

# Report of the Children's Commissioners of Northern Ireland, Scotland and Wales 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

**November 2022**



## Contents

I.	New developments .....	3
1.	COVID-19 .....	3
2.	Withdrawal from the European Union (EU) .....	3
II.	Rights under the Convention and the Optional Protocols thereto.....	5
A.	General measures of implementation (arts. 4, 42 and 44 (6)).....	5
3.	Legislation.....	5
4.	Allocation of resources .....	11
5.	Data collection .....	12
6.	Dissemination and awareness raising .....	14
B.	Definition of a child (art. 1).....	15
C.	General principles (arts. 2, 3, 6 and 12).....	15
7.	Non-discrimination .....	15
8.	Best interests of the child .....	18
9.	Right to life, survival and development .....	19
10.	Respect for the views of the child .....	20
D.	Civil rights and freedoms (arts 7-8 and 13-17).....	24
E.	Violence against children (arts. 19, 24(3), 28(2), 34, 37(a) and 39) .....	27
11.	Torture and other cruel, inhuman or degrading treatment or punishment .....	27
12.	Corporal punishment .....	28
13.	Domestic violence and gender-based violence .....	29
14.	Child Sexual Abuse (CSA) .....	30
15.	Safeguarding in education.....	32
F.	Family environment and alternative care (arts 5, 9-11, 18(1)-(2), 20-21, 25, 27(4) .....	33
16.	Lack of early intervention, childcare and effective family support services .....	33
17.	Children deprived of a family environment .....	35
G.	Basic health and welfare (arts. 6, 18 (3), 24, 26, 27 (1)– (3) and 33) .....	37
18.	Health and health services .....	37
19.	Mental health .....	39
20.	Standard of living .....	43
21.	Impact of climate change on the rights of the child .....	52
H.	Education, leisure and cultural activities (arts. 28–31) .....	53
22.	Education .....	53
23.	Right to play and recreational activities .....	62
I.	Special protection measures (arts. 22, 30, 32–33, 35–36, 37 (b)–(d) and 38–40) .....	64
24.	Asylum-seeking, refugee and migrant children .....	64
25.	Administration of child justice .....	68
J.	Optional Protocol on the sale of children, child prostitution and child pornography .....	73
K.	Optional Protocol on the involvement of children in armed conflict.....	75
26.	Armed Forces and non-State armed groups .....	75

## Introduction

This joint report from the Office of the Northern Ireland Commissioner for Children & Young People (NICCY), Children and Young People's Commissioner Scotland (CYPCS), and Children's Commissioner for Wales (CCfW). It sets out the views and work undertaken by the Commissioners as part of the UN Committee on the Rights of the Child's examination of the UK's combined Sixth and Seventh Periodic report under the UN Convention on the Rights of the Child (UNCRC).

The Commissioners are Independent Children's Rights Institutions. Their statutory functions differ but all centre upon the promotion and protection of children's rights, with particular attention to the UNCRC and informed by children's views and experiences. The devolved settlements of the three jurisdictions differ<sup>1</sup>. Within this report, the Commissioners comment only on matters affecting children within their respective jurisdictions of Northern Ireland, Scotland and Wales<sup>2</sup>. In accordance with the legislation which established the Children's Commissioner for Wales, the Commissioner has made representations to Welsh Ministers on these issues.

The Northern Irish Government was suspended from January 2017 until January 2020. The lack of Executive caused delays to legislative and policy reform in critical areas, including those affecting children. The 2020 *New Decade, New Approach* agreement ensured the restoration of devolved institutions and contains important legislative and policy commitments concerning children.<sup>3</sup> Following an election in May 2022, concerns about the impact of Brexit have resulted in another period without an Executive. While Ministers were permitted to remain in post for six months to allow some functions of government to continue, this period ran out on 28 October 2022, and at the time of writing there are neither Ministers nor an Executive in place. This is preventing political decision-making, legislative development and budget allocation, and is severely hampering the effective delivery of services and supports for children and their families<sup>4</sup>.

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<sup>1</sup> House of Commons Library, 2022. *Introduction to devolution in the United Kingdom*.  
<https://commonslibrary.parliament.uk/research-briefings/cbp-8599/>

<sup>2</sup> There are 440,000 children in Northern Ireland, 1 million in Scotland and 630,000 in Wales.

<sup>3</sup> Northern Ireland Office, 2020. *New Decade, New Approach*.  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/856998/2020-01-08\\_a\\_new\\_decade\\_a\\_new\\_approach.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/856998/2020-01-08_a_new_decade_a_new_approach.pdf)

<sup>4</sup> Currently the UK Government is proceeding with a Northern Ireland Troubles (Legacy and Reconciliation) Bill which includes provisions that set the bar for immunity from prosecution so low that it effectively grants an amnesty for conflict related killings and is unlikely to provide relatives of those who were killed with meaningful information. A Parliamentary Committee, the Joint Committee on Human Rights, has stated it is concerned that the Bill is not compatible with the right to life guaranteed by Article 2 of the ECHR, and has asked the Government to reconsider its approach.

# I. New developments

## 1. COVID-19

The impacts of the COVID-19 pandemic will be long lasting for all children. It has become clear that they will disproportionately impact those children whose rights were already most at risk, including care experienced children, ethnic minority children, disabled children and children who rely on public services. The pandemic is now just one of a range of factors influencing the realisation of children's rights, therefore we have included the impact of the pandemic throughout other sections.

## 2. Withdrawal from the European Union (EU)

The impact of Brexit poses significant challenges to the rights of children across the UK, particularly in **Northern Ireland**.

As the only UK jurisdiction sharing a land border with the European Union, and with a history of violent conflict related to this border, Brexit has proved highly divisive in Northern Ireland. The Northern Ireland Protocol agreed by the UK and EU focussed on minimising a possible "hard border" between Northern Ireland and the Republic of Ireland. The human rights impact of a hard border between Northern Ireland and the Republic of Ireland would have been significant for children's rights to health, education, family, security, play and leisure, and free participation in cultural life and the arts.

The Protocol has resulted in Northern Ireland remaining in the EU Customs Union and has created, effectively, a border in the Irish Sea. While this has avoided many of the potential problems relating to a 'hard border' on the island, the zero-sum nature of politics in Northern Ireland has resulted in a sense within Unionist communities of separation from the rest of the UK, and an undermining of their political identity. Concerns about Brexit's implications for the Good Friday Agreement,<sup>5</sup> peace and stability remain and are the subject of ongoing negotiations on the Northern Ireland Protocol. At the same time the UK Government is progressing a bill at Westminster, aiming to unilaterally override parts of the protocol.

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<sup>5</sup> The Good Friday Agreement, part of the Northern Ireland peace process, was signed on 10 April 1998, ending conflict in Northern Ireland, and establishing its devolved system of government. It also established institutions between Northern Ireland and the Republic of Ireland and between the Republic of Ireland and the UK.

As the Northern Ireland Protocol is currently being renegotiated, the full impact on children's rights is yet to be seen.<sup>6</sup>

Brexit has also resulted in all three jurisdictions losing access to EU funding, which contributed to infrastructure projects and community initiatives. Over the period since leaving the EU up to 2024-25, it is estimated that Wales will have a £772 million shortfall in funds compared to if the UK had remained a member state of the European Union.<sup>7</sup> In Scotland, the loss in 2022-23 alone is estimated to be £151 million.<sup>8</sup>

EU-national children must apply to the EU Settlement Scheme to continue living in the UK. In most cases, this was done by parents before the deadline of 30 June 2021 but being a child at the time is considered a 'reasonable ground' for failing to do so. In the case of EU-national children who are in care, the local authority should support them to apply for settled status (and pre-settled status where needed).<sup>9</sup>

## Recommendations

- Changes to the Northern Ireland Protocol should comply with international law and children's rights obligations and make children's best interests a primary consideration in the decision-making.
- Children in care should be supported to apply for settled status.

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<sup>6</sup> Northern Ireland Human Rights Commission and Equality Commission for Northern Ireland, 2022. *Annual Report of the NIHRC and the ECNI on the implementation of Protocol Article 2, 2021 – 2022*. <https://www.equalityni.org/ECNI/media/ECNI/Publications/Delivering%20Equality/DMU/Annual-Report-Implementation-ProtocolArt2.pdf?ext=.pdf>

<sup>7</sup> Welsh Government, 2022. *Written Statement: Loss of Funding to Wales as a result of the UK Government's arrangements for replacement EU funding*. <https://gov.wales/written-statement-loss-funding-wales-result-uk-governments-arrangements-replacement-eu-funding>

<sup>8</sup> Scottish Government, 2022. *EU replacement funding £151 million less in first year*. <https://www.gov.scot/news/eu-replacement-funding-gbp-151-million-less-in-first-year>

<sup>9</sup> UK Government, undated. *Stay in the UK ('settled status'): step by step*. <https://www.gov.uk/eusettledstatus>

## II. Rights under the Convention and the Optional Protocols thereto

### A. General measures of implementation (arts. 4, 42 and 44 (6))

#### 3. Legislation

##### UNCRC Incorporation

The UK Government has not indicated an intention to incorporate the UNCRC into domestic law. Incorporation is an important step to ensure that children can hold governments and public bodies to account when their rights are breached. Whilst devolved administrations can incorporate international human rights treaties in relation to devolved matters, legislation from the UK Government is required to ensure that the UNCRC is incorporated in full, including areas reserved to the UK Government.

In March 2021, the **Scottish Parliament** unanimously passed the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill.<sup>10</sup> However, that bill is not yet law. Following a referral by the UK Government, the Supreme Court ruled that 4 sections were outwith the competence of the Scottish Parliament.<sup>11</sup> The bill therefore requires reconsideration by the Scottish Parliament. More than a year after the Supreme Court judgment, the Scottish Government is yet to bring forward the required amendments.

The **Scottish** Government has also committed to incorporate the International Covenant of Economic and Social Rights, the Convention on the Elimination of Discrimination Against Women, the Convention on the Elimination of all forms of Racial Discrimination and the Convention on the Rights of People with Disabilities into domestic law.

In **Wales**, ministers have a due regard duty to the UNCRC under the Rights of Children and Young Persons (Wales) Measure 2011<sup>12</sup> but there is no due regard duty on public bodies. Due regard falls short of full incorporation as it does not give

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<sup>10</sup> United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill.  
<https://www.parliament.scot/bills-and-laws/bills/united-nations-convention-on-the-rights-of-the-child-incorporation-scotland-bill>

<sup>11</sup> These related to protections against actions of the UK Government and UK public bodies in Scotland, which was found exceed the powers of the Scottish Parliament.

<sup>12</sup> *Rights of Children and Young Persons (Wales) Measure 2011*.  
<https://www.legislation.gov.uk/mwa/2011/2/contents>

the Convention superior status over policy.<sup>13</sup> CCfW has called on the Welsh Government to ensure full incorporation of the UNCRC into Welsh law. The Welsh Government have set out their commitment to the principles of full incorporation and say they will explore options for this as part of their Strengthening and Advancing Equality and Human Rights research,<sup>14</sup> but this is not a firm commitment and much more work is needed before this is a reality for children in Wales.

In **Northern Ireland**, there is no legal requirement on government ministers to have due regard to the UNCRC, and no notable movement has been made to introduce the UNCRC into domestic law. The *New Decade, New Approach* agreement established a Northern Ireland Assembly Ad-Hoc Committee to develop proposals concerning the creation of a Bill of Rights.<sup>15</sup> NICCY advised that full incorporation of the UNCRC should be included in this Bill of Rights. However, the Committee published its report in February 2022 stating that it had been unable to reach agreement.

Despite earlier recommendations from the Committee,<sup>16</sup> and during the UK's recent Universal Periodic review,<sup>17</sup> the UK Government has yet to ratify the third Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

## Recommendations

- The UNCRC should be incorporated into domestic legislation, taking a maximalist approach in terms of application and justiciability.

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<sup>13</sup> Hoffman, S. and O'Neill, S., 2018. *The Impact of Legal Integration of the UN Convention on the Rights of the Child in Wales*.

[https://www.equalityhumanrights.com/sites/default/files/the\\_impact\\_of\\_legal\\_integration\\_of\\_the\\_un\\_c\\_onvention\\_on\\_the\\_rights\\_of\\_the\\_child\\_in\\_wales\\_eng.pdf](https://www.equalityhumanrights.com/sites/default/files/the_impact_of_legal_integration_of_the_un_c_onvention_on_the_rights_of_the_child_in_wales_eng.pdf)

<sup>14</sup> Welsh Minister for Social Justice, 2022. *Letter to the Chair of the Children, Young People and Education Welsh Parliament Committee*. <https://business.senedd.wales/documents/s126976>

<sup>15</sup> Northern Ireland Office, 2020. *New Decade, New Approach*, p. 28. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/856998/2020-01-08\\_a\\_new\\_decade\\_a\\_new\\_approach.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/856998/2020-01-08_a_new_decade_a_new_approach.pdf)

<sup>16</sup> UN Committee on the Rights of the Child, 2016. *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland*, para. 88. [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2fCO%2f5&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2fCO%2f5&Lang=en)

<sup>17</sup> United Nations General Assembly, 2022. Draft report of the Working Group on the Universal Periodic Review – United Kingdom of Great Britain and Northern Ireland. <https://uprmeetings.ohchr.org/Sessions/41/UnitedKingdomofGreatBritainandNorthernIreland/Pages/default.aspx>

- In the case of Northern Ireland through a Northern Ireland Bill of Rights.
- The Welsh Government should urgently progress their exploration of full incorporation and provide a clear timetable for this.
- The Scottish Government should urgently bring forward the amendments necessary to allow the enactment of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill.
- The UK Government should ratify the Third Optional Protocol on a Communications Procedure.

### **Child Rights Impact Assessment (CRIA) and Child Rights Impact Evaluation (CRIE)**

CRIAs are essential when developing policies and legislation which affect children. There is evidence that CRIAs are often undertaken retrospectively and in many cases their impact is unclear. This was particularly the case during the pandemic when even basic CRIAs were lacking, despite grave interferences with children’s human rights. Children should participate in all aspects of decision making, including the production and review of CRIAs.

CRIAs should be routinely undertaken and published contemporaneously with all legislative and policy decisions affecting children. They should be available before proposals go out for public consultation, including consultation with children, and reviewed to take account of responses to that consultation. Governments should refer to the European Network of Ombudspersons for Children’s (ENOC) statement on CRIAs and common framework for their use.<sup>18</sup>

In **Wales**, the Welsh Government must, under the Rights of Children and Young Persons (Wales) Measure 2011, complete CRIAs on legislative changes and policy decisions under a published Children’s Rights Scheme<sup>19</sup> and state how they will

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<sup>18</sup> European Network of Ombudspersons for Children (ENOC), 2020. *Position Statement on “Child Rights Impact Assessment” (CRIA)*. <http://enoc.eu/wp-content/uploads/2020/11/ENOC-2020-Position-Statement-on-CRIA-FV-1.pdf> ; ENOC, 2020. *Common Framework of Reference on Child Rights Impact Assessments, A Guide on How to Carry Out CRIA*. <http://enoc.eu/wp-content/uploads/2020/12/ENOC-Common-Framework-of-Reference-FV.pdf>

<sup>19</sup> Rights of Children and Young Persons (Wales) Measure 2011. <https://www.legislation.gov.uk/mwa/2011/2/contents>



achieve their duties. They have also committed to publishing all CRIAs online.<sup>20</sup> During the initial lockdown period in 2020 especially, CRIAs were not published on fast-moving policy decision making. One CRIA from this period was not published until June 2022.

The Welsh Government's Children's Rights Scheme was revised in 2021<sup>21</sup> and includes additional resources and guidance for Welsh Government officials on the use of CRIAs. This is welcome. Other measures in the Scheme include a UNCRC awareness raising strategy, and a complaints mechanism for children.

In **Northern Ireland**, whilst there is no legislative requirement to complete CRIAs, there are examples of government departments attempting to apply the CRIA process during the development of policies and legislation affecting children. Government officials would benefit from training to better understand the process and NICCY has produced online training through the Northern Ireland Civil Service LInKS training platform.

In **Scotland**, CYPCS was concerned about the lack of timely production of CRIAs during the pandemic, which led to their commissioning an Independent CRIA which highlighted the impacts of the pandemic on children.<sup>22</sup> Although the Scottish Government now publishes details of CRIAs produced on a quarterly basis, CYPCS are concerned they are seldom prepared or published early enough when policy and legislation are developed.<sup>23</sup>

In **Northern Ireland**, the Children's Services Cooperation Act (Northern Ireland) 2015 (CSCA) requires all statutory departments and agencies to cooperate with each other and other organisations to improve children's well-being on eight measures in accordance with the UNCRC.<sup>24</sup> While the Act required the publication of a Children's Strategy by 2016, delays in its development and then the absence of an Executive for three years, meant the Strategy was not published until 2020. An extensive Delivery Plan was released for consultation in 2021, but the first statutory

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<sup>20</sup> Welsh Government, 2020. Written Response by the Welsh Government to the Report of the Children, Young People and Education Committee entitled Children's Rights in Wales. <https://business.senedd.wales/documents/s105741/Welsh%20Government%20response%20-%2023%20September%202020.pdf>

<sup>21</sup> Welsh Government, 2021. *Children's Rights Scheme 2021*. <https://gov.wales/sites/default/files/publications/2021-12/children%27s-rights-scheme-2021.pdf>

<sup>22</sup> CYPCS, 2020. *Independent Children's Rights Impact Assessment*. <https://www.cypcs.org.uk/coronavirus/independent-impact-assessment/>

<sup>23</sup> Scottish Government, 2022. *Child rights and wellbeing impact assessments: list*. <https://www.gov.scot/publications/child-rights-and-wellbeing-impact-assessments-list/>

<sup>24</sup> Children's Services Co-operation Act (Northern Ireland) 2015. <https://www.legislation.gov.uk/nia/2015/10/contents>

report on the Strategy has not been published due to the current period without a Northern Ireland Executive.

## Recommendations

- CRIAs should be promoted across all levels of government, with training provided to ensure civil servants know and understand how to apply a child rights approach routinely in the policy-making process.
- Children should have meaningful opportunities to participate in decision making, with their views reflected in CRIAs.
- Robust processes should be in place to align new and amended legislation, policies and practice with the UNCRC.
- The Children's Services Co-operation Act 2015 in Northern Ireland must be effectively implemented with regular reporting on co-operation between bodies and outcomes for children.

## Human Rights Act

In their joint response to the UK Government's consultation on Human Rights Reform,<sup>25</sup> the Commissioners stated the proposals significantly weaken the protection of children's rights in the UK. Children in the UK need the protection of both the Human Rights Act 1998, which incorporates the European Convention on Human Rights (ECHR) into UK law, and incorporation of the UNCRC. The ECHR has been critical to advancing children's rights in the UK, increasing knowledge, understanding and respect for human rights. Since incorporation, children whose rights have been violated have been able to obtain remedy in national courts, rather than having to resort to application to the European Court of Human Rights. The ECHR forms a central part of all three devolution settlements. A significant number of states made recommendations regarding the potential weakening of the human rights protections offered by the Human Rights Act during the UK's recent Universal Periodic Review.<sup>26</sup>

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<sup>25</sup> CYPICS, NICCY and CCfW, 2022. *Consultation Response: Human Rights Act Reform*.

<https://www.cypics.org.uk/resources/human-rights-act-consultation-response/>

<sup>26</sup> United Nations General Assembly, 2022. Draft report of the Working Group on the Universal Periodic Review – United Kingdom of Great Britain and Northern Ireland.

<https://uprmeetings.ohchr.org/Sessions/41/UnitedKingdomofGreatBritainandNorthernIreland/Pages/default.aspx>

## Recommendations

- The Human Rights Act 1998 should not be repealed, the Bill of Rights Bill should be abandoned and existing human rights protections upheld.
- If the Bill of Rights Bill weakens existing human rights protections, devolved governments should legislate to preserve these to the maximum extent possible.

## Independence of Children’s Commissioners

In **Northern Ireland**, NICCY was established by legislation as an independent human rights institution for children. The legislation requires that it be periodically reviewed by the Commissioner and report to government.<sup>27</sup> Two independent reviews of the Commissioner’s legislation have identified critical constraints that restrict the Commissioner’s ability to fully exercise their legal powers.

Recommendations for changes to NICCY’s legislation were put to the Executive in 2008, and subsequently again in 2013, 2015 and 2019, however no response has yet been made to any of these recommendations.

In **Wales**, the CCfW is funded by the Welsh Government, not the Welsh Parliament, even though part of their role is to hold their government accountable. The Welsh Parliament has recommended the Commissioner be funded by Parliament to be compliant with Paris Principles.<sup>28</sup> This was rejected in correspondence with CCfW in May 2022, with the Minister for Social Justice stating that the Welsh Government will not explore a transfer of responsibility to the Welsh Parliament.<sup>29</sup>

In **Scotland**, the Commissioner is appointed by the sovereign, on the recommendation of the Scottish Parliament and is funded by the Scottish Parliament. The United Nations Convention on the Rights of the Child (Incorporation) Bill will, when passed, strengthen the strategic litigation powers of CYPCS.<sup>30</sup>

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<sup>27</sup> NICCY, 2015. Report to the First and Deputy First Ministers Under Article 24 of the Commissioner for Children and Young People (Northern Ireland) Order (2003). [www.niccy.org/media/3307/niccy-article-24-report-april-2015.docx](http://www.niccy.org/media/3307/niccy-article-24-report-april-2015.docx)

<sup>28</sup> Welsh Parliament, 2020. *Children’s Rights in Wales: Report of the Children, Young People and Education Committee*. <https://senedd.wales/laid%20documents/cr-ld13405-r/cr-ld13405-r-e.pdf>

<sup>29</sup> Welsh Minister for Social Justice, 26 May 2022. *Letter to the Chair of the Children, Young People and Education Welsh Parliament Committee*. <https://business.senedd.wales/documents/s126976/>  
<https://business.senedd.wales/documents/s126976/>

<sup>30</sup> The law establishing the Commissioner provides express legal protection against interference or direction from Government or Parliament, as well as protections against removal from office and other Paris Principles compliant measures to protect independence.

## Recommendations

- All Children’s Commissioners should have the statutory powers and resources to promote and safeguard all the rights of all children within their jurisdiction.
- NICCY’s founding legislation should be amended as per the recommendations from the Article 24 reviews, to remove obstacles preventing the Commissioner from carrying out their legislative functions in the full.<sup>31</sup>
- The Welsh Government should take steps to ensure and protect the independence of CCfW. CCfW continues to believe this would best be achieved by a transfer of responsibility to the Welsh Parliament.

## 4. Allocation of resources

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 multiple budgets are involved, assess the effectiveness of resource allocation, hold bodies accountable, or evaluate the impacts on children’s services.

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. Child Rights Impact Evaluations (CRIEs) should be used to determine the effectiveness of policies, allowing governments and other public bodies to demonstrate they are allocating funding for children’s services to the maximum extent of available resources.

Spending decisions made by the UK Government have an impact on funding for devolved administrations and, as a result, their ability to fund services for children. The devolved administrations have limited (in the case of Scotland and Wales) or no (Northern Ireland) tax raising powers. Uncertainty around UK Government spending during the course of 2022 has had a negative impact on devolved administrations’ ability to provide clarity or certainty on funding for public services in their jurisdictions. The UK Government budget statement, announced on 17<sup>th</sup> November 2022, committed to uprating benefits in line with inflation (see section 20) and has to some extent addressed previous real-terms cuts in funding to devolved administrations.

In **Scotland**, the Scottish Government’s Equality and Fairer Scotland Budget Statement 2022-23 incorporates elements of a CRIA, however it is less clear that

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<sup>31</sup> NICCY, 2015. Report to the First and Deputy First Ministers Under Article 24 of the Commissioner for Children and Young People (Northern Ireland) Order (2003). [www.niccy.org/media/3307/niccy-article-24-report-april-2015.docx](http://www.niccy.org/media/3307/niccy-article-24-report-april-2015.docx)

budget decisions by public authorities are informed by consideration of children's human rights.<sup>32</sup> Budget cuts in local authorities – including closure of libraries and recreation facilities – negatively affect children's rights and contracting out public services, including in schools, results in limited accountability and transparency.<sup>33</sup>

In **Northern Ireland**, CRIAs are not carried out on budgets and no analysis is provided on expenditure on children. While the Children's Services Cooperation Act 2015 provided a mechanism for children's authorities to 'pool' budgets to support cooperation, this has not yet been utilised.

In **Wales**, while recent Welsh Government budgets have included narrative on how funding decisions are related to children through Integrated Impact Assessments, they fall short of an analysis of the impact on children's rights under the UNCRC which a full CRIA could bring.

## Recommendations

- A child-rights approach, using participatory budgeting and comprehensive CRIAs, should inform budgetary decision making. There should be consistent mechanisms to transparently and regularly measure the allocation and effective use of resources for children's rights in budgets, including the use of CRIEs.
- All governments should ensure that children's services are adequately funded, particularly for children and families in vulnerable situations.
- Departments and agencies in Northern Ireland should use the CSCA provisions for the pooling of budgets to join up delivery for children.

## 5. Data collection

**All jurisdictions** experience inconsistent collection and dissemination of data. The COVID-19 pandemic resulted in interruption to the collection, analysis and publication of data in some areas. There continues to be a need for published data which enables disaggregation and independent analysis, to better understand the lives of children across the UK.

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<sup>32</sup> Scottish Government, 2021. *Equality and Fairer Scotland Budget Statement 2022-23*. <https://www.gov.scot/publications/equality-fairer-scotland-budget-statement-2022-23/documents/>

<sup>33</sup> Audit Scotland, 2022. *Local government in Scotland: Overview 2022*. [https://www.audit-scotland.gov.uk/uploads/docs/report/2022/nr\\_220525\\_local\\_government\\_overview.pdf](https://www.audit-scotland.gov.uk/uploads/docs/report/2022/nr_220525_local_government_overview.pdf); Audit Scotland, 2022. Briefing: *Tackling child poverty* <https://www.audit-scotland.gov.uk/publications/briefing-tackling-child-poverty>

The **Scottish** public sector's data reporting duties have developed in an *ad hoc* manner over many years. The reporting and format of data is inconsistent and restricts the ability of public bodies and others to use data to inform policy making. Data on children with additional support needs in education is reported in a way which makes an estimate of the number of disabled children in Scotland impossible.<sup>34</sup>

The **Northern Ireland** Children and Young People's Strategy should be the key mechanism for the development of a coherent, robust dataset measuring the implementation of the UNCRC. However, it was published without indicators, instead referring to a 'Data Development Agenda' which has not been progressed. Deficits in transparent, robust, disaggregated data regarding UNCRC rights, and gaps in children's services, including access to health services for both physical and mental health reasons<sup>35</sup> and Special Educational Needs (SEN) provision in mainstream schools, are extremely problematic.<sup>36</sup> This makes it difficult to identify provision gaps and the impact of existing services on outcomes.

In **Wales** there is a lack of Wales-only disaggregated data in many areas. For example, there is neither joined-up nor disaggregated data for expenditure on children's mental health services beyond specialist services. The Welsh Government has recently published a *Wellbeing of Wales* report<sup>37</sup> which specifically focussed on available data around children's wellbeing. Wales lacks robust data on school exclusions, incidences of child sexual abuse, and other important data relating to outcome indicators which would aid in the scrutiny of service delivery and reform.

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<sup>34</sup> For example, the most recent Scottish Pupil Census recorded only 2.7% of children as disabled. The census also reports the number of children with conditions which would meet the UNCRPD definition of a disability, but in a way which makes it impossible to calculate the total number of disabled children. Scottish Government, 2021. *Pupil Census Summary Statistics*.

<https://www.gov.scot/binaries/content/documents/govscot/publications/statistics/2019/07/pupil-census-supplementary-tables/documents/pupil-census-2020-supplementary-statistics/pupil-census-2020-supplementary-statistics/govscot%3Adocument/Pupils%2Bin%2BScotland%2B2020%2BV2.xlsx>

<sup>35</sup> NICCY, 2018. *A Rights Based Review of Mental Health Services and Support for Children and Young People: Still Waiting*. <https://www.niccy.org/still-waiting-a-rights-based-review-of-mental-health-services-and-support-for-children-and-young-people-in-northern-ireland/> ; NICCY, 2020. *More Than a Number: A Rights Based Review of Health Waiting Lists in Northern Ireland*.

<https://www.niccy.org/more-than-a-number-a-rights-based-review-of-health-waiting-lists-in-northern-ireland/>

<sup>36</sup> NICCY, 2020. *'Too Little, Too Late,' A Rights Based Review of Special Educational Needs Provision in Mainstream Schools*. <https://www.niccy.org/review-of-sen-provision-too-little-too-late/>

<sup>37</sup> Welsh Government, 2022. *Wellbeing of Wales: children and young people's wellbeing*.

<https://gov.wales/wellbeing-wales-2022>

## Recommendation

- A comprehensive child rights data collection and evaluation system should be established in all jurisdictions, including measurable child rights indicators, to generate high-quality and comparable, disaggregated data at all levels of government.

## 6. Dissemination and awareness raising

In **Wales**, children's human rights under the UNCRC are embedded into the Curriculum and Assessment (Wales) Act 2021. From September 2022, all staff involved in delivering the curriculum need to develop knowledge and understanding of children's human rights under the UNCRC and UNCRPD.

In **Northern Ireland**, while there is increased understanding among statutory bodies of the relevance of children's rights, there is no systematic training programme for officials and professionals working with children. To remedy this, in November 2022 NICCY released online training modules on CRIA and children's rights that are available to officials and professionals through the Northern Ireland Civil Service LInKS training platform.

In anticipation of incorporation of the UNCRC in **Scotland**, the Scottish Government has committed to a programme of awareness raising to increase the understanding of children's rights amongst decision makers, professionals and the wider community. This must include information about accountability mechanisms when things go wrong.

## Recommendations

- A programme of awareness raising to ensure broad awareness and understanding of the UNCRC and other human rights treaties amongst children and their families should be developed by all governments.
- All professionals working with children and those making decisions which affect children, including civil servants and staff in other public authorities, should have a good understanding of the human rights of children, particularly the UNCRC.

## B. Definition of a child (art. 1)

### Age of marriage

The Marriage and Civil Partnership (Minimum Age) Act 2022 has increased the age of marriage in **Wales** to 18. In **Northern Ireland**, the finance minister announced his intention to also progress similar legislation, but this has not been possible due to the lack of an Executive. The **Scottish** Government have yet to announce any plans to progress legislation.

### Recommendation

- The Northern Irish Executive and the Scottish Government must bring forward legislation to raise the age of marriage to 18.

### Definition of child

In **all jurisdictions**, there is a need to ensure that all children are provided with the protections they are entitled to under the UNCRC until they reach 18 years of age. This requires a comprehensive review of law, policy and practice across all jurisdictions as well as action by all governments to address negative stereotypes about older children.

In **Scotland**, the law defines the age of legal capacity as 16 years of age.<sup>38</sup> This has led to an inconsistent definition of a child elsewhere in **Scots** law meaning that the criminal justice and mental health systems, and to some extent child protection processes, treat children as adults at 16. This means that these children are sometimes denied the rights and protections provided to children under the UNCRC.

### Recommendation

- All children under 18 should be recognised as children in all relevant legislation, taking account of their evolving capacities.

## C. General principles (arts. 2, 3, 6 and 12)

### 7. Non-discrimination

Children across the three jurisdictions continue to face multiple forms of discrimination, as well as discrimination on the basis of being a child. There continue

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<sup>38</sup> Age of Legal Capacity (Scotland) Act 1991. <https://www.legislation.gov.uk/ukpga/1991/50/enacted>



to be concerning public narratives about older children and anti-social behaviour, as discussed in previous Concluding Observations.<sup>39</sup>

In 2012, the **Northern Ireland** Executive announced that the Age Discrimination (Goods and Facilities and Services) Bill would apply only to persons over 16. Despite NICCY's successful complaint to the Equality Commission for Northern Ireland,<sup>40</sup> no changes have been announced. The *New Decade, New Approach* agreement commits to the introduction of the bill, but the legislation has not been progressed and there is no clarity on whether the remit will include children under 16.<sup>41</sup>

In **Wales** positive steps have been taken to address inequalities. However, urgent action is required to ensure children's right to non-discrimination is upheld. The Welsh Government have published an Anti-Racist Wales Action Plan (2022),<sup>42</sup> which seeks to promote anti-racist practice and tackle race inequality both within the Welsh Government and in wider Welsh society. Reports of racism in education<sup>43</sup> continue and must be addressed and monitored as this action plan is implemented. Wales is the first UK nation to make the history of Britain's colonial past a mandatory element of the curriculum. New anti-racism and diversity professional learning resources for teachers have been launched this year in Wales.<sup>44</sup>

Racism and discriminatory attitudes towards Gypsy, Roma and Traveller communities, particularly in relation to site provision, must be addressed.<sup>45</sup> The

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<sup>39</sup> UN Committee on the Rights of the Child, 2016. *Concluding Observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland*. [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/GBR/CO/5&Lang=En](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/GBR/CO/5&Lang=En); UN Committee on the Rights of the Child, 2008. *Concluding Observations on the third and fourth periodic reports of the United Kingdom of Great Britain and Northern Ireland*. [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2fCO%2f4&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2fCO%2f4&Lang=en)

<sup>40</sup> NICCY, 2017. *GFS (Goods Facilities and Services Anti-discrimination Legislation)*. <https://www.niccy.org/gfs-goods-facilities-and-services-anti-discrimination-legislation/>

<sup>41</sup> Northern Ireland Office, 2020. *New Decade, New Approach*. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/856998/2020-01-08\\_a\\_new\\_decade\\_a\\_new\\_approach.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/856998/2020-01-08_a_new_decade_a_new_approach.pdf)

<sup>42</sup> Welsh Government, 2022. *Anti-racist Wales Action Plan*. [https://gov.wales/sites/default/files/publications/2022-06/anti-racist-wales-action-plan\\_0.pdf](https://gov.wales/sites/default/files/publications/2022-06/anti-racist-wales-action-plan_0.pdf)

<sup>43</sup> Show Racism the Red Card, 2020. *Racism in Wales? Exploring prejudice in the Welsh education system*. <https://static1.squarespace.com/static/574451fe37013bd0515647ac/t/5ed659aa1288d943ddd2a784/1591106007132/Racism+in+Wales+-+Exploring+racism+the+Education+system+May+2020++%28F%29.pdf>

<sup>44</sup> Welsh Government, 2022. *Anti-racist training launched to support new curriculum for Wales*. <https://gov.wales/anti-racist-training-launched-support-new-curriculum-wales>

<sup>45</sup> Welsh Parliament Local Government and Housing Committee, 2022. *Provision of sites for Gypsy, Roma and Travellers*. <https://senedd.wales/media/lktpwocm/cr-ld15300-e.pdf>

Welsh Government have consulted on a LGBTQ+ action plan<sup>46</sup> however, this has not yet resulted in the action required to tackle discrimination experienced by LGBTQ+ children. Disabled children continue to face direct and structural barriers to equality.<sup>47</sup> The Welsh Government has established a disability rights taskforce which seeks to take steps to address this. The Welsh Government has pledged to incorporate the UN Convention on the Rights of Persons with Disabilities into Welsh law<sup>48</sup> but this has not yet progressed.

In **Scotland**, the Hate Crime and Public Order (Scotland) Act 2021 strengthens protections against hate crimes on the basis of age; disability; race, colour or ethnic or national origins; religion or perceived religious affiliation; sexual orientation; transgender identity; and variations in sex characteristics.<sup>49</sup> Gypsy/Traveller children<sup>50</sup> and LGBT children<sup>51</sup> report they disproportionately experience bullying and harassment. Research shows high awareness amongst teachers about racism in schools, but a lack of training inhibits their ability to address this. The vast majority were supportive of anti-racism being included in the curriculum.<sup>52</sup>

There is a need to improve reporting of hate incidents, particularly availability of disaggregated data. There is a concern that hate crimes experienced by children are not always recognised as such and that there is a need for children and the adults who support them to have greater awareness of the impact of hate crimes.<sup>53</sup> There is a need for improved recognition for the importance of prevention of hate crime, work

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<sup>46</sup> Welsh Government. 2021. *LGBTQ+ Action Plan Consultation*. <https://gov.wales/lgbtq-action-plan>

<sup>47</sup> Welsh Government, 2021. *Locked out: liberating disabled people's lives and rights in Wales beyond COVID-19*. <https://gov.wales/locked-out-liberating-disabled-peoples-lives-and-rights-wales-beyond-COVID-19-html> ; Welsh Government, 2021. *Written Statement: Welsh Government Response to the Locked Out: Liberating disabled people's lives and rights in Wales beyond COVID-19 report*. <https://gov.wales/written-statement-welsh-government-response-locked-out-liberating-disabled-peoples-lives-and-rights>

<sup>48</sup> Welsh Government, 2022. *Programme for Government – update*. <https://gov.wales/sites/default/files/publications/2022-01/programme-for-government-update-december-2021.pdf>

<sup>49</sup> Hate Crime and Public Order (Scotland) Act 2021. Section 1. <https://www.legislation.gov.uk/asp/2021/14/section/1>

<sup>50</sup> Scottish Government, 2022. *Educational Outcomes for Gypsy/Traveller Children*. <https://www.gov.scot/policies/gypsy-travellers/educational-outcomes-for-gypsytraveller-children/>

<sup>51</sup> LGBT Youth Scotland, 2022. *Life in Scotland for LGBT Young People*. <https://www.lgbtyouth.org.uk/media/2712/life-in-scotland-for-lgbt-young-people-2022-e-use.pdf>

<sup>52</sup> Show Racism the Red Card, 2021. *“Overwhelming please” for anti-racism education in Scotland*. <https://www.theredcard.org/news/overwhelming-pleas-anti-racism-education-scotland>

<sup>53</sup> Together, 2019. *State of Children's Rights Report*. [https://www.togetherscotland.org.uk/media/1436/socrr\\_online\\_version.pdf](https://www.togetherscotland.org.uk/media/1436/socrr_online_version.pdf)

with perpetrators and support for victims, including access to justice and effective remedy.

## Recommendations

- Recognition, recording, reporting and responses to hate incidents in relation to children should be improved in all jurisdictions.
- All governments should take further steps to prevent and address all forms of discrimination.
- All governments should extend legal protections from age discrimination to children and take steps to combat negative stereotypes of children in the public discourse.
- All children should receive an anti-discriminatory, inclusive and diverse education.
- The Age Discrimination (Goods, Facilities and Services) legislation should be progressed in **Northern Ireland** without further delay and should be inclusive of children of all ages.

## 8. Best interests of the child

Across all jurisdictions, the primacy of the best interests of the child is enshrined in law in relation to the care and protection of children.<sup>54</sup> However, there are a range of areas of policy and law where best interests are not properly considered, let alone given the status of a primary consideration. As the UNCRC is not yet incorporated into law in any jurisdiction, even when the court finds that the best interests of the child have not been considered, they are not able to provide redress.<sup>55</sup>

### Recommendation

- All governments should amend legislation as necessary to ensure children's best interests are a primary consideration in all matters that affect them.

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<sup>54</sup> Children (Scotland) Act 1995; The Children (Northern Ireland) Order 1995; Children Act 1989 (applies in Wales).

<sup>55</sup> R (on the application of SG and others) v Secretary of State for Work and Pensions. [2015] UKSC 16. <https://files.monckton.com/wp-content/uploads/2015/03/R-on-the-application-of-SG-and-others-previously-JS-and-others-v-Secretary-of-State-for-Work-and-Pensions.pdf>

## 9. Right to life, survival and development

### Child mortality rates

While the impact of the COVID-19 pandemic on infant and child mortality rates has not been well established, pre-pandemic data showed lower infant mortality rates in most European nations.<sup>56</sup> The **Scottish** Government announced in September 2022 a review of neonatal (within four weeks of birth) death rates in order to investigate higher than expected rates over 2021-22. The review is expected to report in 2023 to inform maternal and infant policy.

Child mortality rates remained mostly unchanged across Northern Ireland, Scotland and Wales between 2019 and 2020.<sup>57</sup> In Wales the child mortality rate has decreased over the long term but has been consistent over the last six years of available data. However more recent data is not yet available across the three jurisdictions, meaning that the impact of the COVID-19 pandemic is not yet clear.

There is a link between high infant and child mortality rates and areas of multiple deprivation: in **Wales** for example the most deprived area has an infant mortality rate of 6.8 deaths per 1,000 live births, as opposed to 2.3 deaths in the least deprived area.<sup>58</sup> The child mortality rate is 70% higher amongst the most deprived areas compared to the least deprived areas in Wales.<sup>59</sup>

**Northern Ireland** has the highest rate of avoidable child deaths and, with Scotland, significantly higher rates than England and Wales.<sup>60</sup> In Northern Ireland there

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<sup>56</sup> In 2019 most European countries, including Portugal, Ireland, Sweden and Slovenia, had a rate of less than three deaths per 1,000 live births. Organisation for Economic Co-operation and Development (OECD), 2021. *Health at a Glance 2021: OECD Indicators. Infant, child and adolescent health*. [https://read.oecd-ilibrary.org/social-issues-migration-health/health-at-a-glance-2021\\_37cd40eb-en#page1](https://read.oecd-ilibrary.org/social-issues-migration-health/health-at-a-glance-2021_37cd40eb-en#page1)

<sup>57</sup> ONS, 2022. *Child mortality (death cohort) tables in England and Wales – 2020 dataset*. <https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/deaths/datasets/childmortalitystatisticschildhoodinfantandperinatalchildhoodinfantandperinatalmortalityinenglandandwales>

<sup>58</sup> ONS, 2022. *Child and infant mortality in England and Wales: 2020*. <https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/deaths/bulletins/childhoodinfantandperinatalmortalityinenglandandwales/2020>

<sup>59</sup> Public Health Wales, 2022. *Child Death Review Programme: Patterns and trends of child deaths in Wales, 2011-2020*. <https://phw.nhs.wales/publications/publications1/patterns-and-trends-of-child-deaths-in-wales-2011-2020/>

<sup>60</sup> ONS, 2021. *Avoidable mortality in the UK: 2019*. <https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/causesofdeath/bulletins/avoidablemortalityinenglandandwales/2019#avoidable-mortality-in-children-and-young-people>.

continue to be delays in implementing the child death review process which was set out in Section 3(5) of the Safeguarding Board (Northern Ireland) Act 2011.<sup>61</sup>

## Recommendations

- All governments should take steps to address the relatively high infant and child mortality rates, taking into account underlying factors such as social and economic deprivation and the aftermath of the COVID-19 pandemic.
- In Northern Ireland, a statutory, multi-agency child death overview mechanism should be established as a priority.

## 10. Respect for the views of the child

There is a need for widespread improvement to the ways in which children's participation is facilitated by decision makers. All governments need to produce comprehensive guidance and provide training to ensure public authorities are able to meet their obligations under the UNCRC. Decision makers need to ensure consultations are accessible and child-friendly and they must support meaningful participation, including adequate funding. Attention must be paid to ensuring a broad range of children are supported to participate, including disabled children, those outwith mainstream education, care experienced children and those in deprived communities.

In **Northern Ireland**, there has been some progress in developing structures to mainstream children's voices in decision-making processes. However, progress has been slow in the development of the Department of Education's Participation in Decision Making initiative. This needs to be endorsed and supported by all relevant public bodies within a specific and identified timeframe and deliver a structure for meaningful participation of children, especially those most vulnerable.

In **Wales**, the Welsh Government have published a set of national participation standards based on the UNCRC. Organisations in Wales can work towards achieving a national participation kitemark, endorsed by the Welsh Government. Examples of organisations which have achieved the kitemark include local authority education services and health boards. However, CCfW would like to see participation of children embedded into the Welsh Government's ways of working in a more systematic way.

In **Scotland**, realisation of children's right to participate in decisions made by the Scottish Government, local authorities and other public authorities is inconsistent.

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<sup>61</sup> Safeguarding Board Act (Northern Ireland) 2011. <https://www.legislation.gov.uk/nia/2011/7/contents>

Despite government commitments, there is a lack of evidence that participation has an impact on decision making.

## Recommendations

- Children and their best interests should be at the heart of decision making, particularly those children most at risk of not being heard or of not having their rights realised.
- Appropriate structures, mechanisms, training and guidance should be developed to improve governments and public authorities' engagement with children, including producing child-friendly, accessible versions of consultation documents and developing child-friendly complaints mechanisms.

## Democratic representation

In **Scotland** and **Wales**, the voting age is 16 for the Scottish Parliament and Welsh Parliament and for local government elections but remains 18 in **Northern Ireland**.<sup>62</sup> The voting age for UK general elections remains 18. The Commissioners believe the voting age at all elections should be lowered to 16.

**Scotland** established its Youth Parliament in 1999, comprising of 166 representatives aged 14-25 from across Scotland, some of whom are elected on a geographical basis and some of whom represent children and young people's organisations.<sup>63</sup> The Scottish Cabinet formally meets with Members of the Scottish Youth Parliament and the Children's Parliament<sup>64</sup> twice a year.

**Wales** established its Youth Parliament<sup>65</sup> in 2018. There are 60 members, mirroring the numbers in the Welsh Parliament. As well as elected members, the Welsh Youth Parliament has members nominated by third sector groups representing under-represented groups of children and young people. Welsh Youth Parliament members hold plenary and committee sessions, and have this year conducted a large-scale

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<sup>62</sup> Scottish Elections (Reduction of Voting Age) Act 2015.

<https://www.legislation.gov.uk/asp/2015/7/contents/enacted>; Senedd and Elections (Wales) Act 2020. <https://www.legislation.gov.uk/anaw/2020/1/contents/enacted>

<sup>63</sup> Scottish Youth Parliament, 2020. *Our Story*. <https://syp.org.uk/about-syp/our-story/>

<sup>64</sup> The Children's Parliament provides younger children from diverse backgrounds across Scotland with opportunities to share their experiences, thoughts, and feelings so that they can influence positive change in their lives at home, in school and in the community.

<sup>65</sup> It has plenary debates and committee sessions; sets a work plan; produces reports; and scrutinises Government Ministers. Welsh Youth Parliament, 2020. *Homepage*.

<https://www.youthparliament.wales/>

consultation on children and young people's experiences of poor mental health and accessing mental health support.

In **Northern Ireland**, the establishment of the Northern Ireland Youth Assembly by the Northern Ireland Assembly Commission is a tangible step forward.<sup>66</sup> The voice and experiences of children and young people are essential for good decision making for any legislative body. Although at the initial establishment stage in the development of the Youth Assembly, it is vital the members of the Youth Assembly are able to challenge and question the workings and decisions of government and not simply be a convenient consultative body for departments and statutory agencies.

## Recommendations

- Children should have comprehensive education on citizenship and be able to vote from the age of 16.
- Parliaments, councils and other elected bodies should ensure that children are able to actively participate in their decision-making processes.

## Participation in education and other settings

In **Scotland**, despite government commitments there is a lack of evidence that participation has an impact on decision making in education. It is often tokenistic and ineffective at both local and national levels.<sup>67</sup> Children are left unsure whether they have made any difference.<sup>68</sup> Participation in schools needs to move beyond a pupil council model to ensure active participation of a broad range of children in decision making.

In **Northern Ireland**, there remains an absence of a formal structure to develop children's role as active participants in education and promoting pupil voices. The Department of Education should create a policy to ensure meaningful pupil participation in schools, through requiring schools to establish an effective pupil voice mechanism. This should be supported by an appropriate inspection process.

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<sup>66</sup> Northern Ireland Assembly, 2022. *Homepage*. <https://niyouthassembly.org/>

<sup>67</sup> Scottish Youth Parliament, 2021. *Education Reform Consultation response*. <https://syp.org.uk/wp-content/uploads/2022/03/SYP-Response-to-Education-Reform-Consultation-November-2021.pdf>

<sup>68</sup> CYPCS, 2021. *Education Reform Consultation*. <https://www.cypcs.org.uk/resources/education-reform-consultation/>

In **Wales**, a 2018 survey of 6,392 children found limited participation in school decisions, including school councils,<sup>69</sup> despite the legislative framework supporting children's participation in their local area, within and beyond school.<sup>70</sup>

In Wales, every secondary school must have a school council, but children with protected characteristics told CCfW they do not always feel they have equal opportunities to participate in decisions and may feel their school council is less relevant to them. Many public bodies, including health boards, have established youth participation mechanisms, but more leadership is needed from the Welsh Government to embed this practice across public services.

### Recommendation

- Mechanisms should be established to consistently embed meaningful participation of children in the education system.

### Access to Legal Aid and legal advice

Legal aid is not devolved in **Wales**. Children get legal aid automatically for legal representation in court for criminal cases if they are under 16 (or under 18 and in full-time education). Children and families can also access legal aid if they are the subject of care proceedings.<sup>71</sup> Legal aid in respect of private family law cases is means and merits tested, unless there is evidence of domestic abuse. Cafcass Cymru works to promote children's best interests and experiences in the family courts. Legal Aid has however, been cut significantly since 2012, which has limited its scope and accessibility for many, undermining their access to justice.

In **Northern Ireland** children subject to care proceedings and their parents automatically get legal aid in these proceedings. Legal aid in respect of private family law cases is means and merits tested, unless there is evidence of domestic abuse. As the first stage of legal aid (advice and assistance) is means tested, parents and carers of children and young people seeking initial advice on legal matters relating to a child, who do not satisfy means-testing, may proceed without an initial legal opinion in matters relating to issues such as educational matters and family proceedings. Legal aid may be available to a child in court but depending on the

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<sup>69</sup> CCfW, 2018. *The Right Way Education Survey 2018*. <https://www.childcomwales.org.uk/wp-content/uploads/2018/10/Childrens-Rights-Survey.pdf>

<sup>70</sup> Welsh Government, 2018. *Children and Young People's National Participation Standards*. <https://gov.wales/children-and-young-peoples-national-participation-standards> ; Children and Families (Wales) Measure 2010. <https://www.legislation.gov.uk/mwa/2010/1/contents>

<sup>71</sup> UK Government, undated. *Legal Aid*. <https://www.gov.uk/legal-aid/eligibility>



types of case and whether the child is subject to the proceedings, this may be dependent on the financial means of the parents or the child.

In **Scotland**, children's participation in decision making in legal and administrative hearings requires proper support from both independent advocacy and qualified legal advice, funded by legal aid, to ensure their views can be heard. Whilst the Children (Scotland) Act 2020 ensures children's views in family law proceedings are taken account of in line with the UNCRC,<sup>72</sup> appropriate training for professionals and the provision of support, advice, and advocacy for children is needed for successful implementation.<sup>73</sup>

## Recommendation

- All children and families should have improved access to justice, including legal aid, particularly when protecting children's human rights.

## D. Civil rights and freedoms (arts 7-8 and 13-17)

### Right to peaceful assembly and protest

Children's right to peaceful assembly and protest is not always respected and children have faced penalties from schools for participating in environmental protests such as Fridays for Future.

In **Scotland**, during COP26 in Glasgow, there was a successful children's march,<sup>74</sup> but children were present at incidents where policing was criticised for being heavy handed.<sup>75</sup> Children aged 16 and 17 were particularly at risk as Scots criminal law does not recognise them as children.

In **Wales**, the UK Government have introduced the Police, Crime, Sentencing and Courts Act 2022,<sup>76</sup> which imposes restrictions on protest marches and other forms of

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<sup>72</sup> Children (Scotland) Act 2020. <https://www.legislation.gov.uk/asp/2020/16/contents/enacted>

<sup>73</sup> CYPCS, 2019. *Evidence Submission: Justice Committee Call for Views on the Children (Scotland) Bill*. <https://www.cypcs.org.uk/get-help/policy-and-law/our-policy-work/evidence-submission-justice-committee-call-for-views-on-the-children-scotland-bill/>

<sup>74</sup> Amnesty International, 2021. *Amnesty Briefing on the policing of protest at COP26*. [https://www.amnesty.org.uk/files/2022-08/Policing%20of%20COP26.pdf?VersionId=E19\\_3tjHeHQ9fKRdTe5tr6JsMbalkE0l](https://www.amnesty.org.uk/files/2022-08/Policing%20of%20COP26.pdf?VersionId=E19_3tjHeHQ9fKRdTe5tr6JsMbalkE0l)

<sup>75</sup> NetPol, 2021. *Respect or Repression? An independent report of the COP26 Conference in Glasgow*. <https://netpol.org/2021/12/16/respect-or-repression-an-independent-report-of-the-cop26-conference-in-glasgow/>

<sup>76</sup> Police, Crime, Sentencing and Courts Act 2022. <https://www.legislation.gov.uk/ukpga/2022/32/contents>

protest. This is a concerning precedent for the right to peaceful assembly for children.

During the COVID-19 pandemic, vulnerable children, particularly those estranged from families and living independently, reported having to balance compliance with lockdown restrictions and the implications on their mental wellbeing of enforced isolation. Prior to social bubbling, some children actively made decisions to break COVID-19 regulations to limit their own mental health decline or that of their peers. While the police were directed to primarily use a welfare approach to these situations, in **Northern Ireland** a total of 585 Community Resolution Notices were issued to under 18s in the first year of the COVID-19 pandemic response. In **Scotland**, children aged 16 and 17 were not recognised as children by UK emergency legislation, leaving them potentially subject to criminal prosecution. During the first lockdown, 476 fixed penalty notices were issued to 16- and 17-year-olds.<sup>77</sup>

Furthermore, particularly when restrictions were being eased, children were disproportionately affected by changes to restrictions that failed to take account of the different ways in which children socialise. In particular, restrictions remained on informal gatherings of children even when schools had returned and formal activities (such as sports) had resumed.<sup>78</sup>

Despite the Committee's recommendations,<sup>79</sup> mosquito devices are still used to deter children from gathering in public.<sup>80</sup> These devices have a disproportionate effect on certain groups of children, including very young children (whose parents may be unaware of the device) and autistic children.

## Recommendations

- Ensure legislation and policing practice do not curtail children's right to peaceful assembly.
- Legislate to ban the sale and use of mosquito devices across all jurisdictions.

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<sup>77</sup> Gorton et al, 2022. *Police use of COVID-19 Fixed Penalty Notices in Scotland: Trends in enforcement from March 2020 to May 2021*.

<https://www.scadr.ac.uk/sites/default/files/Fourth%20FPN%20Data%20report%20FINAL%20-%20Aug%202022.pdf>

<sup>78</sup> Scottish Government, undated. *Coronavirus (COVID-19): strategic approach*.

<https://www.gov.scot/collections/coronavirus-COVID-19-strategic-approach/>

<sup>79</sup> CYPSC, 2020. *Mosquito devices*. <https://cypsc.org.uk/positions/mosquito-devices/#what-should-the-scottish-government-do-to-outlaw-mosquito-device>

<sup>80</sup> Electronic 'anti-loitering devices' that emit a high-pitched buzzing sound at frequencies only children can hear.

## Protection from harm in the digital environment

Safe access to the digital environment is essential. The Online Safety Bill, currently being considered in the UK Parliament, is seeking to address the longstanding need for a statutory duty of care for online companies to protect children from harm. However, the bill's progress has been repeatedly delayed, with continued speculation that measures may be watered down meaning that vital protections have yet to be put in place. The bill must ensure that online service providers have a legal responsibility to keep users safe, remove harmful material, and impose sanctions where companies fail in these obligations.

Governments should implement recommendations from ENOC's statement on Children's Rights in the Digital Environment: involve children as active participants, ensure access to the digital environment and protect children from harm by promoting children's rights online.<sup>81</sup>

**All jurisdictions** must provide and continually update educational materials about online privacy and child protection.

In **Wales**, the Welsh Government has developed *Keeping Safe Online*<sup>82</sup> resources for children giving information and advice on issues including inappropriate or offensive content, online hate, cyberbullying and healthy online relationships.

An Online Safety Strategy and Action Plan was published in **Northern Ireland** in 2021.

In **Scotland**, there have been online safety campaigns and updates to overarching Child Protection Guidance, however the National Action Plan on Internet Safety for Children and Young People has not been updated since 2017.<sup>83</sup>

We note that the State Party has not been able to provide data in response to Q38b in the list of issues<sup>84</sup> for each jurisdiction, only for recorded crimes in **Northern**

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<sup>81</sup> ENOC, 2019. *Children's Rights in the Digital Environment*. <https://enoc.eu/what-we-do/annual-advocacy-areas/enoc-2019-annual-focus-childrens-rights-in-the-digital-environment/>

<sup>82</sup> Welsh Government, undated. *Keeping safe online*. <https://hwb.gov.wales/zones/keeping-safe-online>

<sup>83</sup> Scottish Government, 2017. *National Action Plan on Internet Safety for Children and Young People*. <https://www.gov.scot/publications/national-action-plan-internet-safety-children-young-people/documents/>

<sup>84</sup> Information and communications technology-related violations of children's rights and the number of such cases that have been investigated and prosecuted

**Ireland.** However, it is notable that the number of these crimes has increased by 257% since 2016-17, from 236 to 842 in 2020-21.<sup>85</sup>

## Recommendations

- Passage of the Online Safety Bill should be prioritised by the UK Parliament ensuring that children have comprehensive protection from online harm.
- Children should be active participants in work on increasing protection from harm in the digital environment.

## E. Violence against children (arts. 19, 24(3), 28(2), 34, 37(a) and 39)

### 11. Torture and other cruel, inhuman or degrading treatment or punishment

#### Restraint and seclusion in all settings

Restraint, seclusion and other restrictive practices are in use across a range of settings, including schools, secure and non-secure children's homes, mental health facilities and criminal justice settings. There is evidence of their use as a disciplinary measure or in response to low-level incidents such as risks to property rather than people, or infringements of school rules such as uniform breaches.<sup>86</sup> Restrictive practices should be a last resort, where necessary to protect a child or someone else from serious harm. In the absence of mandatory recording, data collection varies and it is difficult to ascertain the scale of the use of restrictive practices, though there are indications it is widespread.

Disabled children are particularly vulnerable to such practices.<sup>87</sup> Many children have struggled to achieve justice as their accounts and interviews were not used by police or child protection authorities because of their age and/or disabilities.<sup>88</sup> More positive

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<sup>85</sup> UK Government, 2022. *Data annex to the UK's Response to the UN Committee's List of Issues on the Rights of the Child.*

[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCRC%2fADR%2fGBR%2f49033&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCRC%2fADR%2fGBR%2f49033&Lang=en)

<sup>86</sup> CYPCS, 2018. *No Safe Place: Restraint and Seclusion in Scotland's Schools.*

<https://www.cypcs.org.uk/resources/no-safe-place/> and evidence from enquiries ; Who Cares? Scotland, 2019. *Children (Equal Protection from Assault) (Scotland) Bill: Supplementary Evidence on Restraint Framework.* <https://www.whocaresscotland.org/wp-content/uploads/2022/06/WCS-Evidence-for-EHRiC-on-Equal-Protection-from-Assault.pdf> ; evidence from NICCY's Legal and Investigations casework.

<sup>87</sup> CYPCS, 2018. *No Safe Place: Restraint and Seclusion in Scotland's Schools*, p.18.

<https://www.cypcs.org.uk/resources/no-safe-place/>

<sup>88</sup> *Ibid.*, p.12.

and proportionate approaches, including therapeutic interventions and sufficient support, are required in mainstream settings.<sup>89</sup>

In **Wales**, child-centred guidance<sup>90</sup> has been published but there are clear examples of it not being followed in closed settings. The Welsh Government, inspectorates and regulators must do more to ensure practice within closed settings is improved on a sustained basis to be confident children are as safe as they can be.

In **Northern Ireland**, the Department of Education's commitment to introduce statutory guidance on the use of restrictive and support practices for settings, under Article 18 1(c) of the Education and Libraries (Northern Ireland) Order 2003, is welcome. Operationalising of the guidance to include mandatory recording and reporting of all incidents of restrictive practices by educational settings must be expedited.

In **Scotland**, local authority policies and practices are inconsistent, failing to recognise children's rights. There is a need for national human rights based legislative standards, guidance, and monitoring of restrictive practices across all settings.

## Recommendations

- Human rights based statutory guidance should be developed, covering all settings including education, health (and mental health), care and justice.
- The use of restraint, seclusion and restrictive practices should be subject to mandatory recording and monitoring.

## 12. Corporal punishment

Since 2016,<sup>91</sup> legal reform has been secured in **Scotland** through the Children (Equal Protection from Assault) (Scotland) Act 2019<sup>92</sup> and **Wales** through the

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<sup>89</sup> NICCY, 2020. 'Too Little, Too Late,' A Rights Based Review of Special Educational Needs Provision in Mainstream Schools. <https://www.niccy.org/review-of-sen-provision-too-little-too-late/>

<sup>90</sup> Welsh Government, 2021. *Reducing Restrictive Practices Framework*. <https://gov.wales/reducing-restrictive-practices-framework>

<sup>91</sup> When the Committee last recommended prohibition of physical punishment in all settings throughout the UK. UN Committee on the Rights of the Child, 2016. *Concluding Observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland*. [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/GBR/CO/5&Lang=En](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/GBR/CO/5&Lang=En)

<sup>92</sup> Children (Equal Protection from Assault) (Scotland) Act 2019. <https://www.legislation.gov.uk/asp/2019/16/enacted>. Entered into force on November 7, 2020.

Children (Abolition of Defence of Reasonable Punishment) (Wales) Act 2020.<sup>93</sup> Both governments must prioritise strong implementation and support focused on positive parenting.

In **Northern Ireland** the reasonable chastisement defence for assaulting children still exists in law.<sup>94</sup>

## Recommendations

- A comprehensive programme to raise awareness of and promote positive parenting, including information and parenting support, should be produced in all jurisdictions.
- The Northern Ireland Government should commit to removing the defence of “reasonable chastisement” in legislation without delay.

## 13. Domestic violence and gender-based violence

In **Wales**, the Welsh Government has recently launched a renewed tackling Violence Against Women and Girls Strategy with a focus on improving the national response to supporting children who are victims and those who display harmful behaviour, with appropriate services.<sup>95</sup>

The Domestic Abuse and Civil Proceedings (**Northern Ireland**) Act 2021<sup>96</sup> sought to better reflect the dynamics of domestic abuse and its impact on children but did not take proper account of the need to provide full protection for all those under 18, with some children instead being afforded protection through legislation enacted in the 1970s. This should be reviewed with urgency.<sup>97</sup>

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<sup>93</sup> Children (Abolition of Defence of Reasonable Punishment) (Wales) Act 2020. <https://www.legislation.gov.uk/anaw/2020/3/contents/enacted>. Entered into force March 2022.

<sup>94</sup> The law regarding physical punishment was reformed to restrict the defence of “reasonable punishment” or “reasonable chastisement” in the Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2006. However, the defence remains available to parents in certain circumstances regarding common assault; Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2006. <https://www.legislation.gov.uk/nisi/2006/1945/contents>

<sup>95</sup> Welsh Government, 2022. *Violence against women, domestic abuse and sexual violence: strategy 2022 to 2026*. <https://gov.wales/violence-against-women-domestic-abuse-and-sexual-violence-strategy-2022-2026-html>

<sup>96</sup> Domestic Abuse and Family Proceedings Bill. <http://www.niassembly.gov.uk/assembly-business/legislation/2017-2022-mandate/primary-legislation---bills-2017---2022-mandate/domestic-abuse-bill/bill---as-introduced/>

<sup>97</sup> NICCY, 2020. *Domestic Abuse and Family Proceedings Bill: Written submission to the Justice Committee*. <https://www.niccy.org/publications/domestic-abuse-and-family-proceedings-bill/>

The Domestic Abuse (**Scotland**) Act 2018 reflects the understanding of domestic abuse as a course of conduct. The Act recognises the impact of domestic abuse on children through the introduction of a statutory aggravator where children are affected by domestic abuse, however there is no specific offence in relation to children.

## Recommendation

- Children who experience domestic abuse should have comprehensive legal protections and access to appropriate support.

## 14. Child Sexual Abuse (CSA)

The Independent Inquiry Into Child Sexual Abuse published its final report in October 2022.<sup>98</sup> The inquiry recounted the huge scale of unreported child sexual abuse in England and Wales and highlighted common themes which came up throughout its work, such as: institutions prioritising reputation management rather than child protection; the widescale lack of appropriate policies and procedures; the risk posed by online spaces; and issues with insufficient and inconsistent data collection. The Inquiry contains important recommendations for all governments.

In **Wales**, the Commissioner has formally recommended in her Annual Report 2021/22<sup>99</sup> that the Welsh Government coordinate and publish a Welsh Implementation Plan to ensure learning and recommendations from this report are implemented by the Welsh Government and public bodies.

The **Scottish Government** do not indicate for all sexual crimes whether they were committed against a child, particularly where the victim is 16 or 17 years old.<sup>100</sup> Likewise, support services for victims of crime often treat 16- and 17-year-olds as

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<sup>98</sup> Independent Inquiry Into Child Sexual Abuse, 2022. *The Report of the Independent Inquiry Into Child Sexual Abuse*. [https://www.iicsa.org.uk/key-documents/31216/view/report-independent-inquiry-into-child-sexual-abuse-october-2022\\_0.pdf](https://www.iicsa.org.uk/key-documents/31216/view/report-independent-inquiry-into-child-sexual-abuse-october-2022_0.pdf)

<sup>99</sup> CCfW, 2022. *Annual Report and Accounts 2021/22*. <https://www.childcomwales.org.uk/wp-content/uploads/2022/10/Annual-Report-and-Accounts-2021-22-v2.pdf>

<sup>100</sup> Scottish Government, 2022. *Recorded Crime in Scotland: 2021-22*. <https://www.gov.scot/publications/recorded-crime-scotland-2021-2022/>; A National Society for the Prevention of Cruelty to Children (NSPCC) Freedom of Information request to Police Scotland found that there were 5,311 recorded sexual offences against children in 2019/20, including instances of rape, sexual assault and grooming. <https://tfn.scot/news/child-sexual-offences-rise-by-a-third-over-five-years>

adults, not providing them with the additional protections provided to children under the UNCRC.<sup>101</sup>

In **Northern Ireland**, over half of all recorded sexual offences are committed against under 18s.<sup>102</sup>

## Recommendations

- All governments should act on the recommendations made by the Independent Inquiry Into Child Sexual Abuse.
- The Welsh Government should coordinate and publish a Welsh Implementation Plan to ensure the learning and recommendations from the IICSA report are implemented by the Welsh Government and public bodies.

## Child-centred support for children affected by sexual abuse (Barnahus) (art. 39)

In addition to the legal protections outlined above, there is a need for all children who experienced CSA to have access to holistic services which support them through criminal justice processes and provide ongoing support for physical and psychological recovery.

In **Scotland**, a pilot Bairns' Hoose is in development, based on the Barnahus model.<sup>103</sup> CYPCS believe broader consideration must be given to how the needs and rights of all children in contact with the criminal justice system will be met, by undertaking a full CRIA. Current eligibility criteria for access to the Bairn's Hoose may risk contributing to a two-tier system.<sup>104</sup> There is also a need for the Scottish Government to ensure that the Bairns' Hoose is established with sustainable long-term funding.<sup>105</sup>

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<sup>101</sup> CYPCS, 2019. *Consultation response: Clinical pathway for children and young people who have disclosed sexual abuse*. <https://www.cypcs.org.uk/resources/consultation-response-clinical-pathway-disclosure-sexual-abuse/>

<sup>102</sup> Police Service of Northern Ireland, 2022. *Police Recorded Crime Statistics*. <https://www.psni.police.uk/about-us/our-publications-and-reports/official-statistics/police-recorded-crime-statistics>

<sup>103</sup> Health Improvement Scotland, 2022. *Bairn's Hoose Standards*. [https://www.healthcareimprovementscotland.org/our\\_work/standards\\_and\\_guidelines/stnds/bairns\\_hoose\\_standards.aspx](https://www.healthcareimprovementscotland.org/our_work/standards_and_guidelines/stnds/bairns_hoose_standards.aspx)

<sup>104</sup> Lightowler, C., 2021. *Rights Respecting? Scotland's approach to children in conflict with the law*. <https://cycj.org.uk/wp-content/uploads/2020/01/Rights-Respecting-Scotlands-approach-to-children-in-conflict-with-the-law.pdf>

<sup>105</sup> Children First, 2022. *Transforming Care, Justice and Recovery for Children*. <https://www.children1st.org.uk/help-for-families/bairns-hoose/>



Under a 2019 National Action Plan,<sup>106</sup> regional safeguarding boards in **Wales** must review available therapeutic support for children to identify and address provision gaps. The Welsh Sexual Assault Service Programme is underway to improve access to support for children. Following the publication of the Independent Inquiry into Child Sexual Abuse, the Welsh Government and public bodies must not only set out how they will respond to its recommendations to strengthen their response and the support available to children who have been affected by CSA, but to further strengthen measures to prevent this harm.

In **Northern Ireland**, over half of all recorded sexual offences are committed against under 18s.<sup>107</sup> A 2018 Review of the law and procedures in serious sexual offences in Northern Ireland (the 'Gillen Review') recommended that serious consideration be given to introducing the Barnahus model. NICCY's report, *Putting the Child at the Centre*,<sup>108</sup> provides detailed guidance on how this should be progressed. Current political instability in Northern Ireland should not delay the urgent change that is required for children who have been subject to sexual abuse.

### Recommendation

- Children who are victims of sexual abuse should have access to child-centred support, such as the Barnahus model, with governments making a commitment to sustainable funding and resources.

## 15. Safeguarding in education

Teachers at private schools in **Wales** currently do not have to register with the Education Workforce Council and private schools do not have to demonstrate compliance with national safeguarding processes. In 2022, the Welsh Government brought into force new regulations enabling the Education Workforce Council to impose interim suspension orders in independent schools. CCfW urges the Welsh Government to keep to its commitment of requiring all independent school staff to register with the Education Workforce Council by April 2023.

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<sup>106</sup> Welsh Government, 2019. *National Action Plan – Preventing and Responding to Child Sexual Abuse*. <https://gov.wales/sites/default/files/publications/2019-07/national-action-plan-preventing-and-responding-to-child-sexual-abuse.pdf>

<sup>107</sup> Police Service of Northern Ireland, 2022. *Police Recorded Crime Statistics*. <https://www.psnl.police.uk/about-us/our-publications-and-reports/official-statistics/police-recorded-crime-statistics>

<sup>108</sup> NICCY, 2022. *Putting the child at the centre: Barnahus, a one door approach to supporting children who have been sexually abused in Northern Ireland*. <https://www.niccy.org/a-barnahus-model-for-ni/>

In **Scotland**, all staff working in schools in both the state and independent sectors are subject to checks under the Protecting Vulnerable Groups system and all teachers must be registered with the General Teaching Council Scotland. In state schools, classroom and pupil support assistants<sup>109</sup> are the largest remaining group of staff not subject to statutory registration. This means that there is no requirement for these staff to receive a minimum standard of ongoing training.<sup>110</sup>

In **Northern Ireland**, there has been no governing body overseeing the registration of teachers since the General Teaching Council for Northern Ireland was dissolved in 2021. Although interim mechanisms have been put place pending the reform of legislation, safeguarding concerns have been raised following reports about some schools employing teachers who have not fully completed criminal records checks. Furthermore, the exclusion of tutors from registration and regulation is a concerning gap.

### Recommendation

- The Welsh Government should require all independent school staff to register with the Education Workforce Council by April 2023.
- The Scottish Government to explore ways to ensure classroom and pupil support assistants are subject to the same requirements for minimum and ongoing training, for example through registration.
- In Northern Ireland, the absence of a governing body overseeing the registration of teachers must be addressed without delay.

## F. Family environment and alternative care (arts 5, 9-11, 18(1)-(2), 20-21, 25, 27(4))

### 16. Lack of early intervention, childcare and effective family support services

#### Early intervention and Family support

Current UK Government policies of austerity and benefits cuts (see under section 20 on child poverty and welfare reform) have meant that more and more families require support. But cuts to local authority funding have had an impact on the provision of early intervention services to properly support children and their families. Third

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<sup>109</sup> Job titles vary across local authorities.

<sup>110</sup> CYPCS, 2018. *Response to Empowering Schools: a consultation on the provisions of the Education (Scotland) Bill*. <https://www.cypcs.org.uk/resources/empowering-schools-consultation-provisions-education/>

sector organisations are increasingly important, but many organisations are facing unsustainable increases in running costs.<sup>111</sup> Some charities did not survive the pandemic and many services are still offering reduced and/or remote services.<sup>112</sup>

## Recommendation

- Greater investment in prevention and early intervention services should be prioritised, particularly in the early years.

## Childcare

Childcare costs in the UK are amongst the highest in the OECD (Organization for Economic Cooperation and Development). Tax-free childcare and the childcare contribution within Universal Credit do not cover average childcare costs<sup>113</sup> and there are areas which do not have enough childcare to meet demand. High childcare costs, difficulty in accessing high-quality childcare and insufficient funded provision can keep parents out of work, with mothers more likely to be affected.<sup>114</sup>

In **Wales**, the childcare offer of up to 30 hours per week for working parents of three- to four-year-olds should be available to all children, irrespective of parental work status. As a result of the Co-operation Agreement between the Welsh Government and Plaid Cymru,<sup>115</sup> there is a commitment to expanding the Flying Start offer (targeted childcare for families in disadvantaged areas) to all two-year-olds. From 2022, the childcare offer for three- to four-year-olds will be expanded to also support families with parents in education or training.<sup>116</sup> Whilst these advances are welcomed, further steps are needed to ensure the inclusivity of children from non-working families in the childcare offer.

In **Scotland**, new statutory guidance on early learning and childcare (ELC) was published in 2020. Implementation of the ELC expansion to 1,140 hours a year of

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<sup>111</sup> SCVO, 2022. Cost of Living and the #RunningCostsCrisis

<https://scvo.scot/policy/campaigns/running-costs-crisis>

<sup>112</sup> Children in Wales, 2022. *Report on the 6th Annual Child and Family Poverty Surveys 2022*.

[https://www.childreninwales.org.uk/application/files/6416/6487/3691/CIW\\_Poverty\\_report\\_2022\\_English.pdf](https://www.childreninwales.org.uk/application/files/6416/6487/3691/CIW_Poverty_report_2022_English.pdf)

<sup>113</sup> Coram Family and Childcare, 2022. *Childcare Survey 2022*.

[https://www.coram.org.uk/sites/default/files/resource\\_files/Coram%20Childcare%20Survey%20-%202022.pdf](https://www.coram.org.uk/sites/default/files/resource_files/Coram%20Childcare%20Survey%20-%202022.pdf)

<sup>114</sup> Ibid; Employers for Childcare, 2021. *Northern Ireland Childcare Survey 2021*.

<https://www.employersforchildcare.org/report/northern-ireland-childcare-survey-2021/>

<sup>115</sup> Welsh Government, 2021. *The Co-operation Agreement*.

<https://gov.wales/sites/default/files/publications/2021-11/cooperation-agreement-2021.pdf>

<sup>116</sup> Welsh Government, 2022. *Written Statement: Expansion of the Childcare Offer for Wales*.

<https://gov.wales/written-statement-expansion-childcare-offer-wales>

funded ELC was delayed by the pandemic but is now available for all three to four-year-olds and some two-year-olds. This is equivalent to 30 hours a week during term time or 22 hours a week if taken year-round.

In **Northern Ireland**, there has not been an equivalent provision of free childcare for young children to date. However, the previous Education Minister announced in September 2022 that work is ongoing to develop an integrated Early Learning and Childcare Strategy, which would include a minimum of 22.5 hours of funded pre-school education per week for all children aged three to four.<sup>117</sup>

## Recommendation

- All families should have access to high quality, affordable childcare, with funded provisions based on need and not employment status.

## 17. Children deprived of a family environment

In all three jurisdictions, children in alternative care experience instability and uncertainty and are frequently unable to maintain connections with their family, friends and community.

In **Wales** in 2021, 115 children per 10,000 were looked after, a trend that has been increasing.<sup>118</sup> Whilst there will always be incidences where it is safe and right for children to become looked after, too often the care system disrupts children's lives, their relationships with family, siblings and friends. The care system is in urgent need of reform, and whilst the Welsh Government have committed to 'reform children's social care in Wales', which will focus on reducing the number of children entering care by improving early intervention support, very little is available publicly at the time of writing to determine how this change will be delivered.

CCfW are concerned that some of the most vulnerable children at times are placed by local authorities in placements which are not registered with Care Inspectorate Wales (CIW). More must be done by the Welsh Government and local authorities to bring these placement options under the regulation of CIW.

The Welsh Government intend to remove the ability to make a profit from children's care services with legislative proposals currently under consultation to help move

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<sup>117</sup> Northern Irish Department of Education, 2022. *McIlveen announces move towards 22.5 hours of funded pre-school for all children*. <https://www.education-ni.gov.uk/news/mcilveen-announces-move-towards-225-hours-funded-pre-school-all-children>

<sup>118</sup> Welsh Government, 2022. *Children looked after at 31 March per 10,000 population aged under 18 by local authority and year, November 2021*. <https://statswales.gov.wales/Catalogue/Health-and-Social-Care/Social-Services/Childrens-Services/Children-Looked-After/childrenlookedafterat31marchper10000population-localauthority-year>

away from profit-making models of care. This includes both foster and residential placements. A focus must be placed on developing Not-for-Profit provision, with robust transitional arrangements in place to ensure continuity for children in care. The Welsh Government must also deliver on commitments to strengthen legislation in regard to Corporate Parenting and Support for Care Leavers.

In **Scotland**, the Independent Care Review ‘The Promise’, made significant recommendations to improve the care system, including a transformation of services to support children and families, with a focus on early intervention and user-centred systems.<sup>119</sup> Whilst the Children's Hearings system<sup>120</sup> aims to take a child-centred approach, children continue to report that they are not always adequately supported to participate in hearings. This particularly applies to younger children and older children in conflict with the law.<sup>121</sup>

CYPCS are concerned that children from outwith Scotland placed in Scottish residential or secure care settings may be deprived of their liberty, or subject to restrictions that equate to a deprivation of liberty, without access to the same rights protections and safeguards available to children normally resident in Scotland.<sup>122</sup>

The introduction of the Adoption and Children Act (Northern Ireland) 2022 and updated Strategy for Looked After Children in **Northern Ireland** are both welcomed and should be implemented in full. The number of children in care is the highest it has been since the introduction of the Children Order in 1995.<sup>123</sup>

Since 2017, the Department of Justice and Department of Health have been working in partnership to reform secure care and custody and develop a shared campus, partly in response to the unacceptably high numbers in custody who are cared for by the State. Unfortunately, progress has been slow.

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<sup>119</sup> Independent Care Review, 2020. *The Promise*. <https://www.carereview.scot/wp-content/uploads/2020/02/The-Promise.pdf>

<sup>120</sup> The welfare-based Children's Hearings System makes decisions for children who require compulsory measures of supervision, care, and protection, including those who are accused of having committed an offence. <https://www.chscotland.gov.uk/>

<sup>121</sup> Independent Care Review, 2020. *The Promise*, pp.39-44. <https://www.carereview.scot/wp-content/uploads/2020/02/The-Promise.pdf>

<sup>122</sup> CYPCS, 2022. *Scottish Government's Policy Position Paper on Cross-border Placements of Children and Young People – consultation response*. <https://www.cypcs.org.uk/resources/cross-border-placements/>

<sup>123</sup> Department of Health, 2022. *Children's Social Care Statistics 2021/2022*. <https://www.health-ni.gov.uk/sites/default/files/publications/health/child-social-care-21-22.pdf>

## Recommendations:

- The Scottish Government must keep ‘The Promise’ by implementing the recommendations of the Independent Care Review by 2030.
- The Welsh Government should clarify and provide detail about its planned programme of reform of social care.
- The Northern Ireland Executive must reform secure care and custody as a matter of urgency.

## G. Basic health and welfare (arts. 6, 18 (3), 24, 26, 27 (1)– (3) and 33)

### 18. Health and health services

#### Waiting times

The COVID-19 pandemic has resulted in increased paediatric waiting times across health services in all jurisdictions and this is exacerbated by ongoing staff shortages. This situation will further deteriorate if health services are subject to further funding cuts.

In **Northern Ireland**, waiting times far exceed those of other UK jurisdictions,<sup>124</sup> and available figures on paediatric waiting times show a relentless upward trend. At April 2022, 38,628 children were waiting on a first consultant-led outpatient appointment, 41% of which were waiting over one year with some extending into waits of four years or more.<sup>125</sup> No Health and Social Care Trust (HSCT) is achieving its Ministerial Targets on waiting times.<sup>126</sup> Officially published statistics are not disaggregated to the level required to fully understand waiting times for children across the child health care system; community health services are particularly poor.<sup>127</sup>

In **Wales**, referral to treatment waiting times for paediatrics within the 26-week target reached 95% in December 2019-February 2020. From a low point of 76.5% in September 2020, as of August 2022 it was 83.2%. For paediatric surgery, during the

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<sup>124</sup> Northern Ireland Fiscal Council, 2022. *Sustainability Report 2022: special focus – Health*. <https://www.nifiscalcouncil.org/publications/sustainability-report-2022-special-focus-health>

<sup>125</sup> NICCY, 2022. *More than a Number – One Year On Monitoring Report*. <https://www.niccy.org/more-than-a-number-one-year-on-resources/>

<sup>126</sup> Department of Health, 2022. *Hospital Waiting Times Statistics*. <https://www.health-ni.gov.uk/topics/dhssps-statistics-and-research/hospital-waiting-times-statistics>

<sup>127</sup> NICCY, 2021. *More Than A Number: Rights Based Review of Child Health Waiting Times*. <https://www.niccy.org/more-than-a-number-a-rights-based-review-of-health-waiting-lists-in-northern-ireland/>

height of the pandemic's effect on services, less than half of children were treated within the 26-week target. In August 2022, the figure was 68.5%.<sup>128</sup> Welsh NHS COVID-19 recovery plans should focus on re-establishing vital services for children to pre-pandemic levels.

Public Health **Scotland** does not publish detailed statistics for paediatric waiting times (with the exception of Child and Adolescent Mental Health Services) and there is a need to improve both reporting and recording of data.

### **Other Healthcare services**

All children should enjoy equal access to independent advocacy concerning their healthcare. The **Welsh Government** have not progressed work to extend independent advocacy across healthcare services.<sup>129</sup>

In **Northern Ireland**, a greater focus on children's health care is required within the broader Health and Social Care reform process. This includes addressing urgent issues of capacity to meet need across the child health system. To ensure children are given full consideration in this process, steps are required to improve the visibility of, and accountability for, children's health within key departments and agencies and with respect to health data and budgeting.

Paragraphs 84 and 85 of the 2018 CEDAW Inquiry report called on the UK Government to take action in relation to expanding the provision of legal abortion services to women and girls in Northern Ireland.<sup>130</sup> While the UK Government has passed legislation to implement these recommendations,<sup>131</sup> (FN2) the provision of services across Northern Ireland is inconsistent. Girls continue to have to travel outside the jurisdiction to secure abortions; in 2021, 161 women and girls were recorded to have travelled to GB for this purpose. The UK Government, through the NI Office has intervened to say that it will commission the required services in keeping with the legislation.

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<sup>128</sup> StatsWales, 2022. *Referral to Treatment*. <https://statswales.gov.wales/Catalogue/Health-and-Social-Care/NHS-Hospital-Waiting-Times/Referral-to-Treatment>

<sup>129</sup> CCfW, 2022. *Annual Report and Accounts 2021-22*. <https://www.childcomwales.org.uk/wp-content/uploads/2022/10/Annual-Report-and-Accounts-2021-22.pdf>

<sup>130</sup> CEDAW, 2018. *Report of the inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*. [https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/GBR/INT\\_CEDAW\\_ITB\\_GBR\\_8637\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/GBR/INT_CEDAW_ITB_GBR_8637_E.pdf)

<sup>131</sup> Northern Ireland (Executive Formation etc) Act 2019 section 9. <https://www.legislation.gov.uk/ukpga/2019/22/enacted>

In **Scotland**, following a review of health visitor services, the number of children attending the additional reviews at 13-15 months and 4-5 years has increased steadily.<sup>132</sup> However, there remain significant inequalities in uptake of childhood vaccinations, with children from the most deprived areas less likely to receive the full range of vaccinations.<sup>133</sup>

## Recommendations

- Comprehensive paediatric waiting times statistics should be available in all jurisdictions.
- The Welsh Government should ensure children have access to independent health-related advocacy through statutory guidance.
- In Northern Ireland paragraphs 84 and 85 of the CEDAW Inquiry report should be fully implemented including provision of reproductive healthcare services to women and girls in keeping with Section 9 of Northern Ireland (Executive Formation etc) Act 2019.
- The Northern Ireland Executive must take steps to improve the visibility of, and accountability for, children's health within key departments and agencies, to include health data and budgeting.

## 19. Mental health

In 2018, the OECD PISA showed only 18% of participating children across the UK reported positive wellbeing.<sup>134</sup> Concerns about the mental wellbeing of children increased during the COVID-19 pandemic. Across all jurisdictions, access to community mental health services is inconsistent and often inadequate, and lengthy waiting times for specialist care through Child and Adolescent Mental Health Services (CAMHS) is an ongoing concern.

In **Scotland**, the Auditor General in 2018 found community health services “complex and fragmented” with support “largely focussed on specialist care and responding to crisis”.<sup>135</sup> Mental health support in schools was improved with the addition of 350

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<sup>132</sup> Public Health Scotland, 2022. *Child health pre-school review coverage*.

<https://publichealthscotland.scot/publications/child-health-pre-school-review-coverage/child-health-pre-school-review-coverage-statistics-2020-to-2021/>

<sup>133</sup> Scottish Public Health Observatory, 2022. *Immunisations: Inequalities in uptake in children*.

<https://www.scotpho.org.uk/health-wellbeing-and-disease/immunisations/data/children/>

<sup>134</sup> OECD, 2018. *PISA 2018 Results*. <https://www.oecd.org/pisa/publications/pisa-2018-results.htm>

<sup>135</sup> Audit Scotland, 2018. *Children and young people's mental health*. [https://www.audit-scotland.gov.uk/uploads/docs/report/2018/nr\\_180913\\_mental\\_health.pdf](https://www.audit-scotland.gov.uk/uploads/docs/report/2018/nr_180913_mental_health.pdf)



counsellors in secondary schools in October 2020, however this only met the level of unmet demand pre-pandemic.<sup>136</sup> Disabled children, those with complex health needs and those experiencing other adversity are less likely to be able to access appropriate community mental health services.

The most recent quarterly CAMHS waiting time data reported that 68.4% of children were seen within 18 weeks of referral. The number of children being seen by CAMHS is increasing but waiting lists are still increasing.<sup>137</sup> This is a concerning pattern which needs more information. Concerns continue to exist about high rates of rejected referrals.<sup>138</sup>

Children aged 16 and 17 years old are treated as adults by the Mental Health (Care and Treatment) (Scotland) Act 2003. In 2022 the independent Scottish Mental Health Law Review recommended extensive reform of relevant legislation to ensure compliance with human rights law and for CAMHS minimum core obligations to include availability to children up to 18.<sup>139</sup>

In **Wales**, in the lead-up to Spring 2020 referral to first CAMHS appointment times improved, but these waiting times have been badly affected by the pandemic. In December 2021, just 22% of children received their specialist CAMHS appointment within the four-week target. In July 2022 the figure was 43.1%.<sup>140</sup> For those children requiring specialist residential mental health care, CCfW is concerned that, too often, children are not cared for in a therapeutic environment.

The NEST/NYTH framework<sup>141</sup> encourages a ‘no wrong door’ approach to mental health and wellbeing, which includes a sharper focus on early help across the range of settings that children encounter in their daily lives. The framework urges all the agencies involved in children’s lives to work together to create a whole system

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<sup>136</sup> CYPCS, 2022. *Mental health investment needs to be targeted so it can make a difference.* <https://www.cypcs.org.uk/news-and-stories/mental-health-investment-needs-to-be-targeted-so-it-can-make-a-difference/>

<sup>137</sup> Public Health Scotland, 2022. *Child and Adolescent Mental Health Services Waiting Times in NHS Scotland.* <https://www.publichealthscotland.scot/media/14866/2022-09-06-camhs-waiting-times-summary.pdf>

<sup>138</sup> SAMH, 2022. *SAMH Comments on Latest CAMHS stats.* <https://www.samh.org.uk/about-us/news-and-blogs/samh-comment-on-latest-camhs-stats>

<sup>139</sup> Scottish Mental Health Law Review, 2022. *Final report.* <https://www.mentalhealthlawreview.scot/>

<sup>140</sup> Welsh Government, 2022. *Specialist Children and Adolescent Mental Health Services first appointment waiting times.* <https://gov.wales/specialist-children-and-adolescent-mental-health-service-first-appointment-waiting-times>

<sup>141</sup> NHS Wales, undated. *The NEST Framework.* <https://collaborative.nhs.wales/networks/wales-mental-health-network/together-for-children-and-young-people-2/the-nest-framework/>

approach to mental health and wellbeing. Work is ongoing to roll out the framework across Wales, but the Welsh Government must ensure reality reflects rhetoric.

The Welsh Government has published statutory guidance on a whole school approach to mental health and well-being, which requires schools to demonstrate plans for continual improvement.<sup>142</sup> It has only been rolled out across some schools and more must be done to embed a whole-school approach into all schools. CCfW also urged the Welsh Government to make the key requirements of the framework more visible and accessible to children and school staff.

The rate of deaths of under 18s from probable / possible suicide in 2021 were higher but not statistically significantly higher than in previous years.<sup>143</sup> However, the suicide rate in 2021 among children aged 15-19 in Wales is 9.8 per 100,000, the highest rate since 2017.<sup>144</sup> The Welsh Government have produced welcome guidance to help schools in supporting learners and preventing suicide and self-harm.<sup>145</sup>

In **Northern Ireland**, waiting times for access to specialist mental health services continues to be a concern. Between 2019/20 and 2020/21 referrals to CAMHS from Emergency Departments increased by 24% (from 765 to 949).<sup>146</sup> Figures for Step 3 CAMHS service show that in April 2022, 2,223 children were waiting, 52 of which had been waiting over a year for a first appointment.<sup>147</sup>

The 10-year Mental Health Strategy for Northern Ireland is welcomed, as it includes firm commitments towards achieving a comprehensive mental healthcare system for children. There is a specific need to strengthen prevention and early intervention approaches, enhancing community-based services and ensuring specialist age and developmentally appropriate services are available. Mental Health support for children with a learning disability and those with more serious and complex alcohol

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<sup>142</sup> Welsh Government, 2021. *Framework on embedding a whole-school approach to emotional and mental wellbeing*. <https://gov.wales/framework-embedding-whole-school-approach-emotional-and-mental-wellbeing>

<sup>143</sup> Public Health Wales, 2022. *Patterns and trends of child deaths in Wales 2011-2020*. <https://phw.nhs.wales/publications/publications1/patterns-and-trends-of-child-deaths-in-wales-2011-2020/>

<sup>144</sup> Office of National Statistics, 2022. *Suicides in England and Wales*. <https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/deaths/datasets/suicidesintheunitedkingdomreferencetables>

<sup>145</sup> Welsh Government, 2019. *Suicide and self-harm guidance launched to support schools*. <https://gov.wales/suicide-and-self-harm-guidance-launched-support-schools>

<sup>146</sup> Health and Social Care Board, 2022. *Monthly Board Minutes- Performance Reports*. <https://hscboard.hscni.net/meeting/hscb-board-meetings-2021-2022/>

<sup>147</sup> NICCY, 2022. *More than a Number – One Year On Monitoring Report*. <https://www.niccy.org/more-than-a-number-one-year-on-resources/>

and drug co-morbidities are particularly concerning.<sup>148</sup> There continues to be an ongoing breach of children's rights caused by under 18s being admitted to adult mental health wards. Unfortunately, the investment required to deliver the Strategy commitments for children is not secured.

The Mental Capacity (Northern Ireland) Act 2016 provides important safeguards and protections for people who lack decision-making capacity leading to a Deprivation of Liberty. During the scrutiny process of the legislation and since it was passed, NICCY has consistently outlined its concerns to the government about excluding under 16s and retaining the Mental Health (Northern Ireland) Order 1986 for this age group,<sup>149</sup> a piece of legislation which has been identified as not meeting human rights standards.

The Northern Ireland Executive published an Emotional Health and Wellbeing Framework in February 2021, with recurrent joint funding between Departments of Health and Education.<sup>150</sup> As part of this work, a pilot therapeutic and counselling service for primary school pupils was introduced which means that counselling-type services are available in both primary and secondary schools in Northern Ireland. After considerable delay, the Addressing Bullying in Schools Act (Northern Ireland) 2016 came into force in September 2022.<sup>151</sup> There is no consistent measure of wellbeing across schools in Northern Ireland.

## Recommendations

- Children should have access to mental health services that are adequately resourced, so that they receive support in a timely and effective manner.
- Children's holistic needs should be met through multi-agency and multi-sectoral collaboration which includes a comprehensive range of services including prevention and early intervention; specialist community; specialist and in-patient care.

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<sup>148</sup> NICCY, 2022. *Still Waiting Monitoring Report*. <https://www.niccy.org/wp-content/uploads/media/4048/niccy-2022-monitoring-report-070222.pdf>

<sup>149</sup> NICCY, 2019. *NICCY response on the Mental Capacity Act (Northern Ireland) 2016 Code of Practice*. <https://www.niccy.org/publications/niccy-response-on-the-mental-capacity-act-northern-ireland-2016-code-of-practice/> <https://www.niccy.org/publications/2019/february/22/mental-capacity-act/>

<sup>150</sup> Department of Education (Northern Ireland), 2021. *Children and Young People's Emotional Health and Wellbeing in Education Framework*. <https://www.education-ni.gov.uk/articles/emotional-health-and-wellbeing>

<sup>151</sup> Addressing Bullying in Schools Act (Northern Ireland) 2016. [https://www.legislation.gov.uk/nia/2016/25/pdfs/nia\\_20160025\\_en.pdf](https://www.legislation.gov.uk/nia/2016/25/pdfs/nia_20160025_en.pdf)

- The Welsh Government should ensure that children experiencing emotional distress or mental ill health receive the multi-agency 'No Wrong Door' response to their needs without waits for assessment.
- The Scottish Government should ensure that children in all areas have access to high quality community mental health services.
- The Northern Ireland Executive must ensure mental capacity legislation provides all children under 18 with access to legal protections that comply with the ECHR and UNCRC.

## 20. Standard of living

### Austerity and welfare reform

Child poverty rates remain high across Northern Ireland, Scotland and Wales.<sup>152</sup> The welfare reform policy pursued by the UK Government and the cost-of-living crisis are predicted to lead to an increase in the number of children living in poverty.<sup>153</sup>

In **Northern Ireland**, an estimated 23% of children in 2019/20 were in relative poverty (after housing costs).<sup>154</sup> This figure has fluctuated between 23-28% for the past 20 years but shown no sustained decrease. Children continue to be the age group with the highest poverty levels, currently eight percentage points above working age adults and 10 percentage points above older people.<sup>155</sup> The Child Poverty Strategy 2016-2019 aimed to reduce child poverty and despite being extended to May 2022,<sup>156</sup> has not led to a decrease in the number of children in poverty. In 2020 the Northern Ireland Executive committed to a comprehensive new

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<sup>152</sup> See data tables Q411 in The UK's response to the UN Committee's List of Issues, Annex E: III. Statistical information and data.

<sup>153</sup> Resolution Foundation, 2022. *'Inflation Nation'*.

<https://www.resolutionfoundation.org/app/uploads/2022/03/Inflation-nation.pdf>

<sup>154</sup> Department for Communities, Northern Ireland Statistics and Research Agency (NISRA), 2021. *Households Below Average Income: Northern Ireland 2019-20 Poverty*. <https://www.communities-ni.gov.uk/publications/households-below-average-income-northern-ireland-201920>

<sup>155</sup> The relative poverty rate for working-age adults was 19% and for pensioners, 15%.

<sup>156</sup> Department for Communities, 2016. *The Child Poverty Strategy*. <https://www.communities-ni.gov.uk/publications/child-poverty-strategy#:~:text=The%20Executive's%20Child%20Poverty%20Strategy,their%20lives%20and%20life%20chances>

Anti-Poverty Strategy.<sup>157</sup> While this strategy has been delayed, this provides an opportunity for the Executive to take concerted action to reduce child poverty.

In **Scotland**, an estimated 24% of children lived in relative poverty in 2016-19.<sup>158</sup> This has remained stable, despite the re-introduction of statutory targets by the Child Poverty (Scotland) Act 2017. The Act requires the Scottish Government to take action to reduce the proportion of children living in relative poverty to less than 10% by 2030.<sup>159</sup> A Poverty and Inequalities Commission has been established, providing independent advice to Scottish Ministers on poverty and inequality, monitoring progress, and proposing solutions to reduce poverty and inequality in Scotland.<sup>160</sup>

In **Wales**, child poverty rates have increased in recent years. Around 31% of children were living in poverty in the Welsh Government's figures from 2017-20.<sup>161</sup> However, a study from Loughborough University put the figure at 34% based on statistics from 2020-21.<sup>162</sup> These figures are the highest of any UK jurisdiction.

Austerity policies and welfare reform across the UK continue to disproportionately impact children. The UK Government has not undertaken a comprehensive assessment of the cumulative impact of social security and tax credit reforms introduced; a number detrimentally affect children.

The UK Government limits support for families in receipt of Universal Credit (UC) with more than two children, in respect of children born since 6 April 2017.<sup>163</sup> Exceptions exist for the two-child limit, including where the mother can show the child was conceived as a result of rape.

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<sup>157</sup> Northern Ireland Office, 2020. *New Decade, New Approach*.

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/856998/2020-01-08\\_a\\_new\\_decade\\_a\\_new\\_approach.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/856998/2020-01-08_a_new_decade_a_new_approach.pdf)

<sup>158</sup> Scottish Government, 2020. *Poverty & Income Inequality in Scotland: 2016-19*.

<https://www.gov.scot/publications/poverty-income-inequality-scotland-2016-19/pages/3/#:~:text=Relative%20poverty%20for%20working%2Dage,to%20530%2C000%20before%20housing%20costs.>

<sup>159</sup> Child Poverty (Scotland) Act 2017. <https://www.legislation.gov.uk/asp/2017/6/contents/enacted>

<sup>160</sup> Poverty and Inequality Commission Scotland. <https://povertyinequality.scot/>

<sup>161</sup> StatsWales, 2020. *Children in Relative Income Poverty by Number of Children in the Household*.

<https://statswales.gov.wales/Catalogue/Community-Safety-and-Social-Inclusion/Poverty/childreninrelativeincomepoverty-by-numberofchildreninthehousehold>

<sup>162</sup> End Child Poverty Network, 2022. *Child Poverty in your area*. <https://endchildpoverty.org.uk/child-poverty/>

<sup>163</sup> UK Government, 2021. *Universal Credit: support for a maximum of 2 children*.

<https://www.gov.uk/guidance/universal-credit-and-families-with-more-than-2-children-information-for-claimants>

There is also a limit to the total amount of support a family can receive through the application of the Benefit Cap. As this does not take account of the number of children it disproportionately affects larger families. Families with a disabled child or adult are exempt. Since its introduction in 2013, the Benefit Cap has fallen from £26,000 to £20,000 per year for a couple or a single parent with resident children.<sup>164</sup> In 2019 the UN Special Rapporteur on Extreme Poverty and Human Rights reported on the impact of austerity including social security cuts on the supports and services to the most vulnerable across the UK:

“Considering the significant resources available in the country and the sustained and widespread cuts to social support, which have resulted in significantly worse outcomes, the policies pursued since 2010 amount to retrogressive measures in clear violation of the country’s human rights obligations.

The ideological rather than economic motivation for the cutbacks is demonstrated by the fact that the United Kingdom spends £78 billion per year to reduce or alleviate poverty, quite apart from the cost of benefits; £1 in every £5 spent on public services goes to repair what poverty has done to people’s lives. Cuts to preventive services mean that needs go unmet and people in crisis are pushed toward services that cannot turn them away but cost far more, like emergency rooms and expensive temporary housing.”<sup>165</sup>

Changes to the social security system in **Northern Ireland** have continued since 2016, with families with children most affected.<sup>166</sup> In 2015, the Executive established a mitigation package, ensuring that those most in need are protected from some of the most severe welfare reform measures, including the ‘Bedroom Tax’ and Benefit Cap. However, this did not mitigate subsequent social security system changes including the two-child limit and removal of the family element of tax credits or Universal Credit. While the mitigations package was continued after 2020, it has not been updated to include measures to mitigate the changes that have most negatively affected families with children.

The **Scotland** Act 2016 introduced devolved social welfare powers for the Scottish Government, however key benefits including Universal Credit have not been

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<sup>164</sup> UK Government, undated. *Benefit cap: Benefit cap amounts*. <https://www.gov.uk/benefit-cap>

<sup>165</sup> Special Rapporteur on extreme poverty and human rights, 2019. Report of the Special Rapporteur on extreme poverty and human rights on his visit to the United Kingdom of Great Britain and Northern Ireland. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/112/13/PDF/G1911213.pdf?OpenElement>

<sup>166</sup> Reed, H., and Portes, J., 2019. *Cumulative impact assessment of tax and social security reforms in Northern Ireland*. <https://nihrc.org/publication/detail/cumulative-impact-assessment-of-tax-and-social-security-reforms-in-northern>

devolved. New child and adult disability benefits have now been introduced, however at present eligibility criteria and payments remain the same as under previous UK benefits.<sup>167</sup> The Scottish Government is in the process of phasing in a new Scottish Child Payment (SCP),<sup>168</sup> but there is a need to ensure that all eligible families receive the benefit and that payments are increased in line with inflation.<sup>169</sup> The Scottish Government can also mitigate the cost of living crisis by addressing issues such as public debt, housing costs and through the Scottish Welfare Fund.<sup>170</sup>

In **Wales**, recent welcome developments include the further extension of school holiday food (see below) and activity provision for school-age children.<sup>171</sup> The Welsh Government's Child Poverty Income Maximisation Plan<sup>172</sup> is also welcome and includes dedicated campaigns for raising awareness of benefits and entitlements which has resulted in increased take up. However, as CCfW has called for repeatedly, initiatives should be implemented through a child poverty delivery plan with measurable outcomes.<sup>173</sup>

### **Poverty during COVID-19 pandemic response and the cost-of- living crisis**

While the pandemic had a severe impact on the economy, in 2020-21 child poverty decreased slightly. This was partly due to a decrease in median income overall, but also a result of significant UK Government interventions, in the form of a Coronavirus Job Retention Scheme, a Self-Employed Income Support Scheme and a £20 weekly uplift to the standard Universal Credit allowance.<sup>174</sup> The removal of the uplift in October 2021 in advance of the cost of living crisis, despite calls from the Commissioners for it to be retained, has meant low-income households that may

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<sup>167</sup> Scottish Government, 2022. *Social Security – Disability Assistance*.

<https://www.gov.scot/policies/social-security/benefits-disabled-people-ill-health/>

<sup>168</sup> Scottish Government, 2022. *Scottish Child Payment*. <https://www.mygov.scot/scottish-child-payment>

<sup>169</sup> CYPCS, CCfW & NICCY, 2022. *Statement: Scotland, Wales and Northern Ireland Commissioners call on Governments to address cost-of-living*. <https://www.cypcs.org.uk/news-and-stories/statement-scotland-wales-and-northern-ireland-commissioners-call-on-governments-to-address-cost-of-living/>

<sup>170</sup> Scottish Government, 2022. *Scottish Welfare Fund - help with living costs*.

<https://www.mygov.scot/scottish-welfare-fund>

<sup>171</sup> The Summer of Fun and Winter of Wellbeing schemes in 2021-22 allocated funds to support children and young people in taking part in a range of sporting, cultural and play based activities.

<sup>172</sup> Welsh Government, 2022. *Child Poverty: income maximisation plan 2020 to 2021*.

<https://gov.wales/child-poverty-income-maximisation-action-plan-2020-2021-html>

<sup>173</sup> CCfW, 2019. *Charter for Change: Protecting Welsh Children from the Impact of Poverty*.

<https://www.childcomwales.org.uk/a-charter-for-change-protecting-welsh-children-from-the-impact-of-poverty-2/>; CCfW, 2022. *Annual report and Accounts 2021-22*. <https://www.childcomwales.org.uk/wp-content/uploads/2022/10/Annual-Report-and-Accounts-2021-22.pdf>

<sup>174</sup> House of Commons Library, 2022. *Poverty in the UK: statistics*

<https://commonslibrary.parliament.uk/research-briefings/sn07096/>

have been just about managing in the past, are now not able to afford the rising costs of basic necessities, including food and fuel.

Following the reversal of most measures in the September 2022 ‘mini budget’, the October 2022 Autumn Statement confirmed that working age benefits would be increased by 10.1%, but not until April 2023. However, the two-child limit and benefit cap<sup>175</sup> remain in place<sup>176</sup>. The Commissioners are concerned that inequality and poverty will persist, with children bearing the burden.<sup>177</sup>

The three Commissioners have called for the UK and devolved governments to address the impact of the cost-of-living crisis on children and their families, including through welfare reform:

“The UK and devolved Governments are failing in their obligation to use all available resources to the maximum extent possible to ensure children’s rights. Every Government must take a children’s rights-based approach to how it monitors and responds to this crisis over the coming months. We must see deliberate and targeted action to mitigate its impact on children and their ability to access and experience their rights.”<sup>178</sup>

Home energy prices have risen sharply in the UK over the last 18 months. The energy regulator, Ofgem, sets price caps for energy supply in Scotland and Wales.<sup>179</sup> Different arrangements apply in Northern Ireland.<sup>180</sup> In August 2021, the price cap was £1,277 for an average household. In September 2022 UK Government put in place an Energy Price Guarantee of an average of £2,500<sup>181</sup>. Unclear communication has caused confusion, as many understand it to mean they will pay

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<sup>175</sup> Albeit increased by 10.1%, the first increase since it was reduced from £26,000 to £22,000 in 2016. From April 2023 it will be £22,020.

<sup>176</sup> UK Government. 2022. Autumn Statement 2022.

<https://www.gov.uk/government/publications/autumn-statement-2022-documents/autumn-statement-2022-html>

<sup>177</sup> CYPCS, CCfW and NICCY, 2022. *Children’s Commissioners warn that poverty persists and children will bear the burden.* <https://www.cypcs.org.uk/news-and-stories/childrens-commissioners-warn-poverty-persists-and-children-will-bear-the-burden/>

<sup>178</sup> CYPCS, CCfW & NICCY, 2022. *Statement: Scotland, Wales and Northern Ireland Commissioners call on Governments to address cost-of-living.* <https://www.cypcs.org.uk/news-and-stories/statement-scotland-wales-and-northern-ireland-commissioners-call-on-governments-to-address-cost-of-living/>

<sup>179</sup> Ofgem, 2022. Energy price cap explained. <https://www.ofgem.gov.uk/information-consumers/energy-advice-households/check-if-energy-price-cap-affects-you> NB this page contains incorrect information on the Energy Price Guarantee.

<sup>180</sup> UK Government, 1 November 2022. Energy Bill support for Northern Ireland households launches. <https://www.gov.uk/government/news/energy-bill-support-for-northern-ireland-households-launches>

<sup>181</sup> At the time of writing, it has just been announced the cap will rise to £4,279 in January 2023.



no more than £2,500. In reality, many households will pay more than this and disproportionately this will be families with children.<sup>182</sup> The Energy Price Guarantee will rise to £3,000 in April 2023.<sup>183</sup> Devolved governments have put in place targeted mitigation measures, but many families face unaffordable bills and the potential to be disconnected, or forced to use a pre-payment meter, if they fall into arrears.<sup>184</sup>

For some families, debt to public bodies has a significant impact on household spending. This includes rent and council tax arrears; school meal debt; and requirements to repay overpayments on Universal Credit and other benefits.<sup>185</sup>

## Recommendations

- Children should have access to a social security system which is an effective safety net for all in society, especially children and their families.
- The two-child limit and benefit cap should be abolished and the £20 weekly Universal Credit uplift reinstated.
- All benefits should be raised at least in line with inflation.
- The recommendations of the UN Special Rapporteur on Extreme Poverty and Human Rights should be implemented in full.
- In Northern Ireland, an Anti-Poverty Strategy should be developed with a focus on eradicating child poverty, including through introduction of a new child payment, mitigating changes in Social Security, reducing costs associated with education, and accessible and affordable childcare.
- The Welsh Government should set ambitious targets for reducing child poverty and develop and implement a comprehensive child poverty action plan with outcomes against which progress can be measured.

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<sup>182</sup> Independent, 30 Sep 2022. *Truss accused of 'repeatedly misleading' public over energy bills.*

<https://www.independent.co.uk/news/uk/home-news/martin-lewis-energy-price-cap-b2177884.html>

<sup>183</sup> Fraser of Allander Institute, 18 November 2022. *Energy Price Guarantee is now less generous but will play a role in fighting inflation.* <https://fraserofallander.org/energy-price-guarantee-is-now-less-generous-but-will-play-a-role-in-fighting-inflation/>

<sup>184</sup> CYPCS, 2022. *Children's Commissioner urges Ofgem to ban compulsory installations of pre-payment meters, warning of dire consequences for children.* <https://www.cypcs.org.uk/news-and-stories/childrens-commissioner-urges-ofgem-to-ban-compulsory-installations-of-pre-payment-meters-warning-of-dire-consequences-for-children/>

<sup>185</sup> Aberlour, 2022. *Low-Income Families in Scotland Are Facing Soaring Debt To Public Bodies.* <https://www.aberlour.org.uk/news-item/new-report-debt-to-public-bodies>

- During the current cost of living crisis governments should act to ensure all families on low incomes can maintain an adequate standard of living.
- Debts to public bodies should not be recovered in a way which acts against children's best interests.

## Adequate housing

The true extent of homelessness and housing insecurity amongst children, families and young people is difficult to ascertain due to its often 'hidden' or 'informal nature'.

The lack of suitable housing often means children and their families spend long periods in temporary accommodation. This particularly affects families seeking asylum, refugees, and others subject to immigration control. Young people<sup>186</sup> living independently, many of whom are care experienced, face barriers to securing appropriate long-term tenancies. A shortage of accessible family housing for disabled children and their families, results in many families living in insecure tenancies or inappropriate housing.<sup>187</sup>

In **Wales**, access to housing support requires the Local Housing Authority to determine whether the applicant is in 'priority need', and if so, whether they are 'intentionally homeless'. A finding of intentionality has implications for access to social housing and ongoing support. This affects children and penalises them without recognising their needs.

The Welsh Parliament's Local Government and Housing Committee inquiry into site provision for Gypsies and Travellers highlighted significant concerns regarding the standard of facilities, the availability and location of site provision and the level of racism and discrimination reported.<sup>188</sup> Whilst we welcome the Welsh Government's response to this report in accepting the recommendations,<sup>189</sup> urgent action must be taken to ensure children's rights are upheld.

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<sup>186</sup> Including children aged 16 and 17.

<sup>187</sup> Equality and Human Rights Commission, 2018. *Housing and Disabled People: Scotland's Hidden*. <https://www.equalityhumanrights.com/sites/default/files/housing-and-disabled-people-scotland-hidden-crisis-long-summary.pdf>; Homelessness and Housing Insecurity impacting Children and Young People- Scoping Study April 2022- NICCY, pending.

<sup>188</sup> Welsh Parliament Local Government and Housing Committee, 2022. *Provision of sites for Gypsy, Roma and Travellers*. <https://senedd.wales/media/lktpwocm/cr-ld15300-e.pdf>

<sup>189</sup> Welsh Government, 2022. Written Response by the Welsh Government to the report of the Local Government and Housing Committee Report on Provision of Sites for Gypsy, Roma and Travellers. <https://business.senedd.wales/documents/s130158/Welsh%20Government%20response%20to%20report.pdf>

In **Scotland**, waiting lists for public and social housing remain high.<sup>190</sup> Children living in private lets are more likely to be affected by the Benefit Cap due to significantly higher rents in this sector. In response to the current cost of living crisis, the Scottish Government has announced temporary protections for private and social tenants this winter,<sup>191</sup> however there needs to be long term action to address a shortage of suitable housing for families. New social housing building needs to at least double to meet demand.<sup>192</sup>

In **Northern Ireland**, the limited statistics available indicate that 27% of households accepted as statutorily homeless in July-December 2021 had dependent children. There has been a 55% increase in the number of children in temporary accommodation between 2019 and 2022.<sup>193</sup>

## Recommendation

- All governments should improve availability of affordable housing across tenures, with a particular focus on families in priority need and children living independently.

## Food insecurity

Food insecurity remains a serious problem for children across the UK, now heightened by the current cost of living crisis. As of September 2022, the Food Foundation estimated that over one in four households with children had experienced food insecurity in the past month – an estimated 4 million children across the UK.<sup>194</sup>

While the Trussell Trust reported a decrease between 2019/20 and 2021/22 in the number of food parcels distributed to children by its network in **Scotland** and **Wales**, data collected on the Trust's behalf on the use of all food banks in the two countries (including those outside the Trussell Trust network) showed that average need in Scotland and Wales was in fact higher than the national average. **Northern Ireland**

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<sup>190</sup> Scottish Government, 2022. *Housing Statistics 2020 & 2021: Key Trends Summary*.

<https://www.gov.scot/publications/housing-statistics-2020-2021-key-trends-summary/>

<sup>191</sup> Shelter Scotland, 2022. *Your housing rights in the cost of living crisis*.

[https://scotland.shelter.org.uk/housing\\_advice/cost\\_of\\_living](https://scotland.shelter.org.uk/housing_advice/cost_of_living)

<sup>192</sup> Joseph Rowntree Foundation, 2020. *Poverty in Scotland 2020*.

<https://www.jrf.org.uk/report/poverty-scotland-2020>

<sup>193</sup> Department for Communities, 2022. *Northern Ireland Homelessness Bulletin July-December 2021*.

<https://www.communities-ni.gov.uk/publications/northern-ireland-homelessness-bulletin-july-december-2021>

<sup>194</sup> The Food Foundation, 2022. *New data show 4 million children in households affected by food insecurity*. <https://foodfoundation.org.uk/publication/new-data-show-4-million-children-households-affected-food-insecurity>

showed the largest increase across the UK, with 39% more parcels distributed to children since 2019.<sup>195</sup>

Free school meals are available to some extent across Scotland, Wales and Northern Ireland, with varying criteria for eligibility. Not all children in poverty are eligible for free school meals. Eligibility criteria should be reviewed to ensure all children in need receive free school meals. While substitute free school meals during school holidays were temporarily put in place as a result of the COVID-19 pandemic, this needs to be made permanent.

The extension of free school meals to all primary school children in **Scotland** has been delayed and while CYPCS support extension to secondary school children this requires further consideration, taking into account the views of children.<sup>196</sup> Increased universal provision, together with the low threshold for free school meals may impact on the take up of support during school holidays.<sup>197</sup>

In the **Welsh Government** co-operation agreement with Plaid Cymru, they have committed to free school meals for all primary school pupils by 2024.<sup>198</sup>

In **Northern Ireland** there currently are no plans to provide free school meals on a universal basis for any age group of children.

## Recommendations

- Children eligible for free school meals should continue to receive support during school holidays, to ensure children do not go hungry when not in school.
- Eligibility criteria for free school meals and other support should be reviewed to, as a minimum, ensure all children in poverty are eligible.

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<sup>195</sup> The Trussell Trust, 2022. *Trussell Trust data briefing on end-of-year statistics relating to use of food banks: April 2021 – March 2022*. <https://www.trusselltrust.org/wp-content/uploads/sites/2/2022/04/EOY-Stats-2022-Data-Briefing.pdf>

<sup>196</sup> CYPCS, 2022. Expanding universal school meals for all nursery, primary and secondary pupils (Submission to Scottish Parliament Citizen Participation and Public Petitions Committee). <https://www.cypcs.org.uk/resources/pe1926-expand-universal-school-meals-for-all-nursery-primary-and-secondary-school-pupils/>

<sup>197</sup> CYPCS, 2022. Expanding universal school meals for all nursery, primary and secondary pupils (Submission to Scottish Parliament Citizen Participation and Public Petitions Committee). <https://www.cypcs.org.uk/resources/pe1926-expand-universal-school-meals-for-all-nursery-primary-and-secondary-school-pupils/>

<sup>198</sup> Welsh Government, 2022. *Universal free school meals roll-out to commence in September*. <https://gov.wales/universal-free-school-meals-roll-out-commence-september>

## 21. Impact of climate change on the rights of the child

Environmental degradation and climate change are important issues for children and they have exercised their right to freedom of assembly and participation, campaigning for urgent action.

In **Northern Ireland** there has been little engagement with children concerning environmental matters, and slow progress concerning climate change. Executive commitments to tackle climate change and environmental degradation<sup>199</sup> must be child-centred and include meaningful engagement with children.

The Active Travel Act (2013) was introduced in **Wales**, but a Parliamentary Committee found in 2018 that active travel had reduced for children travelling to school.<sup>200</sup> The Welsh Parliament passed legislation to lower the default national speed limit on residential roads and pedestrian streets from 30 mph to 20 mph. This will come into force in September 2023.<sup>201</sup>

In 2022, the Welsh Government announced five bills within its legislative programme with a focus on supporting the environment and tackling climate change.<sup>202</sup> This included a Clean Air Bill which will seek to improve air quality and lower emissions. This should seek to address the disproportionate impact of air pollution on low-income families and Black, Asian and Minority Ethnic communities.<sup>203</sup>

The Welsh Government have also published an engagement plan in response to the climate emergency but should take further steps to outline how this will directly involve children.<sup>204</sup>

In 2021, the UN Climate Change Conference (COP26) was hosted in Glasgow. This provided a significant focal point for engagement with children in **Scotland**, including

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<sup>199</sup> Northern Ireland Office, 2020. *New Decade, New Approach*.

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/856998/2020-01-08\\_a\\_new\\_decade\\_a\\_new\\_approach.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/856998/2020-01-08_a_new_decade_a_new_approach.pdf)

<sup>200</sup> National Assembly for Wales, Economy, Infrastructure and Skills Committee, 2018. *Post Legislative Scrutiny of the Active Travel (Wales) Act 2013*.

<https://senedd.wales/laid%20documents/cr-ld11566-r/cr-ld11566-r-e.pdf>

<sup>201</sup> Welsh Government, 2022. *UK first – Welsh Senedd gives green light for 20mph legislation*.

<https://gov.wales/uk-first-welsh-senedd-gives-green-light-20mph-legislation>

<sup>202</sup> Welsh Government, 2022. *Wales' green agenda*. <https://gov.wales/wales-green-agenda-first-minister-announces-welsh-governments-legislative-programme>

<sup>203</sup> Friends of the Earth Cymru, 2022. *Research shows link between income and air pollution*.

<https://foe.cymru/research-shows-link-between-income-and-air-pollution>

<sup>204</sup> Welsh Government, 2022. *Climate Change: Welsh Government Engagement Approach 2022-26*.

<https://gov.wales/sites/default/files/publications/2022-08/engagement-approach-around-climate-change-2022-26.pdf>

support from CYPs to highlight children’s right to protest. On the 29th October 2021, over 2000 children in Scotland took part the ‘The Moment’ and met decision makers across Scotland to talk about their climate calls to action.<sup>205</sup> While focal points for engagement are welcome, there is frustration at the slow pace of resulting action.

Children have clear ideas on how to protect their health and 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:**

- Children’s rights should be considered when developing and implementing all strategies to reduce environmental degradation and climate change.
- All children should have the opportunity to be active participants in policy development.
- The Welsh Government should set out clearly a plan for how children will participate in the Welsh Government’s response to the climate emergency.

## **H. Education, leisure and cultural activities (arts. 28–31)**

### **22. Education**

The COVID-19 pandemic had a profound impact on children’s education. Experiences of online learning were mixed, sometimes even within the same school and particularly during the first lockdown. Disabled, minority ethnic and care experienced children were among the groups disproportionately affected, but those most negatively impacted were children living in poverty, particularly if they also experienced digital exclusion.<sup>206</sup>

In 2020 and 2021, national exams were cancelled in all three jurisdictions. In 2020, serious concerns were raised about the use of algorithms to adjust grades and results were subsequently amended, based on teacher estimates. In 2021, adjustments were made to assessments. However, children reported a high number

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<sup>205</sup> Children’s Parliament, 2021. *The Moment*.

<https://climatechangemakers.childrensparliament.org.uk/the-moment/>

<sup>206</sup> Education Scotland, 2020. *Equity Audit*. <https://education.gov.scot/improvement/scotland-learns/resources-for-practitioners/scottish-attainment-challenge-2020-21-equity-in-education/equity-audit/>; CCfW, 2022, *Coronavirus and Me surveys*. <https://www.childcomwales.org.uk/coronavirus-our-work/>

of internal assessments as schools tried to gather evidence to support teacher estimates.

In addition to the impact on learning, school closures interrupted children's opportunities to socialise and play. For children who received additional support for disability or other reasons during the school day such as speech therapy, counselling and physiotherapy, these services were also interrupted.

### **Support for disabled children and children with other support needs**

In all three jurisdictions, there is insufficient provision of support services for disabled children and those with other support needs (ALN in Wales,<sup>207</sup> SEN in Northern Ireland,<sup>208</sup> and ASN in Scotland<sup>209</sup>). Despite reviews to legislation and policy, children continue to face unacceptable delays in assessment and identification of support needs. Services are poorly integrated, particularly the lack of co-ordination between education and health.

Whilst legal frameworks are different in each jurisdiction,<sup>210</sup> common themes include a lack of participation by children and their families in decision making, inconsistent application of legislation and guidance, and barriers to achieving a right to remedy. Transition planning, as children move between educational stages or from child to adult services, is often poor.

In **Wales**, the Additional Learning Needs and Education Tribunal (Wales) Act 2018 is intended to improve the provision of integrated support for learners with Additional Learning Needs. It also requires views of children and their families to be taken into account, and for information to be made readily available to children and families about their entitlements. However, in 2022 the Act's provisions have yet to be embedded consistently across Wales and CCfW continues to hear regularly that the issues the Act was designed to address are persistent.

Welsh health boards continue to routinely fail to achieve the target of 26 weeks for initial assessment for neurodevelopmental services. A freedom of information request in February 2022 revealed that, at the time of that particular snapshot data collection, a total of 9,014 children were waiting for a neurodevelopmental assessment in Wales. Of these, over one in three have been waiting for over one

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<sup>207</sup> Additional Learning Needs

<sup>208</sup> Special Educational Needs

<sup>209</sup> Additional Support Needs

<sup>210</sup> Additional Learning Needs and Education Tribunal (Wales) Act 2018. <https://gov.wales/additional-learning-needs-and-education-tribunal-wales-act>; Education (Additional Support for Learning) (Scotland) Act 2004 (as amended). <https://www.legislation.gov.uk/asp/2004/4/contents>

year.<sup>211</sup> In 2022, the Welsh Government committed funding to improving neurodevelopmental services and set up a Ministerial Advisory Group.<sup>212</sup> Children with learning disabilities and their families too often experience disjointed services and are often not involved in their transition to adult services.<sup>213</sup> The Learning Disability Strategic Action Plan 2022-2026<sup>214</sup> includes a commitment to reviewing the provision of children and young people's services, and a commitment to promote collaborative working, including transition services.

In **Northern Ireland**, there has been an extensive delay in implementing the new policy and legislative framework which is integral to addressing systemic failures in the SEND system.<sup>215</sup>

In **Scotland**, the number of children with Co-ordinated Support Plans (CSP) continues to fall, leaving limited access to a right to remedy. A concerning number of autistic children are out of school and receiving little or no educational support.<sup>216</sup> Attainment rates for children with additional support needs (including disabled children and those with care experience) are considerably below that of their peers.<sup>217</sup> Social care support for disabled children, including respite care, continues to be difficult to access.<sup>218</sup>

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<sup>211</sup> Welsh Government, 2022. *FOI Release – Autism Assessments*. <https://gov.wales/atish16267>

<sup>212</sup> Welsh Government, 2022. *Written Statement: Improvements in Neurodevelopmental Conditions*. <https://gov.wales/written-statement-improvements-neurodevelopmental-conditions-services>

<sup>213</sup> CCfW, 2018. *Don't Hold Back*. <https://www.childcomwales.org.uk/wp-content/uploads/2019/10/Dont-Hold-Back.pdf>

<sup>214</sup> Welsh Government, 2022. *Learning Disability Strategic Action Plan 2022-2026*. <https://gov.wales/learning-disability-strategic-action-plan-2022-2026-html>

<sup>215</sup> NICCY, 2020. *'Too Little, Too Late,' A Rights Based Review of Special Educational Needs Provision in Mainstream Schools*. <https://www.niccy.org/review-of-sen-provision-too-little-too-late/>; Department of Education, undated. *New SEN Framework*. <https://www.education-ni.gov.uk/articles/review-special-educational-needs-and-inclusion>

<sup>216</sup> Children in Scotland et al, 2018. *Not included, not engaged, not involved: A report on the experiences of autistic children missing school*. <https://www.notengaged.com/>; further engagement with children supported by Children's Health Scotland.

<sup>217</sup> Scottish Government, 2022. *Summary Statistics for Attainment and Initial Leaver Destinations, No. 4: 2022 Edition*. <https://www.gov.scot/publications/summary-statistics-attainment-initial-leaver-destinations-no-4-2022-edition/pages/6/>

<sup>218</sup> Scottish Government, 2019. *Additional Support for Learning Review*. <https://www.gov.scot/groups/additional-support-for-learning-review/>



## Recommendations:

- Disabled children and those with other needs should receive the support they need to realise their right to an education which develops their personality, talents and mental and physical abilities to their fullest potential.
- Assessment processes should be reviewed and adequately resourced to ensure that the needs of disabled children are identified timeously.
- Children and their families should have access to an effective remedy where necessary support has not been provided.

## School exclusions

There continues to be a worrying pattern of formal or informal exclusions/suspensions across all three jurisdictions.<sup>219</sup> These are often either not recorded, or recorded as something else, resulting in a lack of accurate data. Disabled children are particularly vulnerable to both formal and informal/illegal exclusion from school. Schools employ such measures due to a lack of capacity to support these children's educational, behavioural, or health needs.<sup>220</sup>

In **Northern Ireland**, a disproportionate number of children with SEN experience formal and informal suspensions/exclusions, resulting in an increased risk of isolation and lost teaching time. This has been attributed to insufficient resource and capacity to support children's needs, including a lack of behavioural support services<sup>221</sup>.

In **Scotland**, CYPCS are also concerned at anecdotal, but persistent, evidence of disabled children, including those with mental health conditions, being encouraged to leave school at 16 and in some cases before.<sup>222</sup>

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<sup>219</sup> NICCY, 2020. *Too Little, Too Late, 'A Rights Based Review of Special Educational Needs Provision in Mainstream Schools.* <https://www.niccy.org/review-of-sen-provision-too-little-too-late/>; In Scotland, permanent exclusions are extremely rare, but temporary exclusions are commonplace. In 2020-21 there were 8,323 temporary exclusions (a rate of 11.9 per 1,000 pupils) and 1 permanent exclusion. Scottish Government, 2022. School exclusion statistics. <https://www.gov.scot/publications/school-exclusion-statistics/>

<sup>220</sup> NICCY, 2020. *'Too Little, Too Late, 'A Rights Based Review of Special Educational Needs Provision in Mainstream Schools.* <https://www.niccy.org/review-of-sen-provision-too-little-too-late/>

<sup>221</sup> In Northern Ireland since 2015, disabled children are twice as likely to be suspended. NICCY, 2020. *Too Little, Too Late, 'A Rights Based Review of Special Educational Needs Provision in Mainstream Schools.* <https://www.niccy.org/review-of-sen-provision-too-little-too-late/>; Children in Scotland et al., 2018. *Not Included, not engaged, not involved: a report on the experiences of autistic children missing school.* <https://www.notengaged.com/>

<sup>222</sup> Each Other and Includem, Excluded the Event. Summary forthcoming; CYPCS casework.

In **Wales** CCfW has had particular concerns about exclusionary practices, including off-rolling<sup>223</sup> of younger school-aged children, as outlined in the *Building Blocks* report<sup>224</sup> and the accompanying resources for schools. The Welsh Government has promised new exclusions guidance in 2022/23, which CCfW hopes will promote a more nurturing approach that focuses on supporting the child.

## Recommendations

- Children who are not attending school, including due to exclusion, should be supported so they continue to receive an appropriate education for the whole period of exclusion.
- All governments must do more to reduce the number of children formally, informally and illegally excluded from school on a temporary or permanent basis.

## Unequal access

Inequalities exist in all jurisdictions and many children, including care-experienced children, disabled children, Traveller children; those from ethnic minorities, disadvantaged backgrounds, and with additional needs, face significant barriers to a high-quality education.<sup>225</sup>

In **Northern Ireland**, academic selection and separated schooling continues to exacerbate inequalities, advantage children from more affluent families, and reinforce social and religious divides.<sup>226</sup> The government's commitment to implementing in full the *A Fair Start Action Plan*, to address the links between educational underachievement and social disadvantage, is welcome. However, the plan will only be fully effective with political cooperation and the availability of sustainable long-term funding. The passing of legislation placing a statutory duty on the Department of Education to provide further support to the integrated schools sector is also welcome.

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<sup>223</sup> Off-rolling is the removal of a child from a school roll without following the procedure for a permanent exclusion.

<sup>224</sup> CCfW, 2021. *Building Blocks: inclusion in the foundation phase*.

<https://www.childcomwales.org.uk/publications/building-blocks/>

<sup>225</sup> NICCY, 2017. *Educational Inequalities and Inclusion Position Paper*

<https://www.niccy.org/publications/educational-inequalities-position-paper/>; NICCY, 2020. *Education Briefing* <https://www.niccy.org/publications/education-committee-briefing/>

<sup>226</sup> Department of Education, 2020. *Northern Ireland Statistical Bulletin: Enrolments at Schools and in Funded Pre-School Education in Northern Ireland 2019/20*. <https://www.education-ni.gov.uk/publications/school-enrolments-201920-statistical-bulletins>

In **Scotland**, there are ongoing concerns about the number of children with autistic spectrum disorders and other disabilities who are not attending school, often with the acquiescence of the school or local authority.<sup>227</sup> In most cases these children receive little or no alternative educational provision.<sup>228</sup> Children unable to attend school due to ill-health report inconsistent levels of education provision. Only around a third of children in hospital receive educational support in line with government guidance; sometimes children on the same ward receive different provision based on their place of residence.<sup>229</sup>

In **Wales**, the extent to which children can currently access their right to an education whilst receiving treatment in a hospital or another health setting is unclear. The CCfW is currently researching this issue to highlight any gaps in provision and to identify any difficulties faced by professionals tasked with delivering this legal entitlement. Access to an education in Welsh is particularly problematic for children with Additional Learning Needs (ALN) as there is a lack of specialist ALN support in Welsh.

## Recommendations

- Children who are not attending school due to ill health, whether or not they are in hospital, should continue to receive an education appropriate to their needs.
- The education system in Northern Ireland should be transformed, through implementation of *A Fair Start*, banning academic selection and promotion of a single education system.
- The Welsh Government must ensure that the needs of children with Additional Learning Needs are included in their five-year plan for the Welsh language – *More Than Just Words*.

## Financial barriers to education

Although both primary and secondary education is free in all three jurisdictions, concerns have been growing on the financial cost of attending school. Parents and carers are required to cover a range of costs across the school year, including

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<sup>227</sup> Children in Scotland et al, 2018. *Not included, not engaged, not involved: A report on the experiences of autistic children missing school.* <https://www.notengaged.com/>

<sup>228</sup> Engagement work undertaken by CYPCS with young people and professionals.

<sup>229</sup> Children's Health Scotland, 2019. *Children in Hospital 2018/2019 Survey.* <https://www.childrenshealthscotland.org/wp-content/uploads/2019/10/191016-Children-in-Hospital-Survey-2018-19-FINAL.pdf>

'voluntary' school fees/contributions,<sup>230</sup> materials costs for technical subjects, as well as school trips and residentials and ad hoc payments for non-uniform days and fundraising events. Eligibility for financial support is often based on eligibility for free school meals for which eligibility thresholds have remained static for many years.<sup>231</sup>

While additional funding is provided to schools in relation to the proportion of pupils eligible for free school meals, in **Northern Ireland** there is no requirement for schools to report how they have used this money to benefit pupils on low incomes.

In all three jurisdictions, the cost of school uniform has been highlighted as a potential barrier to learning, with some schools requiring or strongly encouraging high-cost items such as blazers, specific clothing for physical education, or other items with the school logo.<sup>232</sup> Girls report that they are subject to more stringent uniform rules than boys,<sup>233</sup> and in some schools are not allowed to wear trousers. Enforcement by schools of strict uniform rules has resulted in children being sent home for wearing incorrect or incomplete uniform.<sup>234</sup>

In **Northern Ireland**, families on low income are eligible for uniform grants. While these increased by 20% to £42.90 for primary school children, and a maximum of £93.20 for pupils aged 15+, the grants only cover a fraction of the cost of uniforms. The Department of Education is currently reviewing its policy on school uniforms and this should ensure that school uniforms are fit for purpose, affordable, and that the grants match the real costs of uniforms. Pupils and their families should be consulted on school uniform design and costs.

In **Wales**, a grant of up to £300 per learner is available for some families on lower incomes which can be spent on the costs of school uniform or other school-related equipment.<sup>235</sup> A lack of free transport provided to over 16s can mean some are unable to reach a place of Welsh medium education when this is their language of

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<sup>230</sup> The Cost of the School Day project, which originated in Scotland, highlighted the range of additional costs families face across the school year. Child Poverty Action Group, 2022. *Cost of the School Day*. <https://cpag.org.uk/cost-of-the-school-day>. In 2017 NICCY also surveyed parents/carers to determine the costs associated with education in Northern Ireland, and reported that, on average families were paying £1222 per child. [Cost of Education \(niccy.org\)](https://www.niccy.org/cost-of-education)

<sup>231</sup> CYPCS, 2022. *PE1926 – Expand universal school meals for all nursery, primary and secondary school pupils*. <https://www.cypcs.org.uk/resources/pe1926-expand-universal-school-meals-for-all-nursery-primary-and-secondary-school-pupils/>

<sup>232</sup> The cost of a polo shirt with logo, for example, is often several times that of a plain one.

<sup>233</sup> CYPCS, 2022. *Statutory School Uniform Consultation*. <https://www.cypcs.org.uk/resources/stat-school-uniform/>

<sup>234</sup> Including in Scotland, where compulsory school uniform in state schools has no legal basis. See: Scott, J, 2017. *Education Law in Scotland*.

<sup>235</sup> Welsh Government, 2022. *Pupil Development Grant – Access*. <https://gov.wales/pupil-development-grant-access>

choice. A lack of free transport to education settings for learners over the age of 16 is also a barrier, particularly for children with Additional Learning Needs as often there is no option available to them close to home and requires a significant journey using public transport.

In **Scotland**, a school uniform grant is available, however there is a role for national guidance to ensure school uniforms are affordable.<sup>236</sup> School transport is provided to a child's catchment area school (or the catchment area Roman Catholic school), but statutory eligibility is restricted to children living more than two miles from the school (three miles if aged eight or over).<sup>237</sup> The introduction of free bus travel for all children and young people under the age of 22 in Scotland means travel by public bus is now free where available. However as this does not include ferries, children in island communities are disadvantaged.

## Recommendations

- Effective action should be taken to reduce the cost of the school day, including production of guidance, policy and, if necessary, legislation.
- All children in Wales and Northern Ireland should have access to free public transport.
- The Welsh Government should amend the Learner Travel (Wales) Measure 2008 so that it properly supports the transport to education needs of children with Additional Learning Needs and those accessing Welsh medium schools.
- The Scottish Government should extend free travel for under 22s to include ferry services.

## Curriculum

Contrary to the Committee's recommendation<sup>238</sup> that meaningful sexual and reproductive health education be part of the mandatory school curriculum for all schools in **Northern Ireland**, the Department for Education requires grant-aided schools<sup>239</sup> to develop their own Relationships and Sexuality Education (RSE) policy.

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<sup>236</sup> CYPCS, 2022. *Statutory School Uniform Consultation*. <https://www.cypcs.org.uk/resources/stat-school-uniform/>

<sup>237</sup> Scottish Government, 2022. *Free School Transport*. <https://www.mygov.scot/free-school-transport>

<sup>238</sup> UN Committee on the Rights of the Child, 2016. *Concluding Observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland*. [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2fCO%2f5&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2fCO%2f5&Lang=en), 64.

<sup>239</sup> In Northern Ireland, most schools are grant-aided (state-funded). These schools follow the revised curriculum.

This contravenes Section 9 of the Northern Ireland (Executive Formation etc) Act 2019, which requires the implementation of CEDAW's recommendations<sup>240</sup> and therefore, the introduction of a compulsory RSE curriculum.

A new curriculum in **Wales** has been rolled out from September 2022. The new Welsh curriculum includes mandatory age-appropriate Relationships and Sexuality Education as well as mandatory teaching of Black, Asian and ethnic minority experiences as part of Welsh history.

In **Scotland** a National Discussion is underway to explore the future of education in Scotland.<sup>241</sup> This follows a series of reviews, including an OECD Review of both Scotland's Curriculum for Excellence<sup>242</sup> and the examination system<sup>243</sup> and of Scotland examination, inspection and education advisory bodies.<sup>244</sup> There have been a series of reviews on additional support for learning. During the National Discussion it is essential that the views of all children are heard, including those whose right to an education in the current system is less likely to be realised, including disabled and care experienced children, those with a history of non-attendance or exclusion, and those who have left school at age 16. Appropriate resource needs to be put in place to support children less likely to be heard, and their parents and carers, to participate in the discussion.

## Recommendations

- The education reform programme in Scotland must improve access to education for groups least likely to achieve.

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<sup>240</sup> UN Committee on the Elimination of Discrimination against Women, 2018. Report of the Inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/OP.8/GBR/1  
[https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/GBR/INT\\_CEDAW\\_ITB\\_GBR\\_8\\_637\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/GBR/INT_CEDAW_ITB_GBR_8_637_E.pdf)

<sup>241</sup> Scottish Government, 2022. *National Discussion on education*.  
<https://www.gov.scot/news/national-discussion-on-education/>

<sup>242</sup> OECD, 2021. *Scotland's Curriculum for Excellence: Into the Future*.  
<https://www.oecd.org/education/scotland-s-curriculum-for-excellence-bf624417-en.htm>

<sup>243</sup> OECD, 2021. *Upper-secondary education student assessment in Scotland: A comparative perspective*. <https://www.oecd.org/publications/upper-secondary-education-student-assessment-in-scotland-d8785ddf-en.htm>

<sup>244</sup> Prof Kenneth Muir, 2022. *Putting Learners at the Centre: Towards a Future Vision for Scottish Education*. <https://www.gov.scot/publications/putting-learners-centre-towards-future-vision-scottish-education/>

- Children should be supported to participate in the National Discussion on education in Scotland, with particular attention given to those most at risk of not having their right to an education fully realised.
- The Northern Ireland Executive must introduce a compulsory RSE curriculum which is comprehensive and age appropriate.
- The Welsh Government should take an equalities approach to evaluating the implementation of educational reforms, assessing the extent to which different groups of children benefit from the new curriculum approach, including children with protected characteristics and Additional Learning Needs.

### 23. Right to play and recreational activities

Across all three jurisdictions, children face barriers to realising their right to play, recreation and leisure. These include financial barriers, with many organised activities requiring payment<sup>245</sup>. Children in rural areas (and in Scotland, island communities) and less-affluent urban areas are less likely to have a wide range of activities locally.<sup>246</sup> These children are also disproportionately affected by availability of transport, including for after school activities where the cost of public transport<sup>247</sup> is also a factor.

Devolved and local government must ensure that resources are sufficient to provide all children with good quality, safe, local places to play and exercise and children must be involved in planning processes which affect their local environment.<sup>248</sup> Yet children report that poorly maintained parks and playgrounds are a key reason they do not engage in unstructured play outdoors.<sup>249</sup>

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<sup>245</sup> CCfW, 2018. Article 31: Spotlight Report. <https://www.childcomwales.org.uk/publications/article-31-spotlight-report/> In some cases this includes activities organised by schools - <https://www.healthscotland.scot/media/2937/cost-of-the-school-day-evaluation-briefing-for-local-authorities.pdf>

<sup>246</sup> Young Scot and Scottish Land Commission, 2019. *Young People and Their Local Urban Areas*. [https://www.landcommission.gov.scot/downloads/5dd7d54fb8b87\\_Young-Scot-SLC-Report-Aug-2019-REDUCED.pdf](https://www.landcommission.gov.scot/downloads/5dd7d54fb8b87_Young-Scot-SLC-Report-Aug-2019-REDUCED.pdf)

<sup>247</sup> In Wales and Northern Ireland. In Scotland all children and young people under the age of 22 are entitled to free bus travel.

<sup>248</sup> Welsh Government, 2019. *Healthy Weight Strategy (Healthy Weight Healthy Wales)*. <https://gov.wales/healthy-weight-strategy-healthy-weight-healthy-wales>

<sup>249</sup> 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*. [https://www.childrensparliament.org.uk/wp-content/uploads/Children\\_Create2019-1.pdf](https://www.childrensparliament.org.uk/wp-content/uploads/Children_Create2019-1.pdf)

Similar barriers exist regarding access to cultural and artistic activities. Public library provision has reduced significantly since 2010,<sup>250</sup> and access to cultural programmes has been reduced, with a disproportionate impact on children from disadvantaged communities and disabled children.

The COVID-19 pandemic response had a severe impact on children's play and leisure opportunities and social interaction. During lockdowns children were unable to meet with each other, and at times had only limited opportunity to move outside the family home. This severely limited their freedom to play, exercise and socialise. This particularly affected children living in cramped living conditions or without outside space. Lack of access to school and local authority premises during COVID-19 had a significant impact on the ability of the youth work and voluntary organisation to deliver services during the pandemic.<sup>251</sup>

Following the COVID-19 lockdowns, governments in **Scotland** and **Wales** offered a range of free accessible opportunities for play, sports, arts and other outdoor activities, but subsequent evaluations highlighted a lack of provision for disabled children, those with other support needs and, in Wales, Welsh language provision.<sup>252</sup> Surveys found that in Wales during the January 2021 lockdown, children from ethnic minorities were less likely to say they were playing outdoors, and more likely to say closing libraries affected their learning.<sup>253</sup> Lack of access to school and local authority premises during COVID-19 had a significant impact on the ability of the youth work and voluntary organisation to deliver services during the pandemic.<sup>254</sup>

### Recommendations:

- All governments to take action to improve leisure and play opportunities for children, with particular attention to the needs of children in rural and island communities, in deprived areas, and disabled children.

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<sup>250</sup> Chartered Institute of Public Finance and Accountancy's (CIPFA), 2022. *CIPFA comment: UK library income drops by almost £20m*. <https://www.cipfa.org/about-cipfa/press-office/latest-press-releases/cipfa-comment-uk-library-income-drops-by-almost-20m>

<sup>251</sup> YouthLink Scotland, 2020. *Youth work needs a home*. <https://www.youthlinkscotland.org/news/news-archive/september-2020/youth-work-needs-a-home/>

<sup>252</sup> Welsh Government, 2021. *Summer of fun evaluation*. [https://gov.wales/sites/default/files/statistics-and-research/2021-12/summer-of-fun-evaluation\\_0.pdf](https://gov.wales/sites/default/files/statistics-and-research/2021-12/summer-of-fun-evaluation_0.pdf)

<sup>253</sup> CCfW, 2021. *Coronavirus and Me*. [https://www.childcomwales.org.uk/wp-content/uploads/2021/02/CoronavirusAndMe\\_Jan21\\_ENG\\_110221\\_FINAL.pdf](https://www.childcomwales.org.uk/wp-content/uploads/2021/02/CoronavirusAndMe_Jan21_ENG_110221_FINAL.pdf)

<sup>254</sup> Youthlink Scotland, 2020. *Youth work needs a home*. <https://www.youthlinkscotland.org/news/news-archive/september-2020/youth-work-needs-a-home/>



- The Welsh Government should continue to support local authorities to provide Summer of Fun and Winter of Wellbeing programmes but must ensure the offer is inclusive.

## I. Special protection measures (arts. 22, 30, 32–33, 35–36, 37 (b)–(d) and 38–40)

### 24. Asylum-seeking, refugee and migrant children

#### Access to safe and legal routes to claim asylum

As a result of the UK leaving the EU, previously available routes for children to safely and legally apply for asylum in the UK were closed.<sup>255</sup> Remaining routes are highly restrictive and difficult to navigate, particularly for unaccompanied children. This was further limited by the Nationality and Borders Act 2022 which effectively created a two-tier system for refugees. Refugees travelling to the UK through third countries via irregular routes (Channel crossings for example) are known as ‘Group 2 refugees’ and now have limited rights to family reunion, further curtailing safe routes for children to apply for asylum in the UK.<sup>256</sup> The UK Government must ensure that there are safe and legal routes for children to apply for asylum in the UK. However, recent UK Government rhetoric suggests that planned reform of the asylum system will further restrict legal routes for asylum-seekers.<sup>257</sup>

#### Recommendations

- Children should have safe and legal routes to apply for asylum in the UK.
- The ‘hostile environment’ policy should be abandoned and the Nationality and Borders Act 2022 repealed.

#### Age assessments

The Nationality and Borders Act 2022 also introduced new provisions on age assessments, referring to the use of ‘scientific methods’ as a routine assessment procedure. There are no tried and tested scientific methods to assess age and the Act grants the Home Secretary broad powers to decide on these procedures. The

<sup>255</sup> In particular, the end of the Dubs scheme and the Dublin III regulation no longer applying to the UK.

<sup>256</sup> Refugee Council, 2022. *Differential treatment (Clause 11)*.

<https://www.refugeecouncil.org.uk/information/refugee-asylum-facts/differential-treatment-clause-11/>

<sup>257</sup> UK Parliament Hansard, 2022. *Western Jet Foil and Manston Asylum Processing Centres, Volume 721: debated on Monday 31 October 2022*. <https://hansard.parliament.uk/commons/2022-10-31/debates/F189CA88-FDF3-4018-905C-1CC8A1B76E28/WesternJetFoilAndManstonAsylumProcessingCentres>

Commissioners are concerned that vulnerable children are being submitted to invasive or intrusive physical or medical examinations as a result of the Act,<sup>258</sup> particularly as non-compliance with the assessment is to be viewed as damaging the credibility of the asylum-seeker.

## Recommendation

- Children should not be subject to age assessments which involve invasive or intrusive examinations or are otherwise not compliant with the model established by R v Merton.

## Support for asylum-seeking and refugee children

Children and families subject to immigration control or with insecure immigration status are subject to a complex range of procedures that require the UK and devolved agencies to work effectively across their respective remits. Concerns around differential access to services and supports depending on an asylum seeker's route into the UK have been heightened by the creation of a two-tier system by the Nationality and Borders Act 2022.

Many families subject to immigration control have No Recourse to Public Funds ('NRPF'), which means they do not have access to most benefits. This has a direct impact on children as parents struggle to pay for housing, food and other necessities. While local authorities should provide support to all children in need regardless of immigration status, implementation of this varies.<sup>259</sup> Use of contingency accommodation, particularly hotels, for unaccompanied children as well as children arriving with family, has now risen to a scale not previously seen.<sup>260</sup>

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<sup>258</sup> The Children's Commissioners of Scotland, Wales and Northern Ireland, 2021. *Consultation Response: Home Office Immigration Plan*. <https://www.cypcs.org.uk/wp-content/uploads/2021/05/Home-Office-Immigration-Plan.pdf>

<sup>259</sup> See for example: *Children (Scotland) Act 1995*, s22. <https://www.legislation.gov.uk/ukpga/1995/36/contents> ; CYPSCS, 2019. *Legal Brief: No Recourse to Public Funds - A Children's Human Rights Issue*. <https://cypcs.org.uk/resources/legal-brief-no-recourse-public-funds/> ; O'Hara L. and Orr K., 2021. *A Hostile Environment: families affected by immigration status and No Recourse to Public Funds*. [www.niccy.org/media/3953/niccy-nrpf-paper-final-7-october-2021.pdf](http://www.niccy.org/media/3953/niccy-nrpf-paper-final-7-october-2021.pdf)

<sup>260</sup> See for example: Law Centre NI, 2022. *Law Centre submission to the Advisory Committee to the Framework Convention for the Protection of National Minorities*. <https://www.lawcentreni.org/wp-content/uploads/2022/08/LCNI-submission-to-FCNM-May-2022-Final.pdf> ; Scottish Refugee Council, 2021. *Submission by Scottish Refugee Council, in response to the Call for Evidence in the Inspection by the Independent Chief Inspector of Borders and Immigration, into the Home Office's use of hotels and barracks as contingency asylum accommodation*. <https://www.scottishrefugeecouncil.org.uk/wp-content/uploads/2021/02/Submission-by-Scottish-Refugee-Council-to-ICIBI-inspection-into-Home-office-contingency-asylum-accommodation-February-2021.pdf>

Children subject to immigration control also face challenges in accessing health services and school places.<sup>261</sup>

In **Northern Ireland**, the lack of visibility and clear pathways to statutory support for those children and families with NRPF is particularly concerning.<sup>262</sup> Initiatives to support separated children, including an independent guardianship provision, are welcome.<sup>263</sup> However, the pause in establishing a regional service model for separated children is of great concern. The Executive must ensure the service provision model is robust and responsive to increased arrivals and establish regional child rights-compliant age assessment guidance.

In **Wales**, there is a paucity of information on migrant, refugee and asylum-seeking children. The government must better understand the impact of adverse childhood experiences on these children<sup>264</sup> to best focus support and resources. We welcome the 2018 Health and Wellbeing Provision for Refugees and Asylum seekers. The government should maximise available support, including early intervention services, education, and mental health support.<sup>265</sup>

In 2019, the Welsh Government declared an ambition for Wales to become a 'Nation of Sanctuary', with a five year plan setting out actions through various agencies designed to support refugees and asylum seekers,<sup>266</sup> including through accessing accommodation, employment and healthcare. However, the asylum system is not devolved to Wales and many of the challenges faced by asylum seekers and refugees are as a result of a lack of compassionate support upon arrival to the UK.

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<sup>261</sup> See for example: UNICEF, 2018. Education for refugee and asylum seeking children: *Access and equality in England, Scotland and Wales*. <https://www.unicef.org.uk/publications/access-to-education-refugee-asylum-seeking-children/>; Royal College of Paediatrics and Child Health, 2021. *Access to healthcare for migrant and undocumented children - position statement*. <https://www.rcpch.ac.uk/resources/access-healthcare-migrant-undocumented-children-position-statement>

<sup>262</sup> O'Hara L. and Orr K., 2021. *A Hostile Environment: families affected by immigration status and No Recourse to Public Funds*. [www.niccy.org/media/3953/niccy-nrpf-paper-final-7-october-2021.pdf](http://www.niccy.org/media/3953/niccy-nrpf-paper-final-7-october-2021.pdf)

<sup>263</sup> Commencement of Section 21 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 in 2018. <https://www.legislation.gov.uk/nia/2015/2/enacted>

<sup>264</sup> Public Health Wales, 2020, *Adverse Childhood Experiences in Child Refugee and Asylum Seeking Populations*. <https://www.wmsmp.org.uk/wp-content/uploads/ACEs-in-Child-Refugee-and-Asylum-Seekers-Report-English-final.pdf>

<sup>265</sup> Welsh Government, 2018. *Policy Implementation Guidance: Health and Wellbeing Provision for Refugees and Asylum Seekers*. [https://gov.wales/sites/default/files/publications/2019-03/health-and-wellbeing-provision-for-refugees-and-asylum-seekers\\_0.pdf](https://gov.wales/sites/default/files/publications/2019-03/health-and-wellbeing-provision-for-refugees-and-asylum-seekers_0.pdf)

<sup>266</sup> Welsh Government, 2022. *Refugee and asylum seeker plan (nation of sanctuary)*. <https://gov.wales/refugee-and-asylum-seeker-plan-nation-sanctuary>

The Welsh Government has committed to supporting Ukrainian Refugees through a wide range of support services, particularly through the Welcome Centres<sup>267</sup> set up in response to resettlement needs. Dedicated guidance has been published regarding safeguarding and slavery<sup>268</sup> however safeguarding children must remain a priority with ongoing consideration. As longer-term support is put in place beyond the Welcome Centres, the Welsh Government must seek to ensure processes are in place for children to remain in contact with relevant authorities such as health and education.

In **Scotland**, CYPCS found that a mother-and-baby unit in Glasgow was insufficient to meet the needs of residents. Mothers did not have space to feed their babies or let them play safely and only had access to limited washing and cooking facilities.<sup>269</sup>

The Scottish Government initially operated a “super sponsor” scheme for Ukrainian Refugees, however this was paused in July 2022 and has not restarted. Comprehensive guidance has been developed for local authorities on safeguarding, including matching and volunteer host checks.<sup>270</sup> Many families remain in temporary accommodation, including two former cruise ships,<sup>271</sup> and there is an urgent need to provide more appropriate, longer-term accommodation.

## Recommendations

- Devolved administrations should mitigate the impact of the hostile environment on asylum-seeking and refugee children.
- Children and their families should not be subject to a status of No Recourse to Public Funds (NRPF).
- Children and families subject to immigration control should not be discriminated against when accessing services, including appropriate housing, healthcare, education and employment.

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<sup>267</sup> Welsh Government, 2022. *Homes for Ukraine: guidance for local authorities*.  
<https://gov.wales/homes-ukraine-guidance-local-authorities>

<sup>268</sup> Welsh Government, 2022. *Homes for Ukraine: safeguarding and modern slavery guidance*.  
<https://gov.wales/homes-ukraine-safeguarding-and-modern-slavery-guidance>

<sup>269</sup> CYPCS, 2022. *Accommodation of Asylum-Seeking Mothers and Babies in Glasgow*.  
<https://www.cypcs.org.uk/wp-content/uploads/2022/03/Mother-and-Baby-Unit-Report.pdf>

<sup>270</sup> Scottish Government, 2022. *People arriving from Ukraine - risk and need: public protection guidance*. <https://www.gov.scot/publications/people-arriving-from-ukraine-risk-and-need-public-protection-guidance/>

<sup>271</sup> Scottish Government, 2022. *Second charter ship for Ukrainians*.  
<https://www.gov.scot/news/second-charter-ship-for-ukrainians/>

- Children and their families who are seeking asylum, are refugees, or have temporary leave to remain on humanitarian grounds, should be provided with appropriate, long-term housing which meets their needs and promotes their integration into communities.
- Children and families who are seeking asylum, are refugees or have temporary leave to remain on humanitarian grounds, should have access to appropriate practical, emotional and medical support.
- Unaccompanied asylum-seeking children should not be placed in a hotel on anything other than an emergency short-term basis.

## 25. Administration of child justice

### Minimum age of criminal responsibility (MACR)

The minimum age of criminal responsibility (MACR) remains very low across **the UK**, despite the Committee's recommendations and General Comment No. 24.<sup>272</sup>

The MACR in **Northern Ireland**, and **Wales** remains 10. Although youth justice in **Wales** prioritises support and diversion, there is no formal protection in the legal system for this approach and a 10 year old can be prosecuted. In Wales, some initial scoping work has been explored by Welsh Government to seek the devolution of Youth Justice to Wales. This was a recommendation of the Commission on Justice in Wales Report.<sup>273</sup>

A public consultation has been launched in **Northern Ireland** in relation to raising the MACR to 14, although an option was proposed for this to remain at 10 years old for 'serious offences'.<sup>274</sup> While the consultation is welcome, it is unlikely that there

<sup>272</sup> UN Committee on the Rights of the Child, 2016. *Concluding Observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland*.

[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2fCO%2f5&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2fCO%2f5&Lang=en) para. 79; *Committee on the Rights of the Child, 2019. General comment No. 24 (2019) on children's rights in the child justice system*.

[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f24&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f24&Lang=en)

<sup>273</sup> The Commission on Justice in Wales, October 2019. *Commission on Justice in Wales report*.

[https://gov.wales/sites/default/files/publications/2019-10/Justice%20Commission%20ENG%20DIGITAL\\_2.pdf](https://gov.wales/sites/default/files/publications/2019-10/Justice%20Commission%20ENG%20DIGITAL_2.pdf)

<sup>274</sup> Department of Justice, 2022. *Consultation on increasing the Minimum age of Criminal Responsibility in NI*. <https://www.justice-ni.gov.uk/consultations/consultation-increasing-minimum-age-criminal-responsibility-ni>; United Nations (2019) – UN Committee on the Rights of the Child: General comment No. 24 (2019) on children's rights in the child justice system - CRC/C/GC/24.

[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f24&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f24&Lang=en)

will be political consensus, and as things stand, the current lack of a Minister or Executive means that this cannot be progressed.

In **Scotland**, the MACR has now been increased to 12,<sup>275</sup> but remains below the internationally minimum acceptable age of 14. Children continue to be prosecuted in adult courts and in particular not all 16- and 17-year-olds in conflict with the law can be referred to a Children's Hearing.

## Recommendation

- The MACR must be raised to 16 in **all jurisdictions**.

## Deprivation of liberty

Children are deprived of their liberty in a range of settings including secure children's homes, mental health units and immigration detention as well as prisons, which include Young Offenders Institutions (YOI). This section primarily addresses the rights of children who have been deprived of their liberty as a result of being in conflict with the law.

In **Northern Ireland**, in 2021/ 22 a total of 160 children were held in Woodlands Juvenile Justice Centre (JJC), the custodial centre for children in Northern Ireland. Of those in custody, males (84%), looked after children (34%) and those identifying as from a Catholic background (52%) continue to be disproportionately overrepresented.<sup>276</sup> In March 2022, the Department of Justice published the Strategic Framework for Youth Justice, which helpfully sets the strategic direction for the system and specifically the Youth Justice Agency.<sup>277</sup> Custody in Northern Ireland is not a measure of last resort. In 2021-212, 11% of young people in the JJC were sentenced, with the remaining 89% either under the Police and Crime Evidence (Northern Ireland) Order or remand.<sup>278</sup>

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<sup>275</sup> Age of Criminal Responsibility (Scotland) Act 2019.

<https://www.legislation.gov.uk/asp/2019/7/contents/enacted>

<sup>276</sup> Department of Justice, 2022. *Youth Justice Agency Annual Workload Statistics*.

<https://www.justice-ni.gov.uk/sites/default/files/publications/justice/youth%20justice%20agency%20workload%20stats%20bulletin%202021-22.pdf>

<sup>277</sup> Department of Justice, 2022. *Strategic Framework for Youth Justice*. <https://www.justice-ni.gov.uk/publications/strategic-framework-youth-justice>

<https://www.justice-ni.gov.uk/publications/strategic-framework-youth-justice>

<sup>278</sup> Department of Justice, 2022. *Youth Justice Agency Annual Workload Statistics*.

<https://www.justice-ni.gov.uk/sites/default/files/publications/justice/youth%20justice%20agency%20workload%20stats%20bulletin%202021-22.pdf>

**Wales** has only two secure custodial settings, a small YOI Unit and a Secure Children's Home, both in South Wales. Both settings are committed to delivering a children's rights approach to support the vulnerable children in their settings. However, work is needed to modernise the settings to be better equipped to deliver therapeutic support to children.

More suitable provision is needed in Wales. The Youth Justice Blueprint<sup>279</sup> has set out proposals to develop a Small Home Pilot which is welcomed. Concern remains in place however at the lack of PACE/Remand accommodation for children. Provision for girls in Wales is also very limited.

Youth Justice should be devolved to Wales to align it with the health, social and education services which support children in Wales. Wales is currently underway with plans to reform and modernise the approach to the youth justice system in Wales with the delivery of the Youth Justice Blueprint. The Blueprint would benefit from regular update reports to share information on its impact and implementation, such as how it is working to reduce the overrepresentation of children from ethnic minority backgrounds, care-experience and those with Additional Learning Needs.

In **Scotland**, children are deprived of their liberty in Youth Offender Institutes (primarily Polmont YOI), police and court custodial settings as well as in five secure care children's homes, four of which are run by non-profit providers and one by a local authority.<sup>280</sup> Children under 16 can be deprived of their liberty on grounds of care and protection, as well as conduct. 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. The number of 16 and 17-year-olds in YOIs has been falling steadily, averaging 7 over the last 3 months, however two-thirds of these children have been untried.<sup>281</sup> In 2019, HM Inspectorate of Prisons Scotland highlighted significant concerns about mental health provision in Polmont YOI<sup>282</sup>.

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<sup>279</sup> Ministry of Justice, 2019. *Youth Justice Blueprint for Wales*.

[https://gov.wales/sites/default/files/publications/2019-05/youth-justice-blueprint\\_0.pdf](https://gov.wales/sites/default/files/publications/2019-05/youth-justice-blueprint_0.pdf)

<sup>280</sup> NB: Immigration detention in Scotland is reserved to the UK Government.

<sup>281</sup> Scottish Prison Service, 2022. *SPS Prison Population*.

<https://www.sps.gov.uk/Corporate/Information/SPSPopulation.aspx>

<sup>282</sup> 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*.

[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](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)

CYPCS continues to be concerned about children from outwith Scotland being deprived of their liberty in Scottish children’s homes, mainly due to the shortage of appropriate secure accommodation in England (as highlighted in the judgment in *Re:T*).<sup>283</sup> In other cases, children from outwith Scotland have been placed in unregistered and unregulated children’s homes without the knowledge of local services such as health and education. As Scotland has a separate legal system, these children do not receive the same legal protection as children residing in Scotland. CYPCS do not believe the current regulatory ‘fix’ for these placements adequately protects the rights of these children and in particular, it allows placements to become long-term rather than temporary.<sup>284</sup>

## Recommendations

- Children should only be placed in care in a different jurisdiction where there is a clear indication that this is in their best interests, for example because of a close link to that jurisdiction.
- Deprivation of liberty should only be used as a last resort and for the shortest possible time.
- The Youth Justice System in **Northern Ireland** must ensure children are diverted from the formal system and statutory time limits are introduced for the processing of youth court cases of 120 days.

## Policing (use of spit guards and stop and search)

In England and **Wales**, the National Police Chiefs’ Council has published its strategy for the Policing of Children and Young People, which states all officers must have regard to the UNCRC.<sup>285</sup>

In **Wales**, CCfW has sought data from the Welsh Forces on their use of stop searches, strip searches and spit guards on those under the age of 18. Not all of the forces have shared data at time of writing, however, CCfW are aware that some children under the age of 11 have been subject to a strip-searches and Tasers. This

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<sup>283</sup> *Re T* [2021] UKSC 35. <https://www.supremecourt.uk/cases/uksc-2019-0188.html>

<sup>284</sup> CYPCS, 2022. *Cross Border Placements (Effect of Deprivation of Liberty Orders) (Scotland) Regulations 2022*. <https://www.cypcs.org.uk/resources/the-cross-border-placements-effect-of-deprivation-of-liberty-orders-scotland-regulations-2022/>

<sup>285</sup> National Police Chiefs’ Council, 2015. *Child Centred Policing: National Strategy for the Policing of Children & Young People*. <https://www.npcc.police.uk/documents/edhr/2015/CYP%20Strategy%202015%202017%20August%202015.pdf>



is completely unacceptable. It is critical that Police and the UK Government reflect on the guidance associated with this practice to better safeguard children.

Police **Scotland** confirmed in 2021 that spit hoods had been used on children 298 times between January 2019 and June 2021. In the same response to a Freedom of Information request, it was confirmed that a Taser was drawn in the presence of a child under 18 on 13 occasions between 2018 and 2021, including in one instance in the presence of two children under 14 years of age.<sup>286</sup>

Police **Scotland** issued new guidance on the use of stop and search powers in relation to children in 2021, in response to sustained criticism of the high number stop and searches of children (some as young as seven). The number of recorded searches has fallen from 5,841 in 2019-20 to 3,850 in 2021-22, however children account for one in every eight searches.<sup>287</sup>

There has been an overall decline in the use of stop and search in **Northern Ireland**, however, it continues to have the highest numbers proportionate to the population when compared to forces in England and Wales. Police Service of Northern Ireland data show that 2,477 (11% of the total) young people were stopped, searched or questioned in 2021/22, mainly under the Police and Criminal Evidence (Northern Ireland) Order 1989 and Misuse of Drugs Act 1971.<sup>288</sup> Many young people continue to state that they feel “targeted and victimised” through use of Policing stop and search powers.<sup>289</sup> Spit and bite guards are a permitted tactical method available to police for under 18s. Although there is a presumption that they will not be used on under 18s, between 16th March 2020 and 15th June 2022, they were used on children 16 times (6.4% of all deployments).<sup>290</sup>

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<sup>286</sup> Police Scotland, 2021. *Freedom of Information Response: Armed policing - TASERS + Use of Spit Hoods - under 18s*. <https://www.scotland.police.uk/access-to-information/freedom-of-information/disclosure-log/disclosure-log-2021/june/21-1201-armed-policing-tasers-use-of-spit-hoods-under-18s-17-td/>

<sup>287</sup> Police Scotland, 2022. *Stop and Search Data Publication*. <https://www.scotland.police.uk/about-us/how-we-do-it/stop-and-search/data-publication/>

<sup>288</sup> Police Service of NI, 2022. *Stop and Search Statistics 2021-2022*. <https://www.psni.police.uk/about-us/our-publications-and-reports/official-statistics/stop-and-search-statistics>

<sup>289</sup> Carr, N., & McAlister, S., 2021. *Tracing the Review: Developments in Youth Justice in Northern Ireland 2011-2021*. [https://pureadmin.qub.ac.uk/ws/portalfiles/portal/263877347/TRACING\\_THE\\_REVIEW\\_PDF.pdf](https://pureadmin.qub.ac.uk/ws/portalfiles/portal/263877347/TRACING_THE_REVIEW_PDF.pdf)

<sup>290</sup> Police Service of NI, 2022. *The Use of Spit & Bite Guards by the Police Service of Northern Ireland: Equality Impact Assessment 2021 – Final Report*. <https://www.psni.police.uk/sites/default/files/2022-09/Spit%20and%20Bite%20Guards%20Equality%20Impact%20Assessment.pdf>

## Recommendations

- Police should be required to demonstrate the purpose and outcomes of all stop and search operations involving children.
- Police should improve the quality of engagement with young people.
- Comprehensive data should be published on the use of strip search and spit/bite guards; and on the use of Tasers in the vicinity of a child.
- Spit and bite guards must not be used on children.
- Children should not be strip searched.
- Where children are strip searched or a spit or bite guard is used on children, this must be recorded and published as comprehensive data.

## Child Covert Human Intelligence Sources (CHIS)

Legislation provides not only for the use of a child as a CHIS but potentially authorises them to commit criminal offences. The Commissioners are concerned that even with restrictions in the Code of Practice<sup>291</sup>, this is incompatible with children's rights.

### Recommendation

- Children should never be used as Covert Human Intelligence Sources.

## J. Optional Protocol on the sale of children, child prostitution and child pornography

The number of child victims of trafficking referred to the National Referral Mechanism (NRM) has increased by nearly 327% since 2016 across the UK, with similar trends in **Scotland, Wales** and **Northern Ireland**. While these increases are likely related to higher awareness of the NRM, the impact of the COVID-19 pandemic on referrals was stark in Scotland, where referrals decreased by 33% between 2019 and 2021. Almost 80% of the child victims of trafficking in Wales are UK nationals. This is not the case in Scotland and Northern Ireland where the proportion of UK nationals is

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<sup>291</sup> UK Government. 2021. *Covert human intelligence sources: draft code of practice*. <https://www.gov.uk/government/publications/covert-human-intelligence-sources-draft-code-of-practice>; Scottish Government, 2017. *Covert human intelligence sources: code of practice*. <https://www.gov.scot/publications/covert-human-intelligence-sources-code-practice/>

much lower (around 20% and 10% respectively), which may indicate a failure to correctly identify domestic victims of trafficking.<sup>292</sup>

Recommendations to reform the National Referral Mechanism in order to embed it into multi-disciplinary safeguarding processes, ensure that victims are not criminalised (especially in the case of child criminal exploitation) and that perpetrators are prosecuted have not been progressed by the UK Government. Local pilots to improve the assessment and decision-making process as well as multi-agency collaboration have occurred across the UK but this has not been translated into national change. Child victims of trafficking who lack documentation may be subject to age assessment (see section 24).

Provision for victims of child sexual exploitation (CSE) vary across **Wales**. In 2021, Welsh Government published welcome statutory guidance for professionals to safeguard children from child sexual exploitation.<sup>293</sup>

In **Northern Ireland** concern remains that government has not demonstrated that the recommendations of the 2014 Independent Inquiry into CSE have been implemented or that outcomes in safeguarding children from CSE and pursuing perpetrators have improved.

Additionally, legislation in Northern Ireland still fails to afford full protection to all children up to the age of 18 from offences set out in the Optional Protocol on the sale of children, child prostitution and child pornography.

In **Scotland**, the National Child Protection Guidance remains non-statutory in nature, without a comprehensive underpinning rights-based legal framework. There is a need for the Guidance to be revised in light of incorporation of the UNCRC. It does not properly reflect responses to the risk of harm caused by professionals (for instance through use of restraint) or the obligations on organisations to ensure that staff can report such concerns in confidence. The Scottish Government should also consider whether any further aspect of the child protection system should be placed on a statutory basis.

Gaps in Scotland's legal and policy protections for child trafficking victims have resulted in a number of child victims being detained in prison. The Scottish Government must urgently review and strengthen these protections. The huge

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<sup>292</sup> Home Office, 2022. *Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, end of year summary, 2021*. <https://www.gov.uk/government/statistics/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-end-of-year-summary-2021>

<sup>293</sup> Welsh Government, 2021. *Working Together to Safeguard People, Volume 7: Safeguarding children from child sexual exploitation*. <https://gov.wales/safeguarding-children-child-sexual-exploitation-0>

delays to processing referrals in the NRM (an average of 448 days) negatively impact on children's rights to protection and recovery, while some unaccompanied asylum-seeking children who are trafficking victims are accommodated in hotels by local authorities, where they are exposed to drug abuse, violence and the risk of re-exploitation.

## Recommendations

- Child victims of trafficking and sexual exploitation should be recognised as such, provided with appropriate support and benefit from protection against arrest, charge, detention and prosecution.
- The National Referral Mechanism should be reformed to develop multi-agency collaboration, strengthen the protections of child victims of exploitation and increase prosecution of perpetrators. Successful local pilots should be rolled out urgently to tackle current excessive delays.

## K. Optional Protocol on the involvement of children in armed conflict

### 26. Armed Forces and non-State armed groups

Despite the Committee's recommendations,<sup>294</sup> the UK's enlistment of children over the age of 16 into the Armed Forces has increased over the past few years, with 2,800 children recruited in 2021-22 alone.<sup>295</sup> 16- and 17-year-olds regularly make up over 20% of yearly intake<sup>296</sup> and recruits are more likely to come from the most deprived areas, which are particularly targeted by Army marketing including activity in schools.<sup>297</sup>

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<sup>294</sup> Committee on the Rights of the Child, 2016. *Concluding Observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland*.

[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2fCO%2f5&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2fCO%2f5&Lang=en) paras 49, 85.

<sup>295</sup> The average of number of children recruited into the Armed Forces between 2016-17 and 2018-19 was 2,400; this rose to over 3,100 between 2019-20 and 2021-22. Ministry of Defence, 2022. *UK armed forces biannual diversity statistics: April 2022 dataset*.

<https://www.gov.uk/government/statistics/uk-armed-forces-biannual-diversity-statistics-april-2022>

<sup>296</sup> Ministry of Defence, 2022. *UK armed forces biannual diversity statistics: April 2022 dataset*.

<https://www.gov.uk/government/statistics/uk-armed-forces-biannual-diversity-statistics-april-2022>

<sup>297</sup> Child Rights International Network, 2019. *Conscription by Poverty? Deprivation and Army Recruitment in the UK*.

[https://static1.squarespace.com/static/5afadb22e17ba3eddf90c02f/t/5d5bbf83278b3100018306a4/1566293898095/UK\\_recruitment\\_report\\_final.pdf](https://static1.squarespace.com/static/5afadb22e17ba3eddf90c02f/t/5d5bbf83278b3100018306a4/1566293898095/UK_recruitment_report_final.pdf)

In the context of the conflict in Northern Ireland and the continuing presence of paramilitary and criminal groups in communities, young people are exposed to threats of, and actual assaults (including common assault, assault occasioning actual and grievous bodily harm), beatings and shootings. They are also subject to threats to life if they do not leave specified areas or comply with stated requests; exploited in relation to the development of debts; exploited into criminal activities such as drug distribution and supply; involved in the intimidation or harm of others; involvement in public order offences, violent protest and civil unrest; and recruitment into paramilitary or criminal groups. Recent instability and ongoing political uncertainty in Northern Ireland have heightened the need a unified government response to effectively protect children from all forms of harm perpetrated by such organised groups.<sup>298</sup>

### Recommendations:

- Children under 18 should not be recruited into the Armed Forces.
- Children and young people in **Northern Ireland** should be fully and effectively protected from criminal coercion and exploitation, trauma, violence or mistreatment in their communities, including from all forms of violence by non-State forces and recruitment by such forces.

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<sup>298</sup> NICCY, 2021. *Safeguarding Children from Abuse and Exploitation*. <https://www.niccy.org/publications/advice-to-government-child-criminal-exploitation-safeguarding-children-and-young-people-from-abuse-and-exploitation/>

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