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Comments by the Children and Young People's Commissioner
Scotland (CYPCS)
on the 40th National Report on the implementation of the
European Social Charter

submitted by

THE GOVERNMENT OF THE UNITED KINGDOM

Article 3,11,12,13 and 14
of the European Social Charter
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Introduction

The Children and Young People's Commissioner Scotland (CYPCS) was established by the Commissioner for Children and Young People (Scotland) Act 2003. The Commissioner is responsible for promoting and safeguarding the rights of all children and young people in Scotland,¹ giving particular attention to the United Nations Convention on the Rights of the Child (UNCRC).

CYPCS has increased reporting on State compliance with children's human rights, particularly economic, social, and cultural rights, in recent years. This includes reporting to the UN Committee on the Rights of the Child,² UN Committee on Economic, Social and Cultural Rights,³ the UN High-Level Political Forum on Sustainable Development,⁴ the UN Committee against Torture,⁵ and engaging with the UN Special Rapporteur on Extreme Poverty and Human Rights.⁶

This report aims to inform the European Committee of Social Rights' review of the United Kingdom (UK) under the thematic group 2 on health, social security, and social protection. It identifies emerging trends and key issues in the thematic areas identified, some of which draw on previous conclusions from the Committee while others reflect worrying trends caused by the UK's departure from the European Union (Brexit) and the Covid-19 pandemic. Our report is not an exhaustive overview of the rights of children and young people in Scotland to health, social security, and social protection but reflects our thematic priorities and the information we have concerning children and young people's human rights in areas brought to our attention.

¹ Including care-experienced young people up to the age of 21.

² Report of the Children's Commissioners of the United Kingdom of Great Britain to the United Nations Committee on the Rights of the Child: Examination of the Combined Sixth and Seventh Periodic Reports of the United Kingdom of Great Britain and Northern Ireland, 2020, <https://cypcs.org.uk/wpcypcs/wp-content/uploads/2020/12/crc-report-2020.pdf>

³ CYPCS, 2016, *Report on the application of the International Covenant on Economic, Social and Cultural Rights (ICESCR) in Scotland* [viewed 12.07.21]. Available from: <https://cypcs.org.uk/wpcypcs/wp-content/uploads/2020/02/ICESCR-report.pdf>



⁴ CYPCS, 2020, *Report on Child Rights & the Sustainable Development Goals: Sustainable and resilient recovery from the COVID-19 pandemic in Scotland* [viewed 12.07.21]. Available from: https://cypcs.org.uk/wpcypcs/wp-content/uploads/2021/01/HLPF-inputs_December-2020-Final.pdf

⁵ CYPCS, Children's Commissioner for Wales, and Northern Ireland Commissioner for Children and Young People, 2019, *Joint submission to the United Nations Committee Against Torture 66th session on the sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland by the Scotland, Wales and Northern Ireland Children and Young People's Commissioners* [viewed 14.07.21]. Available from: https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/GBR/INT_CAT_NHS_GBR_34433_E.pdf

⁶ CYPCS, 2018, *Submission to United Nations Special Rapporteur on Extreme Poverty and Human Rights: Visit to the United Kingdom of Great Britain and Northern Ireland* [viewed 12.07.21]. Available from: <https://cypcs.org.uk/wpcypcs/wp-content/uploads/2020/02/Special-Rapporteur-Submission.pdf>; November 2018, *Statement on UN Extreme Poverty and Human Rights Expert's visit to Scotland*. [viewed 12.07.21] Available from: <https://cypcs.org.uk/news-and-stories/statement-on-un-extreme-poverty-and-human-rights-experts-visit-to-scotland/>.

Context

Some functions of the UK government (Westminster) are devolved to Scotland. The extent of devolution in Scotland is summarised below:

Scotland	
Education, Training & Skills	*Except elements devolved by Scotland Acts 2012 and 2016 Source: Civil Service Key:  Devolved matters  Matters retained at Westminster
Health & Social Services	
Agriculture, Forestry & Fisheries	
Environment & Planning	
Economic Development	
Local Government	
Transport	
Tourism, sport, culture & heritage	
Justice & Policing	
Energy	
Welfare and Social Security*	
Broadcasting	
Defence & National Security	
Foreign Affairs	
Fiscal and Macroeconomic Policy*	
Nationality, Immigration and Asylum	

While measures to address some issues are common UK-wide, others are devolved. Consequently, we include information and recommendations specific to Scotland while recognising that the UK State Party remains ultimately responsible for the Social Charter's implementation.

In 2019, children in Scotland constituted approximately 18% of the total population of Scotland, numbering approximately 1 million.⁷ Despite encouraging developments in child rights-focused policy and legislation in recent years, the benefits have not been universally felt and children's human rights continue to be overlooked in health, social security, and social protection measures. Deep and persistent inequalities remain and have increased in some areas, particularly child poverty and mental health. All of these issues have been exacerbated by the Covid-19 pandemic.

Challenges to realising children's human rights in health, social security, and social protection measures

Several systemic issues underpin the challenges to the realisation of children's rights in thematic group 2, including a lack of data, consideration of children's rights in decision-making,

⁷ Office for National Statistics (ONS), 2020, *Population estimates for the UK, England and Wales, Scotland and Northern Ireland: Mid-2019: April 2020 local authority district codes edition of this dataset* [viewed 04.12.20]. Available from: <https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates/datasets/populationestimatesforukenglandandwalescotlandandnorthernireland>

meaningful engagement with children and young people in decision-making processes, child rights budgeting, and transparency in resource allocation.

There is a lack of coherent, consistent, transparent, and systematic, disaggregated data collection concerning children, making it difficult to monitor and measure children's needs and assess the fulfilment of their rights. In particular, the Scottish public sector's data reporting duties have been developed in an *ad hoc* manner over many years and are inconsistent. There is no reliable data on disabled children and data on children with Additional Support Needs (ASNs) is published but not fully disaggregated. The Covid-19 pandemic has revealed significant and concerning data gaps, making it challenging to assess the impact on children of the pandemic and State responses. The UK and devolved governments should develop a comprehensive child rights data collection and evaluation system, including measurable child rights indicators, which generates high-quality, disaggregated data. Furthermore, they must ensure this data is shared across all relevant departments and agencies to ensure children's needs, vulnerabilities, and outcomes can be properly tracked in order for child rights obligations to be respected, protected, and fulfilled.

There is no clear screening for Child Rights Impact Assessments (CRIA) across government and no systematic process of Child Rights Impact Evaluations (CRIE), meaning children's rights are often overlooked in decision-making and evaluation processes. There is inconsistent or incorrect use of CRIAs, which are often undertaken retrospectively, meaning any assessed negative impact cannot be addressed in advance. The quality of some CRIAs is also concerning, often with no analysis of available options, no justification of selected options, no mitigation measures, and their impact on ministerial decisions is unclear. The pandemic has demonstrated the need for a structured CRIA process as government responses often overlooked children's rights. CRIAs should be routinely undertaken and published on all legislative and policy decisions affecting children and children should be consulted throughout. A young adviser to the Commissioner underlined the importance of involving children and young people in CRIA stating,

"I think it is important that children and young people are involved in impact assessments, you can't do something about children and young people without having children and young people involved. If you put it the other way what about if children and young people are writing about adults, you obviously have adults input so it shouldn't be different the other way about."⁸

Governments should refer to the European Network of Ombudspersons for Children's (ENOC) position statement on CRIAs and their Common Framework for the use of CRIAs.⁹

⁸ Young female, CYPCS Young Adviser, Scotland. Report from Children and Young People supported by the Children's Commissioners of the United Kingdom of Great Britain, November 2020, *Are We There Yet? Our Rights, Our Say. A report for the UN Committee on the Rights of the Child* [viewed 12.07.21]. Available from: <https://cypcs.org.uk/wp-content/uploads/2020/12/cco-are-we-there-yet-final.pdf>, p. 7.

⁹ European Network of Ombudspersons for Children (ENOC), 2020, *Position Statement on "Child Rights Impact Assessment" (CRIA)* [viewed 04.12.20]. Available from: <http://enoc.eu/wp-content/uploads/2020/11/ENOC-2020-Position-Statement-on-CRIA-FV-1.pdf>; *Common Framework of Reference on Child Rights Impact Assessments, A Guide on How to Carry Out CRIA* [viewed 04.12.20]. Available from: <http://enoc.eu/wp-content/uploads/2020/12/ENOC-Common-Framework-of-Reference-FV.pdf>

Children and young people have a leading role to play in the protection and promotion of human rights. As one young human rights defender said in 2019,

“What we need is for people to listen, support and empower us. Don’t just put us on the kid’s table and then ignore us. Give us a seat at the table where decisions are being made about our futures and our lives. And if bureaucratic structures mean that’s not possible, then it’s time for a new table. One where everyone has a voice, no matter their age.”¹⁰

However, children and young people’s right to be heard and involved in decision-making processes, in line with State obligations under the UN Convention on the Rights of the Child (UNCRC), is often being denied without comprehensive implementation in law and practice. Children’s views are often not heard in complaints and appeals processes, in relation to their physical or mental health care, decisions about their family environment, or on issues in which they are at the forefront of protests, such as the climate emergency. In particular, children’s views were at times completely absent from decision-making during the Covid-19 pandemic; an issue which the Court of Appeal recognised in a recent ruling.¹¹ The importance of children’s and young people’s views and their role as human rights defenders to the realisation of children’s human rights but also to society cannot be underestimated.

As Charlotte, a Young Human Rights Defender who worked with CYPCS said,

“I take part in the strikes because climate change is not being treated as an urgent crisis, when it is the biggest problem facing our world. I would consider myself as a human rights defender by protecting our rights — that our views must be considered and taken into account in all matters affecting us. Going on protests is a way of the young people around the world getting our concerns heard. The right to live is only meaningful if we can enjoy it.”¹²

The UK and Scottish Governments must prioritise child participation by establishing appropriate structures, mechanisms, guidance, and provide training for meaningful participation in the development of policies, strategies, legislation, service delivery, and monitoring. Consultations and documentation must be accessible and child-friendly, and authorities must engage actively and meaningfully with children.

There is a lack of transparency and clarity in budget processes, allocations, and expenditure concerning children, which affects the ability to assess the fulfilment of children’s human rights in thematic group 2. The absence of a child rights approach to national and local budgeting makes it difficult to identify how much funding is allocated to children, particularly when

¹⁰ CYPCS, 2019, *Promote, Protect, Defend: A report on children and young people as human rights defenders in Scotland* [viewed 12.07.21]. Available from: <https://cypcs.org.uk/wp-content/uploads/2020/02/promote-protect-defend-child-human-rights-defenders.pdf>, p. 8.

¹¹ Court of Appeal, *The Queen (Appellant) (on the application of Article 39) and Secretary of State for Education (Respondent)*, 24 November 2020, Case No: C1/2020/1279 [viewed 09.12.20]. Available from: <https://www.judiciary.uk/wp-content/uploads/2020/11/R-Article-39-v-SSE-judgment.pdf>

¹² Charlotte, Young Human Rights Defender, CYPCS, 2020, *Annual Report 2019-2020* [viewed 12.07.21]. Available from: <https://cypcs.org.uk/wp-content/uploads/2020/10/Children-and-Young-Peoples-Commissioner-Annual-Report-19-20.pdf>, p. 21.

multiple budgets are involved, or to assess the effectiveness of resource allocation, hold bodies accountable, or evaluate the impacts on children's services. In Scotland, budget cuts leading to the closure or reduced availability of local authority services - including recreation facilities have negatively affected children's rights, including the right to play, which is intrinsically linked to their physical and mental health.¹³ Contracting out public services, including in schools, also results in limited accountability and transparency.¹⁴ The UK and devolved governments must undertake child rights-based budgeting, including CRIAs, and ensure transparent resource allocation to children's services. Budget documentation should be clear and publicly available. Services should be evaluated to determine their effectiveness allowing governments to demonstrate they are allocating funding for children's services to the maximum extent of available resources.

The impact of the Covid-19 pandemic on children's human rights in health, social security, and social protection measures

The Covid-19 pandemic continues to have short-, medium- and long-term impacts on children's human rights in Scotland, affecting every aspect of their lives. One young person described the impact of the pandemic, stating, "Lockdown has been horrible and weird. Not getting out and about feels crazy and when you think something has affected the whole world it feels like a big dream."¹⁵ Many of the issues caused by pandemic-related measures are related to and have exposed the lack of thorough protections of the rights reviewed under thematic group 2. In particular, the pandemic has exacerbated existing inequalities such as child poverty, food insecurity, educational inequalities, and mental health. In May 2020, CYPSCS commissioned the Observatory of Children's Human Rights Scotland to undertake an Impact Assessment independently of the Scottish Government's response and measures related to the Covid-19 pandemic. This CRIA followed the key themes identified by the UN Committee on the Rights of the Child¹⁶ and revealed significant and far-reaching impacts of pandemic-related decisions in relation to children and young people's human rights.¹⁷

In March 2020, the UK implemented an emergency response to contain Covid-19, including the UK-wide Coronavirus Act.¹⁸ The governments implemented lockdown measures, allowing no movement outside the home except in limited circumstances. While these exceptions

¹³ UN Committee on the Rights of the Child, April 2013, *General comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art. 31)*, CRC/C/GC/17 [viewed 07.07.21]. Available from: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f17&Lang=en.

¹⁴ Joseph Rowntree Foundation, 2015, *The Cost of the Cuts: The Impact on Local Government and Poorer Communities* [viewed 07.12.2020]. Available from: <https://www.jrf.org.uk/sites/default/files/jrf/migrated/files/Summary-Final.pdf>

¹⁵ Young person, Scotland. Report from Children and Young People supported by the Children's Commissioners of the United Kingdom of Great Britain, November 2020, *Are We There Yet?*, p. 57.

¹⁶ UN Committee on the Rights of the Child, "Covid-19 Statement," (April 2020) [viewed 11.07.21]. Available from: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT/CRC/STA/9095&Lang=en.

¹⁷ CYPSCS and Observatory of Children's Human Rights Scotland, July 2020, *Independent Children's Rights Impact Assessment on the Response to Covid-19 in Scotland* [viewed 12.07.21]. Available from: <https://cypscs.org.uk/wp-content/uploads/2020/07/independent-cria.pdf>

¹⁸ *Coronavirus Act 2020* [viewed 09.12.20]. Available from: <https://www.legislation.gov.uk/ukpga/2020/7/enacted>

relaxed somewhat, the lockdown continued for several months. The UK and devolved governments imposed shorter, differentiated restrictions from September 2020 to control the virus. Scotland re-entered lockdown on December 26, 2020, and remained in lockdown until April 26, 2021. Since then, the government has applied a “levels-based” system across the country, applying measures based on the severity of the situation by region.¹⁹ The response to the pandemic has required the urgent introduction of emergency legislation at United Kingdom and Scottish government level including: the Coronavirus Act 2020;²⁰ the Coronavirus (Scotland) Act 2020,²¹ the Coronavirus (Scotland) (No 2) Act 2020,²² and Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020.²³ The UK and Scottish Governments should ensure that the introduction of emergency legislation is lawful, necessary, proportionate and time-limited, and actively review it on an ongoing basis. These laws must be repealed or replaced as soon as they are no longer necessary.

During the pandemic, state responses have shifted from early intervention towards crisis management. This is due to decisions about use of available resources, challenges around direct access to families and an increase in demand for support. The impact of the Covid-19 pandemic disproportionately affects children living in poverty, those who live with one parent, children on the move, children in secure care, disabled children, Gypsy/Traveller children, and young carers, among others. These children are often at increased risk of poverty, fuel poverty, and food insecurity, and have limited or no access to necessary services and support systems. Gypsy/Traveller children face additional risks, as their accommodation makes it difficult to limit virus spread, comply with physical distancing, and self-isolate, and public toilet and washing facilities closed during lockdown and may not have re-opened.²⁴

The UK and Scottish Governments must adopt an effective, child rights-based response to the recovery from the pandemic. This response must protect and benefit those most marginalised and in vulnerable situations and include targeted, tailored responses. The best interests of the child must always be a primary consideration, and children should be consulted and actively engaged. They should monitor the situation for children as we emerge from the Covid-19 pandemic, assess the pandemic’s impact on children’s lives and adopt measures to address all adverse impacts affecting children’s rights, including a comprehensive recovery package for children. This should include conducting CRIA on future legislation, policy, and practice concerning children and Child Rights Impact Evaluations, particularly concerning pandemic-related laws, policies and practice to inform and improve future responses.

¹⁹ Scottish Government, 2021, *Coronavirus (COVID-19) protection levels: what you can do* [viewed 22.06.21]. Available from: <https://www.gov.scot/publications/coronavirus-covid-19-protection-levels/>.

²⁰ *Coronavirus Act 2020* [viewed 09.12.20]. Available from: <https://www.legislation.gov.uk/ukpga/2020/7/enacted>

²¹ *Coronavirus (Scotland) Act 2020* [viewed 22.06.21]. Available from: <https://www.legislation.gov.uk/asp/2020/7/contents>

²² *Coronavirus (Scotland) (No 2) Act 2020* [viewed 22.06.21]. Available from: <https://www.legislation.gov.uk/asp/2020/10/contents/enacted>

²³ *Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020* [viewed 22.06.21]. Available from: <https://www.legislation.gov.uk/ssi/2020/344/contents>

²⁴ CYPCS and Observatory of Children’s Human Rights Scotland, July 2020, *Independent Children’s Rights Impact Assessment on the Response to Covid-19 in Scotland*.

Applicable human rights framework

In terms of the international legislative framework to ensure the protection of children's rights to health, social security, and social protection, the UK government has not ratified several key United Nations and European treaties in this regard. As a priority, the UK government should ratify the Protocol amending the European Social Charter and the Revised European Social Charter of 1996, the Additional Protocol Providing for a System of Collective Complaints, as well as the Optional Protocol to the United Nations Convention on the Rights of the Child on a Communications Procedure, and the Optional Protocol to the UN International Covenant on Economic, Social and Cultural Rights.

In March 2021, the Scottish Parliament voted unanimously to directly incorporate the UNCRC into Scots law through the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill.²⁵ While the Bill does not include matters reserved to the United Kingdom's (UK) Parliament, it takes a maximalist approach and requires CRIAs to be conducted on a strategic basis. The Commissioner will be able to take more direct action when children's rights are not realised, with new powers to take proceedings if a public authority is acting incompatibly with the UNCRC. The Scottish Government has also committed to incorporate four other human rights treaties into domestic law – the UN International Covenant on Economic, Social and Cultural Rights (ICESCR), the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the UN Convention on the Elimination of All Forms of Racial Discrimination (CERD), and the UN Convention on the Rights of Persons with Disabilities (CRPD) along with the right to a healthy environment and rights for older people.²⁶

There is an inconsistent approach to the definition of a 'child' in Scotland's law. In some areas of Scots law, a 'child' is defined as someone under 16, meaning 16- and 17-year-olds are considered as adults and are denied some of the human rights and child protections safeguards to which they are entitled in some settings. For example, under the UK-wide Coronavirus Act 2020,²⁷ 16- and 17-year-old Scottish children are at risk of being charged, arrested, detained and convicted of criminal offences and may be liable for up to one year's imprisonment. The Scottish Government must amend all necessary legislation in Scots law to ensure that all under-18s are defined and recognised as children.

The right to protection of health

Child health in Scotland is amongst the poorest in Western Europe.²⁸ Despite some positive progress regarding infant mortality rates and immunisations, children in Scotland continue to face significant barriers to the realisation of the highest attainable standard of physical and mental health, including critical delays to accessing treatment, a complex and under-funded health system, and a lack of consultation of children and young people in the design and provision of their health care. Furthermore, children's health and wellbeing continue to suffer due to a governmental failure to address the growing impact of poverty and deprivation,

²⁵ *United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill* [viewed 04.12.20]. Available from: <https://beta.parliament.scot/bills/united-nations-convention-on-the-rights-of-the-child-incorporation-scotland-bill>. The Bill should enter into effect within six months.

²⁶ Scottish Government, 2021, *New Human Rights Bill* [viewed 24.06.21]. Available from: <https://www.gov.scot/news/new-human-rights-bill/>

²⁷ *Coronavirus Act 2020*.

²⁸ Royal College of Paediatrics and Child Health (RCPCH), 2020, *State of Child Health* [viewed 12.07.21]. Available from: <https://stateofchildhealth.rcpch.ac.uk/evidence/at-a-glance/>

environmental degradation and climate change, and obesity in adolescents. All these factors mean some children and young people in Scotland are denied the foundations they need for a good start in life, and they undermine children and young people's lifelong ability to survive, thrive, and live happy, healthy lives.

The Scottish Government has adopted some proactive policies and programmes concerning children's health care and health education. All children under 18 are automatically entitled to free National Health Service (NHS) dental treatment in Scotland²⁹ and to free NHS-funded eye examinations.³⁰ Regarding the early years, the Scottish Government has expanded the provision of health visitors.³¹ Furthermore, the Scottish Government has a universal health promotion programme - the Child Health programme – for all children and their families³² and a number of initiatives in place to address health and wellbeing in schools covering six crucial areas: mental, emotional, social and physical wellbeing, planning for choices and changes, physical education, physical activity and sport, food and health, substance misuse, relationships, and sexual health and parenthood as well as health promotion.³³

However, widening health inequalities are of particular concern. Despite Scottish Government measures and programmes to address inequalities and ensure children can access the health care they need,³⁴ child health indicators show an increased disparity from 2017 to 2020 for children from deprived backgrounds.³⁵ Children in the most deprived areas of Scotland are at significantly higher risk of poor health outcomes and health problems, including tooth decay and being at an unhealthy weight.³⁶ A lack of comprehensive prevention and early intervention as well as insufficient funding are key barriers to children's failure to enjoy the highest attainable standard of health. There is also a lack of quality data on children's health outcomes

²⁹ Scottish Government, 2021, *Primary care services: Dentistry and oral health* [viewed 12.07.21]. Available from: <https://www.gov.scot/policies/primary-care-services/dentistry-and-oral-health/>

³⁰ Scottish Government, 2021, *Primary care services: Eyecare* [viewed 12.07.21]. Available from: <https://www.gov.scot/policies/primary-care-services/eyecare/>. N.B. Everyone in Scotland is entitled to a free eye examination.

³¹ Scottish Government, October 2015, *Universal Health Visiting Pathway in Scotland: pre-birth to pre-school* [viewed 12.07.21]. Available from: <https://www.gov.scot/publications/universal-health-visiting-pathway-scotland-pre-birth-pre-school/>

³² Public Health Scotland, 2021, *Child Health* [viewed 12.07.21]. Available from: <https://beta.isdscotland.org/topics/child-health/>

³³ Scottish Government, 2021, *Schools: Health and wellbeing in schools* [viewed 11.07.21]. Available from: <https://www.gov.scot/policies/schools/wellbeing-in-schools/>; 2008, *Schools (Health Promotion and Nutrition) Scotland Act: Health promotion guidance for local authorities and schools* [viewed 11.07.21]. Available from: <https://www.gov.scot/publications/schools-health-promotion-nutrition-scotland-act-health-promotion-guidance-local/>

³⁴ See more under food insecurity, childhood obesity, mortality rates, and mental health.

³⁵ RCPCH, 2020, *State of Child Health 2020* [viewed 11.07.21]. Available from: <https://stateofchildhealth.rcpch.ac.uk/wp-content/uploads/sites/2/2020/03/SOCH-SCOTLAND-3-04.03.20.pdf>

³⁶ NHS, Information Services Division, Scotland, 2019, *Child Health 27-30 Month Review Statistics Scotland 2017/18*. Available from: <https://www.isdscotland.org/Health-Topics/Child-Health/Publications/2019-04-09/2019-04-09-Child-Health-27m-review-Report.pdf>, p.13; 2018, *Body Mass Index for Primary 1 Children in Scotland School Year 2018/2019*. Available from: <https://www.isdscotland.org/Health-Topics/Child-Health/Publications/2019-12-10/2019-12-10-P1-BMI-Statistics-Publication-Report.pdf>, p.10; 2018, *National Dental Inspection Programme (NDIP) 2018: Report of the 2018 Detailed Inspection Programme of Primary 1 Children and the Basic Inspection of Primary 1 and Primary 7 children*. Available from: <https://www.scottishdental.org/wp-content/uploads/2018/10/2018-10-23-NDIP-Report.pdf>, p.16 [all viewed 11.07.21]

and access to health care services. Several factors, including sex, race, migration status, and disability, affect such access but more research is required.³⁷ Children and young people also do not feel they are involved in the planning and provision of their health care.³⁸

Over the course of the next parliamentary session, ending in May 2026, the Scottish National Party (SNP) which forms the Scottish Government has committed to introducing a range of measures related to the health system and to support the NHS, including increased investment, particularly to frontline funding, implementing an NHS recovery plan to address delays related to the Covid-19 pandemic, increasing the direct investment in mental health services by at least 25%, and implementing a Women's Health Plan to improve care and reduce health inequalities for women and girls.³⁹ The SNP committed to reshape Children's and Adolescent Mental Health Services (CAMHS) delivery based on the principle of "ask once, get help fast," direct at least 1% of frontline NHS spending to CAMHS support and services, and to introduce a National Transition Strategy to improve outcomes for children experiencing mental health problems⁴⁰

Recommendations

- **Adopt a child rights-based approach to health care, founded on effective, early intervention and prevention to realise the highest attainable standard of health for all children. This includes strengthening family support and community-based services and child protection and social support systems, and allocating the necessary financial and human resources. Particular attention should be given to early intervention services for families in vulnerable situations.**
- **Ensure that factors affecting child health inequalities, particularly poverty, are addressed and accounted for in public health policies, plans, and programmes.**
- **Collect and monitor quality, disaggregated data concerning children's health needs and outcomes to ensure that their human right to the protection of health is respected, protected, and fulfilled.**
- **Ensure all children enjoy access to independent advocacy concerning their healthcare.**

Child mortality rates

Infant mortality rates have decreased in **Scotland**. In 2020, Scotland had 146 infant deaths, a rate of 3.1 per 1,000 live births.⁴¹ However, progress is still slow when compared to most

³⁷ Together Scottish Alliance for Children's Rights, 2020, *State of Children's Rights in Scotland 2019* [viewed 11.07.21]. Available from:

https://www.togetherscotland.org.uk/media/1436/socrr_online_version.pdf, p. 93.

³⁸ Scottish Health Council and Includem, 2017, *Involving young people in planning and delivery of health and social care: Scoping a pan-Scotland collaborative* [viewed 11.07.21]. Available from: approach <https://www.hisengage.scot/media/1099/involving-young-people-dec17.pdf>.

³⁹ Scottish National Party (SNP), 2021, *SNP Manifesto 2021: Scotland's Future* [viewed 12.07.21]. Available from:

https://issuu.com/hinksbrandwise/docs/04_15_snp_manifesto_2021_a4_document?mode=window, p. 18.

⁴⁰ *Ibid.*, p. 22.

⁴¹ National Records of Scotland, June 2020, *Vital Events Reference Table: 2020 Report* [viewed 12.07.21]. Available from: <https://www.nrscotland.gov.uk/files/statistics/vital-events-ref-tables/2020/vital-events-ref-tables-20-publication.pdf>, p. 6.

European Union nations.⁴² Infant mortality rates are highest in the most deprived areas in the **UK**⁴³ and lowest in the least deprived areas.⁴⁴

Child mortality rates have declined in recent years in **the UK**; however, the rate of this decline has slowed, and increased in **Scotland** from 9.3 to 9.7 per 100,000 children aged 1-9.⁴⁵ Adolescent mortality rates remain high, with a significant increase in **Scotland** since 2017, from 19.5 to 24.6 per 100,000 aged 10-19.⁴⁶

In 2018, 35% of all deaths aged 0-19 in **the UK** were considered avoidable.⁴⁷ **Scotland** has significantly higher rates of avoidable child deaths than **England** and **Wales**.⁴⁸

Recommendations

- **Put in place measures to address infant, child, and adolescent mortality rates, especially the underlying determinants of infant and child mortality, including poverty and inequality.**
- **Ensure all cases of death or serious injury involving children are subject to automatic and independent review.**

Child obesity rates

Despite Scottish Government initiatives to support healthy eating and encourage healthy weight,⁴⁹ child obesity rates, particularly between the ages of 12 and 15 and for children from deprived backgrounds remains of concern.

In 2018, the Commissioner was part of the Children's Future Food Inquiry, which was the first attempt to directly and systematically seek the views of children and young people living in poverty across the UK and spent 12 months investigating children's food insecurity in each of

⁴² In comparison, countries such as Estonia, Sweden, Spain, and Ireland have a rate of less than 3 deaths of children under one year per 1,000 live births. Organisation for Economic Co-operation and Development (OECD), 2019, *Health at a Glance* [viewed 08.12.20]. Available from:

<https://data.oecd.org/healthstat/infant-mortality-rates.htm>

⁴³ For example, 5.2 deaths in **England** and 4.6 in **Scotland** per 1,000 live births

⁴⁴ For example, 2.7 deaths in **England** and 3 in **Scotland** per 1,000 live births. ONS, 2019, *Child and Infant Mortality in England and Wales: 2017*. Available from:

<https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/deaths/bulletins/childhoodinfantandperinatalmortalityinenglandandwales/2017> and NHS Health Scotland, 2018, *Child Poverty in Scotland: Health Impact and Health Inequalities*. Available from: <http://www.healthscotland.scot/media/2186/child-poverty-impact-inequalities-2018.pdf> [both viewed 08.12.20].

⁴⁵ RCPCH, 2020, *State of Child Health 2020: Scotland*, p.7

⁴⁶ RCPCH, 2020, *State of Child Health: Adolescent Mortality* [viewed 08.12.20]. Available from:

<https://stateofchildhealth.rcpch.ac.uk/evidence/mortality/adolescent-mortality/>

⁴⁷ That equals 1,720 deaths out of 4,883 deaths. ONS, 2020, *Avoidable Mortality in the UK: 2018* [viewed 08.12.20]. Available from:

<https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/causesofdeath/bulletins/avoidablemortalityinenglandandwales/2018#avoidable-mortality-in-children-and-young-people>

⁴⁸ Ibid.

⁴⁹ Scottish Government, 2018, *A healthier future: Scotland's diet and healthy weight delivery plan* [viewed 11.07.21]. Available from: <https://www.gov.scot/publications/healthier-future-scotlands-diet-healthy-weight-delivery-plan/pages/2/>

the four UK nations. The project's final report pulls together direct input from hundreds of young people, the front-line staff, academics, and experts.⁵⁰

Poverty and deprivation are associated with poor nutritional outcomes. Across the UK, there is a marked socio-economic gradient for childhood obesity. The Inquiry found that despite children living in deprived areas being around twice as likely to be obese compared with their peers in less deprived areas they are not being focussed on in any of the government's Childhood Obesity Plans. Children in the most deprived parts of the country also don't grow as well and are on average a centimetre shorter by the time they reach age 11 than children in the richest areas.⁵¹

Data from an unpublished study conducted at the University of Liverpool looked at 17,000 children from the Millennium Cohort Study.⁵² It examined how obesity and symptoms of depression and anxiety are associated from early childhood to mid-adolescence. It shows that children who are from lower income backgrounds are at greater risk of developing obesity and mental health problems and, as indicated above, these two health problems become inter-related and exacerbate each other from mid-childhood into adolescence. They show that the co-development of obesity and mental health problems in childhood and early adolescence is largely attributable to socio-economic factors. Eating behaviours of people experiencing food insecurity (overeating when food is available, for example) and the psychological aspects of being food insecure (such as stress, depression, and anxiety) may also be contributing factors. It may be of particular relevance to children that lower income neighbourhoods lack opportunities for physical activity. This may present itself in terms of fewer facilities, such as parks and green spaces, unattractive or unsafe facilities, or inability to afford organised sports expenses or transport costs.⁵³

In the 2019/2020 school year, 12% of Primary 1 children in Scotland were at risk of being overweight and 10% were at risk of obesity, meaning more than 1 in 5 children in Primary 1 were at risk of overweight or obesity. In 2019/20, 27% of children living in the most deprived areas were at risk of overweight or obesity, compared with 17% of children living in the least deprived areas.⁵⁴

The proportion of healthy-weight children was 68% in 2019. The prevalence of children at risk of obesity⁵⁵ was 16% in 2019. The prevalence of children at risk of overweight⁵⁶ was 14% in 2019. Of those aged 2-6, 68% were in the healthy weight range, a figure which rose to 73% for those aged 7-11 before falling sharply to 62% for those aged 12-15. In 2019, children aged

⁵⁰ Food Foundation, 2019, *Children's Future Food Inquiry Report* [viewed 14.07.21]. Available from: <https://foodfoundation.org.uk/wp-content/uploads/2020/11/Childrens-Future-Food-Inquiry-report.pdf>

⁵¹ Ibid., p. 30

⁵² Personal communication, Praveetha Patalay and Charlotte Hardman.

⁵³ Ibid pg. 32

⁵⁴ Public Health Scotland, December 2020, *Primary 1 Body Mass Index (BMI) statistics Scotland: school year 2019 to 2020* [viewed 12.07.21]. Available from: <https://publichealthscotland.scot/publications/primary-1-body-mass-index-bmi-statistics-scotland/primary-1-body-mass-index-bmi-statistics-scotland-school-year-2019-to-2020/>. This release from Public Health Scotland provides annual statistics on high, low and healthy body mass index (BMI) for Primary 1 school children, and includes data for school years 2001/02 to 2019/20.

⁵⁵ BMI at or above 95th percentile.

⁵⁶ BMI at or above 85th percentile, below 95th percentile.

12-15 were more likely than younger children to be at risk of obesity (21% for those aged 12-15 compared with 14% for those aged 2-11). This was more pronounced among girls⁵⁷ than boys.⁵⁸

The SNP has pledged to support a transition to healthy eating during its parliamentary term through funding and supporting a number of initiatives and local authorities.⁵⁹ Furthermore, they have committed to halving child obesity by 2030, making Active Schools programmes free for all children, and improving nutritional standards for food and drink in schools.⁶⁰ The SNP further committed to support initiatives to encourage active living and sport, including through doubling investment in sport and active living to £100 million.⁶¹

Recommendations

- **Ensure that all children, particularly those affected by poverty, have access to the food and resources necessary to support healthy eating and a healthy lifestyle as well as the necessary nutritional information. This includes removing barriers and allocating sufficient financial resources to support such families.**
- **Systematically collect data on nutrition for children, including those relevant to obesity, in order to better understand drivers of obesity and inform responses.**

Waiting times

Children and young people continue to face unacceptably long waiting times for both physical and mental health care services as they are not all seen within the standard waiting time, which has significant implications for their treatment and overall health and wellbeing. This is particularly significant in the context of the Covid-19 pandemic, where many services were suspended or reduced at various points throughout the pandemic. In particular, the Rural Economy and Connectivity Committee has highlighted that children and young people in rural communities face barriers to accessing quality health care in a timely manner.⁶²

For the quarter ending 31 March 2021 10,794 children were seen for paediatric treatment, including surgery and dentistry (inpatient and outpatient) and of these 32% (3,484) waited over 12 weeks. For the previous quarter ending 31 December 2020, 8,440 children were seen for paediatric treatment, including surgery and dentistry (inpatient and outpatient) and of these 33% (2,826) waited over 12 weeks.⁶³

⁵⁷ 22% among girls aged 12-15 compared with 11-13% for those aged 2-11.

⁵⁸ 19% among boys aged 12-15 compared with 15-16% for those aged 2-11. Scottish Government, September 2020, *Scottish Health Survey 2019 – volume 1: main report, chapter 6 diet and obesity* [viewed 12.07.21]. Available from: <https://www.gov.scot/publications/scottish-health-survey-2019-volume-1-main-report/>.

⁵⁹ SNP, 2021, *SNP Manifesto 2021: Scotland's Future*, p. 43. Also, see more under "Food insecurity" below.

⁶⁰ *Ibid.*, p. 24.

⁶¹ *Ibid.*, pp. 18, 25.

⁶² Rural Economy and Connectivity Committee in CYPSCS, 2019, *Report on children and young people's mental health echoes young people's voices* [viewed 13.07.21.] Available from: <https://cypcs.org.uk/news-and-stories/report-on-children-and-young-peoples-mental-health-echoes-young-peoples-voices/>

⁶³ Public Health Scotland, May 2021, *NHS waiting times – stage of treatment: quarter ending March 2021* [viewed 12.07.21] Available from: <https://publichealthscotland.scot/publications/nhs-waiting->

In Scotland, the number of children waiting more than 18 weeks for an initial appointment with Child and Adolescent Mental Health Services (CAMHS) (Tier 3 services)⁶⁴ increased from 24.9% to 33.5%, with those waiting more than one year increasing from 1.5% to 5.6% in 2019.⁶⁵ For the quarter ending 31 March 2021, 4,089 children and young people started treatment at Child Adolescent Mental Health Services (CAMHS) in Scotland. This is similar to the 4,091 starting treatment from the previous quarter. Over seven out of ten (72.5%) of children and young people were seen within 18 weeks, compared to 73.1% for the previous quarter and 66.6% for the quarter ending March 2020. The Scottish Government standard states that 90% of children and young people should start treatment within 18 weeks of referral to CAMHS.

Of the 11,007 children and young people who were on the waiting list at the end of March 2021, just over 50% (5,541) had been waiting longer than 18 weeks. Of these, 2,012 had been waiting over 52 weeks, 937 between 36-52 weeks and 2,582 between 19 and 35 weeks. 7,715 children and young people were referred to CAMHS in Scotland for the quarter ending March 2021. This compares to 9,187 for the previous quarter, and 9,019 for the quarter ending March 2020.⁶⁶ Long waiting times can also result in young people becoming ineligible after turning 18.⁶⁷

Recommendation

- **Adopt proactive measures to reduce waiting times for medical treatment and address the impact of such delays on children's health outcomes and quality of life.**

Immunisation rates

In Scotland, statistics for childhood immunisations are provided for children at 12 months, 24 months, five years, and six years old. Vaccines are offered against several diseases in the

[times-stage-of-treatment/nhs-waiting-times-stage-of-treatment-quarter-ending-31-march-2021/](#). N.B. This release relates to the length of time patients wait to be seen as a new outpatient or admitted for treatment as an inpatient or day case.

⁶⁴ Tier 3 is for children with severe, complex, or persistent mental health disorders.

⁶⁵ Public Health Scotland, 2020, *Child and Adolescent Mental Health Services (CAMHS) in Scotland: Waiting Times and Inpatient Activity and CAMHS Workforce in Scotland* [viewed 08.12.20]. Available from: <https://www.isdscotland.org/Health-Topics/Mental-Health/Child-and-Adolescent-Mental-Health/index.asp>

⁶⁶ Public Health Scotland, June 2021, *Child and Adolescent Mental Health Services (CAMHS) waiting times: quarter ending 31 March 2021* [viewed 12.07.21] Available from: <https://www.publichealthscotland.scot/publications/child-and-adolescent-mental-health-services-camhs-waiting-times/child-and-adolescent-mental-health-services-camhs-waiting-times-quarter-ending-31-march-2021/>. See more under "mental health" for other concerns about CAMHS.

⁶⁷ Audit Scotland, September 2018, *Children and young people's mental health* [viewed 12.07.21]. Available from: https://www.audit-scotland.gov.uk/uploads/docs/report/2018/nr_180913_mental_health.pdf;

Scottish Parliament, Public Audit and Post-legislative Scrutiny Committee, March 2019, *Report on children and young people's mental health* [viewed 09.07.21]. Available from: <https://sp-bpr-en-prod-cdnep.azureedge.net/published/PAPLS/2019/3/14/Report-on-children-and-young-people-s-mental-health/PAPLSS052019R1.pdf>;

Scottish Government, June 2018, *Rejected referrals to child and adolescent mental health services: audit* [viewed 12.07.21]. Available from: <https://www.gov.scot/publications/rejected-referrals-child-adolescent-mental-health-services-camhs-qualitative-quantitative/>

first few years of life, including but not limited to, tetanus, diphtheria, polio, rotavirus, and meningococcal C. Annual uptake rates remained high in 2020: over 96% of children had received each routine immunisation by the time they were 12 months of age, apart from rotavirus vaccine, which had 94.1% uptake. Furthermore, all measures of annual vaccine uptake at 12 months, 24 months and 6 years increased compared with 2019, as well as the majority of vaccines measured at 5 years old. However, children from the more deprived areas were less likely to take up the vaccines than children from the less deprived areas and were also more likely to be vaccinated later than children in less deprived areas. For example, for children reaching 24 months of age in 2020, 85% had received their first dose of MMR (Measles, Mumps and Rubella) by 15 months of age in the most deprived areas compared with 92.8% in the least deprived areas.⁶⁸

In Scotland, teenage booster immunisations are routinely offered to pupils in S3⁶⁹ at around 14 years old. The two vaccines offered - Td/IPV⁷⁰ and MenACWY⁷¹ - boost protection against diseases for which children received vaccines in early childhood. Pupils not immunised in S3 are re-offered the vaccine(s) in S4.⁷²

By the end of S4, over 86% of all S4 pupils in Scotland had received the teenage booster immunisations (Td/IPV 86.7%, MenACWY 86.8%). Pupils in more deprived areas were much less likely to receive the Td/IPV and MenACWY vaccines. By the end of S4, 80.9% of pupils from the most deprived areas were immunised, compared with 92.9% from the least deprived areas (Td/IPV vaccine).

Among S3 pupils who were offered the vaccines in 2019/20, uptake of Td/IPV vaccine was 79.6% (81.9% in 2018/19), and MenACWY vaccine uptake was 79.8% (82.1% in 2018/19). For each of the immunisations, this was a decrease in uptake of 2.3 percentage points on the previous year. As these two immunisations are routinely offered at the same immunisation sessions in schools, the uptake rates are usually very similar.⁷³

The school-based HPV immunisation programme aims to help protect boys and girls from developing HPV-related cancers later in life. The most common HPV-induced cancer is cervical cancer. The routine HPV immunisation schedule is two doses of vaccine to complete the full course, typically given in the first two years of secondary school - S1 and S2. From 1

⁶⁸ Public Health Scotland, March 2021, *Childhood immunisation statistics Scotland: quarter and year ending 31 December 2020* [viewed 12.07.21]. Available from: <https://beta.isdscotland.org/find-publications-and-data/population-health/child-health/childhood-immunisation-statistics-scotland/>

⁶⁹ Third year of secondary school.

⁷⁰ The Td/IPV vaccine completes the 5-dose course that provides long-term protection against tetanus, diphtheria, and polio (with inactivated polio vaccine).

⁷¹ The meningitis ACWY (MenACWY) vaccine helps protect against meningitis and septicaemia (blood poisoning) caused by 4 groups of meningococcal bacteria A, C, W and Y.

⁷² S4 is the fourth year of secondary school.

⁷³ Public Health Scotland, December 2020, *Teenage booster immunisation statistics Scotland: school year 2019/20* [viewed 12.07.21] Available from: <https://beta.isdscotland.org/find-publications-and-data/population-health/child-health/teenage-booster-immunisation-statistics-scotland/>. Public Health Scotland provides an annual update on teenage booster immunisation uptake rates for pupils in S3 and S4. Statistics for the 2019/2020 year are affected by the Covid-19 pandemic as some NHS Boards had not completed their planned immunisation sessions when schools closed in March 2020.

August 2019, the HPV immunisation programme in Scotland was extended to adolescent boys, with the vaccine offered to every pupil in S1.⁷⁴

Uptake rates are reported for males and females in their first year of secondary school (S1), and for females in their second, third and fourth year of secondary school (S2, S3 and S4) in 2019/20. Uptake of the first dose among S1 females offered the vaccine in 2019/20 was 85.8%, compared to 85.1% in 2018/19. In this first year that S1 males were offered the immunisation; uptake was 78.7%. Although uptake of the first dose was over 90% by the end of S4 in all deprivation categories, females from the most deprived areas were less likely to receive the second dose compared to those from the least deprived areas (84.3% vs. 91.6%).⁷⁵

Recommendation

- **Ensure all children and young people, including those in deprived areas, can access their childhood, teenage booster, and HPV immunisations in a timely manner. In particular, put in place measures targeting those groups where there is lower uptake and lower vaccination rates, including awareness-raising and support to reach vaccinations if there are financial or other barriers.**

Physical health during the Covid-19 pandemic

While healthcare services have mostly remained available to children during the pandemic, in many cases access to and provision of these services changed. The impact of the pressures on the National Health Service and restricted face-to-face contact on children's healthcare is concerning. Access to urgent medical care and paediatric care dropped, with significant delays to treatment. This meant physical health problems were not being diagnosed in a timely manner or at all and ongoing medical issues were not receiving the necessary care. Routine vaccinations, medical appointments, sexual health services, procedures, and assessments were also all delayed due to the pandemic. There is also a lack of available, accessible information for children.⁷⁶

⁷⁴ Public Health Scotland, December 2020, *HPV immunisation statistics: Scotland school year 2019/20* [viewed 12.07.21]. Available from: <https://beta.isdscotland.org/find-publications-and-data/population-health/child-health/hpv-immunisation-statistics-scotland/>. Statistics are affected by the COVID-19 (Coronavirus) outbreak as some NHS Boards had not completed their planned immunisation sessions when schools closed in March 2020.

⁷⁵ Public Health Scotland, December 2020, *HPV immunisation statistics: Scotland school year 2019/20* [viewed 12.07.21] Available from: <https://beta.isdscotland.org/find-publications-and-data/population-health/child-health/hpv-immunisation-statistics-scotland/>. Trend data for the last 10 years shows S3 uptake of the completed course exceeded 90% until 2013/14 and then gradually decreased to 85.4% in 2018/19. The decrease in uptake of the completed course from 2014/15 is likely to be due to the change in the HPV immunisation schedule in the UK from September 2014, from three doses to two doses. This resulted in changes in the timing of the offer of doses and frequency of HPV immunisation sessions in schools, which means the number of opportunities for girls to complete their full immunisation course by S3 has reduced. It is thought, therefore, that more girls than previously may complete their full vaccination course in S4.

⁷⁶ RCPCH, 2020, *Impact of COVID-19 on child health services between April and July 2020 - report* [viewed 12.07.21]. Available from: <https://www.rcpch.ac.uk/resources/impact-covid-19-child-health-services-tool-results>; CYPCH and Observatory of Children's Human Rights Scotland, July 2020, *Independent Children's Rights Impact Assessment on the Response to Covid-19 in Scotland*.

Access to services for children with ongoing health conditions or disabilities were restricted early on in the pandemic and continue to be affected. Black, Asian and Minority Ethnic (BAME), disabled, and Gypsy/Traveller children as well as young carers were disproportionately affected and less able to access health care. Existing barriers to health care became even more difficult to surmount for asylum-seeking and refugee during the pandemic. Furthermore, young people in Young Offenders Institutions were treated as adults, which meant they were unable to access health support and hygiene facilities like showers.⁷⁷

Recommendation

- **Ensure a minimum standard for children’s access to and provision of healthcare during future public health, economic, environmental, and social crises. This includes guaranteeing safe levels of paediatric care, including routine vaccinations, medical appointments, sexual health services, procedures, and assessments during crises.**

Food insecurity

The Children’s Future Food Inquiry highlighted that food insecurity is a longstanding serious problem for children UK-wide.⁷⁸ It affects children’s physical and mental health and lifelong development. Children who experience food insecurity are more likely to face adverse health outcomes, developmental risk, obesity, and malnutrition. Food insecurity also affects educational performance and can lead to behavioural problems.⁷⁹ In 2016, one child in Scotland told us of the effect of food insecurity on learning stating, “It’s really hard to concentrate.” Another pointed out, “When you’re hungry all you can think about is food.”⁸⁰ Three of the main causes of food insecurity are low income, benefit delays, and benefit changes.⁸¹ When talking about the role of politicians in addressing food insecurity, one child said,

“They’re meant to look after us, they shouldn’t just be sitting there not caring and eating all the food.”⁸²

Prior to 2021, there was no single nationwide government measure for hunger in the UK⁸³ and quality disaggregated data remains lacking at devolved or UK level. Prior to the pandemic, an

⁷⁷ Ibid.

⁷⁸ Food Foundation, 2019, *Children’s Future Food Inquiry*.

⁷⁹ UNICEF, Office of Research - Innocenti Working Paper, June 2017, *Prevalence and Correlates of Food Insecurity among Children across the Globe* [viewed 12.07.21]. Available from: https://www.unicef-irc.org/publications/pdf/IWP_2017_09.pdf.

⁸⁰ CYPCS, October 2016, “*Living is more important than just surviving: Listening to what children think about food insecurity*” [viewed 12.07.21]. Available from: <https://cypcs.org.uk/wp-content/uploads/2020/02/living-more-important-than-surviving.pdf>, p. 7.

⁸¹ SOSENKO, F., et al, 2019, *State of Hunger: A Study of Poverty and Food Insecurity in the UK*, The Trussell Trust [viewed 08.12.20]. Available from: <https://www.stateofhunger.org/wp-content/uploads/2019/11/State-of-Hunger-Report-November2019-Digital.pdf>

⁸² CYPCS, October 2016, “*Living is more important than just surviving*”, p. 14.

⁸³ UK Parliament, 2019, *Sustainable Development Goals in the UK Follow Up: Hunger, Malnutrition and Food Insecurity in the UK: 2 - Hunger, food insecurity and malnutrition in the UK* [viewed 08.12.20]. Available from: <https://publications.parliament.uk/pa/cm201719/cmselect/cmenvaud/1491/149105.htm#:~:text=There%20is%20no%20single%2C%20nationwide,for%20hunger%20in%20the%20UK.&text=22%20Howev>

estimated 1.9 million children experienced food insecurity across the UK.⁸⁴ 720,504 children UK-wide⁸⁵ received food from 1,200 foodbanks in 2019.⁸⁶ Food bank use to feed children increased by 25% in the UK between 2018/19 and 2019/20.⁸⁷ In January 2021, 2.3 million children in the UK lived in households that had experienced food insecurity in the previous 6 months (12% of households with children) and 10% of households in the UK with children reported food insecurity January 2021 alone.⁸⁸

Regarding children experiencing food poverty in Scotland, Scottish Government analysis of the Households Below Average Income, 2019/20 data tables⁸⁹ found that 25% of children lived in households with marginal, low or very low food security in 2019/20. Furthermore, children living in poverty in Scotland were less likely to have high food security: just 48% of those in relative poverty and 49% of those in absolute poverty lived in high food security households.⁹⁰

In order to address food insecurity, ensure access to healthy nutritious food, and reduce dietary-related diseases, in 2014 the Scottish Government announced the Becoming a Good Food Nation policy, scheduled to enter into effect by 2025.⁹¹ Despite intentions to introduce the Good Food Nation (Scotland) Bill before the end of the last Scottish parliamentary term in May 2021,⁹² the Government announced in April 2020 that it would not be tabled due to the

[er%20the%20British%20Association,1.3%20million%20are%20over%2065](#). The Department for Work and Pensions measured food insecurity for the first time in its annual Food and Resources Survey, with first data sets available in March 2021.

⁸⁴ Children's Commissioner for England (CCE), 2020, *Childhood Vulnerability in Numbers: Children Living in Food Poverty* [viewed 08.12.20]. Available from: <https://app-t1pp-cco.azurewebsites.net/vulnerability-in-numbers/>

⁸⁵ England (569,810); Northern Ireland (18,934); Scotland (80,623); Wales (51,137).

⁸⁶ This represented around two-thirds of foodbank provision. The Trussell Trust, 2020, *End of Year Stats* [viewed 08.12.20]. Available from: <https://www.trusselltrust.org/news-and-blog/latest-stats/end-year-stats/>

⁸⁷ England (25%); Northern Ireland (23%), Scotland (13%); Wales (22.5%). The Trussell Trust, 2020, *End of Year Stats: April 2019–March 2020* [viewed 08.12.20]. Available from: <https://www.trusselltrust.org/news-and-blog/latest-stats/end-year-stats/>

⁸⁸ Food Foundation, 2021, *A crisis within a crisis: the impact of Covid-19 on household food security* [viewed 12.07.21]. Available from: https://foodfoundation.org.uk/wp-content/uploads/2021/03/FF_Impact-of-Covid_FINAL.pdf

⁸⁹ Most of the figures in these data tables come from the DWP Family Resources Survey which collected household food security information for the first time in 2019/20. DWP, 2021, *Family Resources Survey: financial year 2019 to 2020* [viewed 12.07/21]. Available from:

<https://www.gov.uk/government/statistics/family-resources-survey-financial-year-2019-to-2020>. The Family Resources Survey now includes ten questions on household food security but the questions do not directly ask about the food security of children. Social Market Foundation, 2020, *Measuring and mitigating child hunger in the UK* [viewed 12.07/21]. Available from: <https://www.smf.co.uk/wp-content/uploads/2020/12/Measuring-mitigating-child-hunger-Dec-20.pdf>

⁹⁰ DWP, March 2021, *Households Below Average Income, 2019/20 data tables* [viewed 12.07.21]. Available from: <https://www.gov.uk/government/statistics/households-below-average-income-for-financial-years-ending-1995-to-2020>; Scottish Government, March 2021, *Poverty and Income Inequality in Scotland 2017-20* [viewed 12.07.21]. Available from: <https://data.gov.scot/poverty/>. See *Child Poverty Trends Food Security* [viewed 12.07.21]. Available from: https://data.gov.scot/poverty/#Child_poverty.

⁹¹ Scottish Government, Agriculture and Rural Economy Directorate, June 2014, *Recipe for Success: Scotland's national food and drink policy, becoming a Good Food Nation* [viewed 13.07.21]. Available from: <https://www.gov.scot/publications/recipe-success-scotlands-national-food-drink-policy-becoming-good-food/>

⁹² Scottish Government, 2020, *Programme for Government* [viewed 12.07.21]. Available from: <https://www.gov.scot/programme-for-government/>.

impact of pandemic-related measures and legislation on parliamentary time.⁹³ The SNP has committed to enshrine the right to food into domestic law part of its incorporation of human rights conventions into domestic Scots law during the current parliamentary term.⁹⁴ The Scottish National Party's plans for its first 100 days of government include an increase in Best Start Food funding to £4.50 per week, helping families with children under three to buy healthy foods.⁹⁵

The longstanding issue of food insecurity worsened due to the Covid-19 pandemic. To-date, there is no comprehensive data on the number of children affected by food insecurity in the wake of the pandemic. In Scotland, there was no standard approach to free school meals across local authorities during the pandemic. Whilst alternatives were provided via meal replacements, cash replacements, or food vouchers, their delivery was inconsistent, particularly the availability of direct payments. Take-up by parents increased if provision was via a cash payment. The value of substitution varied across local authorities (from £10-£20 per week).⁹⁶

Recommendations:

- **Continue State payments for free school meals over school holidays and the UK and Scottish Governments should review eligibility criteria and adequacy of support for families.**
- **Collect, analyse, and monitor data on the extent and impact of food insecurity on children across the United Kingdom, breaking it down by each nation, and introduce measures to address food insecurity.**
- **Regularly monitor and assess the effectiveness of policies and programmes on food security, including school meal programmes and food banks, and programmes addressing infants and young children.**
- **Introduce measures to ensure children have access to adequate food and nutrition throughout the year, including when not at school. Targeted measures must be put in place for those children most at risk of living in food insecurity.**

Mental health

Children and young people in Scotland are unable to access appropriate mental health treatment. Mental health and a lack of mental health support is a priority, long-standing issue facing children and young people in Scotland, and this has been exacerbated by the Covid-19 pandemic, both indirectly through delays in access to services and support and in terms of the direct impact of pandemic-related measures on children and young people. As one young person said to the Commissioner,

⁹³ Scottish Government, *Policy, Food and Drink, Good Food Nation policy* [viewed 30.06.21]. Available from: <https://www.gov.scot/policies/food-and-drink/good-food-nation/>.

⁹⁴ SNP, 2021, *SNP Manifesto 2021*, p. 43.

⁹⁵ Scottish National Party, 2021, *First Steps* [viewed 01.07.21]. Available from: https://issuu.com/hinksbrandwise/docs/04_28c_snp_100_days_210x297mm, p. 7; Scottish Government, 2021, *Best Start Grant and Best Start Foods* [viewed 01.07.21]. Available from: <https://www.mygov.scot/best-start-grant-best-start-foods>.

⁹⁶ Lambie-Mumford, H., August 2020, *Mapping responses to risk of rising food insecurity during the Covid-19 crisis across the UK* [viewed 12.07.21]. Available from: <http://speri.dept.shef.ac.uk/wp-content/uploads/2020/08/Food-Vulnerability-During-COVID-19-first-project-report.pdf>.

“What I’ve seen is young people’s mental health going down the drain. It’s been really damaging.”⁹⁷

This has a significant impact on a range of children and young people’s human rights. As another young person said, “People think that rights are less important if you have a mental health problem. My sister was left in hospital lying on the floor with nothing all night because the hospital staff thought it was better for her, but it wasn’t and it broke her right to a good standard of living.”⁹⁸

In response to a 2021 survey of 1000 young people in Scotland aged 16-24 about mental health, 72% of participants said they have struggled with their mental health and 66% think young people are dismissed by adults when they try to speak about their mental health. These included experiences of being dismissed by family members (67%), while only 39 % felt their teachers took their concerns about mental health seriously when raised. Furthermore, 51% said they would not tell someone if they were having difficulties with how they were feeling.⁹⁹

The mental health system was under significant pressure prior to the Covid-19 pandemic and children and young people faced considerable delays in mental health treatment and barriers to accessing quality mental health care. Prior to the pandemic, there had also been a significant increase in the number of children and young people experiencing mental health problems and in youth suicide levels.¹⁰⁰ The reasons for such an increase are complex, differed between children, and not all understood. However, some causes of mental health conditions in children and young people include bullying, abuse or witnessing violence, social media, academic pressures, illness, separation or divorce of parents, and bereavement, among others.¹⁰¹

Children and young people face a “complex and fragmented” mental health system, which is difficult to navigate and can affect children and their families/carers’ access to the necessary mental health support.¹⁰² A focus on specialist care and responding to crises instead of on early intervention and prevention, which would align with government strategy,¹⁰³ is a key factor hindering effective mental health care for children and young people.¹⁰⁴ A lack of individualised approach and of consultation of children and young people about their treatment

⁹⁷ Young person, participant in education listening session with Commissioner, May 2021.

⁹⁸ Scottish Youth Parliament, 2020, *Statistics are not stories: it’s time to listen to young people about their mental health* [viewed 12.07.21]. Available from: <https://syp.org.uk/statistics-are-not-stories/>.

⁹⁹ See Me Scotland, June 2021, *Young People feel their mental health struggles are dismissed by adults* [viewed 12.07.21]. Available from: <https://www.seemescotland.org/news-and-blogs/young-people-feel-their-mental-health-struggles-are-dismissed-by-adults/>

¹⁰⁰ Scottish Parliament, Public Audit and Post-legislative Scrutiny Committee, March 2019, *Report on children and young people’s mental health*, p. 2.

¹⁰¹ Ibid., p. 2; Children 1st, 2021, *Causes of mental health issues in children* [viewed 12.07.21]. Available from: <https://www.children1st.org.uk/help-for-families/parentline-scotland/guidance-advice/mental-health-issues-in-children/>.

¹⁰² Audit Scotland, September 2018, *Children and young people’s mental health*; Scottish Parliament, Public Audit and Post-legislative Scrutiny Committee, March 2019, *Report on children and young people’s mental health*; Scottish Government, June 2018, *Rejected referrals to child and adolescent mental health services: audit*.

¹⁰³ Scottish Government, 2017, *Mental Health Strategy 2017-2027* [viewed 12.07.21]. Available from: <https://www.gov.scot/publications/mental-health-strategy-2017-2027/>.

¹⁰⁴ Audit Scotland, September 2018, *Children and young people’s mental health*.

as well as limited access to information, advice and sources of support for varied needs and available services are all significant challenges.¹⁰⁵ Children have called for improvements in these areas and for a role for children and young people in forming mental health initiatives.¹⁰⁶ As Erin Campbell, a member of the Scottish Youth Parliament said,

“When we talk about mental health, we often hear the same statistics over and over again. We all know that 1 in 4 people will experience a mental health problem in their lifetime, but statistics are not stories. They do not represent the lived experiences of young people throughout the country and if we want to make a genuine change to mental health in Scotland, it’s time we started listening to those experiences.”¹⁰⁷

There is inconsistent provision of mental health services at community level (Tier 2)¹⁰⁸ with resources in some areas focussed on Child Adolescent Mental Health Services (CAMHS) and inpatient services. Inadequate community provision has resulted in increased and, in the absence of other services, inappropriate CAMHS referrals. Referrals to CAMHS pre-pandemic had increased, but high referral thresholds, significant waiting times, and no provision for early years hindered access.¹⁰⁹ The Rural Economy and Connectivity Committee has highlighted the particular barriers facing children and young people in rural communities to accessing quality health mental health care and more action must be taken in this regard.¹¹⁰ Furthermore, access to early intervention supports, including school counselling and primary mental health workers to specialist support are inconsistent and vary nationwide.¹¹¹

Despite Scottish Government allocation of resources for mental health support, particularly to reduce waiting times,¹¹² greater investment is required. Furthermore, a lack of comprehensive, quality, disaggregated data around mental health service provision for children, ranging from total expenditure, allocation of funding, reasons for rejected referrals and outcomes, are all of

¹⁰⁵ Young Scot Observatory, *Youth Commission on Mental Health Services Report*, May 2019, [viewed 12.07.21]. Available from: https://static1.squarespace.com/static/5cee5bd0687a1500015b5a9f/t/5d5bff2d3e4b3a0001235a5c/1566310232664/YS_Youth_Commission_Mental_Health_FINAL.pdf; Audit Scotland, September 2018, *Children and young people’s mental health*; Scottish Parliament, Public Audit and Post-legislative Scrutiny Committee, March 2019, *Report on children and young people’s mental health*.

¹⁰⁶ See Me Scotland, 2019, *Feels FM, Emoji Jukebox* [viewed 12.07.21]. Available from: <https://www.seemescotland.org/media/9468/feelsfm-executive-summary-report.pdf>

¹⁰⁷ Erin Campbell, Member, Scottish Youth Parliament in: Scottish Youth Parliament, 2020, *Statistics are not stories: it’s time to listen to young people about their mental health*.

¹⁰⁸ Community provision for children with less severe mental health problems such as anxiety and depression.

¹⁰⁹ Audit Scotland, September 2018, *Children and young people’s mental health*, p.14; Together Scottish Alliance for Children’s Rights, 2020, *State of Children’s Rights in Scotland 2019*, p. 96.

¹¹⁰ Rural Economy and Connectivity Committee in CYPCS, 2019, *Report on children and young people’s mental health echoes young people’s voices* [viewed 13.07.21.] Available from: <https://cypcs.org.uk/news-and-stories/report-on-children-and-young-peoples-mental-health-echoes-young-peoples-voices/>

¹¹¹ Audit Scotland, September 2018, *Children and young people’s mental health*.

¹¹² Scottish Government, December 2018, *Progressing the Human Rights of Children in Scotland: A Report 2015-2018* [viewed 12.07.21]. Available from: <https://www.gov.scot/binaries/content/documents/govscot/publications/progress-report/2018/12/progressing-human-rights-children-scotland-report-2015-2018/documents/00544569-pdf/00544569-pdf/govscot:document/00544569.pdf>

concern. This data gap must be addressed as well as a lack of monitoring and research in certain areas, including causes of mental health pressures on children such as social media.¹¹³

Mental health support for children and young people requires significant and urgent transformation to ensure that children can access quality mental health support in a timely manner on an equal basis at all levels. For children to enjoy access to quality mental health support, multi-stakeholder action is required across education, health, media, government, and the wider community, including working with children and young people.¹¹⁴

Consent to medical treatment

The application and understanding of consent to medical treatment is inconsistent in Scotland. Many young people under the age of 16 have the capacity to consent to medical treatment, yet this is not consistently applied.

Under the Age of Legal Capacity (Scotland) Act 1991, section 2(4), “A person under the age of 16 years shall have legal capacity to consent on his own behalf to any surgical, medical or dental procedure or treatment where, in the opinion of a qualified medical practitioner attending him, he is capable of understanding the nature and possible consequences of the procedure or treatment.”¹¹⁵ Therefore, there is no set age at which a child will have the capacity to make such decisions and it is up to the medical practitioner to make that assessment in each instance.

CYPCS has ongoing concerns about requiring parental consent whenever a young person under 18 is prescribed mental health medication. These are: 1.) that this would prevent young people accessing the support they need, when they need it. 2) that existing rules around capacity to consent to medical treatment provide clarity to both young people and medical professionals. Introducing a different approach in relation to mental health medication would create a dual system, which would be difficult to navigate. 3) children and young people with capacity have a right to confidentiality when accessing medical advice and treatment. 4) where a child or a young person is thought to lack capacity or is assessed as being at risk of immediate or significant harm, then there are already protocols in place that would allow medical professionals to breach confidentiality.

Mental health and wellbeing in schools

Mental health and wellbeing in schools is of increasing concern. Pupil wellbeing is concerning with only 18% of **UK** pupils reporting ‘positive wellbeing.’¹¹⁶ Academic pressure, social media,

¹¹³ Scottish Parliament, Public Audit and Post-legislative Scrutiny Committee, March 2019, *Report on children and young people's mental health*, p. 2; Audit Scotland, September 2018, *Children and young people's mental health*.

¹¹⁴ Scottish Parliament, Public Audit and Post-legislative Scrutiny Committee, March 2019, *Report on children and young people's mental health*; ENYA, 2018, *ENYA 2018: “Let’s Talk Young, Let’s Talk about MENTAL HEALTH” Young People’s recommendations*. Available from: <http://enoc.eu/wp-content/uploads/2019/06/ENYA-2018-recommendations-on-MH-pages-1-4.pdf> and *ENYA 2018*; Audit Scotland, September 2018, *Children and young people's mental health* [all viewed 12.07.21].

¹¹⁵ *Age of Legal Capacity (Scotland) Act 1991* [viewed 12.07.21]. Available from: <https://www.legislation.gov.uk/ukpga/1991/50/contents> section 2(4)

¹¹⁶ OECD, 2018, *Programme for International Student Assessment* [viewed 08.12.20]. Available from: <https://www.oecd.org/pisa/publications/pisa-2018-results.htm>

and bullying are predominant issues affecting wellbeing.¹¹⁷ In Scotland, Gypsy/Traveller children report bullying and harassment.¹¹⁸ The Scottish Government's commitment to provide an additional 350 counsellors in secondary schools to ensure counsellors are present in every secondary schools¹¹⁹ is welcome, but unlikely to be adequate given the increased need, including resulting from the Covid-19 pandemic and for all children at primary level.

Mental health during the Covid-19 pandemic

Children accessing mental health services pre-pandemic, and subsequently, have reported a difference in service delivery with many areas only providing mental health support online or by phone. Barriers to mental health support include limited or no access to a private space to discuss mental health, a lack of knowledge of where to access advice, or an inability to access mental health support and information as it is primarily online. Research suggests there has been an increase in symptoms of depression and anxiety.¹²⁰ Furthermore, the pandemic itself had created additional pressure on children and young people and significantly affected their mental health, including the challenges of online learning and uncertainty around the awarding of academic qualifications, increased stress in the household, the loss of socialisation and play and leisure opportunities, bereavement, and increased exposure to violence in the household, among others.¹²¹ Young carers, care-experienced children, disabled, and Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) children were particularly affected and faced additional barriers when accessing support.¹²²

In a survey of over 6,000 young people in Scotland conducted between September to November 2020, (38%) disagreed that they felt good about their mental health and wellbeing.¹²³ Children have reported increased stress and mental ill-health; access to support is insufficient to meet demand. Children and young people reported lacking confidence in

¹¹⁷ National Children's Bureau, 2019, *Informing the Development of an Emotional Health and Wellbeing Framework for Children and Young People in Northern Ireland* [viewed 08.12.20]. Available from:

www.ncb.org.uk/sites/default/files/field/attachment/news/Informing%20the%20Development%20of%20an%20Emotional%20Health%20and%20Wellbeing%20Framework...pdf

¹¹⁸ Scottish Government, 2020, *Educational Outcomes for Gypsy/Traveller Children* [viewed 09.12.20]. Available from: <https://www.gov.scot/policies/gypsy-travellers/educational-outcomes-for-gypsytraveller-children/>

¹¹⁹ Scottish Government, Cabinet Secretary for Education and Skills, Learning Directorate, *Health and wellbeing in schools*. Available from: <https://www.gov.scot/policies/schools/wellbeing-in-schools/>; *Access to counsellors through schools: delivery aims and principles*. Available from: <https://www.gov.scot/publications/delivery-of-access-to-counsellors-through-schools-aims-and-principles/> [both viewed 12.07.21]

¹²⁰ Welsh Government, 2020, *Review of the Impact of Mass Disruption on the Wellbeing and Mental Health of Children and Young People, and Possible Therapeutic Interventions* [viewed 09.12.20]. Available from: <https://gov.wales/review-impact-mass-disruption-wellbeing-and-mental-health-children-and-young-people>

¹²¹ CYPCS and Observatory of Children's Human Rights Scotland, July 2020, *Independent Children's Rights Impact Assessment on the Response to Covid-19 in Scotland*.

¹²² Together Scottish Alliance for Children's Rights, 2020, *Children's Rights in Scotland (UK): Civil society report to inform the UN Committee on the Rights of the Child's List of Issues Prior to Reporting* [viewed 12.07.21]. Available from: https://www.togetherscotland.org.uk/media/1767/together-loipr_final.pdf, p. 27.

¹²³ Young Scot, December 2020, *Lockdown Lowdown: What young people in Scotland think about their lives as lockdown restrictions change* [viewed 12.07.21]. Available from: <https://static1.squarespace.com/static/5cee5bd0687a1500015b5a9f/t/5fce4b42d336b863f0f0c787/1607355209528/Dec2020-LockdownLowdown-V2-Survey-Final+%28%29.pdf>

knowing where to go for help and advice, beyond family and friends, as well as increased stress from being at home and distance learning. Covid-19 has also significantly affected staffing for inpatient CAMHS, which have had to operate with members of staff absent because of illness or isolation.¹²⁴

European Network of Young Advisers on mental health

The European Network of Young Advisers (ENYA) work on a year-long project each year with the European Network of Ombudspersons for Children focused on the Network's priority theme.¹²⁵ In 2018, the theme was mental health. Scotland had a participating delegation and throughout 2018, CYPCS worked with a group of young people to develop recommendations about mental health to be discussed at ENYA's annual meeting of young people from across Europe.

ENYA acknowledged that mental health is as important as physical health, is affected by a range of positive and negative factors, and that support and treatment can be sought from a wide range of people and organisations. They made 48 recommendations aimed at States, policy-makers, and international and regional organisations on education, health, media, government, and community.¹²⁶ ENYA's recommendations focus on support within the community and in schools – the places where children and young people spend the most time. They emphasised the need for a preventive approach, support to families, flexible approaches to meet individual needs, and ease of access.¹²⁷

Recommendations

- **Ensure that mental health services are adequately resourced so that children are supported and their needs met in a timely and effective manner.**
- **Conduct more research around children and young people's mental health, including the underlying determinants, and collate the necessary data to ensure rigorous monitoring of children's needs, treatments, and outcomes to ensure that children's human rights to the protection of health are respected, protected and fulfilled.**
- **Ensure that early intervention and prevention services available and accessible on an equal basis for all children and support and develop therapeutic community-based services for children with mental health conditions.**
- **Implement a comprehensive strategy to improve Child and Adolescent Mental Health Services (CAMHS). Provide sufficient financial and human resources, clear time frames, targets, measurable indicators, and effective monitoring mechanisms so that all children and young people can access services without**

¹²⁴ CYPCS and Observatory of Children's Human Rights Scotland, July 2020, *Independent Children's Rights Impact Assessment on the Response to Covid-19 in Scotland*.

¹²⁵ ENOC, 2021, *ENOC's ENYA child participation project* [viewed 09.07.21]. Available from: http://enoc.eu/?page_id=179

¹²⁶ ENYA, 2018, *ENYA 2018: "Let's Talk Young, Let's Talk about MENTAL HEALTH," Young People's recommendations*. Available from: <http://enoc.eu/wp-content/uploads/2019/06/ENYA-2018-recommendations-on-MH-pages-1-4.pdf> and *ENYA 2018, "Let's Talk Young, Let's Talk about Mental Health," Child Participation project*. Available from: http://enoc.eu/?page_id=2066 [both viewed 08.07.21].

¹²⁷ Ibid.

long waiting times. This should include measures to ensure availability, accessibility, consistency, quality and stability of such services.

- Ensure professionals working with children and young people in the mental health sector have the relevant training.
- Adopt measures to prioritise and invest in the promotion and monitoring of children’s mental health and wellbeing in schools at all levels.
- Ensure that all children can access high-quality child protection, support, and mental health services to enable them to recover from the impact of the Covid-19 pandemic, including through allocating sufficient financial and human resources.
- Engage with children and young people concerning their mental health treatment and ensure they have access to advocacy services. This includes reviewing current legislation to ensure that the best interests and the views of the child are taken into account in cases of mental health treatment.

Limited access to play, rest, and leisure for children and young people

The right to play, rest and leisure is essential for children’s physical and mental health, well-being and development.¹²⁸ In Scotland, access to leisure and play opportunities are limited in rural areas, small towns, and some urban areas, particularly less affluent ones.¹²⁹ Many children do not engage in unstructured play outdoors due to poorly-maintained parks.¹³⁰ Both formal and informal opportunities to enjoy the right to play, rest, and leisure are threatened due to local authority budget cuts.

During the Covid-19 pandemic and particularly in lockdown situations, measures applied due to the pandemic exacerbated barriers to children’s play and leisure, affecting their development, health, and wellbeing. Children without a private space for play were particularly disadvantaged. A lack of outdoor access and the closure of sports and recreational facilities due to lockdown restrictions resulted in fewer opportunities for exercise. Early Learning and Childcare options were limited, reducing pre-school children’s access to space, time, and support for play activity. Children also experienced restrictions on their social interactions, such as time spent with their friends and in-person contact due to physical distancing. Children were not allowed to mix with other households and play and leisure facilities were closed. Children and young people have highlighted the inconsistencies around the rules and the loss of free play spaces. As one young female in Scotland said,

“The biggest change is not getting to see your friends because I used to see my friends every day. It makes me feel sad because they made me laugh.”¹³¹

¹²⁸ UN Committee on the Rights of the Child, April 2013, *General comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art. 31)*.

¹²⁹ Young Scot and Scottish Land Commission, 2019, *Young People and Their Local Urban Areas* [viewed 09.12.20]. Available from: https://www.landcommission.gov.scot/downloads/5dd7d54fb8b87_Young-Scot-SLC-Report-Aug-2019-REDUCED.pdf

¹³⁰ Children’s Parliament, 2019, *Schools on the Move: A Report for the MRC/CSO Social and Public Health Sciences Unit on the Physical and Social Barriers to Children’s Engagement in Physical Activity* [viewed 09.12.20]. Available from: https://www.childrensparliament.org.uk/wp-content/uploads/Children_Create2019-1.pdf

¹³¹ Young female, Scotland. Report from Children and Young People supported by the Children’s Commissioners of the United Kingdom of Great Britain, November 2020, *Are We There Yet?*, p. 14.

Recommendation

- **Put in place measures to ensure children in disadvantaged areas have equal access to leisure and play at all times, including during future public health, environmental, social, and economic crises. This includes through monitoring local authorities' actions and ensuring sufficient budget allocation.**

The use of “mosquito” devices to deter children from gathering

Despite the recommendations from the UN Committee on the Rights of the Child and the Parliamentary Assembly of the Council of Europe (PACE) and documented research about the harms to children and young people,¹³² mosquito devices are still not banned in Scotland and continue to be used to deter children from gathering in public space. Mosquito devices – otherwise known as “anti-loitering devices” – are acoustic devices which emit a high-pitched noise, generally only heard by young people. They can cause irritation, pain, anxiety and distress in children and young people, especially those with Additional Support Needs and sensory issues, and potentially cause nausea, dizziness, and pain.¹³³ One young person described the sensations as, “Incredibly unpleasant, like a buzzing inside my head.”¹³⁴

In 2010, the Parliamentary Assembly of the Council of Europe (PACE) highlighted the risks to children and young people’s health from mosquito devices, highlighting the need for further medical tests on the harm and urged the application of the “precautionary principle.”¹³⁵ PACE called for the ban of the installation and use in all public places of such devices and prohibiting of marketing and sale of such devices, or least clear warnings.¹³⁶

CYPCS has done extensive work on the use of mosquito devices in Scotland for more than fifteen years, highlighting the impact on children and violations of their human rights and campaigning for their abolition in line with international recommendations.¹³⁷ There is a lack of reliable data on the use of mosquito devices in Scotland. A Scottish Youth Parliament

¹³² CYPCS, 2020, *Mosquito devices*. Available from: <https://cypcs.org.uk/positions/mosquito-devices/#what-should-the-scottish-government-do-to-outlaw-mosquito-device>; UN Committee on the Rights of the Child, July 20156, *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland*, CRC/C/GBR/CO/5. Available from: <https://www.undocs.org/CRC/C/GBR/CO/5>, para. 37 (a); German Federal Institute for Occupational Safety and Health, 2007, *Use of ultrasonic noise channels not entirely safe*. Available from: https://web.archive.org/web/20110927131822/http://www.baua.de/nn_5858/de/Presse/Pressemitteilung/2007/12/pm079-07.html [all viewed 12.07.21].

¹³³ CYPCS, 2020, *Mosquito devices* [viewed 12.07.21]. Available from: <https://cypcs.org.uk/positions/mosquito-devices/#what-should-the-scottish-government-do-to-outlaw-mosquito-device>; CRC/C/GBR/CO/5, 37 (a); Parliamentary Assembly of the Council of Europe (PACE), 2010, *Prohibiting the marketing and use of the “Mosquito” youth dispersal device*, Recommendation 1930 (2010) [viewed 12.07.21]. Available from: <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17891&lang=en>.

¹³⁴ Young person, Scotland. Report from Children and Young People supported by the Children’s Commissioners of the United Kingdom of Great Britain, November 2020, *Are We There Yet?*, p. 13.

¹³⁵ In particular, PACE noted that “While the sound level produced by the device does not normally exceed the sound level permitted by labour law regulations for short-term exposure, these regulations are not applicable to children, minors or pregnant women, who clearly should be much better protected than adult workers.” Parliamentary Assembly of the Council of Europe (PACE), 2010, *Prohibiting the marketing and use of the “Mosquito” youth dispersal device*.

¹³⁶ Parliamentary Assembly of the Council of Europe (PACE), 2010, *Prohibiting the marketing and use of the “Mosquito” youth dispersal device*.

¹³⁷ CYPCS, 2020, *Mosquito devices*

survey suggested children encounter mosquito devices in areas where public bodies believe none are installed. 303 Respondents from Aberdeenshire, Clackmannanshire, Dundee, East Renfrewshire, North Ayrshire, Renfrewshire, West Dunbartonshire and South Ayrshire reported either encountering the devices or being aware of their use. As well as this, respondents reported encounters with mosquito devices or awareness of their use in six of the eight council areas that did not hold information on the use of such devices.¹³⁸ Children and young people have stated that they feel that using mosquito devices is unfair, negatively impacts health, and fails to tackle the root causes of antisocial behaviour.¹³⁹ As one young person said in 2020, “Mosquito devices do not create a sense of community but instead divide different generations.”¹⁴⁰

While the Scottish Government is committed to addressing this issue, it has not used its available powers, or sought additional powers, to introduce a ban, nor has the UK government.

Recommendation

- **The Scottish Government must work with the UK Government and public bodies in Scotland to ban mosquito devices and other devices like them.**

The right to protection of health for children in vulnerable situations

Some children are at greater risk of a violation of their right to protection of health than others. These include children deprived of their liberty, including in care settings, disabled children, and asylum-seeking, refugee and migrant children, among others.

Children deprived of liberty

Children should only be deprived of their liberty for the shortest period of time necessary and as a last resort. The impact of deprivation of liberty on children and young people’s mental and physical health and lifelong development has been well-established and includes psychosocial health conditions, cognitive dysfunctions and affected cognitive development, chronic illness, malnutrition, obesity, and increased chance of substance abuse, as well as increased exposure to infectious disease. The significant impact of deprivation of liberty on children’s mental health has been well-documented, notably the increased likelihood of depression, anxiety, higher rates of suicide and self-harm, mental health conditions and developmental problems. Furthermore, children deprived of their liberty face an increased risk of violence, abuse, and acts of torture or cruel, inhuman or degrading treatment or punishment.¹⁴¹ Children deprived of their liberty often become invisible and regarded as

¹³⁸ Ibid.

¹³⁹ Together Scottish Alliance for Children’s Rights, November 2016, State of Children’s Rights in Scotland 2016 report [viewed 12.07.21]. Available from: <https://www.togetherscotland.org.uk/pdfs/TogetherReport2016.pdf>, p. 44.

¹⁴⁰ Young person, Scotland. Report from Children and Young People supported by the Children’s Commissioners of the United Kingdom of Great Britain, November 2020, *Are We There Yet* p. 13.

¹⁴¹ UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 2015, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/HRC/28/68. Available from: <https://undocs.org/A/HRC/28/68>; UN, 2019, *Global Study on Children Deprived of Liberty*, UN General Assembly report, A/74/136. Available from: <https://undocs.org/A/74/136>; Professor Manfred Nowak, 2019, *UN Global Study on Children Deprived of Liberty*, full study. Available from: <https://omnibook.com/global-study-2019/liberty/page-001.html>. World Health Organization, 2021, *Policy Brief: Health Concerns among Children Deprived of Liberty*. Available from: <https://apps.who.int/iris/bitstream/handle/10665/341885/WHO-EURO-2021-2713-42469-58984-eng.pdf> [all viewed 02.07.2021]

perpetrators of offences, but should be regarded as children first and foremost. However, as one child told CYPSC in 2020 that they were made to feel that,

“You’re not a child anymore, you’ve committed this offence, now you’re a monster instead.”¹⁴²

In Scotland, children are deprived of their liberty in adult prisons and Young Offenders Institutions (YOIs), police and court custodial settings, mental health wards, and immigration detention centres.¹⁴³ Restrictive practices, including restraint, unlawful searches and strip searches, seclusion, and chemical restraint are used on children in penal, educational, residential care, and institutional settings. This also applies to 16- and 17-year-olds in adult settings. Sixteen children are currently detained in YOIs, 13 are on remand and only three have been tried and sentenced to custody.¹⁴⁴

There is also a lack of sufficient and disaggregated data regarding the numbers of all children deprived of their liberty in Scotland. The Commissioner has specific concerns about the use of unregulated, alternative care placements, and privately managed, residential care homes without the necessary legal, procedural, and human rights safeguards. There are no ‘Deprivation of Liberty orders’ in Scots law,¹⁴⁵ yet children from England, Northern Ireland and Wales have been placed in Scotland, far from their home, families, and communities, which has a significant effect on their physical and mental health. They are deprived of their liberty in settings outside of the protections they are entitled to under Scots law, statutory childcare and protection schemes. These placements are not monitored by the National Preventive Mechanism.

The legal rights and safeguards of these children have been consistently debated in court¹⁴⁶ and the UK Supreme Court and the Court of Session¹⁴⁷ are currently considering¹⁴⁸ whether it is lawful to deprive a child of their liberty in an unregistered, unregulated children’s home as

¹⁴² Young person, Scotland, CYPSC, 2020, *Children in Conflict with the Law: Short report* [viewed 12.07.21]. Available from: <https://cypsc.org.uk/wp-content/uploads/2020/11/Short-report-on-Conflict-with-the-Law.pdf>, p. 5.

¹⁴³ Although this is a reserved UK power.

¹⁴⁴ Scottish Prison Services (SPS), July 2021, *SPS Prison Population* [viewed 12.07.21]. Available from: <https://www.sps.gov.uk/Corporate/Information/SPSPopulation.aspx>. Despite the 2019 HMIPS Inspection and [Expert Review of Mental Health](#) which highlighted significant concerns. HM Inspectorate of Prisons for Scotland, 2019, *Report on an Expert Review of the Provision of Mental Health Services, for Young People Entering and in Custody at HMP YOI Polmont* [viewed 09.12.20]. Available from:

https://www.prisoninspectorscotland.gov.uk/sites/default/files/publication_files/Report%20on%20Expert%20Review%20of%20Provision%20of%20Mental%20Health%20Services%20at%20HMP%20YOI%20Polmont%20-%20Final%20Version.pdf

¹⁴⁵ As distinguished from English, Welsh, or Northern Irish law.

¹⁴⁶ The Children’s Commissioner for England’s report discusses the debates in the High Court and the Supreme Court around legal and human rights threshold tests for lawful deprivation of liberty, capacity of the child, and parental consent. Children’s Commissioner for England (CCE), 2020, *Who Are They? Where are They? Children Locked Up* [viewed 12.07.21]. Available from: <https://www.childrenscommissioner.gov.uk/wp-content/uploads/2020/11/cco-who-are-they-where-are-they-2020.pdf>

¹⁴⁷ The highest court in Scotland.

¹⁴⁸ UK Supreme Court, October 2020, *In the matter of T (A Child) (Appellant) UKSC (Judgment pending)*, Case ID: UKSC 2019/0188. [viewed 12.07.21] Available from: <https://www.supremecourt.uk/cases/uksc-2019-0188.html>

‘secure accommodation.’ These cases concern children in intra-country cross-border placements where the regulations and domestic laws differ and where children’s rights largely fall under the reserved powers and responsibilities of the Scottish administration, as opposed to the UK.

The increased vulnerability of children deprived of their liberty to the Covid-19 pandemic has been recognised internationally, amid calls for a moratorium on new children entering detention facilities; the release of all children who can be safely released; and to protect the health and well-being of any children who must remain in detention.¹⁴⁹ Pandemic-related restrictions have disproportionately affected the physical and mental health of children deprived of their liberty in Scotland. They have experienced significant reductions in access to recreation and education due to restrictions, exacerbating concerns around isolation. Children in residential settings have been affected by rolling shutdowns due to staff or children testing positive for Covid-19; closing settings to all external visitors for 14 days. Children’s homes have reported repeat periods of isolation, which have often prevented any meaningful direct family contact as well as contact with health services and social workers. Children in Young Offenders Institutions regularly spent more than 22 hours confined in their cells. They also experienced an extended period without face-to-face contact with their families and social workers, meaning family contact and support services contact has also been restricted online.¹⁵⁰

Recommendations

- **Ensure that children deprived of their liberty have access to the highest attainable standard of physical and mental health support, therapeutic support, legal advice, advocacy and access to child-friendly complaints mechanisms.**
- **Ensure that no child under 18 is deprived of their liberty in settings which are unregulated, unregistered, and not in accordance with Scots law or international human rights standards.**
- **Take steps to reduce the number of children deprived of their liberty, including addressing root causes; to ensure that alternatives to deprivation of liberty are always considered in the first instance, and ensure that deprivation of liberty is only used as a last resort for the least possible time and that its application is regularly monitored and reviewed. This should be accelerated for those who can be safely released in the context of the Covid-19 pandemic.**

The use of restraint and seclusion in certain settings

Restraint and seclusion significantly impact children’s ability to learn, thrive and their lifelong development. The use of isolation, seclusion and restraint disproportionately affect children, who are still developing neurologically, psychological, socially, and physically. All such

¹⁴⁹ UN Committee on the Rights of the Child, April 2020, *COVID-19 statement*. Available from: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT/CRC/STA/9095&Lang=en; Alliance for Child Protection in Humanitarian Action, 2020, “*Technical Note: COVID-19 and Children Deprived of their Liberty*.” Available from: <https://www.ohchr.org/Documents/Issues/Detention/ChildrenDeprivedofLibertyandCOVID.pdf>; UN Inter-Agency Working Group on Violence against Children, 2020, *Agenda for Action*. Available from: https://ohchr.org/Documents/Events/COVID-19/Agenda_for_Action_IAWG-VAC.pdf [All viewed 02.07.2021].

¹⁵⁰ CYPCS and Observatory of Children’s Human Rights Scotland, July 2020, *Independent Children’s Rights Impact Assessment on the Response to Covid-19 in Scotland*.

practices are detrimental to children's mental and physical health, particularly in terms of long-term psychological and developmental impacts.

As one young person told CYPSC,

"...anytime you restrain or seclude a child there is a significant, you know, emotional impact on that child. And I think that's what we need to balance out. We need to balance out a potential threat that the child poses to others and the damage that would be caused to the child. You know, so if there are none of those factors present, if they're just being disruptive, and if they're just not doing what they're told, then it's, that damage which was caused to the child is in no way, yeah, it's not justifiable."¹⁵¹

Restraint should never be used as a punishment or to ensure compliance, not involve deliberate infliction of pain, and only be used as a last resort when a child is at imminent threat of injury to self or others, with any use proportionate, properly recorded and reviewed.¹⁵² The use of seclusion of a child in a room on their own has been recognised as punishment and akin to solitary confinement.¹⁵³ Solitary confinement should never be used for a child and any separation or isolation be for the shortest possible time and applied as a measure of last resort for the protection of the child or others.¹⁵⁴

In Scotland, isolation, seclusion, and restraint¹⁵⁵ are used in education, care, mental health, and detention settings, sometimes as a disciplinary measure for low-level incidents. This sometimes results in injuries. Inaccurate and/or inconsistent reporting on restraint methods and practices renders it difficult to establish the extent of the use of restraint methods and practices. Restraint is sometimes used as an inappropriate response to distressed children's behaviour.¹⁵⁶ Local authority policies and practices are inconsistent, failing to recognise children's rights. Restraint and seclusion are disproportionately used against disabled children.¹⁵⁷ Many children have struggled to achieve justice concerning the overuse of seclusion and restraint as their accounts and interviews were not used by police or child protection authorities because of their age and/or disabilities.¹⁵⁸

¹⁵¹ Young person, Scotland. Report from Children and Young People supported by the Children's Commissioners of the United Kingdom of Great Britain, November 2020, *Are We There Yet?*, p. 18.

¹⁵² UN Committee on the Rights of the Child, 2019, *General comment No. 24 (2019) on children's rights in the child justice system* [viewed 02.07.21]. Available from: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f24&Lang=en, para. 95 (f).

¹⁵³ Mental Welfare Commission for Scotland, 2007, *The Use of Exclusion* (Edinburgh: Mental Welfare Commission for Scotland), p. 1; Mental Welfare Commissioner for Scotland, 2007, *The use of seclusion* [viewed 11 September 2018]. Available from: <https://www.mwscot.org.uk/media/51894/The%20use%20of%20seclusion.pdf>

¹⁵⁴ UNCRC, article 37; UN Committee on the Rights of the Child, 2019, *General comment No. 24 (2019) on children's rights in the child justice system*, para. 95 (g)-(h); UN, 2019, *Global Study on Children Deprived of Liberty*, para. 112.

¹⁵⁵ Including pain-inducing restraint in some settings.

¹⁵⁶ Who Cares? Scotland, 2019, *Children (Equal Protection from Assault) (Scotland) Bill: Supplementary Evidence on Restraint Framework* [viewed 11.12.20]. Available from: <https://www.whocarescotland.org/wp-content/uploads/2019/02/WCS-Supplementary-Evidence-on-Restraint.pdf>

¹⁵⁷ CYPSC, 2018, *No Safe Place: Restraint and Seclusion in Scotland's Schools* [viewed 09.12.20]. Available from: <https://www.cypsc.org.uk/ufiles/No-Safe-Place.pdf>, p.18

¹⁵⁸ *Ibid.*, p.12.

Families have told the Commissioner's office of the physical and mental impacts of children's experiences of restraint and seclusion, including about the impact on children who find themselves unable to communicate their distress to the well-meaning adults who do not speak their language so use restraint and seclusion to protect these or other children, or themselves, from harm.¹⁵⁹ In particular, one young person said,

"People with disabilities are meant to be treated equally. Teachers are meant to recognise the signs of autism and find the best ways to support and help their pupils."¹⁶⁰

Recommendations

- **Adopt measures to introduce comprehensive guidance on limiting use of isolation, exclusion, seclusion, and restraint and restrictive practices. This requires consistent national recording, reporting, monitoring and reviewing of all incidents across health, justice, social care, residential and education settings as well as training for all staff working directly with children.**
- **Eliminate the use of solitary confinement of any length for children.**
- **Ban the use of any technique designed to inflict pain on children in all settings.**

Healthy environment

Biodiversity loss and environmental degradation, particularly air pollution, affect children's health. Ensuring a healthy environment protects children's health and wellbeing, including from pandemics like Covid-19, and ensures the realization of children's human rights.¹⁶¹

Research from June 2021 found that 7,852 out of all 28,965 **UK** schools are located in areas which are above World Health Organization (WHO) air pollution limits for the pollutant PM2.5 (10ug/m3). PM2.5 is formed of tiny particles that can cross from the lungs into the blood and then move around the body causing conditions such as heart and lung disease.¹⁶² Furthermore, 8,549 out of 31,979 educational establishments (27% of schools, nurseries and colleges) in England, Scotland and Wales are situated in areas which exceed recommended air pollution guidelines. Study found that these establishments are in areas with average levels

¹⁵⁹ Ibid., p.41.

¹⁶⁰ Young person, Scotland. Report from Children and Young People supported by the Children's Commissioners of the United Kingdom of Great Britain, November 2020, *Are We There Yet?*, p. 18.

¹⁶¹ Office of the UN High Commissioner for Human Rights, January 2020, *Realizing the rights of the child through a healthy environment*, A/HRC/43/30. Available from: <https://www.undocs.org/A/HRC/43/30> UN Human Rights Council, July 1, 2020, *Annual Day Rights of the Child*. Available from: <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=26024&LangID=E> [both viewed 12.07.21].

¹⁶² Global Action Plan, June 2021, *Clean air day 2021: over a quarter of UK schools are above WHO air pollution limits*. Available from: https://www.globalactionplan.org.uk/files/clean_air_day_2021_press_release.pdf; World Health Organization (WHO), October 2018, *More than 90% of the world's children breathe toxic air every day*. Available from: <https://www.who.int/news/item/29-10-2018-more-than-90-of-the-worlds-children-breathe-toxic-air-every-day> [both viewed 05.07.21].

of fine particulate matter (PM2.5) that are above the guideline recommended by the World Health Organisation (WHO) (10µg/m³ for the annual average).¹⁶³

Transport is a dominant cause of air pollution in Scotland. Car engines often remain on when children are dropped off or picked up at school or nursery, significantly increasing their exposure.¹⁶⁴ The Scottish Government's forthcoming climate change plan must focus on transformation of transport, particularly clean public transport, cycling, walking and low emission zones. The pandemic itself threatens a healthy environment and the realisation of children's rights. For example, use of public transport has been discouraged to limit the spread of Covid-19. Behaviour change will be needed during the recovery phase.

Children's exposure to toxic substances is at significant risk as the European Union's REACH¹⁶⁵ Regulations will no longer apply following the UK's exit from the European Union (Brexit). These standards can cover anything from chemicals within food contact materials (for example, food packaging) to herbicides and pesticides. There are concerns about the lowering of chemical safety standards in the UK as REACH decisions will no longer apply.

Environmental degradation and climate change are priority issues for children in Scotland, who have exercised their right to freedom of assembly and participation in campaigning for urgent climate action. Yet, pupils in Scotland were threatened with detention or other punishments for participating in climate strikes.¹⁶⁶ In 2019, the Commissioner wrote to Directors of Education of every local authority in Scotland urging them to support children taking part in the global action against climate change on Friday 20th September, in line with their human rights.¹⁶⁷

One young female in Scotland highlighted the central role of young climate activists in defending the climate,

"It's important to show everyone that we have to be listened to as it's our future... We need to stand up and let the people in charge know that the planet is worth saving for future generations and wildlife."¹⁶⁸

¹⁶³ British Lung Foundation, 11 September 2020, *More than 25% of all British schools, nurseries and colleges surrounded by 'dangerously high' levels of air pollution*, press release. Research commissioned by Asthma UK and British Lung Foundation with data analysed by Cambridge Environmental Research Consultants [viewed 12.07.21] Available from: <https://www.blf.org.uk/media-centre/press-releases/more-than-25-of-all-british-schools-nurseries-and-colleges-surrounded-by>.

¹⁶⁴ Public Health England, 2019, *Review of Intervention to Improve Outdoor Air Quality and Public Health* [viewed 08.12.20]. Available from:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/795185/Review_of_interventions_to_improve_air_quality.pdf, pp.14-15.

¹⁶⁵ Registration, Evaluation, Authorisation and Restriction of Chemicals.

¹⁶⁶ CYPCS, 2019, *Climate Change is a Human Rights Issue: Commissioner Supports Children on #ClimateStrike* [viewed 08.12.20]. Available from: <https://cypcs.org.uk/news-and-stories/climate-change-is-a-human-rights-issue-commissioner-supports-children-on-climatestrike/>

¹⁶⁷ CYPCS, September 2019, *Children's Commissioner urges education leaders to support children taking part in climate strikes* [viewed 12.07.21]. Available from: <https://cypcs.org.uk/news-and-stories/childrens-commissioner-urges-education-leaders-to-support-children-taking-part-in-climate-strikes/>

¹⁶⁸ Young female, Scotland. Report from Children and Young People supported by the Children's Commissioners of the United Kingdom of Great Britain, November 2020, *Are We There Yet*, p. 13.

Children have clear ideas on how to protect their health, that of the planet, and ensure their right to a healthy environment. They must be actively involved in identifying solutions and policy and legislative changes to the environmental emergency.

Recommendations

- **Conduct an assessment of the impact of all forms of pollution on children's health.**
- **Adopt legislation to reduce air pollution levels, especially in areas near schools and residential areas. This must be implemented comprehensively and supported by appropriate technical, financial, and human resources.**
- **Place children's human rights at the centre of all local, national, and international strategies to address environmental degradation and climate change.**
- **Respond to children's calls for action on climate change and environmental protection, acknowledge the crucial role they have to play, and engage them as active participants.**

The right to social security (Article 12)

Social security powers, services, and benefits are split between the UK and Scottish governments. Under the Scotland Act 2016, significant new welfare powers over benefits were devolved to the Scottish Parliament for certain categories. The Scottish Parliament can determine the structure and value of these benefits, or replace them with new benefits.¹⁶⁹

UK government austerity policies and welfare reform continue to affect those most reliant on government services, particularly children. These include the introduction of a range of social security and tax credit reforms, several of which detrimentally affect children and their families. Despite repeated recommendations at the international and national levels,¹⁷⁰ the UK

¹⁶⁹ *Scotland Act 2016* [viewed 12.07.21]. Available from: <https://www.legislation.gov.uk/ukpga/2016/11/contents/enacted>. For more information on devolved social security benefits, see below. For a full discussion of social security in Scotland, see SPICe, July 2021, *Social Security: subject profile*, [viewed 07.07.21]. Available from: <https://digitalpublications.parliament.scot/ResearchBriefings/Report/2021/7/6/0a229447-c06e-42c0-adb9-d6321378eb1a#Executive-Summary> and for a discussion of welfare policy in Scotland, see House of Commons, Scottish Affairs Committee, June 2021, *Welfare policy in Scotland, Second Report of Session 2021–22, Report, together with formal minutes relating to the report* [viewed 08.07.21]. Available from: <https://committees.parliament.uk/publications/6382/documents/70010/default/>.

¹⁷⁰ UN Committee on the Rights of the Child, July 2016, *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland*; March 2021, *List of issues prior to submission of the combined sixth and seventh reports of the United Kingdom of Great Britain and Northern Ireland*, CRC/C/GBR/QPR/6-7. Available from: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2fQPR%2f6-7&Lang=en; Report of the Children's Commissioners of the United Kingdom of Great Britain and Northern Ireland to the United Nations Committee on the Rights of the Child, December 2020, *Examination of the Combined Sixth and Seventh Periodic Reports of the United Kingdom of Great Britain and Northern Ireland*; Children's Commissioners for Scotland, Northern Ireland and Wales: Letter to Secretary of State for Work and Pensions, May 2021. Available from: <https://cypcs.org.uk/wpcypcs/wp-content/uploads/2021/05/Letter-from-Commissioners.pdf>; House of Commons, Scottish Affairs Committee, June 2021, *Welfare policy in Scotland*; Work and Pensions

government has not undertaken a comprehensive assessment of the cumulative impact of social security and tax credit reforms introduced on children and their families. Such measures have further driven children into poverty, with numbers likely to increase due to the Covid-19 pandemic. In 2018, the UK's approach to poverty was examined by the UN Special Rapporteur on Extreme Poverty and Human Rights who highlighted that political decisions by government are resulting in high poverty levels and serving to entrench poverty, including for children.¹⁷¹ The lack of accountability by decision-makers was highlighted by a young person from Scotland in 2019,

“The most unfair thing is the government knows families are going through hard times, but they decide not to do anything about it.”¹⁷²

In Scotland, 260,000 children (26% of all children in Scotland) were living in **relative poverty** after housing costs (AHC) in 2019/20, which was an increase from 230,000 children (23%) in 2018/19. In 2019/20, 220,000 children (23%) were living in **absolute poverty** (AHC), an increase from 200,000 (20%) in 2018/19, and 140,000 children (14%) were living in **severe poverty** (AHC) in 2019/20, an increase from 90,000 (9%) in 2018/19.¹⁷³ Furthermore, around 16% of households living in fuel poverty are families with children and around 9% of households living in extreme fuel poverty are families with children.¹⁷⁴ It is concerning that Scotland is already on course to miss its interim (2023) child poverty targets.¹⁷⁵ Poverty is the most significant human rights issue facing children in Scotland today. One child described the impact of poverty on children's quality of life stating,

“Living is more important than surviving.”¹⁷⁶

Living in poverty affects children and young people's ability to survive, thrive, and meet their full potential, affecting every aspect of a child's life, including their educational attainment and mental and physical health. Children living in poverty often experience worse educational and

Committee, *First Report of Session 2019–21, DWP's response to the coronavirus*, HC 178, Available from: <https://committees.parliament.uk/publications/1558/documents/14743/default/>; House of Lords Economics Affairs Committee, July 2020, *2nd Report of Session 2019–21 HL Paper 105 Universal Credit isn't working: proposals for reform*. Available from:

<https://committees.parliament.uk/publications/2224/documents/20325/default/>, para. 129; Social Security Advisory Committee, May 2020, *Covid 19 SSAC letter to the Secretary of State*. Available from:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/888504/ssac-letter-to-secretary-of-state-covid.pdf [all viewed 13.07.21].

¹⁷¹ UN Special Rapporteur on Extreme Poverty and Human Rights, 2018, *Visit to the United Kingdom of Great Britain and Northern Ireland* [viewed 07.07.21]. Available from:

<https://undocs.org/A/HRC/41/39/Add.1>.

¹⁷² Young person, aged 12 in: CYPCS, October 2016, “*Living is more important than just surviving*.”

¹⁷³ Scottish Government, March 2021, *Poverty and income inequality in Scotland 2017-20* [viewed 12.07.21]. Available from: https://data.gov.scot/poverty/#Child_poverty. See single-year poverty and income data set.

¹⁷⁴ Scottish Government, December 2020, *Scottish House Condition Survey: 2019 Key Findings* [viewed 12.07.21]. Available from: <https://www.gov.scot/publications/scottish-house-condition-survey-2019-key-findings/>.

¹⁷⁵ Birt, C. and Milne, B., Joseph Rowntree Foundation, 2021, *Turning the tide on child poverty in Scotland* [viewed 12.07.21]. Available from: <https://www.jrf.org.uk/report/turning-tide-child-poverty-scotland>.

¹⁷⁶ Child, Scotland, in: CYPCS, October 2016, “*Living is more important than just surviving*.”

health outcomes, poorer living standards than their peers, and poorer employment opportunities and outcomes as adults.¹⁷⁷ One child summarised how living in poverty can feel, telling us,

“When you’re poor, you give up on your dreams.”¹⁷⁸

Poverty also provides a constant stress for children, 21% of whom list ‘not having enough money’ in their top three worries and 5% ‘not having enough food or clothes.’¹⁷⁹ Sometimes children and their families do not have money to cover basic needs, such as public transport. One boy told us:

“I can’t actually afford the bus so I just walk.”¹⁸⁰

Opportunities for children in poverty are also fewer: 37% of children who receive free school meals leave education without a Level 2 Qualification, compared to 18% overall.¹⁸¹

UK government welfare reform policies affecting children’s right to social security

The UK government limits support for families with more than two children in receipt of Child Tax Credit¹⁸² and the total amount of support received through the Benefit Cap.¹⁸³ The Welfare Reform and Work Act 2016 prevents parents claiming the child element in tax credits or Universal Credit for third or subsequent children born after 06 April 2017.¹⁸⁴ Exceptions exist for the two-child limit, including where the mother can show the child was conceived because of non-consensual intercourse.¹⁸⁵

¹⁷⁷ United Nations Children’s Fund (UNICEF), 2021, *Child poverty* [viewed 01.07.21]. Available from: <https://www.unicef.org/social-policy/child-poverty>.

¹⁷⁸ Young person, Scotland. Report from Children and Young People supported by the Children’s Commissioners of the United Kingdom of Great Britain, November 2020, *Are We There Yet?*, p. 37.

¹⁷⁹ CCE, 2020, *Stress Among Children in England During the Coronavirus Lockdown* [viewed 04.12.20]. Available from: <https://www.childrenscommissioner.gov.uk/wp-content/uploads/2020/09/cco-stress-among-children-in-england-during-the-coronavirus-lockdown.pdf>

¹⁸⁰ Young person, Scotland. Report from Children and Young People supported by the Children’s Commissioners of the United Kingdom of Great Britain, November 2020, *Are We There Yet?*, p. 42.

¹⁸¹ Social Mobility Commission, 2020, *Monitoring Social Mobility 2013-2020: Is the Government Delivering on our Recommendations?* [viewed 08.12.20]. Available from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/891155/Monitoring_report_2013-2020_-_Web_version.pdf#page=17.

¹⁸² UK Government, 2020, *Child Tax Credit* [viewed 08.12.20]. Available from: <https://www.gov.uk/child-tax-credit>

¹⁸³ The ‘benefit cap’ is a cap on the maximum level of welfare benefit that can be paid to a household whatever the size, which disproportionately affects families with children and particularly those with a larger number of children.

¹⁸⁴ *Welfare Reform and Work Act 2016* [viewed 12.07.21]. Available from: <https://www.legislation.gov.uk/ukpga/2016/7/contents/enacted>.

¹⁸⁵ Equalities and Human Rights Commission, 2017, *Letter to Minister of State for Employment – Damian Hinds MP: Child Tax Credit (Amendment) Regulations 2017* [viewed 08.12.20]. Available from: <https://www.equalityhumanrights.com/sites/default/files/letter-to-damian-hinds-child-tax-credits-rape-clause-21-april-2017.pdf>

As at April 2 2020, 13,710 households in Scotland were not receiving a child element or amount for at least one child in their household.¹⁸⁶ Scottish Government analysis indicates that the long-term impact of this policy means that up to 40,000 households could lose entitlement for a third or subsequent child, reducing social security spending by up to £120 million per year.¹⁸⁷ This equals an average loss of £2,845 per child per year for those families affected by this policy.¹⁸⁸

The number will increase year-on-year due to the policy applying to children born after April 6th 2017.¹⁸⁹ There is also evidence of disproportionate impact on women as single parent households and those from certain religious or ethnic minority backgrounds.¹⁹⁰ The Child Poverty Action Group (CPAG) et al have estimated that if the two-child limit policy were ended today, '200,000 children [in the UK] would immediately be lifted out of poverty, and 600,000 children would be living in less deep poverty, at a cost of only £1 billion.'¹⁹¹

The benefit cap introduced in 2013 disproportionately affects families with children. It is a policy that sets a limit on the total annual payment a household can receive from means-tested benefits. Furthermore, since it was introduced in 2013, the Benefit Cap has fallen from £26,000 to £20,000 per year.¹⁹² The Child Poverty Action Group found that Child Benefit will have lost 23% of its real value between 2010 and 2020.¹⁹³ At May 2019, a total of 3,320 Scottish households were benefit-capped. Of the 2,730 households whose housing benefit has been capped, two-thirds (1,820) were lone parent households, and of the 91% of households which contain children, 87% are large families which care for 3 or more children.¹⁹⁴

On July 9, 2021, the UK Supreme Court dismissed an appeal against the two-child benefit cap, ruling that the policy pursued a legitimate aim to protect the economic wellbeing of the country and did not violate human rights laws.¹⁹⁵

¹⁸⁶ HM Revenue & Customs (HMRC) and DWP, July 2020, *Child Tax Credit and Universal Credit claimants: statistics related to the policy to provide support for a maximum of 2 children, April 2020* [viewed 12.07.21]. Available from: <https://www.gov.uk/government/statistics/child-tax-credit-and-universal-credit-claimants-statistics-related-to-the-policy-to-provide-support-for-a-maximum-of-2-children-april-2020>

¹⁸⁷ Scottish Government, September 2019, *Welfare Reform: annual report 2019* [viewed 12.07.21]. Available from: <https://www.gov.scot/publications/2019-annual-report-welfare-reform/>

¹⁸⁸ HM Revenue and Customs, April 2021, *Tax credits, Child Benefit and Guardian's Allowance, Child tax credit rates for the 2021 to 2022 tax years* [viewed 12.07.21]. Available from: <https://www.gov.uk/government/publications/rates-and-allowances-tax-credits-child-benefit-and-guardians-allowance/tax-credits-child-benefit-and-guardians-allowance>

¹⁸⁹ Child Poverty Action Group, Church of England, and Nuffield Foundation, April 2021, *It feels as though my third child doesn't matter: The impact of the two-child limit after four years* [viewed 12.07.21]. Available from:

https://cpag.org.uk/sites/default/files/files/policypost/lt_feels_as_though_my_third_child_doesnt_matter.pdf

¹⁹⁰ House of Commons, Work and Pensions Committee, October 2019, *The two-child limit, Third Report of Session 2019* [viewed 12.07.21]. Available from:

<https://publications.parliament.uk/pa/cm201919/cmselect/cmworpen/51/51.pdf>

¹⁹¹ Child Poverty Action Group et al, April 2021, *It feels as though my third child doesn't matter*, p. 5.

¹⁹² Scottish Government, September 2019, *Welfare Reform: annual report 2019*.

¹⁹³ Donald Hirsch, CPAG, August 2018, *The Cost of a Child in 2018*, August 2018, [viewed 12.07.21]. Available from: <https://cpag.org.uk/policy-and-campaigns/report/cost-child-2018>, p. 16.

¹⁹⁴ Scottish Government, September 2019, *Welfare Reform: annual report 2019*.

¹⁹⁵ UK Supreme Court, 2019, R (on the application of SC, CB and 8 children) (Appellants) v Secretary of State for Work and Pensions and others (Respondents), Case ID: UKSC 2019/0135 [viewed 13.07.21]. Available from: <https://www.supremecourt.uk/cases/uksc-2019-0135.html>

These policies are a clear breach of children’s human rights, including their right to social security as well as to an adequate standard of living. Children should not be penalised for actions beyond their control or be denied access to social security on an equal basis with their peers. The cap on welfare benefits and the two-child limit currently in force serve to have an unequal impact on families living in poverty and is inconsistent with the commitments made by the UK through the ratification of the European Social Charter and the United Nations Convention on the Rights of the Child.

The £20 uplift in Universal Credit amounts during the Covid-19 pandemic¹⁹⁶ has been a welcome introduction, and one that must be maintained. These changes have been recommended by a number of Westminster Committees,¹⁹⁷ and would alleviate poverty as well as the strain on public services elsewhere.¹⁹⁸ However, a more fundamental consideration of the policy framework that impacts these families is urgently required. Furthermore, whilst the Scottish Government has powers to address child poverty, the impact of reserved benefits, particularly Universal Credit and the Benefit Cap, together with aspects of the fiscal framework, makes it harder for the Scottish Government to take action. Only 15% of social security expenditure is devolved to Scotland and can therefore be influenced or changed.¹⁹⁹ Most of the benefits with the potential to have the largest impact on child poverty are reserved to the UK government.²⁰⁰

The UK government has committed to address and reduce child poverty. However, in 2016, the UK Government repealed the Child Poverty Act 2010, thereby removing the official child poverty targets and statutory reporting requirements.²⁰¹ The UK government’s shift in approach to focus on measuring worklessness (and the corresponding removal of statutory child poverty targets) has reduced focus on the other factors contributing to child poverty. Evidence shows that improving employment situations does not solely improve child poverty. Almost three-quarters of children in relative poverty live in a household where at least one

¹⁹⁶ For more on this, see under “Children’s access to social security in the context of the Covid-19 pandemic” below.

¹⁹⁷ Work and Pensions Committee, *First Report of Session 2019–21, DWP’s response to the coronavirus*, HC 178 [viewed 13.07.21]. Available from:

<https://committees.parliament.uk/publications/1558/documents/14743/default/>

¹⁹⁸ House of Commons, Scottish Affairs Committee, June 2021, *Welfare policy in Scotland*, p. 5 Work and Pensions Committee, *First Report of Session 2019–21, DWP’s response to the coronavirus*, House of Lords Economics Affairs Committee, July 2020, *2nd Report of Session 2019–21 HL Paper 105 Universal Credit isn’t working: proposals for reform*. Available from:

<https://committees.parliament.uk/publications/2224/documents/20325/default/>; para. 129; Social Security Advisory Committee, May 2020, *Covid 19 SSAC letter to the Secretary of State*. Available from:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/888504/ssac-letter-to-secretary-of-state-covid.pdf; Nina Ballantyne, Citizens Advice Scotland in: Scottish Affairs Committee, June 2021, *Welfare policy in Scotland*, p. 5 Work and Pensions Committee, para. 98.

¹⁹⁹ Scottish Affairs Committee, March 2021, *Oral evidence: Welfare policy in Scotland*, HC 889, [viewed 12.07.21]. Available from: <https://committees.parliament.uk/oralevidence/1844/pdf/>, Q. 140.

²⁰⁰ Scottish Government, Social Security Directorate, *Responsibility for benefits: overview* [viewed 12.07.21]. Available from: <https://www.gov.scot/publications/responsibility-for-benefits-overview/>

²⁰¹ *Welfare and Reform Work Act 2016* [viewed 12.07.21]. Available from: <https://www.legislation.gov.uk/ukpga/2016/7/section/7/enacted>, section 7(1)

person is in paid work.²⁰² In the last decade, child poverty has risen almost entirely in working families.²⁰³ Low-paid jobs and stagnant wages also have a direct effect on children, with families where two adults earn the minimum wage still falling around 11% short of the adequate income needed to raise a child, according to CPAG.²⁰⁴ Improving employment prospects is only one tool in the toolkit and must occur alongside other measures, including improving social protection. As the UN Special Rapporteur on Extreme Poverty and Human Rights said in his report of his visit to the UK in 2018, the UK government's shift in approach to one that highlighted that "almost any alternative will be more tolerable than seeking to obtain government benefits" represents an erosion of the social contract and of the fulfilment of human rights.²⁰⁵

International human rights mechanisms, including the UN Committee on the Rights of the Child,²⁰⁶ UN Committee on Economic, Social and Cultural Rights,²⁰⁷ and the UN Special Rapporteur on Extreme Poverty and Human Rights, have all consistently raised issues with the UK's social security system and welfare reforms.²⁰⁸ In particular, the UN Committee on the Rights of the Child has asked the UK State Party in its report to the Committee, due February 2022, to set out the measures taken to address the increasing child poverty rate; and assess the impact of recent social security and tax credit reforms on children, including children with disabilities and children belonging to ethnic minority groups, and to revise these reforms in order to fully respect the right of children to have their best interests taken as a primary consideration.²⁰⁹ The UK State Party should take these steps now.

Devolved social security

As noted above, new social security powers and certain social security benefits have been devolved to the Scottish Parliament under the Scotland Act (2016).²¹⁰ The Social Security (Scotland) Act 2018 established a framework for the new system and devolves eleven existing social security benefits to Scotland. It also allows for the creation of new benefits through

²⁰² DWP, March 2020, *Households below average income: an analysis of the income distribution 1994/95 to 2018/19* [viewed 12.07.21]. Available from:

<https://www.gov.uk/government/statistics/households-below-average-income-199495-to-201819>

²⁰³ Joseph Rowntree Foundation, 2018, *UK Poverty 2018* [viewed 12.07.21.] Available from:

<https://www.jrf.org.uk/report/uk-poverty-2018>, pp. 3 and 12.

²⁰⁴ Donald Hirsch, CPAG, August 2018, *The Cost of a Child in 2018*, p. 16.

²⁰⁵ UN Special Rapporteur on Extreme Poverty and Human Rights, 2018, *Visit to the United Kingdom of Great Britain and Northern Ireland*.

²⁰⁶ UN Committee on the Rights of the Child, July 2016, *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland*, paras. 13, 70-21; March 2021, *List of issues prior to submission of the combined sixth and seventh reports of the United Kingdom of Great Britain and Northern Ireland*, paras. 27, 41. [both viewed 07.07.21].

²⁰⁷ UN Committee on Economic, Social and Cultural Rights, July 2016, *Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland*,

E/C.12/GBR/CO/6 [viewed 07.07.21]. Available from :

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGBR%2fCO%2f6&Lang=en, paras. 40-42.

²⁰⁸ United Nations Special Rapporteur on Extreme Poverty and Human Rights, 2018, *Visit to the United Kingdom of Great Britain and Northern Ireland* [viewed 07.07.21]. Available from:

<https://undocs.org/A/HRC/41/39/Add.1>.

²⁰⁹ UN Committee on the Rights of the Child, March 2021, *List of issues prior to submission of the combined sixth and seventh reports of the United Kingdom of Great Britain and Northern Ireland*,

²¹⁰ *Scotland Act 2016*.

regulations created under the 2018 Act.²¹¹ The establishment of a Scottish system has involved the creation of a new agency, Social Security Scotland, which will administer the devolved benefits, once fully operational.²¹²

The Scottish Government is currently implementing the devolution of social security, which is scheduled to be fully devolved by 2025. Most of the new powers were devolved before 2020, but many of the benefits are still being administered by the UK Department of Work and Pensions (DWP).²¹³ While DWP continues to administer certain benefits under agency agreements,²¹⁴ the Scottish Government and DWP must work closely together to ensure that devolved benefits are transferred safely and securely. While both the UK and Scottish governments are currently working together to ensure the smooth transfer, barriers to further smooth implementation include operational issues around data-sharing, which need to be resolved, including the prioritisation of the transfer of delivering data regarding children ages 6-16 for the extension of the Scottish Child Payment or identifying alternative data to facilitate this.²¹⁵

There have been several changes to the timing of the roll-out of social security in Scotland. While some of these delays are due to the Covid-19 pandemic, the majority of the delays were announced in 2019, postponing the roll-out from 2021 to 2024.²¹⁶ Currently, a detailed timetable exists only for the Adult Disability Payment and the extension of the Scottish Child Payment.²¹⁷ Other challenges to devolving social security, which is complex by necessity, include a need for strengthened accessible communications to ensure that claimants are aware of all the measures available to them and that these are actively promoted by Social Security Scotland, DWP and Job Centre Staff, effective policy and operational collaborations between all stakeholders, transparent, comprehensive data-sharing, which respects all necessary privacy grounds and is founded on good communication and respect/trust, and increased resources and support for claimants who struggle or cannot make a claim online (Universal Credit).²¹⁸

There are currently 18 devolved social security benefits – seven of which are still administered by DWP. These include the Disability Living Allowance (child),²¹⁹ Scottish Child Payment, Best

²¹¹ Scottish Government, Minister for Equalities and Older People, Social Security Directorate, 2021, *Social Security*. Available from: <https://www.gov.scot/policies/social-security/>; *Social Security (Scotland) Act 2018*. Available from: <http://www.legislation.gov.uk/asp/2018/9/contents/enacted> [both viewed 12.07.21]

²¹² Social Security Scotland, July 2021, *Homepage* [viewed 07.07.21]. Available from: <https://www.socialsecurity.gov.scot/>

²¹³ SPICe, July 2021, *Social Security: subject profile*.

²¹⁴ The Scottish Government has established Agency Agreements with DWP to deliver the devolved benefits while Social Security Scotland benefits continue to be developed ahead of a full roll-out.

²¹⁵ House of Commons, Scottish Affairs Committee, June 2021, *Welfare policy in Scotland*, p. 3.

²¹⁶ SPICe, July 2021, *Social Security: subject profile*, p. 10; House of Commons, Scottish Affairs Committee, June 2021, *Welfare policy in Scotland*, p. 3.

²¹⁷ SPICe, July 2021, *Social Security: subject profile*, p. 10.

²¹⁸ House of Commons, Scottish Affairs Committee, June 2021, *Welfare policy in Scotland*.

²¹⁹ Scottish Government, March 2021, *Child Disability Payment pilot date announced* [viewed 12.07.21]. Available from: <https://www.gov.scot/news/child-disability-payment-pilot-date-announced/>

Start Grant,²²⁰ Best Start Foods,²²¹ Nursery Milk Scheme,²²² Child Winter Heating Assistance²²³ and Young Carer Grant.²²⁴ Several of the other devolved benefits also affect children and their parents/carers. Some powers in relation to Universal Credit, for example, the ability to split payments between household members, are also devolved through Universal Credit Scottish Choice. Furthermore, two devolved payments that are closely linked to social security are Council Tax Reduction and Job Start Payment. Finally, the Cold Weather Payment and Winter Fuel Payment will also be devolved but have been delayed, with the Scottish Government requesting a two-year delay beyond April 2022.²²⁵ Benefits that remain under the UK Government include Universal Credit and Child Benefit.²²⁶

Some Scottish benefits have been created under legislation other than the Social Security (Scotland) Act 2018. These include Best Start Foods,²²⁷ Scottish Milk and Healthy Snack Scheme,²²⁸ and Universal Credit Scottish Choices,²²⁹ among others.²³⁰

The new Scottish Child Payment²³¹ was introduced in February 2021, having been delayed by two months due to the Covid-19 pandemic. This payment entitles parents/carers on low incomes to a weekly payment of £10 for each child they care for under the age of 6.²³² There is no cap on numbers of children per family. The SNP has committed to extend the criteria for the Child Payment from children under 6 to under 16 and to increase the payment to £20 per

²²⁰ Consisting of the Best Start Grant Pregnancy and Baby Payment – a one-off £600 payment from the 24th week of pregnancy to the baby's six months for families on certain benefits, the Best Start Grant Early Learning Payment – a one-off £250 payment between the age of 2 years and three years six months for families on certain benefits, and the Best Start Grant School Age Payment – a one-off £250 payment when a child would normally start the first year of primary education for families on certain benefits. Scottish Government, April 2021, *Best Start Grant and Best Start Foods* [viewed 12.07.21]. Available from: <https://www.mygov.scot/best-start-grant-best-start-foods>.

²²¹ A prepaid card from pregnancy up to a child's third birthday for families receiving certain benefits to assist with buying healthy foods. Ibid.

²²² Will be replaced by the Scottish Milk and Healthy Snack Scheme in 2021.

²²³ A £200 payment to help families of a child on the highest rate care component of the Disability Living Allowance for Children. Scottish Government, November 2020, *Child Winter Heating Assistance* [viewed 12.07.21]. Available from: <https://www.mygov.scot/child-winter-heating-assistance>.

²²⁴ As of 01 April 2021, this is an annual payment of £308.15 to 16-18 year olds, who on average provide at least 16 hours of caring a week, but do not receive Carer's Allowance. Scottish Government, April 2021, *Young Carer Grant* [viewed 12.07.21]. Available from: <https://www.mygov.scot/young-carer-grant>

²²⁵ Other devolved benefits include: Personal Independence Payment, Attendance Allowance, Disability Living Allowance (adult), Carer's Allowance, Discretionary Housing Payments, Industrial Injuries Disablement Benefits, Carer's Allowance Supplement, Scottish Welfare Fund, Self-Isolation Support Grant, Funeral Support Payment, and Severe Disablement Allowance. For a full discussion of social security in Scotland, see, SPICe, July 2021, *Social Security: subject profile*.

²²⁶ Other benefits remaining under the UK government include: Contributory Job Seeker's Allowance, Contributory Employment Support Allowance, Maternity Allowance, State Pension, Pension Credit, and bereavement benefits. <https://www.gov.scot/publications/responsibility-for-benefits-overview/>; SPICe, July 2021, *Social Security: subject profile*.

²²⁷ Regulations made under *Social Security Act 1988* [viewed 13.07.21]. Available from: <https://www.legislation.gov.uk/ukpga/1988/7/contents>, section 13.

²²⁸ Regulations made under *Social Security Act 1988 as amended*, section 13.

²²⁹ Regulations made under *Scotland Act 2016*, section 30.

²³⁰ SPICe, July 2021, *Social Security: subject profile*, p. 20.

²³¹ Scottish Government, February 2021, *Scottish Child Payment* [viewed 12.07.21]. Available from: <https://www.mygov.scot/scottish-child-payment>

²³² Ibid.

child per week during the current parliamentary term ending in May 2026.²³³ The Poverty and Inequality Commission has recommended that this increase to £20 per week take effect this year.²³⁴

The Child Payment is a core part of the Scottish Government's strategy to address child poverty, with suggestions it could reduce child poverty by 3 percentage points.²³⁵ The SNP has also committed to providing a cash grant of £520, paid four times annually, for every family with children receiving free school meals until the full rollout of the Scottish Child Payment is complete, supporting up to 170,000 children.²³⁶

Starting from 2021, the child disability payment will replace the child Disability Living Allowance (DLA).²³⁷ A pilot will start in Dundee, Perth and Kinross, and the Western Isles on 26 July 2021, followed by national roll-out for new claims from 21 November 2021, and the transfer of current cases from DWP to Social Security Scotland scheduled to take place by the end of 2022. The rules will remain broadly the same as the DLA, especially until all cases are transferred, but some administrative processes will change.²³⁸

The Scottish Milk and Healthy Snacks Scheme will be administered by Scottish local authorities and fund a daily portion of plain fresh cow's milk (or alternative) and a healthy snack for all pre-school children spending two hours or more at regulated day care providers and childminders, who have registered with the schemes. It is estimated to cost £10 million with approximately 190,000 children thought to be eligible, but likely take-up is not yet known.²³⁹

The UN Special Rapporteur on Extreme Poverty and Human Rights, during his country visit to the UK in November 2018, described the Scottish social security system under the new powers as "promising," highlighting how it is guided by "dignity and social security as a human right," designed to be accessible, and is an evidenced-based system²⁴⁰ co-designed with claimants. At time of his visit in 2018, he highlighted it was too soon to tell whether this and Scotland's new taxation powers would make significant change for people in poverty. Furthermore, the Special Rapporteur highlighted a key accountability gap, as the Social Security (Scotland) Act 2018 provides no redress for violations of the right to social security.²⁴¹ However, incorporation of the UNCRC and the Scottish Government intention to incorporate other human rights treaties into domestic law should help address this gap, and must proceed.

²³³ SNP, 2021, *SNP Manifesto 2021: Scotland's Future*, pp. 28-29.

²³⁴ Poverty and Inequality Commission, May 2021, *Child Poverty Delivery Plan: Progress 2020-2021, Scrutiny by the Poverty and Inequality Commission* [viewed 07.07.21]. Available from: <https://povertyinequality.scot/wp-content/uploads/2021/06/Child-poverty-scrutiny-report-2020-21-Report-to-Scottish-Government-22-June-2021-003.pdf>

²³⁵ SPICe, July 2021, *Social Security: subject*, p. 10.

²³⁶ SNP, 2021, *SNP Manifesto 2021: Scotland's Future*, p. 28.

²³⁷ Scottish Government, March 2021, *Child Disability Payment pilot date announced*.

²³⁸ SPICe, July 2021, *Social Security: subject profile*, p. 9.

²³⁹ Ibid.

²⁴⁰ The Scottish Government established the Social Security Experience Panels with people who have experience of one or more of the relevant benefits to inform the development of the new system. More information can be found at: Scottish Government, *Social Security Experience Panels: publications* [viewed 07.07.21]. Available from: <https://www.gov.scot/collections/social-security-experience-panels-publications/>.

²⁴¹ UN Special Rapporteur on Extreme Poverty and Human Rights, 2018, *Visit to the United Kingdom of Great Britain and Northern Ireland*, para. 90.

SNP commitments relevant to social security for the current parliamentary term include a commitment to begin work on a Minimum Income Guarantee and publish a four-year delivery plan to lift children out of poverty with a £50 million fund to support it.²⁴² The SNP also committed to increase the Best Start Foods payment from £4.25 to £4.50 and extend eligibility for the payment to all those receiving Universal Credit and to review the Scottish Welfare Fund.²⁴³

The Scottish Government has committed to eradicate child poverty by 2030, through the introduction of the Child Poverty (Scotland) Act 2017 with four statutory income-based targets against which child poverty is to be measured and reported and a statutory Poverty and Inequality Commission, with functions related to the child poverty reduction targets, including scrutiny on meeting the statutory targets through to 2030.²⁴⁴ The four statutory income-based targets are all set on an After Housing Costs basis.²⁴⁵ The Act also requires Scottish Ministers to publish child poverty delivery plans in 2018, 2022 and 2026 and report on those plans annually, and local authorities and health boards to report jointly each year on activity they are taking and will take to reduce child poverty.²⁴⁶

Scottish Government statutory targets are also underpinned by the non-statutory Child Poverty Measurement which looks at trends in the drivers of poverty over time, including average rates of pay, availability of childcare and debt. The Scottish Child Poverty Strategy outlines a wide range of drivers of poverty, grouped loosely into three categories - income from employment; costs of living; income from social security benefits/ benefits in kind.²⁴⁷ As mentioned above, the Scottish Government has established several targeted and universal measures to support children, young people, and their families, including the Best Start Grants, Scottish Child Payment, free childcare hours,²⁴⁸ baby boxes²⁴⁹ and the exemption from council tax for care leavers.²⁵⁰

²⁴² SNP, 2021, *SNP Manifesto 2021: Scotland's Future*, p. 28.

²⁴³ Ibid.

²⁴⁴ The four statutory income-based targets, to reduce child poverty in Scotland by 2030 are 1. Fewer than 10% of children living in families in relative poverty. 2. Fewer than 5% of children living in families in absolute poverty. 3. Fewer than 5% of children living in families living in combined low income and material deprivation. 4. Fewer than 5% of children living in families in persistent poverty. There are also four interim income-based targets to reduce child poverty in Scotland by 2023.

²⁴⁵ *Child Poverty (Scotland) Act 2017* [viewed 12.07.21]. Available from: <https://www.legislation.gov.uk/asp/2017/6/contents/enacted>

²⁴⁶ Ibid.

²⁴⁷ Scottish Government, *Housing and Social Justice Directorate, March 2019, Child poverty strategy documents* [viewed 12.07.21]. Available from: <https://www.gov.scot/publications/child-poverty-strategy-documents/>

²⁴⁸ Scottish Government, May 2021, *Funded early learning and childcare* [viewed 12.07.21]. Available from: <https://www.mygov.scot/childcare-costs-help/funded-early-learning-and-childcare>.

²⁴⁹ Scottish Government, September 2020, *Scotland's Baby Boxes* [viewed 12.07.21]. Available from: <https://www.mygov.scot/baby-box>

²⁵⁰ Edinburgh Council, *Care leaver discount and exemption* [viewed 12.07.21]. Available from: <https://www.edinburgh.gov.uk/discounts-exemptions/care-leaver-discount-exemption/1>

Children's access to social security in the context of the Covid-19 pandemic

The pandemic and government measures in response have significant immediate and long-term impacts for children, with numbers of families in poverty predicted to increase.²⁵¹ The pandemic has exacerbated existing inequalities and risks pushing those affected by poverty deeper into poverty, creating a human rights emergency. An Independent CRIA commissioned by CYPSC last year identified the worsening situation for children and young people in Scotland, particularly BAME children, those living with one parent, refugee children, Gypsy/Traveller children, children living in poverty – including fuel poverty and food insecurity, disabled children, and young carers.²⁵² Furthermore, gaps in the social security and welfare system can severely effect family finances in times of crisis. Examples include gaps in entitlement to financial support, waiting times or delays in receiving social security payments, not being eligible to certain support, or households lacking financial support due to moving between different benefits.²⁵³ UNICEF estimates that child poverty will remain above pre-pandemic levels for at least five years in high-income countries.²⁵⁴

Children across Scotland are living in households where parents had working hours reduced, were furloughed²⁵⁵ or lost jobs.²⁵⁶ Furthermore, Scottish Government was already not on target to meet its child poverty reduction targets pre-pandemic.²⁵⁷ Poverty has risen as a result of the Covid-19 pandemic, with an increase of 320,000 more people in poverty in Q1 2021.²⁵⁸ In February 2020, 89,722 households with child dependants(s) in Scotland were on Universal

²⁵¹ Treanor., M.C., 2020, *How COVID-19 crisis measures reveal the conflation between poverty and adversity* [viewed 12.07.21]. Available from:

<https://eupublishing.com/doi/full/10.3366/scot.2020.0338>; Legatum Institute, June 2021, *Nowcasting Poverty – Quarter 1, 2021* [viewed 13.07.21]. Available from: <https://li.com/wp-content/uploads/2021/07/Nowcasting-Poverty-and-Covid-Report-Q1-2021.pdf>.

²⁵² CYPSC and Observatory of Children's Human Rights Scotland, July 2020, *Independent Children's Rights Impact Assessment on the Response to Covid-19 in Scotland*.

²⁵³ Save The Children, May 2021, *Dropped Into a Cave: How families with young children experienced lockdown* [viewed 12.07.21]. Available from:

<https://www.savethechildren.org.uk/content/dam/gb/reports/dropped-into-a-cave-compressed.pdf>

²⁵⁴ UNICEF, 2020, *Supporting Families and Children Beyond COVID-19, Social protection in high-income countries* [viewed 01.07.21]. Available from: <https://www.unicef.org/social-policy/child-poverty>.

²⁵⁵ The Coronavirus Job Retention Scheme allows employers to put staff on temporary leave—or furlough—at 80% of their income. It is in place until September 2021. HM Revenue & Customs, 2020, *Check if You Can Claim for Your Employees' Wages through the Coronavirus Job Retention Scheme* [viewed 09.12.20]. Available from: <https://www.gov.uk/government/publications/extension-to-the-coronavirus-job-retention-scheme/extension-of-the-coronavirus-job-retention-scheme>

²⁵⁶ CCE, 2020, *Fact Checking Claims about Poverty* [viewed 09.12.20]. Available from:

<https://www.childrenscommissioner.gov.uk/2020/06/22/fact-checking-claims-about-child-poverty/>

²⁵⁷ Corlett, A., Resolution Foundation, 2019, *Wrong direction: can Scotland hit its child poverty targets?* Available from:

<https://www.resolutionfoundation.org/app/uploads/2019/03/Wrong-direction-briefing-note.pdf>; Joseph Rowntree Foundation, 2020, *Poverty in Scotland 2020: The independent annual report*. Available from: <https://www.jrf.org.uk/file/56631/download?token=6EW9zhr&filetype=briefing> [both viewed 12.07.21].

²⁵⁸ Legatum Institute, June 2021, *Nowcasting Poverty – Quarter 1, 2021*.

Credit.²⁵⁹ In February 2021, 142,469 households with child dependant(s) in Scotland on Universal Credit. This represents an increase of 37%.²⁶⁰

The pandemic has also demonstrated it is possible to fund poverty alleviation measures quickly. UK Government time-bound initiatives to lessen the pandemic's impact include the protection of incomes through the Job Retention Scheme²⁶¹ and social security changes such as temporary increases to Universal Credit and Working Tax Credit basic element to £20 per week, the suspension of the Minimum Income Floor,²⁶² and a reversal of cuts to the Local Housing Allowance.²⁶³²⁶⁴ Such measures have positively affected families, protecting them from some of the worst aspects of the pandemic.²⁶⁵ In addition to protecting families, they have even reduced the levels of very deep poverty, with 270,000 fewer people living in families that are more than 25% below the poverty line in the UK. Furthermore, there has been a reduction of 140,000 people living in single-parent families experiencing poverty.²⁶⁶ Even so, nearly two-thirds of families on Universal Credit in the UK had to borrow money to survive, and half are behind on rent and other essential bills.²⁶⁷ Despite significant opposition and recommendations to the contrary,²⁶⁸ the UK government has confirmed its intention to stop

²⁵⁹ This is broken down as follows: 68,008 single households with child dependant(s) & 21,718 couple households with child dependant(s). DWP, May 2021, *Database: Households on Universal Credit*, [viewed 13.07.21]. Available from: <https://stat-xplore.dwp.gov.uk/webapi/jsf/dataCatalogueExplorer.xhtml>

²⁶⁰ The breakdown is as follows: 96,705 single households with child dependant(s) & 45,767 couple households with child dependant(s). Ibid.

²⁶¹ The Coronavirus Job Retention Scheme allows employers to put staff on temporary leave—or furlough—during the lockdown measures at 80% of their income. It is in place until September 2021. UK Government, *Check if you can claim for your employees' wages through the Coronavirus Job Retention Scheme* [viewed 13.07.21]. Available from: <https://www.gov.uk/government/publications/extension-to-the-coronavirus-job-retention-scheme/extension-of-the-coronavirus-job-retention-scheme>

²⁶² This is an assumed level of earnings applied to self-employed people claiming Universal Credit. When calculating how much universal credit received, the DWP assumes the self-employed earn at least roughly minimum wage. Without the floor in place, those earning less than that level are assessed on actual income and are thus entitled to more financial assistance. The Minimum Income Floor will be reinstated on 31 July 2021.

²⁶³ Institute for Public Policy Research, 2020, *Estimating Poverty Impacts of Coronavirus: Microsimulation Estimates* [viewed 09.12.20]. Available from: <https://www.ippr.org/research/publications/estimating-poverty-impacts-of-coronavirus>

²⁶⁴ The additional financial security provided by the extended furlough scheme and the Universal Credit uplifts are in place until the autumn of 2021, with government schemes starting to wind down progressively prior to ceasing.

²⁶⁵ House of Commons, Scottish Affairs Committee, June 2021, *Welfare policy in Scotland*, p. 5; Legatum Institute, June 2021, *Nowcasting Poverty – Quarter 1, 2021*.

²⁶⁶ Legatum Institute, June 2021, *Nowcasting Poverty – Quarter 1, 2021*.

²⁶⁷ Joseph Rowntree Foundation, June 2020, *Nearly Two-Thirds of Families on Universal Credit Forced into Lockdown Debt 'Nightmare'* [viewed 13.07.21]. Available from: <https://www.jrf.org.uk/press/nearly-two-thirds-families-universal-credit-forced-lockdown-debt-%E2%80%98nightmare%E2%80%99>

²⁶⁸ House of Commons, Scottish Affairs Committee, June 2021, *Welfare policy in Scotland*, p. 5; Work and Pensions Select Committee the House of Lords Economic Affairs Committee and Social Security Advisory Committee [para 111]; Children's Commissioners for Scotland, Northern Ireland and Wales: Letter to Secretary of State for Work and Pensions, May 2021. Available from: <https://cypcs.org.uk/wp-content/uploads/2021/05/Letter-from-Commissioners.pdf>; Report of the Children's Commissioners of the United Kingdom of Great Britain and Northern Ireland to the United Nations Committee on the Rights of the Child, December 2020, *Examination of the Combined Sixth and Seventh Periodic Reports of the United Kingdom of Great Britain and Northern Ireland*.

the £20 increase to Universal Credit on October 1, 2021.²⁶⁹ There has been no assessment by the UK Government of the impact of this cut on child poverty.

In Scotland, the government took action to relieve the impact of the pandemic on children and young people, including through social security measures. This included action to provide payments or goods to replace free school meals while children were unable to attend school and the extension of these to cover school holiday periods.²⁷⁰ Another notable major improvement in the Scottish Government's approach to child poverty resulting from the pandemic is the principle that direct cash payments should be the default approach, based on their approach to social security founded on dignity and social security as a human right. At May 2020, only 10 out of 32 local authorities adopted direct cash payments as their default approach – opting instead for vouchers, delivery or collection of food parcels.²⁷¹ Since then, the majority have changed their approach with 30 out of 32 local authorities now taking a cash first approach.²⁷²

In recognition of the potential impact of the pandemic on child poverty and the need for a flexible immediate response, the Scottish Government expanded third sector capacity to support households. For example, they greatly increased funding for the Urgent Assistance Fund, operated by Aberlour,²⁷³ and which prior to the pandemic typically made around 100 grants per year totalling £50,000. Since March 2020, that fund has paid out 4,500 grants totalling £1.5 million. The profile of applicants over this period has also changed. Whereas prior to the pandemic applicants tended to come from families who were in crisis, many of the families applying had never needed help before and had no experience of social security at all. Prior to the pandemic, such families had not needed social security support, but the pandemic's impact, including some households having been furloughed and thus experiencing the loss of a fifth of a minimum wage income, brought them to crisis point.²⁷⁴ From a human rights perspective, it is concerning that some referrals to third sector or charity assistance are made by public bodies with an existing human rights duty to support families. Aberlour indicated that, despite the Scottish Government's Scottish Welfare Fund being administered by local authorities, 40% of referrals to the Urgent Assistance Fund were from local authority employees.²⁷⁵

In November 2020, the Scottish Government established the winter support fund, which included funding for low-income families until payments started for the Scottish Child Payment

²⁶⁹ UK Parliament, *House of Commons Debate*, 3 March 2021, Column 252 Available from: <https://hansard.parliament.uk/Commons/2021-03-03/debates/C8618796-C14D-4695-8DC0-20BC6C6DDED4/FinancialStatement>; BBC News, July 7, 2021, *Covid: Universal credit £20 top up to be phased out*. Available from: <https://www.bbc.co.uk/news/uk-politics-57748815> [both viewed 07.07.21].

²⁷⁰ See more under food security.

²⁷¹ Morag Treanor, Institute for Social Policy, Housing, Equalities Research, Heriot Watt University, June 2020, *COVID-19 crisis measures, poverty and free school meals* [viewed 13.07.21]. Available from: <https://www.i-sphere.hw.ac.uk/covid-19-crisis-measures-poverty-and-free-school-meals/>

²⁷² Poverty and Inequality Commission, May 2021, *Child Poverty Delivery Plan: Progress 2020-2021*.

²⁷³ Aberlour, Scotland's Children's Charity, *Homepage* [viewed 13.07.21]. Available from: <https://www.aberlour.org.uk/>

²⁷⁴ Meeting with Aberlour, May 2021.

²⁷⁵ Ibid.

in February 2021.²⁷⁶ It also included a £100 one-off payment for Christmas for families with a child in receipt of free school meals. However, the eligibility criteria for free school meals are stricter than for the Scottish Child Payment and it was not made to families with children below school age. CPAG estimated that as many as 125,000 children missed out on this payment. Further allocation of winter support funding included £23.5 million for children through additional support for residential and care homes, social work, and the Children's Hearing system and additional funding for support via third sector.²⁷⁷

Educational inequalities and digital poverty are of increased concern following school closures and the rapid shift to online learning. Many children, particularly from lower socio-economic backgrounds, have limited or no access to information technology, limited devices for concurrent use by multiple family members, low bandwidth internet or no internet access and were largely unable to access learning. As one girl told us,

"I need a computer to do my assignment. Five of us share one computer in my family."²⁷⁸

The educational attainment gap is also likely to widen. In terms of social security measures to address the "digital divide," the Scottish Government made funding available to local authorities to support distribution of digital devices and ensure that children and their families had access to good broadband connections, but there is limited data to show whether need has been met.²⁷⁹ Furthermore, some devices provided broke down or were not fit for purpose, and children and young people have reported that there was a lack of ongoing support in this regard, hindering their ability to learn. For example, one boy told us of the limitations of this support stating,

"Laptop doesn't work very well. Not got a printer to print things out."²⁸⁰

It is important to note that several of the reactive, emergency measures in response to the Covid-19 pandemic have had a positive impact on the lives of families experiencing financial crisis, but they can only mitigate the impact of continued austerity and a social security system that fails to provide even working parents with any security at all. Social security should be sufficient to provide families at least some degree of financial resilience to ensure that all children have an adequate standard of living and can survive, thrive and develop. Ultimately, they need a minimum income standard that enables families with children to achieve a reliable and decent income to live a dignified life.

²⁷⁶ Scottish Government, November 2020, *Winter support fund for families and children* [viewed 12.07.21]. Available from: <https://www.gov.scot/news/winter-support-fund-for-families-and-children/>
²⁷⁷ Ibid.

²⁷⁸ Young female, Scotland. Report from Children and Young People supported by the Children's Commissioners of the United Kingdom of Great Britain, November 2020, *Are We There Yet?*, p. 49.

²⁷⁹ Scottish Government, September 2020, *Help to get online*. Available from: <https://www.gov.scot/news/help-to-get-online/>; September 2020, *Protecting Scotland, Renewing Scotland: the Government's Programme for Scotland 2020-2021*. Available from: <https://www.gov.scot/publications/protecting-scotland-renewing-scotland-governments-programme-scotland-2020-2021/pages/7/>, p. 96; June 2020, *Coronavirus (COVID-19): statement by the Deputy First Minister on re-opening of schools*. Available from: <https://www.gov.scot/publications/re-opening-schools/> [all viewed 12.07.21].

²⁸⁰ Young male, Scotland. Report from Children and Young People supported by the Children's Commissioners of the United Kingdom of Great Britain, November 2020, *Are We There Yet?*, p. 50.

Recommendations

- The UK and Scottish Governments should retain positive measures introduced to support people in poverty in response to the pandemic and apply these more widely.
- The UK Government should undertake an assessment of the cumulative impact of the full range of social security and tax reforms to date on children and their families.
- The UK Government should adopt measures to reverse welfare reform that negatively affect children and their families, including the Benefits Cap; mitigate child poverty, including through measures such as free school meals; and to implement the recommendations of the UN Special Rapporteur on Extreme Poverty and Human Rights.²⁸¹
- The UK Government's welfare benefits should ensure that all children, no matter their family circumstances, receive the same entitlements to state support in order to reduce the current and projected impact on child poverty.
- The UK and Scottish Governments should adopt measures to ensure that groups of children disproportionately affected by poverty will be prioritised in their respective approach to poverty reduction. This includes ensuring that local authorities are sufficiently funded to support children and families living in poverty and able to react in a responsive, flexible manner in crisis situations.
- The Scottish Government should ensure that all devolved social security measures and benefits are rolled out in a timely manner.
- The Scottish Government should ensure that the UNCRC Incorporation Bill enters into force in a timely manner.
- The Scottish Government should incorporate to the fullest extent possible the other human rights treaties proposed in its Human Rights Bill.
- The Scottish Government should ensure that all children and young people have access to quality digital devices on an ongoing basis, with the possibility of repair if needed, as well as an adequate internet connection for online learning.
- The Scottish Government should increase the Scottish Child Payment to £20 per week in 2021 in line with the Poverty and Inequality Commission's recommendation.

The right to social and medical assistance (Article 13)

Asylum-seeking children and their access to social assistance are affected by their parents' No Recourse to Public Funds (NRPF)²⁸² status. This concerns most children who are not citizens of the European Economic Area and do not have permanent residency in the UK (Indefinite Leave to Remain). Their papers have the 'No Recourse to Public Funds' (NRPF) condition attached to their immigration status, which prevents them from accessing most state-funded benefits, tax credit, social housing or homelessness assistance.²⁸³

²⁸¹ UN Special Rapporteur on Extreme Poverty and Human Rights, 2018, *Visit to the United Kingdom of Great Britain and Northern Ireland*.

²⁸² UK Visas and Immigration, *Public funds* [viewed 13.07.21]. Available from: <https://www.gov.uk/government/publications/public-funds--2/public-funds>. No recourse to public funds means that an individual cannot claim most benefits, tax credits or housing assistance that are paid by the state.

²⁸³ Fernandez-Reino, M., The Migration Observatory at the University of Oxford, August 2020, *Children of migrants in the UK* [viewed 13.07.21]. Available from: <https://migrationobservatory.ox.ac.uk/resources/briefings/children-of-migrants-in-the-uk/>

By the end of 2019, there were at least 175,643 children under age 18 in families in the UK who would be expected to have NRPF. There were 11,375 children whose asylum application was still pending as of January 2020, including unaccompanied asylum-seeking children.²⁸⁴ As of 31 March 2021, this number had risen to 13,718 children.²⁸⁵

Local authorities are responsible for the welfare and accommodation of all unaccompanied children through their obligations under the Children (Scotland) Act 1995,²⁸⁶ UK immigration legislation²⁸⁷ and, in relation to children at risk of trafficking, the new Human Trafficking and Exploitation (Scotland) Act 2015.²⁸⁸ The Home Office rarely publish aggregated statistics for regions and, consequently, exact figures of unaccompanied asylum-seeking children for Scotland are not known. In 2018, estimated 140 unaccompanied children and young people were accommodated across Scotland.²⁸⁹

In Scotland, children and families with insecure immigration status have been turned away from local authority supports to which they are entitled, often related to a misunderstanding or misinterpretation of the applicable law and the extent of local authority duties towards children. Local authorities have a duty to safeguard and promote the welfare of children in need²⁹⁰ in their area, must assess the needs of a child if requested, and include a consideration of the child's needs, wellbeing, and human rights²⁹¹ in all assessments. If the assessment concludes that the child needs support, it can be provided regardless of the immigration status of child or parent or any NRPF condition.²⁹² Local authorities have a duty and must exercise their powers to provide support to a child to prevent breaches of a child's human rights, for example, to avoid the child being destitute. Support must also be provided "in the family" unless there are other concerns about the child's welfare or safety. If such concerns exist, the child can only be removed from their parents/carers' care through formal legal proceedings.

²⁸⁴ Ibid; Work and Pensions Committee, *First Report of Session 2019–21, DWP's response to the coronavirus*, HC 178 [viewed 13.07.21]. Available from:

<https://committees.parliament.uk/publications/1558/documents/14743/default/>, para. 12.

²⁸⁵ Home Office, May 2021, *Immigration Statistics: Asylum and Resettlement: Asylum applications awaiting a decision* [viewed 13.07.21]. Available from: <https://www.gov.uk/government/statistical-data-sets/asylum-and-resettlement-datasets>.

²⁸⁶ *Children (Scotland) Act 1995* [viewed 13.07.21]. Available from:

<https://www.legislation.gov.uk/ukpga/1995/36/contents>.

²⁸⁷ UK Government, Home Office, 2016, *Immigration Rules* [viewed 13.07.21]. Available from:

<https://www.gov.uk/guidance/immigration-rules>

²⁸⁸ *Human Trafficking and Exploitation (Scotland) Act 2015* [viewed 13.07.21]. Available from:

<https://www.legislation.gov.uk/asp/2015/12/contents/enacted>

²⁸⁹ Figures provided by the Convention of Scottish Local Authorities (COSLA) for a workshop on separated children in Scotland. The largest population was in Glasgow, followed by Edinburgh with very small numbers accommodated by other local authorities.

²⁹⁰ Section 22 of the *Children (Scotland) Act 1995* states that local authorities have a duty to safeguard and promote the welfare of children in need in their area and, so far as is consistent with that duty, to promote the upbringing of children in need by their families by providing a range and level of services appropriate to the children's needs. The duty applies to the whole local authority and includes not just social work, but education, housing, and any other relevant service. The duty applies regardless of the child or parent's immigration status.

²⁹¹ In making this assessment and then exercising the power to provide services for the child and for their family, a local authority must have regard to: the nature of the child's needs; the child's "wellbeing" in terms of the matters listed in section 96(2) of the Children and Young People (Scotland) Act 2014; the European Convention on Human Rights, in particular Articles 3 and 8; and the United Nations Convention on the Rights of the Child, in particular Articles 3 and 9.

²⁹² *Children (Scotland) Act 1995*, sections 22, 23A and 93(4).

The rights and duties mentioned above can be enforced through the courts by judicial review.²⁹³ Despite duties on local authorities to support children, no specific funds are allocated for implementation.²⁹⁴

Children in asylum-seeking families are likely to face financial hardship because their parents or legal guardians are not allowed to work, although they can apply for Section 95 [Immigration and Asylum Act 1999] support, which covers housing plus £39.63 per week for each person.²⁹⁵ The subsistence payment is paid via a pre-paid debit card – ASPEN. In May 2021, the ASPEN card stopped working for approximately three weeks following the changeover to new pre-paid cards by PrePaid Financial Services, the contractor who took over the service for the Home Office. Emergency crisis payments did not eventuate in a timely manner, leaving asylum-seekers who have limited or no resources to buy food or other living essentials, with no resources.²⁹⁶ For the quarter ending 31 March 2021, 3,904 people in Scotland were in receipt of section 95 Asylum support. There is no breakdown of data of number of dependent children.²⁹⁷

In terms of access to social assistance and services, some asylum-seeking children in publicly funded schools²⁹⁸ are entitled to free school meals. Pre-school age children are entitled to a free lunch in early learning and childcare if a parent is receiving an eligible benefit or section 95 Home Office asylum support.²⁹⁹ At Primary 1, 2 and 3, all children at publicly-funded schools in Scotland automatically get free school lunches at this stage, regardless of their or their parents' immigration status. For example, a child in an NRPf household will be able to

²⁹³ CYPCS, April 2019, *No. 01 Legal Brief, No Recourse to Public Funds, A children's human rights issue* [viewed 09.07.21]. Available from: <https://cypcs.org.uk/wp-content/uploads/2020/03/Legal-Brief-1-No-Recourse-to-Public-Funds.pdf>

²⁹⁴ *Children (Scotland) Act 1995*, Section 22; CYPCS, April 2019, *Legal Brief: No Recourse to Public Funds - A Children's Human Rights Issue*.

²⁹⁵ *Immigration and Asylum Act 1999* [viewed 13.07.21]. Available from: <https://www.legislation.gov.uk/ukpga/1999/33/section/95>; NRPf Network, 2021, *Home Office support, Section 95 asylum support* [viewed 13.07.21]. Available from: <https://www.nrpfnetwork.org.uk/information-and-resources/rights-and-entitlements/support-options-for-people-with-nrpf/home-office-support/section-95-asylum-support>; Visas and Immigration, 2021, *Asylum Support: What you'll get* [viewed 13.07.21]. <https://www.gov.uk/asylum-support/what-youll-get>. Additional amounts to pay for healthy food for children 1 – 3 years (£3 per week) and children under 1 years (£5 per week).

²⁹⁶ Scottish Housing News, June 2021, *Refugee organisations pen open letter to Home Office on Aspen card crisis*. Available from: <https://www.scottishhousingnews.com/article/refugee-organisations-pen-open-letter-to-home-office-on-aspen-card-crisis>; Scottish Refugee Council, May 2021, *Anger as Aspen card problems leave people without food or essentials*. Available from: <https://www.scottishrefugeecouncil.org.uk/anger-as-aspen-card-problems-leave-people-without-food-or-essentials/> [both viewed 13.07.21.]

²⁹⁷ Home Office, May 2021, *Immigration Statistics: asylum and protection- section 95 support by local authority* [viewed 13.07.21]. Available from: <https://www.gov.uk/government/statistical-data-sets/asylum-and-resettlement-datasets#asylum-support>

²⁹⁸ The 2020 Pupil Census 2020 contains information on pupils in publicly-funded schools in Scotland. Numbers are as follows: 1,700 asylum seekers and 3,253 refugees. Glasgow City 1,450 asylum seekers and 1,757 refugees. City of Edinburgh 68 asylum seekers and 347 refugees. *Scottish Government*, April 2021, *Pupil Census 2020* [viewed 13.07.21]. Available from: <https://www.gov.scot/publications/pupil-census-supplementary-statistics/>

²⁹⁹ Migration Scotland, *Eligibility for other publicly funded services* [viewed 13.07.21]. Available from: <http://www.migrationscotland.org.uk/migrants-rights-entitlements/eligibility-other-publicly-funded-services/4-7-free-school-meals>

receive free school meals during these school years.³⁰⁰ For children in Primary 4 until statutory school leaving age, they will continue to receive free school meals at this stage if their parents or carers are receiving an eligible qualifying benefit or section 95 Home Office asylum support. Local authorities also have the discretion to provide free school meals to children who are not eligible under the regular qualifying criteria, where their families are experiencing financial hardship. This includes providing them for families who have NRPF due to their immigration status.³⁰¹

Recommendation

- **Take steps to ensure that all asylum-seeking and migrant children are fully protected and can access the necessary support, social assistance and services. Ensure systematic, disaggregated data collection and monitoring. This also includes ensuring that local authorities are conducting the necessary assessment of children in need regardless of immigration status.**

The right to benefit from social welfare services (Article 14)

Some children are at greater risk of a violation of their right to benefit from social welfare services than others. These include children and young people in care and at risk of entering care, disabled children, and children who are homeless or at risk of homelessness, among others.

Children and young people in the care system and their access to social welfare services

The current care system is not sufficiently rights-based or adapted to children's needs and, consequently, children and young people in the care system or at risk of entering care face multiple barriers to their human rights, including to benefit from social welfare services. The care system comprises foster care,³⁰² kinship care,³⁰³ residential care,³⁰⁴ and secure care.³⁰⁵ As at 31 July 2020, there were 14,458 Looked-After Children in Scotland.³⁰⁶

Children are affected by poor system design, resulting in instability and uncertainty, inadequate care standards, and isolation. Barriers include separation of siblings due to limited resources or placements for siblings, insufficient sibling contact, and inadequate access to necessary supports, including for their mental health. Care-experienced young people also face discrimination, stigma, and are more likely to leave school earlier with fewer

³⁰⁰ Ibid.

³⁰¹ Ibid.

³⁰² Scottish Government, January 2020, *Becoming a foster carer* [viewed 13.07.21]. Available from: <https://www.mygov.scot/foster-carer>

³⁰³ Scottish Government, 2021, *Kinship care* [viewed 13.07.21]. Available from: <https://www.gov.scot/policies/looked-after-children/kinship-care/>

³⁰⁴ Scottish Government, 2021, *Residential care* [viewed 13.07.21]. Available from: <https://www.gov.scot/policies/looked-after-children/residential-care/>

³⁰⁵ Scottish Government, 2021, *Secure care* [viewed 13.07.21]. Available from: <https://www.gov.scot/policies/youth-justice/secure-care/>

³⁰⁶ Scottish Government, March 2021, *Children's social work statistics: 2019 to 2020* [viewed 13.07.21]. Available from: <https://www.gov.scot/publications/childrens-social-work-statistics-2019-20/>

qualifications³⁰⁷ and live in poverty. They often face placement changes at short notice and regular changes in social workers and carers. Their views are often not considered prior to entry into, during, and when planning for leaving care. As one young person said,

“I felt that I was never listened to. At times, it was like my opinion was never heard by the social work or the children’s panel when I tried to express my feeling about moving back in with my mum. They always made decisions regardless of how I felt about it.”³⁰⁸

Children and young people’s experiences with the care system can affect their lifelong development and well-being.

A lack of early intervention, childcare, and effective family support services significantly affect children at risk of entering care. Greater investment is needed in early intervention services for families in vulnerable situations. Governments should adopt an approach that prioritises prevention before crisis, particularly in the early years. In particular, inconsistent access to family support services and insufficient funding hinder the functioning of the system. The reduction in local authority funding has affected family support provision.³⁰⁹ Delivery is inconsistent nation-wide, as services are provided by both local authorities and third sector organisations. The short-term, insecure grant funding status for many services can create uncertainty about service continuity and negatively affect staff.³¹⁰ In particular, financial pressures, including on placements and resources, demographic changes, a lack of human resources, and legislative changes, have affected social work.³¹¹ There is also a lack of specialist support for families where parents have a learning disability.³¹² Furthermore, services focus on permanence planning and rapid decision-making. Community-based support and early intervention to resolve issues before families reach crisis point, with which no stigma is associated, is essential to ensuring high-quality support for children and families, preventing children entering care, and reducing the numbers of children in care.

Corporate parents hold a central role in the care system but can often seem inaccessible or unsupportive to young people as well as not working in a “joined-up” manner.³¹³ They must

³⁰⁷ Scottish Government, June 2021, *Education Outcomes for Looked After Children – 2019/20* [viewed 13.07.21]. Available from: <https://www.gov.scot/publications/education-outcomes-looked-after-children-2019-20/>

³⁰⁸ Young person, Scotland. Report from Children and Young People supported by the Children’s Commissioners of the United Kingdom of Great Britain, November 2020, *Are We There Yet?*, p. 25.

³⁰⁹ Galloway, S., Barnardo’s Scotland and National Society for the Prevention of Cruelty to Children (NSPCC) Scotland, September 2020, *Challenges from the Frontline – Revisited: Supporting Families with Multiple Adversities in Scotland during a Time of Austerity*, [viewed 07.12.20]. Available from: <https://www.barnardos.org.uk/sites/default/files/2020-10/Barnardo%27s%20Scotland%20and%20NSPCC%20Scotland%20-%20Challenges%20from%20the%20Frontline%20-%20Revisited.pdf>.

³¹⁰ *Ibid.*, pp. 11, 38-39.

³¹¹ Together Scottish Alliance for Children’s Rights, 2020, *State of Children’s Rights in Scotland 2019*.

³¹² Scottish Commission for Learning Disability, Stewart, A., MacIntyre, G., and McGregor, S., August 2016, *Supporting Parents with Learning Disabilities in Scotland: Challenges and Opportunities* [viewed 12.07.21]. Available from: <https://www.sclcd.org.uk/wp-content/uploads/2016/11/Parenting-Report-FINAL-14.11.16.pdf>

³¹³ Scottish Government, Children and Families Directorate, *Looked-after Children* [viewed 13.07.21.] Available from: <https://www.gov.scot/policies/looked-after-children/corporate-parenting/>. The *Children and Young People (Scotland) Act 2014* defines corporate parenting as “the formal and local

work collaboratively to ensure effective service delivery and that the young people with whom they interact feel supported.³¹⁴ The Children and Young People (Scotland) Act 2014 put corporate parents on a statutory footing.³¹⁵

In February 2020, the Independent Care Review, conducted from 2017-2020,³¹⁶ found a lack of data and a bureaucratic, fragmented care system, in which young people's voices are not sufficiently heard or valued. The Commissioner co-chaired the rights working group of the Review with a care-experienced co-chair. The Review recommended over 80 systemic, rights-respecting changes to the care system, including transforming services to support children and families, with a focus on early intervention and user-centred systems. Four core elements were identified: i.) young people's experiences must always be the basis of all decisions about their lives, ii.) building and maintaining life-long relationships, iii.) equality in all areas for care-experienced children with their peers; and iv.) keeping families together where it is safe to do so.³¹⁷ The outputs included a ten-year implementation plan,³¹⁸ an analysis of the required legislative change,³¹⁹ resources³²⁰ on the effective financial investment needed,³²¹ and a child-friendly version.³²² The Promise team has been established to support the changes, starting with its first three-year plan.³²³

One particular matter of concern is also cross-border placements, where children from England, Northern Ireland and Wales have been placed in Scotland, far from their home, families, and communities. They are deprived of their liberty in alternative care settings outside of the protections they are entitled to under Scots law, statutory childcare and protection schemes.

Financing of care services

The Independent Care Review found that £942 million³²⁴ was spent annually on the formal care system and £198 million annually on services. The costs of the care system – both the

partnerships between all services responsible for working together to meet the needs of looked after children, young people and care leavers". *Children and Young People (Scotland) Act 2014* [viewed 11.07.21]. Available from: <https://www.legislation.gov.uk/asp/2014/8/contents/enacted>.

³¹⁴ Independent Care Review, 2020, *The Promise* [viewed 07.12.20]. Available from:

<https://www.carereview.scot/wp-content/uploads/2020/02/The-Promise.pdf>.

³¹⁵ *Children and Young People (Scotland) Act 2014*

³¹⁶ The Review consulted with more than 5,500 people, over half of whom were young people in care and care-experienced adults. The others were families and members of the unpaid and paid workforce.

³¹⁷ Independent Care Review, 2020, *The Promise*

³¹⁸ Independent Care Review, 2020, *The Plan* [viewed 13.07.21]. Available from:

https://www.carereview.scot/wp-content/uploads/2020/02/The-Plan_pages.pdf

³¹⁹ Independent Care Review, 2020, *The Rules* [viewed 13.07.21]. Available from:

https://www.carereview.scot/wp-content/uploads/2020/02/The-Rules_pages.pdf

³²⁰ Independent Care Review, 2020, *The Money* [viewed 13.07.21]. Available from:

<https://www.carereview.scot/wp-content/uploads/2020/02/The-Money.pdf>

³²¹ Independent Care Review, 2020, *Follow The Money* [viewed 13.07.21]. Available from:

<https://www.carereview.scot/wp-content/uploads/2020/02/Follow-the-money.pdf>

³²² Independent Care Review, 2020, *The Pinky Promise* [viewed 13.07.21]. Available from:

<https://www.carereview.scot/wp-content/uploads/2020/02/Pinky-Promise.pdf>

³²³ The Promise, 2021, *The Plan 2021-2024*. Available from: <https://thepromise.scot/> and <https://thepromise.scot/plan-21-24/> [both viewed 13.07.21].

³²⁴ Including for the Children's Panel, Children and Families Social Work, Children's Hearings Scotland, the Scottish Children's Reporters' Administration and the Looked-After Children Pupil Equity Fund.

operational costs and the economic costs of failing to deliver high-quality alternative support that allows children to survive, thrive, and meet their full potential - have significant implications. A preventive, early intervention model, with intensive, multi-agency family support, can be more cost-effective than the current model.³²⁵

A fragmented approach to funding support services and a focus on individual care budgets, instead of individual support packages, can hinder effective, high-quality support. Where budget-holders adopt a flexible, collaborative approach, complex funding packages have been successful, ensuring children, particularly disabled children, can stay at home.

There have also been significant cuts to intensive family support in Scotland. Last year National Society for the Prevention of Cruelty to Children (NSPCC) and Barnardo's followed up research into Intensive Family Support they undertook in 2013. They found that of the 14 services they originally studied, six had closed completely. With one exception, the remaining services had reduced provision. In 2013, standstill funding had been the norm, but 2020 most remaining services reported significant cuts in local authority funding. In some cases, mainstream revenue funded services had been replaced by spot-purchase, for individual families, by local authorities. Some local authorities had taken service provision "in-house" – but with much reduced services.³²⁶ Services described a shift in culture as a result of increased marketisation of family support.

The Convention of Scottish Local Authorities COSLA, which represents local authorities in Scotland, said last year that local authority funding had reduced, in real terms, by 7%. Increased ring fencing meant that cuts were felt disproportionately in services where there was no ring fencing, including family support. The Special Rapporteur on Poverty and Human Rights highlighted concerns around local authority cuts in his 2018 report on his visit to the UK and recommended that the UK State Party "restore [the] local government funding needed to provide critical social protection and tackle poverty at the community level, and take varying needs of communities and differing tax bases into account in the ongoing Fair Funding Review."³²⁷

Children's Hearings

The Children's Hearings system is a child-centred, welfare-based system, which makes decisions for children who require compulsory measures of supervision, care, and protection, including those accused of having committed an offence.³²⁸ The legal framework is set out in the Children (Scotland) Act 1995³²⁹ and Children's Hearings (Scotland) Act 2011.³³⁰ There are commitments in Scotland to review the legislative underpinning of the Children's Hearing

³²⁵ Independent Care Review, 2020, *The Promise*.

³²⁶ Galloway, S., Barnardo's Scotland and NSPCC Scotland, September 2020, *Challenges from the Frontline – Revisited: Supporting Families with Multiple Adversities in Scotland during a Time of Austerity*.

³²⁷ UN Special Rapporteur on Extreme Poverty and Human Rights, 2018, *Visit to the United Kingdom of Great Britain and Northern Ireland*.

³²⁸ Children's Hearings Scotland, *The Children's Hearings System*, [viewed 13.07.21]. Available from: <https://www.chscotland.gov.uk/about-us/the-children-s-hearings-system/>

³²⁹ *Children (Scotland) Act 1995*.

³³⁰ *Children's Hearings (Scotland) Act 2011* [viewed 13.07.21]. Available from: <http://www.legislation.gov.uk/asp/2011/1>

System, to ensure it upholds the conclusions of the Independent Care Review, is compliant with the UNCRC, and facilitates child-friendly justice.³³¹ However, children and young people experience inconsistent access to support services within the context of Children's Hearings. For example, meaningful participation of children is currently inconsistent in hearings. Children continue to report that they are not always adequately supported to participate, particularly younger children and older children in conflict with the law.³³² In a positive step, enhanced access to advocacy support for children was commenced in late 2020.³³³

Furthermore, children's views on sibling contact have often not been recorded throughout proceedings.³³⁴ From July 2021, changes to the Rules of Procedure in Children's Hearings will give siblings a greater role in hearings.³³⁵ Children have regularly told the Commissioner about the pain of separation and frustration at systemic barriers, which can prevent them from even asking for contact. Contact arrangements can vary in type, frequency, and quality, and tend to become less frequent over time.

Care Leavers

In Scotland, care leavers face multiple challenges upon leaving care, are disproportionately affected by poverty, and more likely to be homeless than their peers. The Children and Young People (Scotland) Act 2014 introduced new care leavers' rights.

- **Continuing care:** the right to the same accommodation and support they received while in care until age 21.
- **End-of-care planning:** the right to have views considered, a full welfare assessment of continuing in their placement prior to leaving care, and a written decision.
- **Aftercare:** an assessment of care leavers' eligible needs, a plan for advice, guidance and assistance¹ to meet eligible needs, a written decision about eligible needs, and the right to appeal regarding the assessment.³³⁶

The Care Leaver Covenant - a commitment from public, private and voluntary sector organisations to support care leavers - aims to help them transition to independent living.³³⁷ It

³³¹ The Promise, 2021, *Change Programme One* [viewed 13.07.21]. Available from: <https://thepromise.scot/change-programme-one-pdf.pdf>

³³² Independent Care Review, 2020, *The Promise*.

³³³ *Children's Hearings (Scotland) Act 2011*.

³³⁴ Jones, C. and Henderson, G., February 2017, *Supporting Sibling Relationships of Children in Permanent Fostering and Adoptive Families*, School of Social Work and Social Policy Research Briefing, No. 1 [viewed 13.07.21]. Available from:

https://strathprints.strath.ac.uk/60547/1/Jones_Henderson_2017_Supporting_Sibling_Relationships_of_Children.pdf

³³⁵ *The Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Amendment Rules 2021* [viewed 13.07.21]. Available from:

<https://www.legislation.gov.uk/ssi/2021/68/contents/made>

³³⁶ *Children and Young People (Scotland) Act 2014*.

³³⁷ It allows public, private and voluntary sector organisations to pledge support, including apprenticeships, work experience, free or discounted goods and services. All support will help care leavers to transition to independence and includes CV training and accommodation for care leavers in higher education. Every care leaver has a personal adviser who can provide information on Care Leaver Covenant offers. *The Care Leaver Covenant* [viewed 12.07.21]. Available from: <https://www.scottishcareleaverscovenant.org/>

has significant support, which must be matched by concrete actions and inclusion in corporate parents' plans.

Despite the strong legal and policy framework, poor and inconsistent implementation of these obligations, particularly variations between local authorities, means that care leavers' rights are often not realised. Barriers include limited or no resources, local authorities' allocation policies, and a lack of knowledge and awareness of how to enforce care leavers' statutory rights, and relevant training, resulting in lower confidence among practitioners and social welfare services providers.

Care leavers have reported not knowing about their entitlements, rights, and how to challenge failure to have these respected and fulfilled, demonstrating a lack of information dissemination and support from social welfare services.³³⁸ The Commissioner has received reports that young people are moved on from continuing care before they are ready. Care-leavers are not a homogeneous group and support must be tailored around disability, sexual orientation and gender identity. Continuing care must be implemented correctly and fully in a manner consistent with children's best interests.

The SNP has committed to introduce a new Care Leaver Grant to support care-experienced young people aged 16-26 as they transition from the care system.³³⁹

Access to social services and care services in the context of the Covid-19 pandemic

The pandemic has exacerbated existing issues with the care system and created further challenges, including increased risk of infection within care settings and restricted family and professional contact rights. Concerns are particularly exacerbated for children in secure care, who were required to self-isolate if another child in the centre developed Covid-19 symptoms. This is a significant restriction for children who have already experienced distress.

With schools closed, and other services operating virtually, if at all, many children in vulnerable situations became less visible to those services designed to protect and support them. Child protection visits continued in-person where necessary, while virtual visits took place for others. Childline reported a 22% increase in counselling sessions about child abuse, and a 53% increase from people with concerns about children experiencing physical abuse comparing April–July 2020 with January–March 2020.³⁴⁰ Referral rates for child protection and support from social services decreased at the start of the pandemic, due to a lack of contact from universal services, extended family, or the local community, who may identify issues. However, calls to helplines from families seeking support increased.³⁴¹

³³⁸ See our Rights to Care guide, developed with Who Cares? Scotland. CYPCS and Who Cares? Scotland, May 2017, *Rights to Care Booklet* [viewed 12.07.21]. Available from: <https://static1.squarespace.com/static/55c07acee4b096e07eeda6e8/t/5922fe11be65940d4a249aea/1495465493414/Rights-To-Care-Booklet-FINAL-pdf1.pdf>

³³⁹ SNP, 2021, *SNP Manifesto 2021: Scotland's Future*, p. 28.

³⁴⁰ NSPCC, 2020, *The Impact of the Coronavirus Pandemic on Child Welfare: Physical Abuse* [viewed 09.12.20]. Available from: <https://learning.nspcc.org.uk/media/2292/impact-of-coronavirus-pandemic-on-child-welfare-physical-abuse.pdf>

³⁴¹ Scottish Government, Children and Families Directorate, May 2020, *Vulnerable children report: 15 May 2020* [viewed 12.07.21]. Available from: <https://www.gov.scot/publications/vulnerable-children-report-15-2020-scottish-government-solace/pages/what-the-data-tells-us/>

Assessments and placement have been affected by the pandemic. The UK Coronavirus Act 2020 provided a power to suspend legal duties on local authorities to assess the needs of disabled children, care-experienced children, and young carers.³⁴² These assessments provide an essential rights protection, and this change has affected the appropriate delivery and prioritisation of cases.

Recommendations

- **Adopt a child rights-based approach to care. This includes strengthening family support and community-based services and child protection and social support systems, and allocating the necessary financial and human resources, especially for early intervention services for families in vulnerable situations. This also includes ensuring full implementation of care leavers' rights through sufficient funding and resources, awareness-raising, and training.**
- **Implement all of the Independent Care Review's recommendations.**
- **Where children are in residential care, ensure they are placed in specialist residential provision suited to their needs, near their home where appropriate and in their best interests, with the necessary legal safeguards.**
- **Ensure proper and regular inspections by the Care Inspectorate of all placements, including 'unregulated placements.'**
- **Ensure that young people are supported, listened to, and engaged in all decisions about their family environment and care and at all stages of the care process, including the transition to leaving care.**
- **Ensure that children can access age-appropriate information concerning family services, alternative care, and human rights.**
- **Ensure thorough recording and monitoring of children's rights throughout the care process to determine whether approaches are effective and in line with human rights obligations. Concerning all decisions regarding secure care: record and consider children's views, explain decisions to children, and send them written confirmation.**

Disabled children's access to social welfare services

Disabled children are disproportionately affected by inadequate resourcing, particularly because of austerity measures and the Covid-19 pandemic. Overall, disabled children do not always have the additional support required by law or equal access to services. Furthermore, they often do not know how to access the necessary services or they are not always consistent, and this can significantly impact them and their daily lives. As one child explained,

"Going to the GP can be difficult though, as sometimes the interpreter doesn't show up, which means that the appointment needs to be rescheduled. Obviously this is not okay as it can have an impact on my health."³⁴³

In Scotland, there is inadequate support for disabled children, particularly in mainstream education.³⁴⁴ Children with Attention Deficit Hyperactivity Disorder, Autism Spectrum Disorder

³⁴² *Coronavirus Act 2020.*

³⁴³ Deaf young person, Scotland. Report from Children and Young People supported by the Children's Commissioners of the United Kingdom of Great Britain, November 2020, *Are We There Yet?*, p. 32.

³⁴⁴ Advice calls and information from other advice providers, including Enquire.

and other neurodiverse conditions are disproportionately affected. Despite increasing numbers of children being identified with ASN, the number of children with Co-ordinated Support Plans (CSP) continues to fall. Social care support for disabled children, including respite care, continues to be difficult to access.³⁴⁵

Disabled children have been disproportionately affected by the Covid-19 pandemic. Some disabled children have been expected to shield at home,³⁴⁶ limiting their enjoyment of multiple rights and severely affecting their development and well-being. In the absence of an approved vaccine for children, including those who may be considered clinically vulnerable,³⁴⁷ this continues to limit their ability to enjoy their human rights and may pose a long-term challenge to their development and well-being. It is important to consider the risk of no vaccination to children who are clinically vulnerable as pandemic-related measures continue to be relaxed.

Disabled children have also had a significantly worse experience of lockdown, due to business or service closures, requiring additional support with digital learning, delayed assessments of need and lack of equal access to educational, professional or specialist services. Disabled children also experienced significant reductions in access to and lack of equal access to education, health care, social care, professional, or specialist services.³⁴⁸ While schools and early years centres and services were closed, individualised teaching and therapeutic support were not provided. Concerns include returning to school because of Covid-19, lack of support, or exclusions if their needs are not met. During the first lockdown, 76% of families no longer received social services' support, e.g., respite care.³⁴⁹ Some councils offered direct payments instead, but families could not find services to provide support. Return to school has not been experienced equally by all children and some disabled children have not returned due to Covid-19 risk exposure, lack of support, or exclusions if their needs are not met.

Recommendations

- **Adopt a human rights-based approach to disability and set up a comprehensive strategy for the inclusion of disabled children.**
- **Ensure that disabled children receive the necessary support and can access all services on an equal basis with their peers, particularly in the education and health sectors, including during public health, environmental, social, and economic crises.**

³⁴⁵ Scottish Government, 2019, *Additional Support for Learning Review* [viewed 08.12.20]. Available from: <https://www.gov.scot/groups/additional-support-for-learning-review/>

³⁴⁶ Scottish Government, February 2021, *Coronavirus (COVID-19): shielding advice and support* [viewed 12.07.21]. Available from: <https://www.gov.scot/publications/covid-shielding/>

³⁴⁷ At time of writing, the UK Joint Committee on Vaccination and Immunisation are yet to announce their recommendation on whether 12-15-year-olds should be offered vaccination at this time.

³⁴⁸ Education Committee, 2020, *Oral Evidence: The Impact of Covid-19 on Education and Children's Services*. Available from: <https://committees.parliament.uk/oralevidence/627/pdf/>; CCE, 2020, *Supporting Children with Special Educational Needs and Disabilities to Return to School*. Available from: <https://www.childrenscommissioner.gov.uk/2020/08/31/supporting-children-with-special-educational-needs-and-disabilities-to-return-to-school/> [both viewed 09.12.20].

³⁴⁹ Disabled Children's Partnership, 2020, *#LeftInLockdown - Parent Carers' Experiences of Lockdown* [viewed 09.12.20]. Available from: <https://disabledchildrenspartnership.org.uk/wp-content/uploads/2020/06/LeftInLockdown-Parent-carers%E2%80%99-experiences-of-lockdown-June-2020.pdf>

- **Ensure that the needs of disabled children are prioritised in all legislative, policy and practices, including the return to school.**

Homelessness and housing support

Certain groups of children are more likely to be living in unsuitable housing or being homeless, including care-experienced young people. 11,804 children were in households assessed as homeless in 2020/21, a decrease of 26% (from 16,050) the previous year.³⁵⁰

In Scotland, waiting lists for public and social housing remain high.³⁵¹ 130,000 households are on local authority housing waiting lists across Scotland.³⁵² Shelter Scotland (29 September 2020) estimate that 70,000 children in Scotland are on social housing waiting lists.³⁵³ There is a shortage of accessible family housing for disabled children and their families, with many families in insecure tenancies or inappropriate housing.³⁵⁴ New social housing building needs to at least double to meet demand.³⁵⁵ Children living in private lets are more likely to experience poverty and be affected by the Benefit Cap due to significantly higher rents in this sector.

The Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2014 provides that certain types of 'unsuitable accommodation' such as Bed and Breakfasts cannot be used for temporary accommodation for families containing children and households with pregnant women for more than seven days unless in exceptional circumstances.³⁵⁶ As at 31 March 2021, 7,130 children were in temporary accommodation, a decrease of 2% from 7,280 the previous year. Temporary accommodation includes social sector accommodation, hostels, bed and breakfasts, and other similar types of accommodation. The Scottish Government claim low levels of use of hostels and bed and breakfast accommodation for households with children. As at 31 March 2020, 15 children were in local authority hostels and 30 children were in bed and breakfast accommodation. There is no published data on number of days children spend in temporary accommodation by 'type'. Households with children spend longer, on average, in temporary accommodation. For 2020-21 figures show, on average, households with children spend 290 days in temporary accommodation, against 194 for those without

³⁵⁰ Scottish Government, June 2021, *Homelessness in Scotland: 2020 to 2021* [viewed 12.07.21]. Available from: <https://www.gov.scot/publications/homelessness-scotland-2020-2021/>

³⁵¹ Scottish Government, 2018, *Housing Statistics 2018: Key Trends Summary* [viewed 08.12.20]. Available from: <https://www.gov.scot/publications/housing-statistics-scotland-2018-key-trends-summary/pages/13/>

³⁵² Scottish Government, September 2020, *Scottish Household Survey 2019, Excel Tables, Chapter 3 Housing, Table 3.18* [viewed 12.07.21]. Available from: <https://www.gov.scot/publications/scottish-household-survey-2019-annual-report/>

³⁵³ Shelter Scotland, September 2020, *70,000 children in Scotland are on social housing waiting lists* [viewed 12.07.21]. Available from: https://scotland.shelter.org.uk/media/press_releases/70000_children_in_scotland_are_on_social_housing_waiting_lists

³⁵⁴ Equality and Human Rights Commission, 2018, *Housing and Disabled People: Scotland's Hidden Crisis* [viewed 08.12.20]. Available from: <https://www.equalityhumanrights.com/sites/default/files/housing-and-disabled-people-scotland-hidden-crisis-long-summary.pdf>

³⁵⁵ Joseph Rowntree Foundation, 2020, *Poverty in Scotland 2020* [viewed 08.12.20]. Available from: <https://www.jrf.org.uk/report/poverty-scotland-2020>

³⁵⁶ *Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2014* [viewed 12.07.21]. Available from : <https://www.legislation.gov.uk/ssi/2014/243/made>

children. Homeless households are more likely to be single adult or single parent compared to the overall population.³⁵⁷

The SNP committed in this parliamentary term of invest an additional £50 million to end homelessness and rough sleeping.³⁵⁸

Recommendations

- **Take necessary measures to reduce homelessness and to guarantee all children stable access to adequate housing that provides physical safety, adequate space, protection against the threats to health and structural hazards, including cold, damp, heat and pollution, and accessibility.**
- **Adopt measures to protect, support and find accessible, affordable, and suitable accommodation for those children and families who are particularly vulnerable to homelessness or living in unsuitable accommodation, including those living in poverty.**
- **Ensure that no child is in 'unsuitable accommodation' for more than seven days in line with Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2014.**
- **Ensure that no 16- or 17-year-old is in unsupported temporary accommodation, and that multi-agency reviews are undertaken whenever a care-experienced young person presents to a local authority as homeless or at risk of homelessness.**

Child-centred support for children affected by sexual abuse

In Scotland, implementation of the Barnahus model³⁵⁹ continues with a pilot under development. It must be available to all children affected by sexual abuse up to 18. 16- and 17-year-olds must not be treated as adults and ineligible for this support.

Recommendations

- **Introduce the Barnahus, or a similar child-centred model for children affected by sexual abuse, including necessary financial and human resources.**
- **Ensure that this model is available to all children affected by sexual abuse up to 18. 16- and 17-year-olds must not be treated as adults and ineligible for this support.**

Conclusion

The Commissioner remains available to assist the Committee with any requests for further information arising from this report.

³⁵⁷ Scottish Government, June 2021, *Homelessness in Scotland: 2020 to 2021*.

³⁵⁸ SNP, 2021, *SNP Manifesto 2021: Scotland's Future*, p. 28.

³⁵⁹ The Barnahus model supports implementation of the Convention for the Protection of Children against Sexual Exploitation and Sexual Abuse, which the UK ratified in 2018.