

Getting it right

# IN POLICY AND LEGISLATION



## Children's rights legislation in Scotland: A quick reference guide



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The Scottish Government  
Riaghaltas na h-Alba

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## 1. Background

### 1.1 Purpose

This quick summary guide is to:

- Set the scene on children’s rights legislation in Scotland, and
- Provide useful web links to key measures.

This guide has been adapted from materials produced for Scottish Government officials to accompany guidance on the [Child Rights and Wellbeing Impact Assessment](#) (CRWIA). CRWIA helps officials satisfy Ministerial duties on children’s rights introduced by the Children and Young People (Scotland) Act 2014, including a duty to report progress on the implementation of the [UN Convention on the Rights of the Child](#) to the Scottish Parliament every three years.

### 1.2 Executive summary

- The UN Convention on the Rights of the Child (UNCRC) is a core international human rights instrument, and the UK Government ratified the Convention in 1991.
- All children have the same human rights as adults but only the UNCRC articulates these rights within the framework of children’s lives and experiences.
- All Scottish Ministers have a duty to:
  - Keep under consideration whether there are any steps which they could take to give better or further effect to the requirements of the UNCRC; and, if they consider it appropriate, to take those steps under s.1(1) of the 2014 Act.
  - Take such account as they consider appropriate of any relevant views of children of which they are aware under s.1(2) of the 2014 Act.
  - Promote public awareness and understanding of the rights of children under s.1(3) of the 2014 Act.
- Public bodies such as Local Authorities and Health Boards have a duty to:
  - Report back every three years on the steps each has taken to secure better or further effect of UNCRC requirements under s.2 and Schedule 1 of the 2014 Act.
  - Eight child wellbeing indicators set out in s.96 of the 2014 Act – Safe, Healthy, Achieving, Nurtured, Active, Respected, Responsible, Included (sometimes known by the acronym SHANARRI) – support the implementation of children’s rights in practice.

### 1.3 The Scottish Government’s Vision

The Scottish Government wants Scotland to become the best place in the world for a child to grow up, with opportunities for all in Scotland to flourish. An integral part of that vision is the recognition of, respect for and promotion of children’s human rights.

Children, young people and human rights are central to three of Scotland’s national outcomes:

- We grow up loved, safe and respected so that we realise our full potential
- We are well educated, skilled and able to contribute to society
- We respect, protect and fulfil human rights and live free from discrimination

[Getting It Right for Every Child](#) (GIRFEC) is Scotland's approach to improving outcomes and wellbeing for all children and young people. It builds on, and is reflected in a wide range of policies and strategies including the [Early Years Framework](#), [Curriculum for Excellence](#) and [Better Health, Better Care](#).

The [UN Convention on the Rights of the Child](#) (UNCRC) is the internationally mandated, cross-government children's rights framework that informs each of these strategies and programmes. Part 1 of the [Children and Young People \(Scotland\) Act 2014](#) places children's rights duties on Scottish Ministers and public authorities.

Firstly, however, in order to understand how the UNCRC applies to Scottish law and policy, we need to explore:

### Human rights

- What we mean by 'human rights'
- International and European human rights frameworks
- Human rights in Scotland

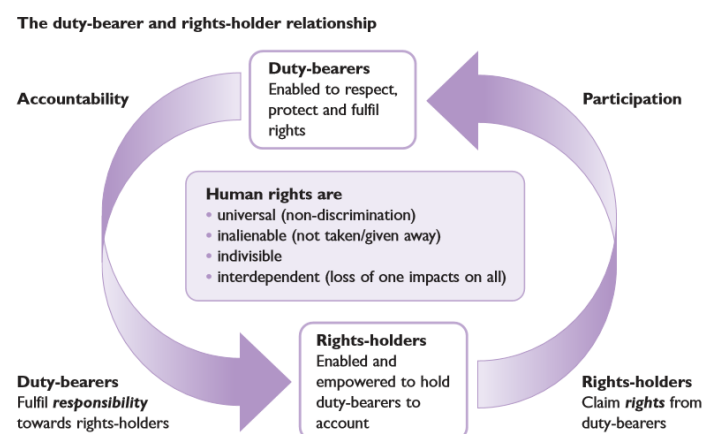
### Children's rights

- What we mean by 'children's rights'
- The UN Convention on the Rights of the Child (UNCRC)
- Children's rights and the Scottish Government
- GIRFEC and the UNCRC

## 2. What are human rights?

Human rights are the basic rights and freedoms to which we are all entitled in order to live with dignity, equality and fairness, and to develop and reach our potential. Everyone, including children, has these rights, no matter what their circumstances.

Under international law, States/Governments are obliged to respect, protect and fulfil human rights. This legal responsibility applies to all levels of government and all kinds of public services - the *duty bearers* in the human rights framework.



The role of Government is to create the conditions in which human rights are known, understood, practised, protected and realised. The role of public services is to respect, protect and fulfil the rights of the people with whom they work, as well as make themselves accountable and responsive to these *rights holders*.

### 3. International human rights instruments

The [Universal Declaration of Human Rights](#) was adopted by the UN General Assembly in 1948 to provide common human rights standards for all peoples and nations in a post-war world. It was signed up to by all member countries of the United Nations and provides the foundation for international human rights law.

In addition, there are nine core international human rights instruments or treaties, including the UN Convention on the Rights of the Child (UNCRC). Some treaties are supplemented by Optional Protocols (additions to an existing treaty) that provide more detail on specific or developing areas of concern. A list is provided below:

1. [International Convention on the Elimination of All Forms of Racial Discrimination](#) (ICERD) (1965)
2. [International Covenant on Civil and Political Rights](#) (ICCPR) (1966) and its Optional Protocols (1976 and 1989)
3. [International Covenant on Economic, Social and Cultural Rights](#) (ICESCR) (1966) and its Optional Protocol (2008)
4. [Convention on the Elimination of All Forms of Discrimination against Women](#) (CEDAW) (1979) and its Optional Protocol (1999)
5. [Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment](#) (CAT) (1984) and its Optional Protocol (2006)
6. [Convention on the Rights of the Child](#) (UNCRC) (1989) and its Optional Protocols (2000, 2000 and 2011)
7. [International Convention on the Protection and Rights of all Migrant Workers and Members of their Families](#) (ICMW) (1990)
8. [International Convention on the Protection of Persons from Enforced Disappearance](#) (CPED) (2006)
9. [Convention on the Rights of Persons with Disabilities](#) (CRPD) (2006) and its Optional Protocol (2006)

Only States/Governments are in a position to put in place the laws and policies necessary for the protection of human rights. They are the only bodies able to regulate public and private practices that affect individuals' enjoyment of those rights.

States/Governments become a party to an international treaty by signing it, which means the State may not act in ways that are contrary to the objects and purposes of the treaty. This is followed by ratification, through which the State formally indicates its intent to be bound by the treaty.

There is continuity and overlap between the different treaties. Some of the rights found in the UNCRC are also found in other international instruments, for example, the:

- Principle of non-discrimination in the provision, protection and promotion of rights (found in all international treaties)
- Right to life (ICCPR, CRPD, UNCRC)
- Right to freedom of opinion and expression (ICCPR, UNCRC)
- Right to freedom of thought, conscience and religion (ICCPR, CRPD, UNCRC)
- Rights of disabled people (CRPD, UNCRC)
- Right to an adequate standard of living (ICESCR, CRPD, UNCRC)
- Right to health and health services (ICESCR, CRPD, UNCRC)
- Right to education (ICESCR, CRPD, UNCRC)
- Right to a fair trial (ICCPR, UNCRC)

- Right to freedom from torture or cruel, inhuman or degrading treatment (ICCPR, CAT, UNCRC)

The UNCRC affirms and articulates the significance of these rights for children and young people.

There are a number of universal human rights instruments in addition to the core treaties which deal with a wide range of issues including child labour, the administration of justice, the treatment of girls and women, cultural diversity and refugee status. The [Office of the High Commissioner for Human Rights](#) publishes a complete list.

#### **4. Reporting process for international instruments**

Following ratification of international treaties, States are required to provide regular reports on their implementation of the treaty in law, policy and practice to a Committee established under that treaty. The [UN Committee on the Rights of the Child](#) monitors the implementation of the UNCRC.

Since there is considerable overlap between the different treaties and government reports on each, an additional monitoring process has been developed to look at human rights 'in the round'. In 2007, the UN introduced the [Universal Periodic Review](#) (UPR), a process aimed at improving human rights in each member state by assessing Governments' human rights records through a similar reporting process. The United Kingdom has submitted three reports: the first in 2008, the second in 2012, and the third in 2017. In each of these, implementation issues under the UNCRC received a considerable amount of attention.

#### **5. Human rights in the Council of Europe**

The [European Convention on Human Rights](#) (ECHR) – drafted by the Council of Europe in 1950 and in force from 1953 – was the first regional agreement for the protection of human rights. The United Kingdom was a founder member of the Council of Europe.

ECHR rights are enforceable through the courts – the ECHR established the European Court of Human Rights, based in Strasbourg. The court hears applications alleging a violation of ECHR rights from individuals and groups.

The primary focus of the ECHR is on political and civil rights. 'Political rights' include: due process in law; the right to seek redress or a legal remedy; and the right to vote. 'Civil rights' include: protection against discrimination; the right to privacy; and the right to freedom of thought and expression.

More detail on the rights outlined in the ECHR is in [Annex 5](#).

The [European Social Charter](#) complements the ECHR and sets out economic, social and cultural rights – what the Council of Europe calls 'the rights of every day'.

Many of these are of importance to children and young people, including the right to housing, health, education; and legal and social protection.

#### **6. Human rights in the European Union**

In 2009, the European Union adopted the [EU Charter of Fundamental Rights](#), which is legally binding on EU members through the Treaty of Lisbon. The EU Charter brings

together ECHR rights, rights found in Court of Justice case law, and rights and principles from international treaties and the common constitutional traditions of EU countries.

## 7. Human rights in Scotland

The UK Government signs and ratifies international conventions, and therefore has primary responsibility for coordinating and submitting the reports to the various Committees. However, the Scottish Government has the power through Schedule 5 of the Scotland Act 1998 to '*observe and implement international obligations*'. The Scottish Government also drafts its own reports which inform the UK-wide reports which are submitted to the various monitoring Committees.

The ECHR has been incorporated into UK domestic law through the Human Rights Act (HRA) 1998. The HRA gives people of any age in the UK the ability to protect their ECHR rights through the domestic courts and, if all other avenues have been exhausted, the European Court of Human Rights.

The HRA applies to all public bodies, including the Government and courts. It has been applied in a series of legal cases affecting children and young people, a growing number of which refer to Articles of the UNCRC. Further detail on HRA rights and the UNCRC is in [Annex 5](#).

In 2006, the Scottish Human Rights Commission (SHRC) was established, with its overall objective to promote awareness, understanding and respect for all human rights – economic, social cultural, civil and political – to everyone, everywhere in Scotland, and to encourage best practice in relation to human rights. The SHRC has powers to recommend changes to law, policy and practice; promote human rights through education, training and publishing research; and to conduct inquiries into the policies and practices of Scottish public authorities.

Further to this, in December 2017, The First Minister's Advisory Group on Human Rights Leadership was set up by Scotland's First Minister to make [recommendations](#) on how Scotland can continue to lead by example in the field of human rights. This includes economic, social, cultural and environmental rights. Operating independently from the Scottish Government, the group published their report "[Recommendations for a new human rights framework to improve people's lives](#)" on 10 December 2018.

## 8. What are children's rights?

Children and young people have long been considered to require special attention in respect of their rights because of their particular vulnerabilities and their reliance on adults. Even though they are autonomous rights holders, children and young people are dependent on others to give effect to their rights.

Children and young people:

- Have limited political and social power
- Are dependent on adults for food, shelter, clothing, care and protection
- Are subject to rules that do not apply to other population groups
- Are vulnerable to ill treatment, coercion and control by adults
- Are key users of public services, though not often asked to contribute to the planning, design, development, delivery and evaluation of those services
- Are often excluded from or unable to access effective complaints mechanisms when things go wrong

Children's rights cover every aspect of a child's or young person's life from birth up to the age of 18, and exist wherever the child is: at home, at school, in any institution, and in the community.

They recognise that children are key actors in their own development. They make it clear that children are *rights holders* whose ability to enjoy their rights can be impeded by attitudinal and structural barriers that need to be identified and changed.

Children's rights charge those responsible for making policy, passing legislation, and designing and delivering services – the *duty bearers* within the human rights framework – to instigate that change, preferably with the direct involvement of children.

## 9. The UN Convention on the Rights of the Child

The [UN Convention on the Rights of the Child](#) (UNCRC) is one of the core international human rights treaties - a universally agreed set of minimum child rights standards which is the most widely ratified of all the international conventions, and with which States must comply.

The UNCRC sets out a holistic framework for the rights of all children. The different articles are interdependent – the mutually-reinforcing nature of children's rights means that civil, political, economic, social and cultural rights all have equal status and are indivisible.

Governments are expected to do all they can to implement the UNCRC – to make sure all law, policy and decisions which impact on children from birth to 18 comply with their human rights.

The **general measures** of the Convention include measures which give legal effect to the UNCRC, as well as 'non-legal measures' – for example, awareness raising, training, budgeting – or other processes that can be used to progress implementation of the Convention.

The UNCRC introduces the concept of a child's '**evolving capacities**' (Article 5), which states that direction and guidance provided by parents or others with responsibility for the child must take into account the capacities of the child to exercise rights on their own behalf.

It includes four **general principles** that are not only rights in themselves but underpin every other right in the Convention:

- For rights to be applied without discrimination (Article 2)
- For the best interests of the child to be a primary consideration (Article 3)
- The right to life, survival and development (Article 6)
- The right to express a view and have that view given due weight (Article 12)

The UNCRC also provides children with a series of **individual rights**, such as the:

- Right to a name and nationality
- Right to education
- Right to health
- Right to play and recreation
- Right to an adequate standard of living

There are also additional rights for specific groups of children, such as:



- Disabled children
- Children who have been exploited or mistreated
- Refugee and migrant children
- Children in custody
- Children in care

Children's rights are inextricably linked with the rights of parents and carers, whose important role in children's lives is recognised throughout.

Further detail on the Articles of, and Optional Protocols to, the UNCRC can be found in [Annex 1](#).

Having played a key role in negotiating its 54 Articles, the UK Government ratified the UNCRC in 1991. The 18-member UN Committee on the Rights of the Child monitors the implementation of the Convention, and provides guidance to governments in the interpretation of the Articles of the Convention through the publication of [General Comments](#). A full list of these can be found in [Annex 4](#).

In addition, the United Nations Children's Fund (UNICEF) has produced a [UNCRC implementation handbook](#) which identifies specific implementation issues connected to each Article of the Convention.

To date, the UK Government has submitted five periodic reports to the UN Committee on the Rights of the Child, with the [fifth periodic report](#) having been examined by the Committee in 2016. The most recent set of [Concluding Observations](#) from the Committee dates from that examination, with over 150 recommendations for change and/or improvement. A summary list of these can be found in [Annex 3](#).

In addition to the Articles of the Convention, there are three **Optional Protocols** to the UNCRC:

- [Optional Protocol on the Involvement of Children in Armed Conflict](#)
- [Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography](#)
- Optional Protocol on a Communications Procedure (i.e. complaints mechanism to the UN Committee on the Rights of the Child)

The UK Government has ratified the first two. A set of Concluding Observations to each has been published, with a summary list of these in [Annex 3](#). The third Optional Protocol is still under consideration by the UK Government.

## 10. Children's rights and the Scottish Government

Section 1(1) of the [Children and Young People \(Scotland\) Act 2014](#) places all Scottish Ministers under a duty:

- to keep under consideration whether there are any steps which they could take which would or might secure better or further effect in Scotland of the UNCRC requirements, and*
- if they consider it appropriate to do so, take any of the steps identified by that consideration.*

In order to meet this duty, Ministers and their officials should look at laws and policies that have a direct or indirect impact on children and young people and assess what they need to do to make sure they comply with and progress the realisation of the UNCRC in Scotland.

This is where the Child Rights and Wellbeing Impact Assessment (CRWIA) has an important role to play in policy development and improvement by Scottish Government officials.

In addition, Scottish Ministers must also:

a) . . . *take such account as they consider appropriate of any relevant views of children of which the Scottish Ministers are aware* (s.1(2))

And

b) . . . *promote public awareness and understanding (including appropriate awareness and understanding among children) of the rights of children...* (s.1(3))

Under s.1(4) of the Act, Ministers must lay a report before the Scottish Parliament every three years which details what they have done to fulfil these duties, and what they intend to do over the next three-year period.

Under s.1(5), Scottish Ministers *must take such steps as they consider appropriate to obtain the views of children* to inform their plans for the next three years.

These duties came into force in June 2015, and the first report, [Progressing the human rights of children in Scotland: 2018 report](#), was laid in Parliament in December 2018. Accompanying this is the [Progressing the human rights of children in Scotland: 2018-2021 action plan](#). This action plan Sets out the ambition to deliver the building blocks and the foundations that help children and young people to experience their rights.

The [Scottish Government's submission](#) to the UK Government's fifth periodic report sets out actions taken by government since the 2008 examination before the UN Committee. The UK Government is due submit its next report to the Committee by 14 January 2022.

Scotland created an independent Commissioner for Children and Young People in 2004. The [Children and Young People's Commissioner for Scotland \(CYPCS\)](#) promotes and safeguards the rights of children with particular emphasis on the UNCRC, in part by reviewing and assessing the adequacy of the law, policy and practice.

The Commissioner also has a power to carry out formal general investigations into rights issues that are of significance to individual children, groups of children, or children generally, in relation to a service they have received.

## **11. Child wellbeing: UNCRC, GIRFEC and the Wellbeing Indicators**

The UNCRC is a set of substantive, legal and procedural standards that focus on the role of the State in ensuring that these standards are met. It is the overarching framework within which all policy that affects children and young people should be developed, and within which child wellbeing sits.

[Getting It Right for Every Child](#) (GIRFEC) is Scotland's national approach to improving the wellbeing of children and young people, and was built up from the UNCRC. Through policy and the delivery of services at both national and local level, the GIRFEC approach:

- Puts the best interests of the child at the heart of decision-making
- Takes a holistic approach to the wellbeing of a child
- Works with children, young people and their families on ways to improve wellbeing
- Advocates preventative work and early intervention to support children, young people and their families

- Believes professionals must work together in the best interests of the child

The [Children and Young People \(Scotland\) Act 2014](#) places key elements of GIRFEC in statute. Eight GIRFEC **wellbeing indicators** – Safe, Healthy, Achieving, Nurtured, Active, Respected, Responsible, Included (sometimes known by the acronym **SHANARRI**) - are now part of Scottish law (s.96 of the Act). Further information on the wellbeing indicators can be found in [Annex 2](#).

Under **Part 1 (s.2) and Schedule 1** of the Act, public bodies, including local authorities and health boards, are also required to report back every three years on the steps each has taken to secure better or further effect of **UNCRC requirements**. Further detail can be found in non-statutory [Guidance on Part 1: Duties of Public Authorities in Relation to the United Nations Convention on the Rights of the Child \(UNCRC\)](#).

**Part 3 (s.8)** of the Act provides for the joint preparation by local authorities and health boards of **local children's services plans** every three years. Every year, local authorities and health boards must report back on the extent to which children's services and other related services have safeguarded, supported and promoted the wellbeing of children in an integrated and efficient manner. Further detail can be found in [Statutory Guidance on Part 3 \(Children's Services Planning\) of the Children and Young People \(Scotland\) Act 2014](#).

While **children's rights and child wellbeing** are two discrete concepts, they are intrinsically linked.

- 'Wellbeing' is a measure of the quality of a child's life. It is understood in relation to objective measures (such as income, health status, being a victim of crime, educational achievement) and subjective measures (such as life satisfaction or reported levels of happiness).
- The implementation of the UNCRC is a mechanism through which wellbeing can be achieved. Where a child's rights have been respected, protected and fulfilled, their wellbeing should improve.

Child Rights and Wellbeing Impact Assessments (CRWIAs) utilise each of these frameworks to assess the potential impact of a policy/measure on children and young people's rights and wellbeing in Scotland. They were originally developed to support policy development and improvement by Scottish Government officials and help ensure Scottish Ministers fulfil their children's rights duties.

## 12. Children and young people's views

Under Article 12 of the UNCRC, every child has the right to be heard in matters affecting them and to participate in the life of their family, community and society. The Children and Young People (Scotland) Act 2014 embeds this child's right in primary legislation, and places requirements on Scottish Ministers in relation to policy and service development and services planning to:

- *Take such account as they consider appropriate of any relevant views of children of which the Scottish Ministers are aware (Section 1(2))*
- *Take such steps as they consider appropriate to obtain the views of children to inform their plans for the next three years (Section 1(6))*

The Ministerial duty is supplemented by a Scottish Government expectation that, where children and young people's views are not known on a matter that is likely to have an impact on them, steps should be taken to obtain their views.

### 13. Further information on children's rights

A number of Scottish organisations take a children's rights-based approach to their work and have dedicated pages on their website containing information on children's rights, these include:

- [Alliance](#)
- [Article 12](#)
- [Barnardo's](#)
- [Children 1st](#)
- [Children in Scotland](#)
- [Children and Young People's Commissioner Scotland \(CYPCS\)](#)
- [Children's Parliament](#)
- [CoSLA](#)
- [Education Scotland](#)
- [Enquire](#)
- [NHS Scotland](#)
- [Save the Children](#)
- [Social Work Scotland](#)
- [Together: Scottish Alliance for Children's Rights](#)
- [Who Cares? Scotland](#)
- [Young Scot](#)
- [YouthLink Scotland](#)
- [Youth Scotland](#)

## Annex 1 – UNCRC clusters

As part of its requirements for State periodic reports, the UN Committee on the Rights of the Child has organised the different Articles of the UNCRC into cluster groups. However, when undertaking your Child Rights and Wellbeing Impact Assessment (CRWIA), it is important to refer to the [original text of the Convention](#), and its Optional Protocols.

It is also worth looking at [UNICEF's implementation handbook](#) on the UNCRC which provides an implementation checklist for each Article of the Convention.

**Article 1** of the UNCRC defines a child as every human being below the age of 18.

### General measures of implementation

The Government is expected to do all it can to implement the UNCRC - to make sure all law, policy and decisions which impact on children comply with their human rights. There are different ways of doing this.

'Legal measures' give legal effect to the UNCRC. In Part 1 of the Children and Young People (Scotland) Act 2014, the Scottish Government has placed a duty on Scottish Ministers to consider how they could give better or further effect to UNCRC requirements. Other UNCRC requirements appear in Scottish laws relating to specific provisions such as those relating to education, child protection, adoption, or juvenile justice.

'Non-legal measures' refer to other processes that can be used to progress implementation of the Convention. These include: national strategies and action plans for children; child rights impact assessment (CRIA) processes to anticipate the impact of proposed laws and policies; the establishment of children's commissioners, ombudsmen and other national human rights institutions; the identification, allocation and monitoring of resources spent on children and children's services; children's rights training, awareness-raising and capacity-building for all those working with and on behalf of children; the development and collection of data on children's lives; and collaboration and engagement with all sectors of society, including children themselves.

**NB We have adopted the term Child Rights and Wellbeing Impact Assessment (CRWIA) to cover the consideration of both children's rights and wellbeing**

<b>Article 4 Protection of rights</b>	<b>Article 42 Knowledge of rights</b>	<b>Article 44(6) Implementation measures</b>
<p>Governments should undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the UNCRC. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of the available resources.</p>	<p>Governments undertake to make the principles and provisions of the UNCRC widely known, by appropriate and active means, to adults and children alike.</p>	<p>Governments should make their reports on the implementation of the UNCRC widely available.</p>

### General principles of the UNCRC

The four general principles of the UNCRC are the guiding principles which underpin each and all of the specific rights outlined in the Convention, and must be considered in every CRWIA. They cover: non-discrimination; the best interests of the child; the right to life, survival and development; and the right to express their views and have them given due weight, taking into account their age and maturity.

**Article 2  
Non-discrimination**

Children should not be discriminated against in the enjoyment of their rights. No child should be discriminated against because of the situation or status of their parent/carer(s).

**Article 3  
Best interests of the child**

Every decision and action taken relating to a child must be in their best interests. Governments must take all appropriate legislative and administrative measures to ensure that children have the protection and care necessary for their wellbeing - and that the institutions, services and facilities responsible for their care and protection conform with established standards.

**Article 6  
Life, survival and development**

Every child has a right to life and to develop to their full potential.

**Article 12  
Respect for the views of the child**

Every child has a right to express their views and have them given due weight in accordance with their age and maturity. Children should be provided with the opportunity to be heard, either directly or through a representative or appropriate body.

**Civil rights and freedoms**

Children have a right to access and to move freely in public spaces, and to meet up and spend time with others. Children have a right to think and believe what they like, to access information and to speak their mind, so long as this is not harmful to others. They have a right to keep personal matters and communications private.

**Article 7  
Birth registration, name, nationality, care**

Every child has the right to have their birth registered, and to a legal name and nationality, and as far as

**Article 8  
Protection and preservation of identity**

Governments must respect and protect every child's right to an identity.

**Article 13  
Freedom of expression**

Every child must be free to say what they think and to seek, receive and share information, as long as the

<p>possible, the right to know and to be cared for by their parents.</p>		<p>information is not damaging to themselves or others.</p>
<p><b>Article 14 Freedom of thought, conscience and religion</b></p> <p>Every child has the right to think and believe what they like, and to practise their religion or beliefs publically, as long as they do not harm others in doing so. Governments must respect the right of parents to offer guidance to children where they are deciding what to think and believe.</p>	<p><b>Article 15 Freedom of association</b></p> <p>Every child has the right to freedom of assembly: to meet with other children, and to join groups and organisations, as long as it does not stop others from enjoying their rights.</p>	<p><b>Article 16 Right to privacy</b></p> <p>Every child has a right to privacy. The law should protect the child's private, home and family life, and correspondence.</p>
<p><b>Article 17 Access to information; mass media</b></p> <p>Every child has the right to reliable information from the media as well as informative and educational materials from a variety of sources. Governments must protect children from materials that could harm them.</p>		
<p><b>Violence against children</b></p> <p>The Government should protect children against all forms of violence, exploitation and abuse, and must take appropriate action to properly investigate suspected abuse. They should also establish social programmes to provide the necessary support for the child, and for those who have the care of the child. Children have a right to be protected from inhuman or degrading treatment in every setting. The Government should assist child victims - not penalise them - and help them recover and reintegrate into society.</p>		
<p><b>Article 19 Protection from all forms of violence</b></p> <p>Children have a right to be protected from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation. Governments</p>	<p><b>Article 28(2) Right to education</b></p> <p>Every child has the right to an education. Discipline in schools must respect children's dignity.</p>	<p><b>Article 34 Sexual exploitation</b></p> <p>Governments must protect children from all forms of sexual exploitation and abuse.</p>

<p>must do all that they can to ensure this</p>		
<p><b>Article 37(a) Inhumane treatment and detention</b></p> <p>No child should be subjected to cruel, inhuman or degrading treatment or punishment.</p>	<p><b>Article 39 Recovery and rehabilitation of child victims</b></p> <p>Children who have been the victims of any form of exploitation or abuse; cruel, inhuman or degrading treatment or punishment; or who are victims of war should receive the help they need to recover their health, dignity and self-respect, and reintegrate into society.</p>	
<p><b>Family environment and alternative care</b></p> <p>The UNCRC recognises parents' primary role in protecting and promoting the rights of their child but says the Government should support parents in bringing up their children. Children have a right not to be separated from their parents, unless this is in their best interests. Where children must live apart from their families, they have a right to be well cared for. If the child's parents are living apart, the child has the right to maintain contact with both, if that is safe and in their best interests. Children should have a say when adults make decisions about where they live and how they should be cared for, and those placements should be subject to regular review.</p>		
<p><b>Article 5 Parental guidance and a child's evolving capacities</b></p> <p>Governments must respect the rights, responsibilities and duties of parents and carers, as well as members of the extended family, to direct and guide the child in the exercise of their rights.</p>	<p><b>Article 9 Separation from parents</b></p> <p>A child should not be separated from his or her parents against their will, unless such a separation is in their best interests. In any related proceedings, all interested parties shall be given an opportunity to participate and make their views known.</p> <p>A child who is separated from one or both parents has the right to maintain direct and regular contact with both parents, unless this is contrary to the child's best interests.</p>	<p><b>Article 10 Family reunification</b></p> <p>Governments must respond quickly and sympathetically if a child or a child's parents apply to live together in the same country. Children whose parents live in different countries have the right to maintain contact with both.</p>
<p><b>Article 11 Abduction and non-return of children</b></p>	<p><b>Article 18(1,2) Parental responsibilities and state assistance</b></p>	<p><b>Article 20 Children deprived of a family</b></p>



<p>Governments must do everything they can to stop children being removed from their own country illegally or being prevented from returning.</p>	<p>Parents, or legal guardians, have the primary responsibility for the upbringing and development of the child, and should always consider what is best for the child. Governments must provide appropriate assistance to parents and carers to help them.</p>	<p>A child temporarily or permanently deprived of his or her family environment is entitled to special protection and assistance provided by the State.</p>
<p><b>Article 21 Adoption</b></p> <p>States Parties shall ensure that the best interests of the child shall be the paramount consideration in adoptions.</p>	<p><b>Article 25 Review of treatment in care</b></p> <p>Every child placed away from home (for example, in care, hospital or prison) has the right to a periodic review of their treatment and all circumstances of their placement.</p>	<p><b>Article 27(4) Adequate standard of living</b></p> <p>Governments should take all appropriate measures to recover child maintenance from parents or others who have financial responsibility for the child.</p>
<p><b>Disability, basic health and welfare</b></p> <p>Disabled children are children first, and have a right to the same opportunities as every child. That means removing the barriers - whether social, cultural, attitudinal or physical - which impede their inclusion in education, play and recreation, and society, and providing whatever protective measures, health and social care services they might need. It also means promoting their equal rights and protecting them from discrimination. In order to fully take part in these opportunities, disabled children and their families sometimes require special care and assistance which should, where possible, be delivered free of charge.</p> <p>All children have the right to the best possible standard of health, including access to relevant health services. This includes an expectation that public authorities should take action to reduce child deaths, combat disease and malnutrition, and provide support to women during their pregnancy and following the birth of their child. The Government is responsible for providing public education on child health, preventive healthcare, and family planning education and services.</p> <p>As well as providing a comprehensive primary healthcare system, the Government should focus on the underlying determinants of children's health, including their mental health. Services should be provided as close as possible to where children and their families live. When inpatient treatment is necessary, it must be provided in the best interests of the child. Health care itself must be shaped by evidence-based public health standards and best practice. The realisation of the right to health is indispensable for the enjoyment of all the other rights in the UNCRC.</p> <p>When families do not have enough to live on, children have a right to financial support from the Government in order to enjoy a standard of living that will meet their basic needs and allow them to develop fully. Although the UNCRC recognises the responsibilities that parents have to meet their children's needs, governments must step in and provide</p>		

assistance to help ensure that children's essential needs are met - in particular, food, clothing and housing - where families are unable to do so.

**Article 6  
Life, survival and development**

Every child has a right to life and to develop to their full potential.

**Article 18(3)  
Parental responsibilities and state assistance**

Governments must take all appropriate measures to ensure the children of working parents have the right to benefit from childcare services and facilities.

**Article 23  
Children with disabilities**

A disabled child has the right to enjoy a full and decent life in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community. Governments must recognise the right of the disabled child to special care, and ensure the disabled child has effective access to education, training, health care, rehabilitation, preparation for employment, and recreational opportunities.

**Article 24  
Health and health services**

All children have a right to the highest attainable standard of health, and to health care services that help them to attain this. Governments must provide good quality health care, clean water, nutritious food and a clean environment so that children can stay healthy.

**Article 26  
Social security**

Every child has a right to benefit from social security, taking into account the resources and circumstances of those who have responsibility for the child.

**Article 27(1-3)  
Adequate standard of living**

Every child has a right to a standard of living adequate to their physical, mental and social development. Governments should take measures to assist parents and carers who cannot afford to provide this, and in particular to provide assistance and support with food, clothing and housing.

**Article 33  
Drug abuse**

Governments must protect children from the use of drugs, and from involvement in the illicit production and trafficking of drugs.

**Education, leisure and cultural activities**

All children, no matter what their ability, interests or background, have a right to an education that will help them achieve their potential without discrimination. Education should be child-centred and empowering. It should strengthen their capacity to enjoy the

full range of human rights as well as promote human rights values. School discipline must respect children's human rights. Children should be able to express their views, and encouraged to participate in preschool, school and college life.

Children are entitled to a broad curriculum which helps them develop their life skills, talents and abilities, including the ability to make well-balanced decisions and develop a healthy lifestyle. Children have a right to learn about human rights.

Children also have a right to play and recreational activities, to rest and leisure, and to take part in cultural life.

<p><b>Article 28 Right to education</b></p> <p>Every child has a right to education on the basis of equal opportunity. Primary education must be free. Secondary education must be available to every child, with financial assistance available in case of need. Information and guidance on education should be available to all. Governments should take measures to encourage regular attendance and reduce drop-out rates. School discipline should be administered in a manner consistent with the child's human dignity.</p>	<p><b>Article 29 Goals of education</b></p> <p>Education must aim to develop every child's personality, talents and abilities to their fullest potential. It must encourage the child's respect for human rights, their origins and identity, for other cultures around the world, and for the natural environment.</p>	<p><b>Article 30 Children of minorities/indigenous groups</b></p> <p>Every child has the right to learn and use the language, customs and religion of their family, whether or not these are shared by the majority of people in the country where they live.</p>
<p><b>Article 31 Leisure, play and culture</b></p> <p>Every child has a right to rest and leisure, to engage in play and recreational activities, and to take part in a range of cultural and artistic activities.</p>		

**Special protection measures**

There are groups of vulnerable and marginalised children who require special protection from the government - and these are often the children who are most at risk of having their rights ignored or infringed. They include asylum-seeking and refugee children, child victims of trafficking or exploitation, and children in trouble with the law.

Asylum-seeking children and child refugees are entitled to special protection and all the other rights in the UNCRC. They must not be the victims of discrimination or stigmatisation. If they arrive unaccompanied by any parents or other family members, they

should be well cared for. They should not be deprived of their liberty. Unaccompanied asylum-seeking children are particularly vulnerable to trafficking and exploitation. Governments should take every measure to prevent child trafficking, and protect all children from exploitation. They should assist child victims - not penalise them - and help them recover and reintegrate into society.

Children in conflict with the law are children first. The UNCRC makes it clear that, wherever possible, children should be dealt with outside the criminal justice system. A welfare response suited to the child's individual needs and circumstances can better address the underlying causes of the behaviour that first brought the child to the attention of criminal justice agencies.

Children who enter the criminal justice system have a right to fair treatment and legal representation in a justice system which respects their rights. They should not be subjected to any punishment that is cruel, inhuman or degrading. If they are detained or imprisoned, this should be a measure of last resort and for the shortest possible time. Institutions where children are detained should treat them in a manner which takes into account their age, capacity and individual needs.

<p><b>Article 22 Refugee children</b></p> <p>Asylum-seeking and refugee children are entitled to all rights set out in the UNCRC. Governments must help in trying to reunite asylum-seeking or refugee children to reunite with their parents. Where this is not possible, the child must be given special protection.</p>	<p><b>Article 30 Children of minorities/indigenous groups</b></p> <p>Every child has the right to learn and use the language, customs and religion of their family, whether or not these are shared by the majority of people in the country where they live.</p>	<p><b>Article 32 Child labour</b></p> <p>Governments must protect children from economic exploitation, and any work that is likely to be harmful to their health or interfere with their education.</p>
<p><b>Article 33 Drug abuse</b></p> <p>Governments must protect children from the use of drugs, and from involvement in the illicit production and trafficking of drugs.</p>	<p><b>Article 35 Abduction, sale and trafficking</b></p> <p>Governments must take all possible measures to make sure children are not abducted, sold or trafficked.</p>	<p><b>Article 36 Other forms of exploitation</b></p> <p>Governments must protect children from all forms of exploitation or maltreatment.</p>
<p><b>Article 37(b-d) Inhumane treatment and detention</b></p> <p>No child should be deprived of their liberty unlawfully or arbitrarily. Any arrest, detention or imprisonment of a child should be a measure of last resort and</p>	<p><b>Article 38 War and armed conflicts</b></p> <p>Governments must do everything they can to protect and care for children affected by war, and should ensure that no child under 15 is recruited into the</p>	<p><b>Article 39 Recovery and rehabilitation of child victims</b></p> <p>Children who have been the victim of any form of exploitation should receive the help they need to recover their health, dignity</p>

<p>for the shortest possible time. Every child deprived of their liberty must be treated with humanity, and in a manner which takes into account their needs. Children should be kept separate from adult prisoners, and have the right to maintain contact with their family. Every child deprived of their liberty has a right to prompt legal and other appropriate assistance and to challenge the legality of his or her detention.</p>	<p>armed forces or engaged in direct combat.</p>	<p>and self-respect, and reintegrate into society.</p>
<p><b>Article 40 Juvenile justice</b></p> <p>Governments must establish a minimum age of criminal responsibility. Wherever appropriate and desirable, measures for dealing with children without resorting to judicial proceedings should be used (providing that human rights are fully respected). A child accused or convicted of breaking the law must be treated with dignity and respect, in a manner which takes into account the aim of promoting the child's reintegration into society. They have the right to legal assistance and a fair trial that takes account of their age or situation. Governments must ensure that the child's privacy is fully respected at all times.</p>		

**Optional Protocol to the UNCRC on the Involvement of Children in Armed Conflict**

Governments should ensure that children under 18 who are members of the armed forces do not take a part in combat. Any recruitment of children under 18 must be voluntary and carried out with the full consent of the child's parents/carers.

The UK Government has entered interpretive Declarations to this Optional Protocol. The UK would not exclude the deployment of under 18s who are members of the armed forces

in direct combat if there is a genuine military need; it is not practicable to withdraw them before deployment; or doing so would undermine the operational effectiveness of their unit. The minimum age at which children may join the UK armed forces is 16 years, with parental consent required.

**[Optional Protocol to the UNCRC on the Sale of Children, Child Prostitution and Child Pornography](#)**

Governments must prohibit the sale of children, child prostitution and child pornography, and recognise the vulnerability of child victims, protect their privacy, provide appropriate support services and ensure their safety.

## Annex 2 – Wellbeing indicators and the UNCRC

Eight child wellbeing indicators – sometimes known by the acronym SHANARRI – were developed as part of the GIRFEC approach which aims to improve outcomes for all children and young people in Scotland. Section 96(2) of the Children and Young People (Scotland) Act 2014 provides a statutory definition of ‘wellbeing’, relating it directly to the eight indicators. The [statutory guidance for Part 18 \(Section 96\) of the Act](#)<sup>1</sup> provides further detail.

The GIRFEC approach was built up from the UNCRC, and requires those who work with children and young people to put children at the centre of their day-to-day practice. Putting children at the centre realises all UNCRC Articles, but in particular highlights the requirement to consider the best interests of the child (Article 3), and the need for children’s views to be taken into account when decisions are being made about them (Article 12).

Like the Articles of the UNCRC, the [Wellbeing indicators](#) are non-hierarchical and interconnected, focused on the whole child rather than just one discrete aspect of their lives.

<b>Safe</b>	Protected from abuse, neglect and harm by others at home, at school and in the community
<b>Healthy</b>	Having the highest attainable standards of physical and mental health, access to suitable healthcare, and support in learning to make healthy and safe choices
<b>Achieving</b>	Being supported and guided in their learning and in the development of their skills, confidence and self-esteem at home, at school and in the community
<b>Nurtured</b>	Having a nurturing place to live, in a family setting with additional help if needed or, where this is not possible, in a suitable care setting
<b>Active</b>	Having opportunities to take part in activities such as play, recreation and sport which contribute to healthy growth and development, both at home and in the community
<b>Respected</b>	Having the opportunity, along with carers, to be heard and involved in decisions which affect them
<b>Responsible</b>	Having opportunities and encouragement to play active and responsible roles in their schools and communities and, where necessary, having appropriate guidance and supervision and being involved in decisions that affect them
<b>Included</b>	Having help to overcome social, educational, physical and economic inequalities and being accepted as part of the community in which they live and learn

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<sup>1</sup> Please note this guidance remains valid in draft form until revisions can be made to sections on the Named Person service.

## Annex 3 – UNCRC Concluding Observations

This is a summary version of the 2016 [Concluding Observations](#) on the implementation of the UNCRC in the UK, and the most recent Concluding Observations on the two Optional Protocols ratified by the UK Government. The UK Government is due to submit its next report to the UN Committee by 14 January 2022.

Concluding Observations are recommendations made by the UN Committee on the Rights of the Child to the UK Government, setting out what it needs to do to comply with and better progress the implementation of the UNCRC. As such, they indicate the children's rights issues most recently examined and highlighted as areas of concern in the UK - and form the basis of the Government's next periodic report to the UN Committee.

[Together: the Scottish Alliance for Children's Rights](#) publishes an annual State of Children's Rights in Scotland report. The [2016 report](#) aims to provide data and evidence on where Scotland stands on each of the Concluding Observations and makes Scotland-specific recommendations on how the Scottish Government can take these forward.

In your CRWIA, you should take into account any Concluding Observation which is relevant to your policy/measure, as well as any emerging issue(s) raised in the UN Committee's report.

### General measures of implementation

#### Comprehensive policy and strategy

- Expedite bringing UK domestic legislation, at the national and devolved levels, in line with the UNCRC in order to ensure that the principles and provisions of the Convention are directly applicable and justiciable under domestic law
- Revise the 2009 UK-wide strategy [Working together, achieving more](#) to cover all areas of the Convention and ensure its full implementation
- Ensure the full implementation of Scotland's 2009 UNCRC action plan [Do the Right Thing](#) and the [National Action Plan for Human Rights 2013-17](#), and ensure they are adequately resourced and evaluated

#### Child Rights Impact Assessment

- Introduce a statutory obligation to conduct Child Rights Impact Assessment (CRIA), publish the results of such assessments and demonstrate how they have been taken into consideration

#### Coordination

- Coordinate and evaluate the implementation of the UNCRC at national level and across relevant sectors

#### Allocation of resources

- In accordance with [Sustainable Development Goal 10](#) (*Reduce inequality within and among countries*), allocate the maximum resources available to implement the UNCRC, with a particular focus on eradicating child poverty and reducing inequality
- Introduce a child rights approach to the State budget; ensure participatory budgeting through public dialogue, including with children; protect budgetary lines for children in disadvantaged or vulnerable situations; conduct CRIA of budget decision-making and outcomes; monitor the adequacy, efficacy and equitability of the distribution of resources



### **Independent monitoring**

- Ensure the Children's Commissioners are independent of government, and have the necessary resources to carry out their mandate, including the power to receive and investigate complaints from children

### **Children's rights and the business sector**

- Require businesses to undertake child rights due diligence, and establish and implement regulations to make sure that businesses are child rights compliant

## **General principles**

### **Non-discrimination**

- Consider amending equality legislation to protect all children under 18 from discrimination on the grounds of their age
- Strengthen the review and oversight mechanisms to ensure counter-terrorism and counter-extremism measures, including the [Prevent Strategy](#), do not have a discriminatory or stigmatising impact on any group of children
- Take urgent measures to address the inappropriate characterisation of children, especially adolescents, in the media and society
- Raise awareness and strengthen preventive activities to protect vulnerable groups of children from discrimination and stigmatisation

### **Best interests of the child**

- Ensure that the best interests of the child is adequately integrated into all legislative, administrative and judicial proceedings and decisions as well as policies and programmes
- Develop guidance for all persons in authority involved in determining the best interests of the child

### **Right to life, survival and development**

- Address the underlying determinants of infant and child mortality
- Introduce automatic, independent and public reviews of unexpected death or serious injury involving children

### **Respect for the views of the child**

- Establish structures for the active and meaningful participation of children and give due weight to their views in designing laws, policies, programmes and services
- Establish Youth Parliaments in all devolved administrations as permanent fora
- Ensure legal aid reforms do not negatively affect children's access to justice
- Consult with children on the voting age, supported by active citizenship and human rights education

## **Civil rights and freedoms**

### **Freedom of thought, conscience and religion**

- Repeal requirements for compulsory attendance at collective worship in publicly funded schools, and ensure that children have the right to withdraw from religious worship at school

### **Freedom of association and peaceful assembly**

- Prohibit the use of mosquito devices in public spaces
- Collect data on, and monitor the use of anti-social behaviour measures used against children

### **Right to privacy**

- Prohibit the use of non-statutory stop and search checks against children; ensure that the use of statutory stop and search checks is proportionate and non-discriminatory; and collect, analyse and publish stop and search data

## **Violence against children**

### **Torture and other cruel or degrading treatment or punishment**

- Act in accordance with [Sustainable Development Goal 16](#), Target 16.2: *To end abuse, exploitation, trafficking and all forms of violence against children*
- Collect and publish data on, and prohibit the use of, Tasers on children
- Abolish the use of restraint against children for disciplinary purposes in all institutional settings, and ban the use of any technique designed to inflict pain on children
- Ensure that restraint against children is used as a last resort and only to prevent harm, and collect and publish data on its use in order to monitor the appropriateness of discipline and behaviour management in all settings

### **Corporal punishment**

- Prohibit physical punishment in the home, schools and all other institutions, and promote non-violent and positive forms of discipline

### **Violence, abuse and neglect**

- Strengthen the systematic collection of data and recording of information on all types of violence against children in all settings and sectors
- Systematically collect and publish data on child exploitation and abuse, including through mandatory reporting, in all settings
- Increase the number of social workers and strengthen their capacity to address violence against children
- Give due weight to the views of children affected by violence in criminal and family law proceedings

### **Sexual exploitation and abuse**

- Develop multi-sectoral strategies to prevent, detect and intervene in child exploitation and abuse, including online exploitation and abuse
- Strengthen the capacity of law enforcement agencies and the judiciary to detect and prosecute child sexual exploitation and abuse, and grant the victims effective redress
- Further develop comprehensive services to support child victims of sexual exploitation and abuse

### **Harmful practices**

- Ensure the marriage of children aged 16 and 17 are based on the full, free and informed consent of those children
- Strengthen measures, collect data, raise awareness and provide education and training to professionals on the use of harmful practices including Female Genital Mutilation (FGM) and unnecessary surgical interventions on intersex children

### **Freedom of the child from all forms of violence**

- Record incidences and tackle bullying and violence in schools, including through teaching human rights and improving students' conflict resolution skills, and involve children in anti-bullying initiatives
- Train children, teachers and families on the safe use of ICT, and raise awareness among children of the impact online bullying can have on their peers

## **Family environment and alternative care**

### **Family environment**

- Conduct a CRIA of funding reductions for childcare and family support, and adjust policies in order to make those services available to those who need them

### **Children deprived of a family environment**

- Provide assistance to help parents and guardians with their child-rearing responsibilities
- Ensure that the removal of children from their families is not directly and solely attributable to poverty, and that removal is in the best interests of the child and used as a measure of last resort
- Take all necessary measures to provide stability for children in care, including efforts to retain social workers and avoid placement changes
- Inform and consult with children from an early stage on plans for their care and transition from care, and provide sufficient support to care leavers including for accommodation, education and employment

### **Children of incarcerated parents**

- Ensure that child protection agencies are notified when a parent/carer with a dependent child is imprisoned in order to ensure children are not left unattended
- Consider the best interests of the child when sentencing parents in order to avoid, as far as possible, sentences which lead to parents being separated from their children

## **Disability, basic health and welfare**

### **Children with disabilities**

- Adopt a human rights based approach to disability, with a comprehensive strategy for inclusion
- Ensure disabled children can exercise their right to have their views taken into account and given due weight in all decision-making that will affect them
- Further develop and prioritise the use of inclusive education, and make mainstream schools fully accessible to disabled children
- Provide a comprehensive and integrated package of services for transition to adulthood

### **Health and health services**

- Tackle inequalities in access to health services through resource allocation and addressing the underlying social determinants of health, as well as a strong focus on reducing inequality in health outcomes

### **Mental health**

- Collect comprehensive data on child mental health
- Invest in, and develop strategies to deliver and improve child and adolescent mental health services
- Provide age-appropriate services and facilities, and prohibit the placement of children with mental health needs in adult psychiatric units or police stations
- Develop and support therapeutic community-based services for children with mental health conditions
- Review mental health legislation to ensure the best interests and views of children below the age of 16 are duly taken into account

- Ensure that the prescription of drugs is used as a measure of last resort, and that children and their parents/carers are informed about potential side-effects and non-medical alternatives
- Collect data on the type, amount and use of psychotropic drugs being prescribed to children

#### **Adolescent health**

- Develop a comprehensive sexual and reproductive health policy for adolescents
- Ensure sex education is a mandatory subject in the school curriculum

#### **Nutrition**

- Collect data on breastfeeding, numbers of overweight and obese children, malnutrition and food security
- Promote, protect and support breastfeeding, and fully implement the [International Code of Marketing of Breastmilk Substitutes](#)

#### **Environmental health**

- Act in accordance with [Sustainable Development Goal 1](#), Target 1.5: *By 2030, build the resilience of the poor and those in vulnerable situations and reduce their exposure and vulnerability to climate-related extreme events and other economic, social and environmental shocks and disasters*
- Make a statutory commitment to reduce air pollution levels, especially near schools and in residential areas
- Place children's rights at the centre of climate change and adaptation strategies

#### **Standard of living**

- Act in accordance with [Sustainable Development Goal 1](#), Target 1.2: *By 2030, reduce at least by half the proportion of men, women and children of all ages living in poverty in all its dimensions according to national definitions implement nationally appropriate social protection systems and measure for all, including floors, and by 2030 achieve substantial coverage of the poor and the vulnerable*
- Establish concrete targets for the eradication of child poverty
- Ensure a clear focus on the child in poverty reduction strategies and action plans
- Conduct a full assessment of the cumulative impact of social security and tax credit reforms on children, including disabled children and BME groups – and where necessary, revise the reforms to ensure the best interests of the child are fully respected
- Prohibit the prolonged placement of children in temporary accommodation
- Reduce homelessness and progressively guarantee all children stable access to adequate housing which meets quality standards
- Introduce a statutory duty on local authorities to provide safe and adequate sites for Travellers, and involve Roma, Gypsy and Traveller communities, including children, in the planning and decision-making processes

### **Education, leisure and culture**

#### **Education and training**

- Act in accordance with [Sustainable Development Goal 4](#), Target 4.2: *By 2030, ensure that all girls and boys have access to quality early childhood development, care and pre-primary education so that they are ready for primary education*
- Ensure access to early childhood care and education, based on a comprehensive policy of early childhood development, paying special attention to vulnerable children

- Ensure the right of all children to an inclusive education to reduce the effects a child's social background or disability may have on their achievement in school
- Use exclusion from school as a last resort, abolish the use of informal exclusions, and reduce the number of exclusions through the use of mediation and restorative justice
- Abolish the use of isolation rooms
- Ensure that children have a right of appeal against their exclusion
- Make children's rights education mandatory

#### **Rest, leisure, recreation and cultural and artistic activities**

- Guarantee children's right to rest and leisure, to engage in play and recreational activities
- Provide all children, including those with disabilities, with safe, accessible and inclusive play spaces, and public transport to get to those spaces
- Involve children in planning, designing and monitoring the implementation of play policies and activities

### **Special protection measures**

#### **Asylum-seeking, refugee and migrant children**

- Collect and publish data on the number of children seeking asylum, including those whose age is disputed
- Establish an independent guardian system for unaccompanied and separated children
- Conduct age assessments only in cases of serious doubt
- Stop using detention for asylum-seeking and migrant children
- Review asylum policy to facilitate family reunion for unaccompanied and separated refugee children
- Ensure that adequate safeguards are in place when children are being returned to their country of origin

#### **Administration of juvenile justice**

- Raise the minimum age of criminal responsibility
- Ensure that children in conflict with the law are always dealt with in the juvenile justice system up to the age of 18
- Abolish mandatory life sentences for children who committed the relevant offence while under the age of 18
- Place in statute the principle of using custody as a measure of last resort and for the shortest possible period of time
- Separate children placed in custody from adults in detention settings
- Prohibit the use of solitary confinement for children

#### **Child victims and witnesses of crime**

- Make the use of video-recordings of interviews with child victims and witnesses standard practice in courts

### **Optional Protocol to the UNCRC on the Involvement of Children in Armed Conflict Concluding Observations (2008 & additional recommendations from 2016)**

- Provide training on the OP to all members of the armed forces and relevant professionals
- Consider raising the minimum age for recruitment to the armed forces to 18

- Ensure that recruitment practices do not actively target children under 18, and make sure recruitment is genuinely voluntary and based on informed consent
- Prohibit the use of firearms for all children
- Ensure asylum-seeking, refugee and migrant children who have been child soldiers in other countries are identified, receive appropriate care and treatment, and have their best interests considered when making decisions about their repatriation
- Only detain captured child soldiers as a measure of last resort, and in conditions which meet their needs as children
- Prohibit the sale of arms to countries where children are known to be recruited and serve as soldiers

**Optional Protocol to the UNCRC on the sale of children, child prostitution and child pornography Concluding Observations (2014 & additional recommendations from 2016)**

- Make sure that unaccompanied asylum-seeking children, irregular migrant children and child victims of trafficking receive special protection and care, and that they are provided with safe and adequate accommodation
- Focus on the particular vulnerabilities and needs of child victims through the Modern Slavery Bill and other legislation
- Strengthen the National Referral Mechanism (NRM) is embedded in existing child protection systems
- Strengthen the capacity of law enforcement authorities and the judiciary to detect and prosecute trafficking of children for labour, sexual and other forms of exploitation
- Establish a clear non-prosecution principle in the criminal justice system for child victims of offences
- Adopt measures to rescue, repatriate, rehabilitate and reintegrate child victims of trafficking and sexual exploitation
- Appoint a competent and statutory guardian to safeguard the best interests of child victims
- Set up measures to identify, investigate and prosecute UK nationals involved in the sexual exploitation of children in other countries, and restrict their movements
- Revise legislation to ensure that all children up to 18 are protected from all types of offences covered in the OP

## Annex 4 – UNCRC ‘General Comments’

General Comments are guidelines issued by the UN Committee on the Rights of the Child to provide a detailed interpretation of an Article or issues relating to the UNCRC, and what actions governments should take to ensure its implementation.

New General Comments appear at irregular intervals on the website of the [Office of the High Commissioner on Human Rights](#). [UNICEF UK](#) can advise on titles which are in preparation.

1. [The aims of education](#) (2001)
2. [The role of independent National Human Rights Institutions in the protection and promotion of the rights of the child](#) (2002)
3. [HIV/AIDS and the rights of children](#) (2003)
4. [Adolescent health and development in the context of the Convention on the Rights of the Child](#) (2003)
5. [General measures of implementation on the Convention on the Rights of the Child](#) (2003)
6. [Treatment of unaccompanied and separated children outside their country of origin](#) (2005)
7. [Implementing child rights in early childhood](#) (2005)
8. [The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment](#) (2006)
9. [The rights of children with disabilities](#) (2006)
10. [Children’s rights in juvenile justice](#) (2007)
11. [Indigenous children and their rights under the Convention](#) (2009)
12. [The right of the child to be heard](#) (2009)
13. [The right of the child to freedom from all forms of violence](#) (2011)
14. [On the right of the child to have his or her best interests taken as a primary consideration](#) (2013)
15. [On the right of the child to enjoyment of the highest attainable standard of health](#) (2013)
16. [State obligations regarding the impact of the business sector on children’s rights](#) (2013)
17. [On the right of the child to rest, leisure, play, recreational activities, cultural life and the arts](#) (2013)
18. [On harmful practices](#) (Joint General Comment with the Committee on the Elimination of Discrimination against Women) (2014)

19. [Public budgeting for the realisation of children's rights](#) (2016)
20. [Implementation of the rights of the child during adolescence](#) (2016)
21. [Children in street situations](#) (2017)
22. [General principles regarding the human rights of children in the context of international migration](#) (Joint General Comment with the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families) (2017)
23. [State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return](#) (Joint General Comment with the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families) (2017)



## Annex 5 – ECHR rights and the Human Rights Act 1998

Unless they appear in specific pieces of legislation, UNCRC rights are not justiciable in UK domestic courts. However, some UNCRC rights align to ECHR rights and are used to support some applications to court made on behalf of children.

### **Articles of the European Convention on Human Rights as incorporated in the Human Rights Act 1998, linked to relevant UNCRC Articles**

UNCRC articles	Relevant ECHR articles
Article 6 - Life, survival and development Article 19 - Protection from all forms of violence	Article 2 - Right to life
Article 19 - Protection from all forms of violence Article 32 - Child labour Article 34 - Sexual exploitation Article 37 - Inhuman treatment and detention	Article 3 - Prohibition of torture
Article 32 - Child labour	Article 4 - Prohibition of slavery and forced labour
Article 27 - Inhumane treatment and detention Article 40 - Juvenile justice	Article 5 - Right to liberty and security
Article 40 - Juvenile justice	Article 6 - Right to a fair trial
Article 40 - Juvenile justice	Article 7 - No punishment without law
Article 5 - Parental guidance and a child's evolving capacities Article 7 - Birth registration, name, nationality, care Article 8 - Protection and preservation of identity Article 9 - Separation from parents Article 10 - Family reunification Article 16 - Right to privacy Article 18 - Parental responsibilities and state assistance Article 19 - Protection from all forms of violence	Article 8 - Right to respect for private and family life
Article 14 - Freedom of thought, belief and religion	Article 9 - Freedom of thought, conscience and religion
Article 13 - Freedom of expression Article 17 - Access to information; mass media	Article 10 - Freedom of expression
Article 15 - Freedom of association	Article 11 - Freedom of assembly and association
Article 2 - non-discrimination	Article 14 - Prohibition of discrimination
Article 28 - Right to education	Protocol 1, Article 2 - Right to education

Not all ECHR rights carry the same weight. Some are:

- **Absolute rights** which cannot be infringed under any circumstances. Article 3 (prohibition of torture) is an example.
- **Limited rights** which may be limited under explicit and finite circumstances. Article 5 (right to liberty) is an example.
- **Qualified rights** which require a balance between the rights of the individual and the interests of the wider community or State. Examples include: Article 8 (respect for private and family life), Article 9 (freedom of thought, conscience and religion), or Article 10 (freedom of expression).

## Annex 6 – Key Terms

### Child

Under the UNCRC, a 'child' is anyone under the age of 18. In this guidance, we use the Scottish Government's preferred term of 'children and young people'.

### Child wellbeing

*'Child wellbeing and deprivation represent different sides of the same coin. From a child rights perspective wellbeing can be defined as the realisation of children's rights and the fulfilment of the opportunity for every child to be all she or he can be. The degree to which this is achieved can be measured in terms of positive child outcomes, whereas negative outcomes and deprivation point to the denial of children's rights.'*

**Bradshaw, J., Hoelscher, P. and Richardson, D. (2006) An index of child well-being in the European Union, Social Indicators Research**

### Child wellbeing indicators

There are eight child wellbeing indicators developed as part of the GIRFEC approach which aims to improve outcomes for all children and young people in Scotland. They are sometimes referred to as 'SHANARRI' which stands for: Safe, Healthy, Achieving, Nurtured, Active, Respected, Responsible, Included. The legislative basis for the SHANARRI indicators is found in s.96 of the Children and Young People (Scotland) Act 2014.

### Children and young people

In this guidance, we use the Scottish Government's preferred term of 'children and young people' to mean anyone up to the age of 18.

### Children and Young People's Commissioner Scotland (CYPCS)

Since 2004, CYPCS has promoted and safeguarded the rights of children and young people in Scotland, with particular reference to the UNCRC.

### Children's rights

Human rights are the basic rights and freedoms to which we are all entitled in order to live with dignity, equality and fairness, and to develop and reach our potential. Children's rights are human rights, but articulated in a way that recognises children's vulnerabilities and their dependence on others to give effect to their rights. The UN Convention on the Rights of the Child is the international treaty that outlines the rights of all children and young people up to the age of 18.

### Civil and political rights

Civil and political rights protect people's freedoms, and ensure their ability to participate in society and the life of the State. They include the right to life; the right not to be tortured, enslaved or required to perform forced labour; the right to liberty and security of person, including freedom from arbitrary arrest or detention, the right to be equal before the courts and tribunals and the right to a fair trial; freedom of thought, conscience, religion and expression, opinion, assembly and association, as well as the right to vote; and the rights to equality and self-determination.

### Common Core

From the perspective of children, young people and their families, the [Common Core](#) describes the values needed for working with them that are fundamentally important to them, no matter what service they are using or their own circumstances or backgrounds. From the perspective of workers (whether paid or unpaid) the Common Core describes the essential skills that every worker should demonstrate and contains the basics needed to build positive relationships and promote children's rights.

## **Concluding Observations**

Recommendations made by the UN Committee on the Rights of the Child in response to the periodic reports on the implementation of the UNCRC submitted by Government. They set out what the Government needs to do to comply with and better progress the implementation of the UNCRC.

## **Do the Right Thing**

Scotland's UNCRC action plan, published after the 2008 set of Concluding Observations was issued by the UN Committee on the Rights of the Child.

## **Duty bearers**

Under international human rights law, the State is the principal duty bearer, but the obligation to respect, protect and fulfil children's human rights extends to all those responsible for making policy, passing legislation, designing and delivering services and providing care to children and young people.

## **Economic, social and cultural rights**

Economic, social and cultural rights are those human rights relating to the workplace, social security, family life, participation in cultural life, and access to housing, food, water, health care and education.

## **European Convention on Human Rights (ECHR)**

European countries signed the European Convention on Human Rights in 1950. The ECHR was the first regional agreement for the protection of human rights, and established the European Court of Human Rights to take up individual cases. The ECHR is the basis of the European human rights system and has been brought into UK domestic law through the Human Rights Act 1998.

## **General comments on the UNCRC**

These are guidelines to the interpretation of various Articles or aspects of the UNCRC and other international treaties. Each set of General Comments is published by the respective treaty Committee. A full list of UNCRC General Comments is in **Annex 4** of this guidance.

## **General measures of the UNCRC**

Ways in which Governments can fully implement the UNCRC, including legislative measures, and administrative and structural measures. These include: national strategies and action plans for children; child rights impact assessment (CRIA) processes to anticipate the impact of proposed laws, policies or budgetary allocations; the establishment of children's commissioners, ombudsmen and other national human rights institutions; child budgeting, or the identification, allocation and monitoring of resources spent on children and children's services; children's rights training, awareness-raising and capacity-building for all those working with and on behalf of children; the development and collection of data on children's lives; and collaboration and engagement with all sectors of society, including children themselves.

## **General principles of the UNCRC**

The guiding principles which underpin each and all of the specific rights outlined in the Convention, and must be considered in every CRWIA. They cover: non-discrimination (Article 2); the best interests of the child (Article 3); the right to life, survival and development (Article 6); and the right to express their views and have them given due weight, taking into account their age and maturity (Article 12).

## **Getting it Right for Every Child (GIRFEC)**

Scotland's national approach to improving the wellbeing of children and young people.

## **Human rights**

The basic rights and freedoms to which everyone is entitled, no matter what their characteristics or circumstances. Human rights are set out in international law to ensure that States respect, protect and fulfil the civil, political, economic, social and cultural rights of all people.

## **Human Rights Act 1998**

Incorporates the articles of the European Convention on Human Rights (ECHR) into UK domestic law, and can therefore be challenged in UK courts as well as the European Court on Human Rights based in Strasbourg.

## **Optional Protocols (OP) to the UNCRC**

Additions to an existing treaty. There are three Optional Protocols to the UNCRC: the OP on the Involvement of Children in Armed Conflict; the OP on the Sale of Children, Child Pornography and Prostitution; and the OP on a Communications [complaints] Procedure. The UK Government has only ratified the first two OPs.

## **Periodic reports/reviews**

Following ratification of international treaties, States are required to provide regular reports on their implementation of the treaty in law, policy and practice to a Committee established under that treaty. The UK Government submitted its fifth periodic report to the UN Committee on the Rights of the Child in January 2014.

## **Progressing the Human Rights of Children in Scotland: 2018 Report**

The report sets out the progress made in relation to children's rights since June 2015.

## **Progressing the Human Rights of Children in Scotland: 2018-2021 action plan**

Sets out our ambition to deliver the building blocks and the foundations that help children and young people to experience their rights.

## **Ratification of international instruments/treaties**

States become a party to a treaty when they sign it. It is not until they ratify the treaty that they consent to be legally bound by the treaty's provisions.

## **Rights holders**

All children and young people up to the age of 18 are rights holders under the UNCRC.

## **Special protection and assistance under the UNCRC**

Groups of vulnerable and marginalised children who require special protection from the government and are often the children who are most at risk of having their rights ignored or infringed.

## **UN Committee on the Rights of the Child**

The monitoring Committee for the UNCRC. Its 18 members are internationally recognised experts on different aspects of children's rights and wellbeing, and are elected for a four-year term.

## **UN Convention on the Rights of the Child (UNCRC)**

The core international treaty that sets out the civil, political, economic, social and cultural rights to which all children are entitled. The 54 Articles of the Convention cover all aspects of a child's life.