between two parties that places obligations on both. To ensure it takes account of the interests and rights of children and young people as much as the interests of professional football clubs, it needs to be regulated and monitored in a manner that is independent of the clubs.

Whether or not an independent regulatory body is established, a clear process should be set up immediately to ensure that children and young people can lodge a complaint where they feel their rights have been infringed by a club.

2.18 The UKG reports that 'The SNAP Better World Action Group has commissioned a national baseline assessment to underpin the development of an action plan. Scottish Enterprise is incorporating human rights into equality impact assessments on services to client companies.'²² It is important that the voices and experiences of children are represented in policy and practice, as consumers of services from business but also as the current and future workforce, for example in Scotland children can work from the age of 13 years under certain circumstances²³. The children's rights impact assessment tool should be used in this work.

Children and young people's voices and experiences should be understood in the strategic decision-making processes on delivering the UN's Guiding Principles on Business and Human Rights, to ensure that corporations respect their economic, social and cultural rights throughout their operations.

3. Issues related to the general provisions of the Covenant (Arts. 1-5)

Article 2 (1) – Duties of UK State

3.1 The Commissioner understands that if deliberately retrogressive measures are taken, the State party has the burden of proving that they have been introduced after the most careful consideration of all alternatives and that they are duly justified by reference to the totality of the rights provided for in ICESCR in the context of the full use of the State party's maximum available resources.²⁴ Article 2(1) describes the nature of the general legal obligations undertaken by States parties to the Covenant which are obligations of conduct and obligations of result.

3.2 The UK has adopted regressive measures in its response to the global economic downturn, including the imposition of austerity measures and changes to the welfare system introduced through the UK Welfare Reform Act of 2012. This has resulted in a failure to protect the most disadvantaged children and those in especially vulnerable groups from child poverty. (see paragraphs 4.19 - 4.22)

3.3 The best interests of children were not central to the development of these policies and children's views were not sought. For example reductions to household income for poorer children as a result of tax, transfer and social security benefit changes have led to food and fuel poverty, and the sharply increased use of crisis food bank provision by families. The impact of such regressive measures have prevented children from realising their rights including the right to adequate food (Article 11). Consequently there is discrimination in the enjoyment of ICESCR rights.

3.4 Since 2008, the devolved governments have received significant, overall reductions in funding from the UK Government which is having a significant impact on their ability to deliver services. There has also been a significant reduction in funding to statutory authorities across the UK. It is feared that reduced access to local universal services for children will put further pressure on services for those most in need. Due to budget cuts, statutory services are only focussing on delivery

of their statutory duties. In practice funding is being withdrawn, from both the public and voluntary sectors, for many critical preventative and early intervention services that play an important role in the lives of vulnerable children. Austerity measures have reduced provision of a range of services that protect and fulfil children's rights including health and child and adolescent mental health services; education; early years; preventive and early intervention services; and youth services.

The UK and devolved governments should routinely carry out child rights-based analyses of both budget and economic decision-making and processes and outcomes. Information on public finances should be made accessible and understandable, to enable scrutiny and wider engagement of civil society, including children. This could be achieved by the participation of children in the work of the Finance Committee at the Scottish Parliament.

As a priority, the UK State Party should maximise the amount of resources available to protect children, especially those most in need, from the impacts of economic recession and austerity measures. The State Party and devolved governments should ensure that arrangements are in place to clearly set out how resources are allocated to progressing children's rights and the eradication of child poverty.

All national and sub-national public spending and other resource decision-making must prioritise the needs, rights and best interests of children, with an emphasis on children experiencing or at risk of poverty or social exclusion.²⁵

Article 2(2) Non-discrimination

3.5 Children are not fully protected in UK law from discrimination in the enjoyment of their rights either due to their status as children or due to their parent/legal guardian's membership of a particular group or status. In England, Wales and Scotland the Equality Act 2010, which provides legislative protection for protected groups in a range of areas of life including employment, goods, facilities and service provision, exempts children from the majority of its age discrimination provisions. More than half of 11–16 year olds responding to a recent survey in Scotland believed they were treated unfairly because of their age, proving the need for this protection.²⁶

3.6 Public bodies across the UK carry out equality impact assessments (EIAs) in relation to new or amended policies or legislation, to determine whether they will have an adverse impact on a range of equality categories, including 'age'. However, in practice, these equality impact assessments are often very poor in terms of their assessment of the impact on children, often due to a lack of disaggregated data, or because the impact – while significant – will be indirect.

3.7 Older children are also impacted significantly throughout the UK by negative stereotyping. This was one of four critical priorities agreed by the UK Government and devolved governments in response to the 2008 CRC Concluding Observations on which they would work together. It has been repeatedly raised by children so it is important that they have access to a legal remedy.

The State Party and devolved governments should provide equal legislative protection for children against age discrimination and remove all exemptions

relating to children under their equality legislation, unless these can be objectively justified.

Public bodies carrying out equality impact assessments should specifically include and assess children in their consideration of 'age' equality.

The State Party and devolved governments should take action to adequately address the negative stereotyping of older children.

4. Issues relating to the specific provisions of the Covenant (Arts. 6–15)

Article 7 – The right to just and favourable conditions of work

4.1 The national “minimum wage” introduced by the UK does not provide workers and their families with a decent living. The UK Government has described the new minimum pay rate of £7.20 an hour for over-25s as a “living wage”. Currently in-work poverty affects 120,000 children in Scotland. The reaction of some companies to the forced wage increase has resulted in less take home pay for workers and fewer benefits. Reported examples include being paid less for over-time, ending paid breaks and stopping free food.²⁷

4.2 Remuneration, fair wages and a decent living are fundamental to families living with dignity. A majority (61%) of children growing up in poverty in the UK live in a family where at least one parent is working.²⁸ This reflects the UK’s low wage economy and insecure and part-time work including the rise in ‘zero hours contracts’, where people are required to make themselves available to work exclusively for an employer without the guarantee of being given any work. The UK State Party enacted legislation to remove employment exclusivity terms within zero-hour contracts. However, further regulation is needed to ensure these legislative provisions are implemented and applied. Rest, leisure and reasonable limitation of working hours and periodic holidays with pay are important factors in enabling families to thrive.

Article 9 – Right to social security

4.3 The Welfare Reform and Work Act 2016 is introduced partly to address the cumulative impact of taxation and social security measures on vulnerable groups such as lone parents and families with disabilities who have suffered a drop in net income. The Children’s Commissioner England’s (CCE’s) Child Rights Impact Assessment of the UK Welfare Reform Bill, carried out before it came into force in 2012, warned that ‘[b]enefit levels have for some years been consistently below the poverty line (60% of median income)’ as a result of the Bill’s measures.²⁹ One such measure, the ‘benefit cap’ (a cap on the maximum level of welfare benefit that can be paid to a household whatever the size, which disproportionately affects families with children and particularly those with a larger number of children), has been found by the UK Supreme Court to be in breach of Article 3 of the CRC in the case of R (SG and others) v Secretary of State for Work and Pensions [2015] UKSC 16. The Court was however unable to give relief to the claimants because the CRC (and ICESCR) has not been incorporated into UK law. The UK Government has recently announced plans to lower the benefit cap to £23,000 per annum per household.³⁰

4.4 Across the UK, changes to welfare benefits have had a disproportionate impact on children with disabilities. These children are already more likely to be living in poverty.³¹ Children with disabilities also experience financial disadvantage due to higher living costs, because of the specialist support services and goods needed to meet their needs. Many have suggested that benefit levels fail to cover these costs.

4.5 In addition, there have been significant concerns about the 'bedroom tax' (spare room subsidy) whereby tenants in social housing lose part of their housing benefit if one or more bedrooms in their property is unoccupied. This measure has been mitigated in Scotland through discretionary housing payments.³² Benefits sanctions have also led to severe losses in household income for families already living in poverty. In Scotland there have been welcome initiatives to mitigate some of the effects of welfare changes including: the Scottish Welfare Fund and the protection of families facing exceptional pressure as a priority group for support; and investment by the Scottish Government and local authorities in the council tax reduction scheme, ensuring that unlike in the rest of the UK, low income families have not been hit by the abolition of council tax benefits.

4.6 The UK government has announced further cuts to benefits in the March 2016 Budget.³³ The Government has committed to protecting pensions from these cuts, but the same commitment has not been made to protecting benefits to children. Some of the sections which refer to the social security system in the Full Employment and Welfare Benefits Bill³⁴ will apply to Scotland including provisions relating to children living in low-income households and changes to child tax credit.

4.7 The Scottish Government now has limited devolved powers on 'welfare'. It must prioritise its efforts to ensure the combined systems provide a minimum amount of social assistance benefits that enable an adequate standard of living for families.

Children's rights to social security and to an adequate standard of living should be fulfilled by the welfare system: children and their families should be protected from welfare cuts; and measures should not discriminate against children from particular groups for example children of lone parents, children with disabilities or children from large families.

Benefits sanctions should not be applied in violation of the CRC. Families with children to whom benefits sanctions are applied should be passported directly to hardship payments at a level sufficient to fulfil their rights to social security and an adequate standard of living.

Article 10 – Protection of the family, mothers and children

Family reunification

4.8 In July 2012 the Home Office changed the rules for people wanting to come to or stay in the UK, based on family life with a British citizen, settled person or refugee in the Family Migration Rules.³⁵ The introduction of a much higher minimum income requirement on non-EEA spouses and partners has meant the enforced separation of families including children from their non-EEA parent. The UK Commissioners believe the Rules should support children to live with their families in the UK where their best interests require it.³⁶ The Government has not yet reviewed the operation

of the Family Migration Rules and in particular the minimum income requirement, as promised when they were introduced. The Commissioners are concerned that these Rules have led to routine violations of Articles 9 and 10 of the CRC.

The State Party should review the operation and impact of the Family Migration Rules and in particular, the minimum income requirement, on the rights of children under the CRC. Decisions affecting children made under the Rules should always include the best interests of the child as a primary consideration.

Disabled Children

4.9 In Scotland, issues for children transitioning to adulthood with additional support and/or medical needs include that: children waiting too long for appropriate packages of care to be put in place; those whose life expectancy, due to medical advances, is extended are finding that there is a lack of service provision for them; and children feel that their voices are not listened to. The transitions process is often not explained to them in an accessible way and the jump to adult services is too steep; children are being treated in inappropriate places such as adult wards due to a lack of service provision; and transition planning does not start early enough.

The State Party should ensure that the additional costs of disability are met by welfare provision for children with disabilities.

The State Party should ensure that planning for transition to adult services starts early, and conforms with Articles 3, 12 and 23 of the CRC.

The State Party should amend the Equality Act 2010 to so schools have the same duty to ensure access for people with disabilities as other public buildings.

Looked after children

4.10 The Commissioner believes early intervention is essential to avoid the admission of children to state care where possible. It is concerning that a result of austerity measures is the loss of some early parenting support services.

4.11 Supporting looked after children and young people leaving care to achieve their potential, remains a problem with the lack of progress on improving outcomes for looked after and care experienced children in various areas, e.g. health; education; and involvement in the criminal justice system. The Commissioner believes the looked after system should help all children and young people achieve their potential, by facilitating greater placement stability, permanency and security so that they can move into healthy adulthood.³⁷ In order to reduce outcome differentials for looked after children, longer term support must be made available for those dealing with the consequences of past abuse or neglect. Recovery in line with Article 39 of the CRC and building resilience for the future should be an important focus of the care system through appropriate placements and additional support.

4.12 The Children and Young People (Scotland) Act 2014 will require that the looked after child's plan is fully integrated with the holistic Child's Plan and will ensure that a looked after child has the right to remain in care if they are in kinship, foster or residential care until they are 21 years old, and are entitled to aftercare provisions up to the age of 26. The Act provides a clear definition of corporate parenting, and defines which public bodies have corporate parenting duties. Although the new

legislation contains a wide range of provisions for children who are looked after, it is important that the accompanying guidance is rights-based and implementation is fully resourced and properly monitored.

4.13 The Commissioner underlines the need for services which support children who return to their families from care.³⁸ Further, while the option of staying put in placement should be supported as a choice, there are many for whom this will not be an option. It is important to address the quality and range of accommodation options for care leavers and other vulnerable young people between 16 – 25, by improved regulation and inspection. Local authorities should ensure consistency in meeting the accommodation and support needs of over-16s in line with relevant case law.³⁹

All children leaving care should have adequately funded living and support services in accordance with their assessed need. Children in residential children's homes should be entitled to access the schemes.

The State party should provide the necessary strategic leadership to ensure high quality independent advocacy provision for all relevant children and young people, to ensure their participation in care planning and in other decisions affecting them.

The State party should provide clear evidence that all decisions regarding the care for a looked after child should be made in accordance with the CRC particularly Articles 3 and 12. Corporate Parents⁴⁰, relevant authorities should ensure adequate services for looked after children, including education support and child adolescent mental health services (CAMHS).

Equal Protection from Assault

4.14 In 2009, the Committee 'reiterated its recommendation that physical punishment of children in the home be prohibited by law'.⁴¹ This was part of a series of recommendations towards combatting violence in the home. However corporal punishment remains legal as a matter of domestic law in the UK in the family environment. Section 51 of the Criminal Justice (Scotland) Act 2003 prohibits adults from delivering blows to the head, shaking and using an implement to 'punish' children, and provides the defence of 'justifiable assault' to a charge of assault of a child. Civil society has tried several times to reform the law in Scotland. In 2015, the Commissioner working in partnership with NSPCC Scotland, Barnardo's Scotland and CHILDREN 1ST, published 'Equally Protected? A review of the evidence on the physical punishment of children' to provide further evidence in support of legal reform to provide children with equal protection from assault.

The Scottish Government should immediately prohibit all corporal punishment in the family through the repeal of the legal defence, and actively promote positive and non-violent forms of childrearing and behaviour management.

Violence Against Women and Children

4.15 Domestic abuse remains prevalent, with severe impacts on children. 25% of children in the UK are exposed to domestic abuse between adults in their homes at some point in childhood (up to age 18) and 6% of all children in the same study had been exposed to severe domestic abuse at some point in their childhood.⁴² Two

thirds (62%) of the children in a major study who had been exposed to domestic abuse were also directly harmed, most often physically or emotionally abused, or neglected. Children were suffering multiple physical and mental health consequences as a result of exposure to domestic abuse. Amongst other effects, over half (52%) had behavioural problems, over a third (39%) had difficulties adjusting at school and nearly two thirds (60%) felt responsible or to blame for negative events. One quarter of children exposed to domestic abuse exhibited abusive behaviour themselves.⁴³

4.16 Children's views are often not heard or sufficiently taken into account in family law proceedings and the assumption that contact is in the best interests of the child often determines the outcome of the case. This has a negative impact on some of the youngest and most vulnerable children and children who are exposed to ongoing abuse through unsafe contact orders. More than half of children whose parents go to court in disputes over contact where there are also allegations of domestic abuse do not want any contact with their non-resident parent. The older children are, the more likely their views will be taken into account. However, even when children's views in cases involving domestic abuse are taken, there is wide variation in the *weight* attached to their views. Recent research shows that one-third of children (34%) had a contact outcome that bore no resemblance to the view they expressed and one-fifth (20%) had an outcome that only partially accommodated their view.⁴⁴

The UK should ratify the Council of Europe Convention on preventing and combating violence against women and domestic violence (the 'Istanbul Convention').

Domestic abuse should be regarded as a children's rights issue and children's experiences must be more visible. Those taking children's views should be appropriately trained, able to use a range of participation methods to meaningfully engage with children and young people (with specialist input available for very young children).

Human Trafficking

4.17 In 2011, the Commissioner published '*Scotland: A safe place for child traffickers?*' which listed significant weaknesses in the identification and support of child victims of trafficking, and in the apprehension and prosecution of perpetrators. Progress has been made on a number of the report's recommendations. The Commissioner's Office contributes a rights based perspective in Ministerial led initiatives on child sexual exploitation and child trafficking. The Trafficking and Exploitation (Scotland) Act 2015 creates a new single offence of human trafficking and a new offence of slavery, servitude and forced or compulsory labour. Measures to support for victims, including child victims, is being developed and will be formalised in "due course".⁴⁵ The Modern Slavery Act 2015 established an Anti-Slavery Commissioner with a UK-wide remit.

The Scottish Guardianship Service now also works with trafficked children and young people and should be sufficiently resourced to ensure effective working.

Child Sexual Exploitation (CSE)

4.18 In Scotland, the Scottish Parliament's Public Petitions Committee carried out an Inquiry into child sexual exploitation in 2013 to explore its scale and nature. It heard estimates from Scottish agencies of the likelihood of child sexual exploitation victims ranging from 64 to 300 for each agency. It also highlighted concern around under-recognition of the issue, particularly in rural areas. In a recent small scale study in Scotland, factors associated with confirmed sexual exploitation included being a girl, the misuse of alcohol and drugs during the last year, being aged 11 and over and with experience of sexual abuse before becoming looked after.⁴⁶ The Scottish Government has developed a National Action Plan to address child sexual exploitation (CSE) but there are concerns that it has been slow to progress. Children are not being involved in the design and development of local measures to protect them from sexual exploitation. There is little evidence on the views and experiences of children regarding child sexual exploitation in Scotland.⁴⁷

The UK State Party and devolved governments must ensure that children who experience any form of child sexual abuse receive appropriate counselling and therapy as a priority.

Agencies must establish adequate information sharing and multi-agency working practices to protect children from child sexual abuse including child sexual exploitation.

Children's views and experiences should be heard and taken into account in the development of all measures to combat child sexual abuse including child sexual exploitation.

The State Party should ratify the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.

The State Party should legislate to ensure that in all parts of the United Kingdom, all children up to the age of 18 are protected from all types of offences covered by the Optional Protocol on the Sale of Children.

Article 11 – The right to adequate standard of living

Poverty

4.19 Children are considered as living in poverty if they live in households with less than 60% of median household income. This is the key measure used by UK and Scottish Government, and by the EU. Using this measure the latest (2013/14) official data shows; a lone parent family with two children (aged 5 and 14) is living in poverty if they are living on less than £278 per week (after housing costs have been deducted). A two parent family with two children (aged 5 and 14) is living in poverty if they are living on less than £355 a week (after deduction of housing costs).⁴⁸ More than one in five (220,000) of Scotland's children were officially recognised as living in poverty in 2012/2013.⁴⁹ This is predicted to increase to nearly 1 in 3 by 2020.⁵⁰ The most recent projections suggest that absolute child poverty in the UK will rise from 15.1% in 2015-16 to 18.3% in 2020-21, and relative child poverty from 17.8% in 2015-16 to 25.7% in 2020-21.⁵¹ The majority of these rises can be explained by a sharp increase in poverty among families with three or more children. The

Commissioner regards this is of critical concern for children's rights across the UK at the current time, requiring urgent attention from the UK and devolved governments.

4.20 The State party has taken specific measures to reduce poverty but the cumulative impact of general measures has been regressive. In 1999 the Government committed to eradicating child poverty across the UK and in 2010 set a number of legally binding targets to reduce child poverty by 2020–21. These included reducing the proportion of children in households in relative low income to below 10%, and those living in households in absolute low income to below 5%. The Child Poverty Act 2010 also required the UK and devolved governments to publish strategies and actions to reach the targets, annual reports on delivery, and with the UK-wide strategy relating in the devolved nations to reserved matters. The Social Mobility and Child Poverty Commission found in 2014 that the statutory targets were now unattainable and that this was likely to be the first decade since records began in which absolute child poverty had not fallen.⁵² This is due to insufficient action by the UK and devolved governments to tackle child poverty, as well as the introduction of 'welfare reforms' which are impacting detrimentally on low income families across the UK.

4.21 The Scottish Government has published annual Child Poverty reports from 2012.⁵³ In 2014, the Child Poverty Strategy was supported by a measurement framework for the first time.⁵⁴ Unlike England and Wales, there is no legislative duty on local authorities in Scotland to produce and deliver on child poverty strategies.⁵⁵ This results in inconsistencies in local action and difficulties in assessing the extent of implementation at local level.⁵⁶ The Scottish Child Poverty Strategy focuses on devolved matters, and therefore does not tackle some of the root causes of poverty. The understanding of child poverty and an outcomes and measurement framework in the Strategy are welcome, but a clear delivery plan is needed setting out responsibilities, leadership and accountability roles.

4.22 There is also no mechanism for the Scottish Government to ensure that local authorities and partners deliver on the strategy. This is important as in Scotland there is no legislative duty on local authorities in relation to child poverty. A number of Scottish Government measures have been put in place to address child poverty including: investment in advice and information services to support access financial support; rollout of free school lunches for children in the first three years of primary school; commitment to tackling the education gap between low income pupils and their better off peers; and guidance that child poverty should be considered in local children's services planning and when wellbeing is being discussed under the Children and Young People (Scotland) Act 2014. The UK Government is trying to redefine poverty so a different set of parameters are going to be used which are likely to skew results.

Food

4.23 Despite the welcome introduction of free school lunches for children in the first three years of primary school in Scotland, food poverty remains a serious problem for children. The right to food has become a major issue. The Commissioner is now working with an NGO, Nourish Scotland, to fulfil this right for Scotland's children. Low wages and welfare reform have exposed growing numbers of people to food insecurity. Continued austerity measures compounded by welfare reform in

particular, has disproportionately impacted on the financial accessibility of food for women with children and people with disabilities. Research on intra-household distribution finds that parents are being pushed into poverty to provide for their children such as skimping on food so others have enough to eat⁵⁷

4.24 The All-Party Inquiry into Hunger in the UK took evidence on the reliance of people on low incomes on charitable food banks, finding that the rising costs of housing, food and fuel impacts on the ability of households to buy and cook food.⁵⁸ Combined with welfare reform and low wages, it is incredibly challenging for some families to afford the material resources and services children need.⁵⁹ A third of people depending on food banks are children and diet-related health inequalities can have a huge impact on child attainment and long-term quality of life. The number of children accessing food banks in Scotland has risen from 1,861 children (April 2011-March 2012) to 36,114 children (April 2014-March 2015).⁶⁰ The Scottish Parliament Welfare Reform Committee believes there is a direct correlation between welfare reform and increased use of food banks.⁶¹ There is UK-wide concern regarding “holiday hunger”⁶² and examples of initiatives in Scotland reveal this policy gap.

The UK Government and devolved Governments must make child poverty a key focus as a matter of urgency, and fully comply with the Child Poverty Act 2010. Sufficient resources must be provided to meaningfully tackle child poverty and prevent the predicted rise by 2020. The impact of all new policies on families on low incomes must be assessed, and measures put in place to prevent them from having a detrimental impact.

The State party should commit to making the elimination of child poverty a national priority and develop, fund and implement a plan to reduce the number of children in poverty year on year for the next 5 years. This should include helping parents bring home a decent income, strengthening universal credit, reducing demand for foodbanks and protecting families from rising living costs.

The Scottish Government should provide sufficient resources to effectively take forward, monitor and evaluate Scotland’s child poverty strategy and report annually on progress against key elements.

Local authorities should produce child poverty strategies consistently and integrated with local service planning and budgets. Progress at local level should be supported and driven by actions, timescales and systems of accountability⁶³ that are effectively supported, monitored and evaluated.

Housing

4.25 In her visit to the UK in 2013, the UN Special Rapporteur on the right to adequate housing summarised the effects of the housing market, provision and welfare changes on lower-income families.⁶⁴ In some parts of Scotland, there is insufficient affordable decent housing which has led to poorer children living in inadequate housing and in temporary accommodation. This has prevented children from realising their right to education.

The UK State Party should urgently address the need for adequate housing for lower-income families.

Gypsy/Travellers

4.26 A significant lack of culturally sensitive accommodation is having a detrimental impact on the lives of Gypsy/Traveller children.⁶⁵ There is a lack of services on many Gypsy/Traveller sites and a continued inequality between standards of housing for those in fixed accommodation and those who are living on sites.⁶⁶ Government policies are not adequate in exerting pressure on local authorities to give due regard to their duties under the Housing (Scotland) Act 2001⁶⁷ to provide suitable accommodation for all members of the community.⁶⁸ This affects the right of Gypsy/Travellers to health and social care, education and other public services⁶⁹ and has contributed to accommodation shortages, breakdown of trust between Gypsy/Travellers and local authorities, and tensions with settled communities.⁷⁰

4.27 A lack of suitable accommodation is forcing some Gypsy/Traveller families into bricks and mortar accommodation, eroding their traditional life and often resulting in severe social isolation and mental health needs.⁷¹ Only a minority of local authorities have developed effective plans to meet the accommodation needs of Gypsy/Traveller communities since 2009.⁷² The lack of progress has been attributed to funding shortages, finding suitable land, resistance by local communities, a perceived complexity of the issue from local authorities and a lack of engagement by members of Gypsy/Traveller communities.⁷³ There is a need for a range of sites, including permanent sites, temporary/transit sites and stopping places, alongside greater dialogue between local authorities and Gypsy/Travellers.⁷⁴

The State Party should strengthen efforts to remove stigma and discrimination for Gypsy/Traveller communities⁷⁵ and reintroduce a statutory duty for local authorities to provide safe and adequate sites for Gypsy/Travellers.

The State Party should Ensure that mechanisms are in place to ensure that Gypsy/Traveller communities can meaningfully participate in planning and decision-making processes.

Article 12 - Right to health

4.28 Child and adolescent mental health services (CAMHS) across the UK are vastly underfunded and this has affected the availability of services for children with mental health needs. Scotland was the first country in the UK to have a mental health waiting times target however from practice we know that demand is not being met, and children need to get the right help at the right time. In General Comment 14 on the right to enjoy the highest attainable standard of physical and mental health, it is recognised that “Health is a fundamental human right indispensable for the exercise of other human rights... conducive to living a life in dignity.”⁷⁶ The right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and portable water and adequate sanitation, safe and healthy working conditions, and a healthy environment.”⁷⁷

4.29 In May 2015, the Scottish Government announced an extra £85 million over the next five years to be spent on mental health in Scotland. This will partly be used to

improve CAMHS and extend access to psychological therapies and other services. In January 2016 the Scottish Government announced a further £54 million over four years to “improve access to psychological therapies for all ages including for children and adolescents’ mental health services”.⁷⁸ The Mental Health Foundation Scotland responded: “... Children and young people face more challenges to their mental health than ever, and demand for services at all levels is high. The evidence proves that early intervention enables young people to recover quickly, often preventing longer term engagement with services and reduced life chances. Improved access and workforce skills should ensure services are available, and responsive to what young people want and need.”⁷⁹ Recovery must be central to the policy and practice of all services that provide support to children and young people experiencing mental health problems, and that includes their involvement and self-management.

The Scottish Government should invest sufficient funding in child and adolescent mental health services to meet children’s needs, with particular attention to those at greatest risk, including disabled children, children deprived of parental care, children affected by conflict, trauma, abuse and neglect, those living in poverty and those in conflict with the law.

The Scottish Government should invest in universal preventative and early intervention children’s services, to prevent an increase in mental ill health among children.

4.30 Children with mental health needs are frequently being cared for in non-specialist settings. For example in Scotland, admissions to non-specialist inpatient settings have risen for a second year in 2013–14 (202 admissions involving 179 children). 28 admissions were to paediatric wards, which are still non-specialist wards for treatment of mental illness. Only 50% of children had a Resident Medical Officer who was a CAMHS psychiatrist.⁸⁰ Of serious concern is the continued use of adult psychiatric wards for children. Children with mental health problems also continue to be inappropriately detained in police cells. Age appropriate 24-hour community based services are needed for children to replace the use of police cells across the State Party. Careful consideration should be given to the potential risk that a decline in the use of police cells could have on an increase in the use of adult mental health wards.

Children with mental health needs should only be admitted onto adult mental health wards in exceptional circumstances. The Scottish Government should be recording and monitoring such incidents to identify the required action, including the appropriate level of investment in age-appropriate inpatient services.

Children with mental health needs should not be held in police custody or pre-charge in youth justice custody. The Scottish Government should legislate to prevent this and should simultaneously prioritise the urgent funding of timely assessments and age appropriate, 24 hour community-based services to replace the use of police custody.

Articles 13 and 14 – Right to education

4.31 In Scotland, in 2012–13 there were 21,955 cases of exclusion from local authority schools, a decrease of 18 per cent from 2010–11 (26,844 exclusions).⁸¹ Guidance⁸² ('Included, Engaged and Involved, Part 2') is clear that there is no such thing as a lawful 'informal' exclusion but these still occur. Further, while official exclusion figures have been decreasing markedly since 2006–7, they have gone up in some special schools⁸³ and there are huge disparities in which children are excluded: looked after children and those with additional support needs are several times more likely to be excluded.⁸⁴

The Scottish Government should use the disciplinary measure of permanent or temporary exclusion as a means of last resort, and ensure that 'informal' and illegal exclusions do not occur. Mediation, restorative justice and input from professionals such as educational psychologists should be used to reduce exclusions.

The Scottish Government Monitor all exclusions by protected characteristics, so that some groups of children and young people are not disproportionately affected/targeted.

The Scottish Government should ensure that children who are able to express their views have the right to appeal with legal advice and assistance, and representation provided for those without means, against their exclusion as well as the right, in particular for those in alternative care, to appeal to special educational needs tribunals.

The Scottish Government should ensure that alternative educational provision for excluded pupils begins promptly after exclusion and is of a high quality.

Bullying

4.32 Bullying within education provision remains a serious and widespread problem and is damaging children's successful engagement in learning. The Life in Scotland for LGBT Young People report⁸⁵ highlighted that discrimination and harassment remain a significant problem for LGBT children, particularly in schools. Around 70% of LGBT pupils had experienced homophobic bullying at school, with transgender children's experiences being even worse. Surveys report high levels of cyber bullying experienced by children in the UK. A survey of over 2,000 UK teenagers in 2013 found that 37% of children are experiencing cyber bullying on a highly frequent basis; cyber bullying had catastrophic effects upon the self-esteem and social lives of up to 70%; and 7 in 10 children are victims of cyber bullying.⁸⁶ The Scottish Anti-Bullying Steering Group, of which the Commissioner is a member, takes the view that the attitudes and behaviours that characterise online bullying are essentially the same as other types of bullying. While the reach and pervasiveness of online bullying presents particular challenges, the same focus on the impact on the child and similar prevention methods are required to tackle it.⁸⁷

The Scottish Government should intensify its efforts to tackle bullying and violence in schools, including through teaching human rights, peace and tolerance and strengthen children's participation in all matters of school, classroom and learning which affects them.

The Scottish Government should ensure that digital competence and online safety is reinforced across the school curriculum as a whole.

Relationships and Sexuality Education

4.33 Children should be equipped with the knowledge and skills to protect themselves from sexual abuse and exploitation and to support the development of healthy sexual relationships as they approach adulthood. Younger children may not have the words to describe abuse or understand that it is wrong. Relationships and sexuality education is an effective means of building resilience of children and young people, ensuring that they have the knowledge to understand exploitation and know how to access help and advice. It is also important in helping children understand their own and others' sexual orientation and to address discrimination and bullying against LGBT children. Despite this, across the UK schools are not obliged to provide teaching on relationships⁸⁸. Sexual and reproductive health services and information are not available and accessible to all persons.

Relationships, sexual health and parenthood education is an integral part of the health and wellbeing area of the schools curriculum in Scotland. The curriculum is not statutory and it is for local authorities and schools to decide how to deliver the curriculum based on local needs and circumstances. However, the Government are specific about the need for children and young people to gain knowledge appropriate to their age and stage of education. School guidance has been issued so that "information about relationships, sexual health and parenthood is not given in isolation but as part of a programme that considers a range of issues relating to personal and social development, healthy living, values and beliefs which reinforce self-worth, respect for others and a sense of responsibility."⁸⁹

Relationships and sexuality education must be provided by trained practitioners in every educational setting for all children, using a standard curriculum. This must be part of a holistic/whole-school approach that includes internet safety, abuse within the family, all forms of bullying and harassment, child protection and the getting and giving of consent.

4.34 In Scotland, asylum seeking families continue to live on very low incomes and are forced to move accommodation regularly. This can prevent children from settling into their local school and community or may necessitate long commutes which are unaffordable for asylum seeking families. Refused asylum seeking women are not normally entitled to receive any financial support during the first 34 weeks of their pregnancy. This places them at greater risk of destitution.⁹⁰

The State Party should ensure that migrant, refugee and asylum-seeking children have access to basic services e.g. education and health, and there is no discrimination in benefit entitlements for these families that could affect children or be contrary to their rights under Articles 2, 22, 26 or 27 of the CRC.

Conclusion

4.35 The Commissioner notes that on International Human Rights Day 2015, a year-long campaign "Our Rights. Our Freedoms. Always" was launched for the 50th anniversary of the two International Covenants on Human Rights: ICESCR and the ICCPR. The Commissioner will share this report widely to raise general awareness of economic, social and cultural rights and to promote this campaign in Scotland. The Commissioner is happy to assist the Committee with any requests for further information arising from this report.

¹ Draft published by the Committee on the Rights of the Child on 11th June 2015

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&SymbolNo=CRC/C/GC/19

² Para 3 'List of Issues' and (is the rest of this reference missing or does it link to Ref '3'?)

³ Para 12 and 14 Concluding Observations on ICESCR 2009.

⁴ 'Fly the Flag for Human Rights' Scottish Government News Release 18th November 2015

<http://news.scotland.gov.uk/News/Fly-the-flag-for-human-rights-1f5a.aspx>

⁵ "Draft General Comment No. 9": The domestic application of the Covenant published by the UN Committee on Economic, Social and Cultural Rights 3rd December 1998 para 2

⁶ The Scotland Act 2016 <http://www.legislation.gov.uk/ukpga/2016/11/contents/enacted/data.htm>

⁷ Children and Young People (Scotland) Act 2014

⁸ For more information see the Children and Young People's Commissioner Scotland website

<http://www.cypcs.org.uk/policy/new-powers>

⁹ Advice and Assistance (Scotland) Amendment Regulations 2010 and the Civil Legal Aid (Scotland) Amendment Regulations 2010

¹⁰ An obligation of 'aliment' is the duty owed to the child by their parents and those who have accepted the child as a child of the family, to support the child in kind or by way of financial assistance up to age 18 (and, in some circumstances, 25), regardless of whether the parent has parental responsibilities and parental rights. When applying for legal aid, the income and other resources of every person who owes the child an obligation of aliment must be taken into account in the calculation of the child's means, unless it would be unjust or inequitable to do so.

¹¹ 'Improving youth football in Scotland - 'I would like to have control over my life and do what I want to do' Submission to the Scottish Parliament Public Petitions Committee on Petition PE1319 by the Children and Young People's Commissioner Scotland May 2015 Para 13.7

¹² Para 5.5.10 Ibid

¹³ Para 6.6 Ibid

¹⁴ Copies are available at: <http://www.gov.scot/Topics/People/Young-People/families/rights/child-rights-wellbeing-impact-assessment>.

¹⁵ Elsley et al (2013), *Children and young people's experiences of, and issues relating to the implementation of the United Nations Convention on the Rights of the Child, Social Research*

¹⁶ SCCYP(2013) *The treatment of the views of children in private law child contact disputes where there is a history of domestic abuse (Mackay K)*

¹⁷ National Review of Services for Disabled Young People, <http://dera.ioe.ac.uk/2190/1/0114135.pdf>

¹⁸ Conservative Party (2015) *Manifesto*. Available at <https://www.conservatives.com/manifesto>

¹⁹ The Scottish Parliament voted in favour of the following Scottish Government motion on 11th November 2014 by 100 votes to 10

²⁰ List of Issues pub 16th October 2015 Issue 2

²¹ The full report can be read at

https://www.scottish.parliament.uk/S3_PublicPetitionsCommittee/Submissions_10/20150520_PE1319_YY_SCCYP.pdf

²² Para 7

²³ See the Scottish Government website for further information

<http://www.gov.scot/Publications/2009/04/02155040/2>

²⁴ See General Comment No. 3 "The nature of state parties obligations (Article 2(1)), para. 9; General Comment No. 13 'The rights to education (Article 13)' para. 45.

²⁵ In line with the European Network of Ombudspersons for Children, Position Statement on 'Children and Austerity', adopted at the 18th ENOC General Assembly, Edinburgh, 24 October 2014

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- ²⁶ SCCYP (2014) (unpublished)
- ²⁷ See Guardian article of 16th April 2016 at <http://www.theguardian.com/uk-news/2016/apr/16/employers-claw-back-national-living-wage-cuts-pay-perks>
- ²⁸ DWP (2014) *Households Below Average Income: An analysis of the income distribution 1994/95 – 2012/13*. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/325416/households-below-average-income-1994-1995-2012-2013.pdf
- ²⁹ 88Figures at: <http://www.trusselltrust.org/resources/documents/Press/Trussell-Trust-foodbank-use-tops-one-million.pdf> (some of the users will be repeat users)
- ³⁰ See: <http://www.telegraph.co.uk/news/politics/queens-speech/11632708/Queens-Speech-David-Cameron-says-Britain-a-golden-opportunity-to-back-hard-working-people.html>
- ³¹ Children's Society (2011) *4 in 10*. Available at: http://www.childrensociety.org.uk/sites/default/files/tcs/4_in_10_reportfinal.pdf
- ³² Report of the UN Special Rapporteur on the Right to Adequate Housing (2013) Available at: <http://www.ohchr.org/EN/Issues/Housing/Pages/HousingIndex.aspx>
- ³³ CPAG response to the Budget <http://cpag.org.uk/content/budget-2016-next-generation-comes-second>
- ³⁴ Welfare Reform and Work Act 2016 section 35 <http://www.legislation.gov.uk/ukpga/2016/7/section/35/enacted>
- ³⁵ Details at: <https://www.gov.uk/government/publications/immigration-rules-appendix-fm>.
- ³⁶ Details at: http://www.appgmigration.org.uk/sites/default/files/APPG_family_migration_inquiry_report-Jun-2013.pdf ; see also letter from CCE at http://www.childrenscommissioner.gov.uk/content/publications/content_721
- ³⁷ Jones, R., Everson-Hock, ES, Papaioannou, D., Guillaume, I., Goyder, E., Chilcott, J., Cooke, J., Payne, N., Duernas, A., Sheppard, L.M., Swann, C. (2011) *Factors associated with outcomes for looked-after children and young people: a correlates review of the literature*. Child: Care, Health and Development, 37, 5 pp.613-622.
- ³⁸ Details in: <http://www.nspcc.org.uk/globalassets/documents/research-reports/supporting-children-families-returning-home-from-care.pdf>
- ³⁹ R (G) v London Borough of Southwark [2009] UKHL 26.
- ⁴⁰ The Children and Young People's Commissioner Scotland has duties as a corporate parent under the Children and Young People (Scotland) Act 2014.
- ⁴¹ Para 24 Co Obs
- ⁴² Radford et al (2011) *Child abuse and neglect in the UK today*. London: NSPCC.
- ⁴³ CAADA (2014) *In plain sight: The evidence from children exposed to domestic abuse*. Bristol: CAADA
- ⁴⁴ Scotland's Commissioner for Children and Young People (2013). The treatment of the views of children in private law child contact disputes where there is a history of domestic abuse <http://www.sccyp.org.uk/ufiles/views-of-children-anddomestic-abuse.pdf> [Date accessed: 17.6.15]
- ⁴⁵ Scottish Government Press Release 'Tackling Human Trafficking' pub 26th February 2016 at <https://scottishgovernment.presscentre.com/News/Tackling-human-trafficking-22f8.aspx>
- ⁴⁶ Quoted from 'Child Sexual Exploitation' by Annette Webb and Catriona Laird, October 2014 pub by With Scotland
- ⁴⁷ Brodie and Pearce (2012), Exploring the Scale and Nature of Child Sexual Exploitation in Scotland. Scotland: Scottish Government Social Research.
- ⁴⁸ Quoted from the Child Poverty Action Group website at <http://www.cpag.org.uk/scotland/child-poverty-facts-and-figures> [Accessed 28th April 2016]
- ⁴⁹ Scottish Government (2014). Poverty and income inequality in Scotland: 2012/13 www.gov.scot/Publications/2012/06/7976/0 {date accessed: 8.6.15}; End Child Poverty (2014). Child Poverty Map of the UK. Mapping exercise of numbers of children living in poverty in each Scotland local authority http://www.endchildpoverty.org.uk/images/ecp/Report_on_child_poverty_map_2014.pdf [Date accessed 8.6.15]; The level of child poverty is significantly higher than in other European countries Child Poverty Action Group (2011). Poverty in Scotland. Page 70 & Page 74. International comparisons are for 2008 on a before housing costs basis under which 21% of Scotland's children live in poverty. http://www.cpag.org.uk/sites/default/files/CPAG_povinscotland2011_download_0.pdf [Date accessed: 30.6.15]
- ⁵⁰ Save the Children (2014) A Fair Start for Every Child in Scotland. www.savethechildren.org.uk/.../online-library/fairstart-every-child [Date accessed: 8.6.15]

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- ⁵¹ Browne, J., and Hood, A., (2016), 'Living Standards, Poverty and Inequality in the UK: 2015-16 to 2020-21', [London: Institute for Fiscal Studies]. These figures are *Before Housing Costs* and therefore considerably lower than the *After Housing Costs* figures provided in the State Party List of Issues response annex.
- ⁵² Social Mobility and Child Poverty Commission (2014) *State of the Nation 2014*. Available at: <https://www.gov.uk/government/organisations/social-mobility-and-child-poverty-commission>
- ⁵³ This is to comply with the duties under the Child Poverty (Scotland) Act. See: Scottish Government (2010). Child Poverty (Scotland) Act 2010. <http://www.legislation.gov.uk/ukpga/2010/9/contents> [Date accessed: 26.6.15]
- ⁵⁴ Social Mobility and Child Poverty Commission (2014) *State of the Nation 2014*. Available at: <https://www.gov.uk/government/organisations/social-mobility-and-child-poverty-commission>
- ⁵⁵ Together (2014). State of Children's Rights in Scotland. Page 72. <http://togetherscotland.org.uk/pdfs/SOCRRTTogetherReport2014.pdf> [Date accessed: 22.6.2015]
- ⁵⁶ The Trussell Trust (2015). Statistics for the Use of Foodbanks, 2008-2014. <http://www.trusselltrust.org/stats> [Date accessed: 8.6.15]
- ⁵⁷ 'Re-defining poverty will not help poor children' by Gill Martin published on 10th February 2016 at <http://www.poverty.ac.uk/editorial/redefining-poverty-will-not-help-poor-children>
- ⁵⁸ See: <https://foodpovertyinquiry.files.wordpress.com/2014/12/food-poverty-feeding-britain-final.pdf>
- ⁵⁹ *The Scottish Parliament (2013). Report on Inquiry into Teenage Pregnancy.* http://www.scottish.parliament.uk/S4_HealthandSportCommittee/Reports/heR-13-05w.pdf [Date accessed: 26.5.15]
- ⁶⁰ Save the Children (2014) A Fair Start for Every Child in Scotland. www.savethechildren.org.uk/.../online-library/fairstart-every-child [Date accessed: 8.6.15]
- ⁶¹ Scottish Parliament (2014). Welfare Reform Committee, second report 2013: Foodbanks and welfare reform. http://www.scottish.parliament.uk/S4_Welfare_Reform_Committee/Reports/wrr-14-02w.pdf [Date accessed: 8.6.15]
- ⁶² All Parliamentary Group on School Food (2014). Filling the holiday hunger gap. <http://accordgroup.org.uk/filemanager/resources/Filling%20the%20holiday%20hunger%20gap%20report.pdf> [Date accessed: 26.6.15]
- ⁶³ Save the Children (2012) Local Action to Tackle Child Poverty. <http://www.savethechildren.org.uk/sites/default/files/images/Local-action-tackle-poverty-Scotland.pdf> [Date accessed: 29.6.15]
- ⁶⁴ Details at: <http://www.ohchr.org/EN/Issues/Housing/Pages/CountryVisits.aspx>
- ⁶⁵ Joseph Rowntree Foundation (2014) *Gypsy, Traveller and Roma: Experts by Experience 'Reviewing UK Progress on the European Union Framework for National Roma Integration Strategies'*. http://www2.anglia.ac.uk/ruskin/en/home/news/roma_report.Maincontent.0007.file.tmp/Experts%20by%20Experience.pdf [Date accessed: 25.6.15]
- ⁶⁶ Article 12 in Scotland (2013). *Work with the Gypsy/Traveller community of North Cairntow, Edinburgh.* <http://www.article12.org/resources/> [Date accessed: 25.6.15]
- ⁶⁷ Scottish Government (2001). *Housing (Scotland) Act 2001.* <http://www.legislation.gov.uk/asp/2010/17/contents/enacted> [Date accessed: 25.6.2015]
- ⁶⁸ Scottish Parliament (2012). *Equal Opportunities Committee. Official Report, 6 December 2012, Col 765.* <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=7904&mode=pdf> [Date accessed: 25.6.15]
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⁷⁶ General Comment No. 14 (2000) 'The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights)' Published 11th August 2000. Para 4.

⁷⁷ Para Ibid

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