

Response to Recommendations

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Universal Periodic Review



Human Rights

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List of abbreviations

ASL	Additional Support for Learning
ASN	Additional Support Needs
BSG	Best Start Grant
BSL	British Sign Language
CAMHS	Child and Adolescent Mental Health Services
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CEMVO	Council of Ethnic Minority Voluntary Sector Organisations
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CJSW	Criminal Justice Social Work
CLW	Community Links Worker
CONTEST	UK Counter-Terrorism Strategy
COPFS	Crown Office and Procurator Fiscal Service
COSLA	Convention of Scottish Local Authorities
CPCC	Child Protection Case Conference
CPIP	Child Protection Improvement Programme
CPO	Child Protection Order
CRC	Convention on the Rights of the Child
CRC-OP-SC	Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography
CRPD	Convention on the Rights of Persons with Disabilities
CRWIA	Child Rights and Wellbeing Impact Assessments
CSE	Child sexual exploitation
CTRS	Council Tax Reduction Scheme
CYP Act	Children and Young People (Scotland) Act 2014
CYPICS	Children and Young People's Commissioner Scotland
CYPIC	Children and Young People Improvement Collaborative
DBI	Distress Brief Intervention
DDP	Disability Delivery Plan
DFM	Deputy First Minister
DHP	Discretionary Housing Payments
DWP	Department for Work and Pensions
DYW	Developing the Young Workforce
EBS	Equality Budget Statement
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EEAS	Enhanced Enforcement Areas Scheme
EHRC	Equality and Human Rights Commission
EHRiC	Scottish Parliament's Equalities and Human Rights Committee
ELC	Early learning and childcare
EQIA	Equality Impact Assessment
ESOL	English for speakers of other languages
FAI	Fatal Accident Inquiry
FCO	Foreign and Commonwealth Office
FE	Further Education
FGM	Female Genital Mutilation
FM	First Minister
FNP	Family Nurse Partnership
FoI	Freedom of Information
FSS	Fair Start Scotland
GMC	General Medical Council
GRC	Gender Recognition Certificate

HE	Higher Education
HES	Historic Environment Scotland
HMCIPS	Her Majesty's Chief Inspector of Prisons for Scotland
HMIPS	Her Majesty's Inspectorate of Prisons for Scotland
HMRC	Her Majesty's Revenue and Customs
HMYOI	Her Majesty's Young Offenders Institution
HNDA	Housing Need and Demand Assessment
HRA	Human Rights Act 1998
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICVS	Independent Custody Visitors Scotland
IPCO	Investigatory Powers Commissioner's Office
IPM	Independent Prison Monitors
JII	Joint Investigative Interview
LBTT	Land and Buildings Transactions Tax
LGBTI	Lesbian, Gay, Bisexual, Transgender and Intersex
LHA	Local Housing Allowance
LHS	Local Housing Strategy
LIFT	Low Cost Initiative for First Time Buyers
MA	Modern Apprenticeship
MWC	Mental Welfare Commission for Scotland
NCAIU	National Child Abuse Investigation Unit
NGO	Non-Governmental Organisation
NHS	National Health Service
NPF	National Performance Framework
NPM	National Preventive Mechanism
NRPF	No recourse to public funds
NSCU	National Sexual Crimes Unit
NSSE	New Supply Shared Equity
OECD	Organisation for Economic Cooperation and Development
OJEU	Official Journal of the European Union
OMSE	Open Market Shared Equity
OPCAT	Optional Protocol to the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
OSC	Office of Surveillance Commissioners
PACE	Partnership Action for Continuing Employment
PfG	Programme for Government
PIRC	Police and Investigations Review Commissioner
PSED	Public Sector Equality Duty
PTR	PlayTalkRead
REF	Race Equality Framework
RO	Religious Observance
RSHP	Relationships, Sexual Health and Parenthood
SAA	Secure accommodation authorisation
SAAS	Students Awards Agency for Scotland
SAMH	Scottish Association for Mental Health
SCQF	Scottish Credit and Qualifications Framework
SCSB	Secure Care Strategic Board
SCTS	Scottish Courts and Tribunals Service
SDGs	Sustainable Development Goals
SDS	Skills Development Scotland
SEEP	Scotland's Energy Efficiency Programme
SFA	Scottish Football Association
SFC	Scottish Funding Council

SFIU	Scottish Fatalities Investigation Unit
SGS	Scottish Guardianship Service
SG	Scottish Government
SHRC	Scottish Human Rights Commission
SIDCAAR	Self-Inflicted Death in Custody Audit, Analysis and Review
SLAB	Scottish Legal Aid Board
SNAP	Scotland's National Action Plan for Human Rights
SPA	Scottish Police Authority
SP	Scottish Parliament
SPCB	Scottish Parliamentary Corporate Body
SPFL	Scottish Professional Football League
SPS	Scottish Prison Service
STEM	Science, Technology, Engineering and Maths
SWF	Scottish Welfare Fund
TARA	Trafficking Awareness Raising Alliance
TIE	Time for Inclusive Education
TISC	Transparency in Supply Chains
UC	Universal Credit
UCAS	Universities and Colleges Admissions Service
UN	United Nations
UNCAT	UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
UNGPs	UN Guiding Principles on Business and Human Rights
UNICEF	UN International Children's Emergency Fund
UPR	Universal Periodic Review
WSA	Whole System Approach
YOI	Young Offenders Institution

Ministerial Foreword

Earlier this year the UN Human Rights Council met in Geneva to examine the United Kingdom's human rights record.

It did so against the background of an increasingly uncertain outlook for human rights, both at home and abroad. There are very real threats to many of the most fundamental protections we take for granted in Scotland, and to the principles of equality, dignity and social justice which underpin modern civilised societies.

The UN examination formed part of a rolling programme of scrutiny known as the *Universal Periodic Review*. It generated 227 targeted recommendations, requiring action by the UK in areas ranging from gender-based violence to the impact of Brexit.

Many of those recommendations have direct relevance for Scotland. Some of them cover areas where Scottish institutions are already taking practical action to give further and better effect to internationally-recognised human rights. Others arise out of well-documented concerns around UK Government policies. All of them challenge us to ask whether we are doing everything we reasonably can to meet our human rights commitments and deliver the right outcomes.

The Scottish Government strongly supports the *Universal Periodic Review* and other international accountability mechanisms. I therefore have genuine pleasure in presenting the Scottish Government's response to the UN recommendations.

Our response builds on and supplements the Scottish position statement which I published in April, ahead of the Geneva examination.¹ That statement described the positive actions we are taking - as Scotland's national government - to respect, protect and implement human rights for everyone in our society.

The hard work we are all doing - not just in government but across wider society - to make human rights meaningful and real at a practical, everyday level will, I hope, be clear from this response to the UN recommendations. That work is central to our vision for a Scotland that is prosperous and inclusive and meets its global responsibilities.

In our 2017-18 Programme for Government we reiterated our proactive commitment to human rights and made clear that equality, dignity and respect must be at the heart of everything we do.

Our programme emphasises the need for Scotland to demonstrate leadership by advancing and promoting, rather than merely defending, existing human rights standards.

Integral to that work is the recognition that human rights, equality and the shared objectives established by the *Sustainable Development Goals*² need to shape all of our actions.

In Scotland we are in the process of embedding all three elements at the centre of our refreshed *National Performance Framework*³ - demonstrating that in

1 <http://www.gov.scot/Publications/2017/04/5025>

2 <http://www.un.org/sustainabledevelopment/sustainable-development-goals/>

3 <http://www.gov.scot/About/Performance/scotPerforms>

Scotland we understand how the practical action we take domestically is part of a much larger global effort to deliver for people, planet and prosperity. Ours is indeed *A Nation with Ambition*.

To make sure that continues to be the case, and to enable us to seize every opportunity to make progress, we are establishing an expert advisory group to lead a participatory process and make recommendations on how Scotland can continue to lead by example in human rights.

We are also fully alert to the threat posed by regressive proposals which risk undermining existing human rights protections. Foremost amongst these is the damage which UK withdrawal from the European Union threatens to inflict, by removing the guarantees which underpin some of our most important fundamental rights. Nor should we forget that UK Government plans to repeal the *Human Rights Act* have merely been postponed, not abandoned. The prospect of the UK pulling out of the *European Convention on Human Rights* remains a clear and present danger.

But our most important ambitions are progressive, not defensive. This response sets out how the Scottish Government intends to make substantive progress in areas highlighted by the *Universal Periodic Review*. We are committed to reporting on that progress ahead of the next formal examination in 2022.

Our response also recognises that a single session in Geneva cannot cover all of the civil and political, economic, social, cultural and environmental rights that underpin our lives. It therefore looks beyond the *Universal Periodic Review* to include outputs from other UN monitoring processes.

The need for positive action to tackle poverty and homelessness, to close the attainment gap and deliver greater social justice all feature prominently. We are creating a Scottish social security system which embeds human rights in its core principles. We are taking forward our existing human rights and equality action plans – to ensure Scotland gives proper effect to the rights of children and of disabled people, and to carry forward our work to promote true gender equality and tackle all forms of discrimination.

Human rights touch on every aspect of our lives and for that reason they necessarily underpin every action of this government, and every part of Scottish society.

This report records the progress which both the Scottish Government and Scotland as a nation have already achieved in putting human rights firmly at the heart of everything we do.

It serves also to signpost the actions which we, collectively, have yet to take. That challenge is one which this Government intends to meet in full.



Angela Constance
Cabinet Secretary for Communities,
Social Security and Equalities



PROTECTING AND PROMOTING HUMAN RIGHTS IN SCOTLAND

Legal framework

Human rights are devolved to the Scottish Parliament under the constitutional settlement which has applied in Scotland since 1999.

The Scotland Act 1998, in combination with the Human Rights Act 1998 (HRA), ensures that both Scottish legislation and the actions of public bodies are subject to an overriding requirement to comply with core human rights standards.

Specifically, legislation passed by the Scottish Parliament is ‘not law’ to the extent that it is incompatible with rights derived from the European Convention on Human Rights (ECHR). These ‘Convention Rights’ are formally defined in the HRA. Scottish legislation can be challenged in the courts and independent judges are able to rule on whether the legislation breaches relevant Convention Rights. Where a court finds that legislation is incompatible, the legislation can be struck down and ceases to have effect.

The Scottish Ministers similarly have no power to act in a manner that is incompatible with the Convention Rights. The HRA ensures that other public bodies are subject to a similar obligation. It is unlawful for a public body to act incompatibly with the Convention Rights. The actions of both the Scottish Ministers and public bodies can be challenged in the Scottish courts.

In addition to these legally-enforceable guarantees, the Scottish Ministerial Code explicitly reminds all Scottish Ministers of the overarching duty they have, as members of Scotland’s Government, ‘to comply with the law, including international law and treaty obligations.’

The role of the Scottish Parliament

Following the Scottish Parliament election in May 2016, the Scottish Parliament established an Equalities and Human Rights Committee (EHRiC).

On 20 June 2017 the Commission on Parliamentary Reform published its *Report on the Scottish Parliament*.⁴ Its recommendations include:

“We refer the proposals raised with us on the Parliament’s role as a human rights guarantor to the Equalities and Human Rights Committee to inform its inquiry work on this matter. We recognise the importance of the proposals made to us and consider that some of our other recommendations may also promote the delivery of a stronger human rights role for the Scottish Parliament.”

The Scottish Government strongly supports efforts to further embed human rights within the work of the Parliament and will continue to engage with the EHRiC.

⁴ <https://parliamentaryreform.scot/>

Human rights institutions in Scotland

The Scottish Human Rights Commission (SHRC)⁵ was established by the Scottish Commission for Human Rights Act 2006.⁶ It has a general duty to promote human rights and encourage best practice in relation to human rights in Scotland. It can fulfil this remit by providing information, guidance and education; by conducting inquiries; by monitoring law, policy and practice; and by intervening in civil court proceedings.

The Equality and Human Rights Commission (EHRC)⁷ is a statutory non-departmental public body, established by the Equality Act 2006.⁸ It is responsible for promoting equality and diversity, enforcing laws and promoting mutual respect including good relations. It also works to promote and protect human rights, by encouraging good practice. The EHRC's remit extends across Great Britain. Relations between the two Commissions are regulated by a Memorandum of Understanding.⁹ The EHRC has the power to assist individuals who take legal action and may intervene or instigate legal action itself.

The Children and Young People's Commissioner Scotland (CYPSC)¹⁰ was established by the Commissioner for Children and Young People (Scotland) Act 2003.¹¹ The Commissioner's role is to promote understanding of, and ensure respect for, children and young people's rights in Scotland.

Engagement with civil society

The Scottish Government is committed to working with the whole of Scottish society to deliver a shared vision of a Scotland where everyone can live a life of human dignity. Scotland is proud of the close and constructive working relationship which exists between state institutions and civil society. A range of collaborative processes support progress on human rights and equality.

In relation to international human rights treaty reporting and implementation, the Scottish Government held meetings with civil society organisations before and after reviews under ICESCR, CRC, and the Universal Periodic Review. These were an opportunity for the Scottish Government to share information on the treaty monitoring process, and for stakeholders to provide insight into the particularly Scottish dimension to the human rights issues of interest to the respective United Nations bodies.

5 <http://www.scottishhumanrights.com/about/>

6 http://www.legislation.gov.uk/asp/2006/16/pdfs/asp_20060016_en.pdf

7 <https://www.equalityhumanrights.com/en/commission-scotland/about-commission-scotland>

8 <http://www.legislation.gov.uk/ukpga/2006/3/contents>

9 www.equalityhumanrights.com/en/legal-work-scotland/legal-work-scotland/memoranda-understanding

10 <https://www.cypcs.org.uk/>

11 <http://www.legislation.gov.uk/asp/2003/17/contents>

Policy context

The Scottish Government is committed to respecting, protecting and implementing human rights for everyone in Scotland, and to embedding equality, dignity and respect in everything it does.

On 5 September 2017 *A Nation with Ambition: the Government's Programme for Scotland 2017-18* (2017-18 PfG)¹² was published. It contains specific commitments to:

- oppose the proposed removal of the European Charter of Fundamental Rights from our laws contained in the EU Withdrawal Bill and oppose any attempt by the UK Government to undermine the Human Rights Act 1998
- ensure existing and relevant future human rights protections provided under EU law are maintained following Brexit
- consider how Scotland can go further and establish an expert advisory group to lead a participatory process to make recommendations on how Scotland can continue to lead by example in human rights, including economic, social, cultural and environmental rights
- undertake a comprehensive audit on the most effective and practical way to further embed the principles of the UN Convention on the Rights of the Child into policy and legislation, including the option of full incorporation into domestic law.

12 <http://www.gov.scot/Resource/0052/00524214.pdf>

ELIMINATING DISCRIMINATION AND ADVANCING EQUALITY

Equal opportunities in general are currently reserved to the UK Parliament, but with exceptions that provide scope for the Scottish Parliament to legislate in relation to the advancement of equality. The Scottish Ministers have made direct use of devolved powers to make Regulations¹³ which place specific equality duties on Scottish public authorities. These are designed to support and enable the better performance of the Public Sector Equality Duty (PSED) in section 149 of the Equality Act 2010.¹⁴ Under the Regulations, there is a duty on the Scottish Ministers to publish proposals for activity to enable public authorities in Scotland to better perform the equality duty.

The Scottish Government *Equality Outcomes and Mainstreaming Report 2017*¹⁵ provides an update on its progress in incorporating equality across its activities and in delivering on the 2013 equality outcomes. It also sets new equality outcomes covering the period 2017-21.

The Scotland Act 2016 (passed by the UK Parliament) introduced further exceptions to the equal opportunities reservation in the Scotland Act 1998. These constitutional changes allow the Scottish Parliament some limited additional scope to legislate in relation to the functions of Scottish public authorities and cross-border public authorities.

The 2017-18 PfG commits the Scottish Government to:

- press on with implementing *Fairer Scotland for Disabled People*¹⁶ and continue wider work to protect and promote the human rights of disabled people
- publish and implement a Race Equality Action Plan, setting out key actions to drive forward race equality¹⁷ over the course of this parliamentary session
- progress the Gender Representation on Public Boards (Scotland) Bill¹⁸ to ensure that women are properly represented on Scotland's public boards
- confirm the full membership of the Advisory Council on Women and Girls. The Council will advise on the impact of government policies (Scottish, UK and local) on women and girls, and identify areas where action is needed to bring about positive change
- work with the Time for Inclusive Education (TIE) campaign¹⁹ to deal with LGBTI bullying, discrimination and prejudice in schools
- consult on reforming gender recognition legislation²⁰
- publish the first National Action Plan on British Sign Language (BSL)²¹ improving access to information and services
- implement the socio-economic duty²² in the Equality Act 2010 by the end of this year

For the eighth year in a row, the Scottish Government has protected the level of spend for the Equality Budget at £20.3 million in 2017-18.

13 <http://legislation.gov.uk/ssi/2012/162/contents/made>

14 <http://legislation.gov.uk/ukpga/2010/15/section/149>

15 <http://www.gov.scot/Publications/2017/04/4384>

16 <http://www.gov.scot/Publications/2016/12/3778>

17 <http://www.gov.scot/Publications/2016/03/4084>

18 <http://www.parliament.scot/parliamentarybusiness/Bills/105197.aspx>

19 <https://www.tiecampaign.co.uk/>

20 <http://www.gov.scot/Publications/2017/11/5459>

21 <http://www.gov.scot/Publications/2017/10/3540>

22 <http://www.gov.scot/Publications/2017/07/8131>

International Human Rights Instruments



1. INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

1.1 Ratification of human rights treaties and their optional protocols

International human rights treaties

Ratification of international treaties is a reserved matter. The Scottish Parliament does, however, have competence to observe and implement international obligations and the general subject matter of human rights falls firmly within devolved competence. The Scottish Government works closely with the UK Government to report on compliance with international human rights treaty obligations as they apply in Scotland. Through contributing to UK state party reports and forming part of UK delegations in Geneva, the Scottish Government communicates Scotland's distinctive approach internationally.

Scotland (as part of the UK) was examined under the International Covenant on Civil and Political Rights (ICCPR) in July 2015 and, in 2016, under the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC), and the Convention on the Elimination of All Forms of Racial Discrimination (CERD). Scotland participated in the Universal Periodic Review process coordinated by the UN Human Rights Council on 4 May 2017, and in an examination of the UK under the Convention on the Rights of Persons with Disabilities (CRPD) in August 2017. Also in 2017, the Scottish Government contributed to state party reports under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT).

A table setting out forthcoming treaty reporting events and providing links to recent Scottish Government position statements is contained at Annex A.

In its 2017-18 PfG, the Scottish Government has committed to action that gives effect to the economic, social and cultural rights set out in ICESCR, the European Social Charter and other treaties. The Scottish Government will also establish an expert advisory group on human rights and undertake a comprehensive audit on the most effective and practical way to further embed the principles of the UN Convention on the Rights of the Child into policy and legislation, including the option of full incorporation into domestic law.

Optional protocols

The Scottish Government has welcomed the third optional protocol to the Convention on the Rights of the Child in principle, and confirmed that the Scottish Ministers would be minded to offer measured support for its signature and ratification in the future. However, before doing so, Ministers would wish to better understand how the UN Committee intends to apply the new mechanism in practice.

Further consideration will be given in Scotland to the potential for participation in other Optional Protocols, in order to enable individuals to raise alleged breaches of UN treaties under established communications procedures.

Relevant procedures exist under the ICCPR, ICESCR, CRC, CEDAW, and CRPD. The UK is currently a party to both the CEDAW and CRPD protocols.

Rights of individual application should be considered within the context of existing remedies both in domestic law, including through the Human Rights Act 1998, and under Article 34 of the European Convention on Human Rights.

Special Procedures

The Scottish Government supports the Foreign and Commonwealth Office (FCO) in facilitating visits from UN Special Rapporteurs, most recently during the visit in January 2017 of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes.²³ The Scottish Government values such opportunities to engage constructively with Special Procedures and the expert insight they provide on human rights issues in Scotland.

Council of Europe

The Scottish Government fully supports the role of the Council of Europe in promoting human rights throughout Europe and beyond, and is resolute in its insistence that the UK must remain a member of the Council.

The UK signed the Council of Europe (Istanbul) Convention on preventing and combating violence against women and domestic violence in 2012. The 2017-18 PfG reaffirms the Scottish Government's commitment to ratification of the Convention.

Detail on actions taken in Scotland to combat violence against women and girls can be found in section 3.4.

The Scottish Government considers that Scotland is compliant with the Council of Europe (Lanzarote) Convention on Protection of Children against Sexual Exploitation and Sexual Abuse. Indeed, the Convention formed the basis for the later 2011 EU Directive on Child Sexual Exploitation and Abuse. The Scottish Government is working with the UK Government regarding the practical arrangements for a possible ratification.

Detail on action taken in Scotland to combat child sexual exploitation and abuse can be found in section 3.6.

23 <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21132&LangID=E>

ILO Convention 189 on domestic workers

Domestic servitude is one of the forms of exploitation covered by the Human Trafficking and Exploitation (Scotland) Act 2015, and 10% of the victims recovered in Scotland in 2016 were subject to this form of exploitation. The offences in the Act also cover the situation where someone is exploited by a family member and control of that individual is not transferred.

Detail on action taken in Scotland to combat human trafficking and exploitation can be found in section 3.9.

Implementing Human Rights in Scotland

“ We can build a better society, based on respecting rights, recognising dignity and encouraging ,and crucially, enabling each other’s potential.”

First Minister Nicola Sturgeon
Jimmy Reid memorial lecture, 24 November
2015



2.1 Implementation of international human rights obligations

UPR recommendations²⁴

- Respect the principles and purposes of the Charter of the United Nations
- Ensure that all laws and policies adopted are in conformity with international human rights laws and standards
- Continue open and inclusive public debates on the most effective domestic implementation of international and regional human rights standards, with full account of universally guaranteed rights and freedoms
- Further implement the International Covenant on the Elimination of All Forms of Racial Discrimination in domestic law so that its principles and provisions are directly and fully applicable
- Integrate fully the principles and provisions of the Convention on the Rights of the Child into domestic law and ensure its implementation across national and local governments, with effective coordination and monitoring structures

The Scottish Government is committed to creating a modern, inclusive Scotland which protects, respects and realises internationally recognised human rights. Everyone in Scotland has fundamental human rights guaranteed by law and set out in international treaties developed by the United Nations and other international organisations. The 2017-18 PfG sets out an ambitious roadmap for long-term progressive change designed to make these human rights real for everyone in Scotland; to build a country where every person can live with dignity and respect; and to embed human rights, equality and fairness at the heart of everything the Scottish Government does.

As well as the overarching provisions of the Scotland Act 1998 and the Human Rights Act 1998 concerning ECHR rights, specific provisions in recent Scottish legislation require the Scottish Ministers to have regard to the economic, social and cultural rights contained in ICESCR for example as a result of provisions in the Community Empowerment (Scotland) Act 2015²⁵ and the Land Reform (Scotland) Act 2016.²⁶

Legislation currently in the Scottish Parliament tackles child poverty, domestic abuse and ensures gender balance on public boards. The Scottish Government is taking forward its *Fairer Scotland Action Plan* and Scotland's new social security system will put dignity and respect at its heart. A *Fairer Scotland for Disabled People* was consciously framed as a delivery plan for the CRPD, and implementation of Scotland's *Race Equality Framework* is ongoing. The Scottish Government has pledged to legislate to bring the minimum age of

24 134.56, 134.58-134.65

25 <http://www.legislation.gov.uk/asp/2015/6/contents/enacted> – the 2015 Act amends the Land Reform (Scotland) Act 2003 – <http://www.legislation.gov.uk/asp/2003/2/contents>

26 <http://www.legislation.gov.uk/asp/2016/18/contents/enacted>

criminal responsibility into line with international standards; will support a proposed member's Bill in the Scottish Parliament to introduce a legislative ban on the physical punishment of children; is acting to right the historic wrong suffered by gay, lesbian and bisexual people convicted under outdated laws; and is consulting on reforming the Gender Recognition Act 2004 in line with international best practice for transgender people.

2.2 UK withdrawal from the European Union

UPR recommendations²⁷

- In view of the process of leaving the European Union, ensure that any new legislation aims at strengthening human rights in the entire jurisdictions of the country
- In the context of withdrawal from the EU, ensure that human rights achievements and protections in the *acquis* are maintained; and ensure rights and status of EU citizens in the UK

Membership of the European Union (EU) brings positive social and economic benefits. These include important fundamental rights, equality guarantees and social protections. The Scottish Government is opposed to proposals contained in the EU Withdrawal Bill which will mean that the EU Charter of Fundamental Rights ceases to be part of domestic law.

Scotland voted clearly and decisively for the UK to remain in the EU (62% to 38%). There was a majority for remaining within the EU in all 59 of Scotland's Westminster parliamentary constituencies.

The Scottish Government continues to believe that EU membership is the best option for Scotland. On 20 December 2016, the Scottish Government published *Scotland's Place in Europe*,²⁸ which contains proposals for mitigating the impact on Scotland of the UK's exit from the EU.

The Scottish Government believes the least damaging option is for the whole of the UK to remain in the European Single Market and Customs Union.

The Scottish Government is clear that ending free movement of people between the UK and the EU will have a negative impact on individuals, families and our wider economy and society as a whole. Ending free movement will mean a significant reduction in the rights and benefits that EU citizens in the UK, and UK citizens in EU countries, currently enjoy. The Scottish Government has repeatedly called for assurances that all EU citizens should have their rights protected in the place that they choose to call home. On 26 June, the UK Government published *Safeguarding the position of EU citizens living in the UK and UK nationals living in the EU*. The published Scottish Government response, *Free Movement - Citizens' Rights*,²⁹ outlines the areas in which the UK Government should seek to provide greater clarity both for EU citizens here, and for UK citizens in EU countries.

27 134.76, 134.78

28 <http://www.gov.scot/Publications/2016/12/9234>

29 <http://www.gov.scot/Topics/International/Europe/eu-referendum/FreeMovementCitizensRights>.

On social protection, *Scotland's Place in Europe* makes clear that Scotland's interests include "ensuring the continued protection of workers' rights and maintaining social, environmental and human rights advances."

In a speech given on 25 July 2016, Scotland's First Minister said:

"I genuinely fear that a UK government outside the single market will seek economic competitiveness through de-regulation and a race to the bottom. That would be devastating for the workers' rights and protections that we have come to take for granted."

On 27 June 2017, the First Minister told the Scottish Parliament that the Scottish Government would come back to Parliament to set out its judgement on the best way forward, including its view on the precise timescale for offering people a choice over the country's future, at the end of the period of negotiation with the EU, when the terms of Brexit will be clearer.

2.3 "British Bill of Rights"

UPR recommendations³⁰

- Reconsider plans to repeal the Human Rights Act 1998 (HRA) and ensure that there is no weakening of human rights protections or impact on access to remedies. Maintain the legal effects, scope and effectiveness of the HRA
- Ensure the inclusion of all stakeholders in the drafting and adoption of the "British Bill of Rights", in particular representatives of the poor, minorities and vulnerable groups

The Scottish Government has consistently opposed the UK Government's proposals to repeal the HRA, and to replace it with a 'British Bill of Rights'. That opposition has, *inter alia*, been made clear by the First Minister and in evidence submitted to the Scottish Parliament European and External Relations Committee. It is reiterated in the 2017-18 PfG.

The Scottish Government's position reflects its desire to protect the human rights of individuals and communities from across the whole of society, not just in Scotland but in the United Kingdom as a whole.

The Scottish Government is also firmly committed to securing human rights in a global context and has explicitly criticised the damage done to international human rights mechanisms by the negative statements made in recent years by individuals representing, or closely associated with, the UK Government.

Any attempt by the UK Parliament to repeal or replace the HRA would be likely to require the legislative consent of the Scottish Parliament, which has been explicit in its opposition to attacks on the HRA. Support for existing human rights safeguards spans the political spectrum in Scotland and four out of the five political parties represented in the Scottish Parliament have made clear their support for the HRA. The position of the Parliament has been definitively expressed in two motions, in 2014 and in 2017:

30 134.66-134.77

- on 11 November 2014 a motion in support of the HRA was passed by 100 votes to 10.
- on 10 January 2017 a motion passed by 93 votes to 30 called on the UK Government to “give an understanding not to take, or propose, any action that weakens or undermines participation in...international human rights mechanisms, including, in particular the Council of Europe and the European Convention on Human Rights (ECHR), and records [the] opposition [of the Scottish Parliament] to any loss in Scotland of the human rights, equality, social protection and other safeguards and standards enshrined in EU law and set out in the EU Charter of Fundamental Rights.”

Following the 2017 general election the UK Government stated that the UK will remain party to the ECHR for the duration of the current Westminster Parliament (i.e. until 2022 unless an earlier election is held). However, it has pledged to give further consideration to the human rights legal framework when the process of leaving the European Union concludes.

DIGNITY

“ Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.”

(Universal Declaration of Human Rights)



Dignity

3.1 Torture³¹

The Scottish Government unreservedly condemns torture as an abhorrent violation of human dignity.

The Scotland Act 1998 requires that all legislation passed by the Scottish Parliament and all acts of members of the Scottish Government be compatible with rights contained in the ECHR (“the Convention rights”), Article 3 of which provides that no one shall be subjected to torture, inhuman or degrading treatment or punishment. The HRA requires every public authority in Scotland to act compatibly with the Convention rights and enables human rights cases to be taken in domestic courts.

The use of torture is a penal offence, as set out in section 134 of the Criminal Justice Act 1988,³² which provides that it may be punished with life imprisonment. The International Criminal Courts (Scotland) Act 2001³³ provides for the offence of crimes against humanity. This offence includes within it conduct amounting to torture, and the maximum penalty available is up to 30 years imprisonment.

In relation to the operation of Police Scotland, section 48 of the Police and Fire Reform (Scotland) Act 2012³⁴ states: “The Scottish Ministers must make regulations as to the governance, administration and condition of service of constables and police cadets.” Section 52 of this Act provides that regulations under section 48 must establish, or provide for the establishment of, procedures for dealing with a constable whose standard of behaviour or performance is unsatisfactory.

3.2 Use of weapons by law enforcement officers³⁵

In Scotland, just over 2% of police officers have authority to carry firearms. All Police Scotland Authorised Firearms Officers (AFOs) are trained in the use of Conducted Energy Device CED (TASER) as a Less Lethal Option to be used in support of armed operations. This training is delivered in line with current national UK practices and procedures as directed by the College of Policing and National Armed Policing. Further guidance is contained within the Authorised Professional Practise (Armed Policing), National Police Firearm Training Curriculum and the Statement of Intent on Police Use of Firearms and Less Lethal Weapons in Scotland.³⁶

There is a wide range of scrutiny measures and oversight arrangements in place to hold the Chief Constable of Police Scotland to account for the actions that

31 ICCPR (2015), para 18

32 <http://www.legislation.gov.uk/ukpga/1988/33/section/134>

33 <http://www.legislation.gov.uk/asp/2001/13/contents>

34 <http://www.legislation.gov.uk/asp/2012/8/contents/enacted>

35 UNCAT (2013), para 26; CRC (2016), para 40

36 <https://www.app.college.police.uk/app-content/armed-policing/use-of-force-firearms-and-less-lethal-weapons/>

he takes and the decisions that he makes. These checks and balances include oversight by the Scottish Police Authority (SPA), which reports annually to the Scottish Parliament, Her Majesty's Inspectorate of Constabulary in Scotland (HMICS), the Police and Investigations Review Commissioner (PIRC) and the Parliament's Sub-Committee on Policing. The Chief Constable is required to report any incident where any person serving with Police Scotland has used a firearm to the PIRC. The PIRC will then carry out an independent assessment and decide if a full investigation is required, making recommendations as necessary. The PIRC publishes its reports on its website.³⁷

3.3 Suicide prevention³⁸

Data published in 2017 show that the suicide rate in Scotland fell by 17% in the period 2002-6 to 2012-16.³⁹

The Scottish Government *Suicide Prevention Strategy 2013-2016*⁴⁰ was developed on the basis of the growing evidence base about factors that can be related to death by suicide. One of the strategy's five key themes is 'Developing the Evidence base', and the Scottish Government has committed to fund sources of research data that help to inform suicide prevention action, including the Scottish Suicide Information Database and the UK Confidential Inquiry into Suicide and Homicide by People with Mental Illness. The Scottish Government also funds NHS Health Scotland's National Suicide Prevention Programme, which includes a range of national and local actions to raise awareness of suicide and to encourage people to talk about their concerns or to ask if a friend or family member is feeling suicidal.

With partner agencies, the Scottish Government has developed a proposed Distress Brief Intervention (DBI) to be piloted in four areas from 2017. This is aimed at intervening early with people who are in distress and potentially at risk of self-harm or suicide but who do not need urgent medical treatment. An evaluation report on the impact of DBI is expected in 2021.

With regard to suicide and self-harm in places of detention, see section 4.7.

3.4 Violence against women and girls⁴¹

UPR recommendations⁴²

- Continue efforts to tackle violence against women and girls, domestic violence and harmful practices.
- Take measures to prevent secondary victimisation and the negative impact of domestic violence on children.

37 <http://pirc.scotland.gov.uk/>

38 ICCPR (2015), para 16; CRC (2016), para 29

39 <http://www.scotpho.org.uk/health-wellbeing-and-disease/suicide/key-points>

40 <http://www.gov.scot/Publications/2013/12/7616>

41 ICCPR (2015), para 13; ICESCR (2016), para 46; CEDAW (2013), para 23, 35, 57

42 134.180-134.187

- Dedicate sufficient resources at all levels to ensure effective implementation of the Istanbul Convention.

Every Minister in the Scottish Government takes tackling violence against women and girls seriously, and it is a priority area for the First Minister in the context of her wider ambitions to advance gender equality. The Cabinet Secretary for Communities, Social Security and Equalities has responsibility for overall strategy in this area, with a particular focus on violence prevention and building the capability of services, while the Cabinet Secretary for Justice oversees the development of a strong Justice response to supporting victims and tackling perpetrators.

Scottish Government strategy

The Scottish Government is implementing *Equally Safe*,⁴³ Scotland's strategy to tackle all forms of violence against women and girls - working with stakeholders to prevent violence from occurring in the first place, build the capability and capacity of mainstream and specialist services to support survivors and those at risk, and strengthen the Justice response to victims and perpetrators.

The 2017-18 PfG contains a commitment to publish and implement a delivery plan for *Equally Safe*. Following a consultation on a draft version, *Equally Safe - A Delivery Plan for Scotland's Strategy to Prevent Violence Against Women and Girls* was published on 24 November 2017.⁴⁴



Legislation

The Scottish Government has introduced the Domestic Abuse (Scotland) Bill,⁴⁵ which will, if passed by Parliament, provide for a specific offence of domestic abuse. The Bill introduces a new offence criminalising a course of abusive behaviour towards a partner or ex-partner, which will appropriately and effectively criminalise the type of pernicious coercive and controlling behaviour that can constitute domestic abuse. The new offence will cover all the types of behaviour that can constitute domestic abuse, including psychological harm. While physical harm and overt threats can be prosecuted using, for example, common law assault and the offence of threatening or abusive behaviour, psychological harm can be very challenging to prosecute using existing laws.

43 <http://www.gov.scot/Publications/2016/03/7926>

44 <http://www.gov.scot/Publications/2017/11/5647>

45 <http://www.parliament.scot/parliamentarybusiness/Bills/103883.aspx>

The following provisions of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016⁴⁶ came into force on 24 April 2017:

- the introduction of a ‘statutory domestic abuse aggravator’ to ensure courts take domestic abuse into account when sentencing offenders
- power for courts to make non-harassment orders in cases where they cannot do so at present
- a requirement for judges to give juries specific directions when dealing with sexual offence cases to help improve access to justice for victims
- the extension of Scottish courts’ extra-territorial jurisdiction over sexual offences committed against children to cover the other jurisdictions of the UK

The Act also created a specific offence of sharing private intimate images without consent (commonly known as ‘revenge porn’), with a maximum penalty of five years’ imprisonment, which came into force on 3 July 2017. Through the work of the Equally Safe Justice Expert Group, the Scottish Government is looking at both medium and longer term improvements that can be made to the justice system for all victims of this type of violence, including domestic abuse victims and their children.

Raising awareness

The Scottish Government undertook a publicity campaign to coincide with the commencement of the offence criminalising the non-consensual sharing of intimate images in the 2016 Act.⁴⁷ The campaign aimed both to raise awareness of the new offence and to challenge “victim blaming” attitudes.

Additional funding of £30,000 (from the £20 million Violence against Women and Girls Justice Fund) was allocated to Rape Crisis Scotland to develop a campaign to increase public understanding of responses to rape.⁴⁸ The campaign complements the jury directions provisions introduced by the 2016 Act, which introduced a requirement for judges to give directions to juries on how people may respond to becoming a victim of rape, which are designed to ensure any pre-conceived views about how someone who has been raped should react do not influence how a jury reaches a decision in a case.

Funding

In the face of significant austerity, equality funding has been held in Scotland at similar levels since 2012. The Scottish Government is investing significant levels of funding to tackle violence against women and girls, including nearly £30 million over 2017-20 from the Equality budget. This includes direct provision for front line domestic abuse and sexual assault services, as well as funding for the National Domestic Abuse, Forced Marriage and Rape Crisis Helplines. The Scottish Government has also invested an additional £20 million over 2015-18 from Justice budgets, which includes increased support for advocacy provision.

46 <http://www.legislation.gov.uk/asp/2016/22/contents/enacted>

47 <http://notyourstoshare.scot/>

48 <https://www.rapecrisisscotland.org.uk/i-just-froze/>

Child victims

Equally Safe states that the Scottish Government has a responsibility to make sure that the rights of all children are protected, including their right to have a say in all matters affecting them, and to create an environment that is safe for children and young people to grow up. In the context of gender-based violence, children and young people must be regarded as ‘victims/survivors’ with the ability to access services in their own right and to be recognised as service users with an individual and collective voice in relation to the services they receive.

The Scottish Government is working closely with children’s organisations to ensure that the *Equally Safe* Delivery Plan reflects the need to ensure children are protected from domestic abuse, and is continuing to invest resources in a number of services across Scotland that support children who have experienced domestic abuse.

The Domestic Abuse (Scotland) Bill will, if passed, provide for a statutory aggravation to the offence of domestic abuse that the perpetrator involved a child in the perpetration of the abuse, directed behaviour at a child in committing the offence, or that a child saw or heard incidents of abusive behaviour, or was present when they took place. Where the aggravation is proven, the court will be required to take this into account in sentencing the offender.

The Scottish Government recognises the value in approaches such as the “Safe and Together” model, which can offer support to non-abusing parents in line with the principles of *Equally Safe*. In partnership with Barnardos and others in the Safe and Together Consortium, the Scottish Government is exploring what can be done to support local authorities to embed the model’s principles and produce a strong evidence-base in Scotland, which will create a change in practice and better inform those who work with survivors and children.

Prosecuting offenders

Police Scotland has established a National Domestic Abuse Taskforce to target the most prolific perpetrators, and the Crown Office has a dedicated National Prosecutor for Domestic Abuse. A new Joint Protocol has been published, which commits Police Scotland and the Crown Office and Procurator Fiscal Service (COPFS) to a consistent and robust approach to domestic abuse, and recognises the significant and enduring impact that domestic abuse can have on victims and children.

Support for victims

There are currently 477 refuge spaces in Scotland for women and their children affected by domestic abuse.

Legal aid is available to victims of domestic and gender-based violence seeking protection through civil actions, where they meet the statutory eligibility criteria. There is no residency test and no requirement to demonstrate that domestic abuse has taken place. In criminal cases, the state investigates offences and prosecutes alleged offenders. Victims of domestic and gender-based violence have the status of ‘complainant’ and can access advice and assistance on the criminal process.

In addition to the general availability of publicly-funded legal assistance, the Scottish Government has provided funding, through the Scottish Legal Aid Board (SLAB), to support the Scottish Women’s Rights Centre, which offers free legal information and advice to women who have experienced gender-based violence, including a national helpline. The Scottish Government has also made available publicly funded legal assistance for those seeking representation in recovery proceedings where sensitive records are sought, following the judgment in *WF v Scottish Ministers* [2016] CSOH 27.

The Scottish Government’s Justice Directorate commissioned a national scoping exercise of advocacy services relating to the criminal justice system for victims of violence against women and girls.⁴⁹ The exercise included advocacy services for victims of domestic abuse, prostitution, human trafficking, rape and sexual assault, and advocacy services available for children and for men where these may have an impact on women’s services.

The Scottish Government funds a number of women’s support organisations that provide specialist services for black and ethnic minority women, for instance Shakti, Saheliya, Kenyan Women in Scotland Association (KWISA) and Community Infosource. These community based organisations work to support women affected by so-called honour-based violence, including FGM, forced marriage and domestic abuse. The Scottish Government is working with CEMVO Scotland to facilitate an ethnic minority women’s event, which aims to identify specific barriers experienced by minority ethnic communities with regard to gender-based violence, so these can be accounted for in *Equally Safe*.

No recourse to public funds (NRPF)

The Scottish Government welcomed the Equalities and Human Rights Committee’s (EHRiC) report, *Hidden Lives – New Beginnings: Destitution, asylum and insecure immigration status in Scotland*.⁵⁰ The Destitute Domestic Violence Concession, which was introduced in 2012, increases front-line service providers’ capacity to support women who are affected by the NRPF rule. However, as immigration is reserved to the UK Government, the Scottish Government’s options for helping those affected are limited. The Cabinet Secretary for Communities, Social Security and Equalities has written to Brandon Lewis MP, Minister of State for Immigration, in relation to recommendations from the EHRiC inquiry.

49 <https://beta.gov.scot/publications/national-scoping-exercise-advocacy-services-victims-violence-against-women-girls/documents/00523297.pdf?inline=true>

50 <http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/103215.aspx>

Istanbul Convention

The Scottish Government was active in pressing the UK Government to set out a clear timetable for ratifying the Istanbul Convention, and welcomed the passage of the Preventing and Combating Violence Against Women and Domestic Violence (Ratification of Convention) Act 2017. As stated previously, the Scottish Government is actively working towards compliance with the Convention in Scotland and plans to bring forward a report setting out progress on this.

3.5 Forced marriage and female genital mutilation⁵¹

UPR recommendations⁵²

- Strengthen the legislative framework by including penal sanctions for perpetrators of acts of forced marriage and non-protection against female genital mutilation

Forced marriage

The Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011⁵³ introduced a civil Forced Marriage Protection Order, breach of which is a criminal offence. From 30 September 2014, section 122 of the Anti-Social Behaviour, Crime and Policing Act 2014 made it a criminal offence to force a person into marriage in Scotland. The Scottish Government continues to fund a range of specialist organisations that provide support and assistance to those affected or who may be affected by forced marriage, and has commissioned independent research into forced marriage in Scotland. Findings from the report *Understanding forced marriage in Scotland* (January 2017)⁵⁴ will inform future thinking.

Female Genital Mutilation

*Scotland's National Action Plan to Prevent and Eradicate Female Genital Mutilation (FGM) 2016-2020*⁵⁵ sets out an agreed range of actions and associated activities to be taken forward by the Scottish Government and its partners to prevent and ultimately eradicate FGM. A multi-agency National Implementation Group, which includes statutory and third sector and community-based organisations, is overseeing the implementation and monitoring progress. A 'Year One Update' will be published later this year.

To support the action plan, over £271,620 has been invested (2017-18) and the Scottish Government will continue to invest a similar amount over the period 2017-20. Multi-agency guidance will be published in 2017, setting out how agencies, individually and together, can protect girls and young women from FGM, and how to respond appropriately to survivors.

51 CEDAW (2013), para 37

52 134.188

53 <http://www.legislation.gov.uk/asp/2011/15/contents/enacted>

54 <http://www.gov.scot/Publications/2017/01/6540>

55 <http://www.gov.scot/Publications/2016/02/8232>

FGM has been unlawful in Scotland since 1985. The Prohibition of Female Genital Mutilation (Scotland) Act 2005⁵⁶ re-enacted the Prohibition of Female Circumcision Act 1985 and extended protection by making it a criminal offence to have FGM carried out either in Scotland or abroad by giving those offences extra-territorial powers. Amendments made by the Serious Crime Act 2015 closed a loophole in the 2005 Act to extend the reach of the extra-territorial offences to habitual (as well as permanent) UK residents.

All referrals made to the police from partner agencies in relation to concerns for girls who were at risk of harm from FGM have been fully investigated and no criminality has been found.

The Scottish Government has been looking closely at the legislative provisions in the Serious Crime Act 2015 (England and Wales) (Part 5, Sections 71-75). The Scottish Ministers are considering next steps.

3.6 Child neglect, sexual exploitation and abuse⁵⁷

UPR recommendations⁵⁸

- Develop and implement comprehensive multi-sectoral strategies on child exploitation and abuse
- Complete the investigation on numerous cases of sexual violence against children perpetrated by high level officials and bring the perpetrators to justice

Child sexual exploitation

An updated *National Action Plan to Prevent and Tackle Child Sexual Exploitation*⁵⁹ was developed with partners including local authorities, Police Scotland, health services and the third sector to focus on prevention, providing support to those at risk of or experiencing sexual exploitation, bringing perpetrators to justice and reducing cultural and social barriers to preventing and tackling child sexual exploitation (CSE). Actions have included developing a national definition of CSE; funding to third sector organisations to support victims and those identified as vulnerable; funding for organisations working with perpetrators; and CSE awareness-raising campaigns. The Scottish Government continues to work with the National Child Sexual Exploitation Group on the implementation of actions.

In 2015, Police Scotland launched a National Child Abuse Investigation Unit (NCAIU) to provide local policing teams with support for investigations into reports of complex child abuse and neglect, including child sexual exploitation and on line child abuse.

56 <https://www.legislation.gov.uk/asp/2005/8/contents>

57 CRC (2016), para 43, 45, 47; CEDAW (2013), para 27, 41

58 134.200-134.202

59 <http://www.gov.scot/Publications/2016/03/4765>

In 2009, the COPFS established the National Sexual Crimes Unit (NSCU), which specialises in the investigation and prosecution of serious sexual crimes across Scotland. All cases involving serious sexual offences are reported to NSCU for instructions. This team of experienced Crown Counsel directs criminal investigations from the earliest stages, providing advice and expertise on all aspects of the investigation and preparation of cases. It also prosecutes sexual crimes in the High Court.

Internet safety

Following work across government and in consultation with external stakeholders, an updated *Child Internet Safety Action Plan*⁶⁰ was published in April 2017, linking child protection with the digital participation and cyber resilience strategies and work being taken forward in schools. It sets out a number of actions to improve internet safety, including equipping children and young people themselves to stay safe online; supporting professionals, parents and carers; continuing to work with digital and social media providers to ensure children are not exposed to harm; and deterring potential perpetrators from committing abuse online. The Scottish Government has also invested in a number of programmes and initiatives that promote internet safety for children and young people.

Neglect

Section 12 of the Children and Young Persons (Scotland) Act 1937⁶¹ is the criminal legislation under which child cruelty is prosecuted. Since the offence was drafted, understanding of the impact of child neglect and emotional and psychological abuse has developed significantly. As part of the Child Protection Improvement Programme (CPIP), the Scottish Government has committed to holding a formal public consultation in 2017 on section 12 to explore the limitations of the current offence and the scope of a reframed offence.

Data collection

The Scottish Government has committed to establishing a Child Protection Data and Evidence Hub in order to develop a more co-ordinated strategic approach to share learning and improve use of evidence in practice.

Child Abuse

As part of CPIP, the Scottish Government will implement recommendations from the Child Protection Systems Review, and publish a new national child protection policy, including a National Child Abuse Prevention Plan by March 2018.

60 <http://www.gov.scot/Publications/2017/04/1061>

61 <http://www.legislation.gov.uk/ukpga/Edw8and1Geo6/1/37/contents>

Historic abuse

Following an InterAction dialogue with survivors of in-care abuse and former providers of care in 2012, an *Action Plan on Justice for Victims of Historic Abuse of Children in Care*⁶² was developed with two main recommendations: acknowledgement and apology (including commemoration), and accountability (reparation, inquiry and access to justice).

The Scottish Child Abuse Inquiry, chaired by Lady Anne Smith, is looking into abuse of children in care and is expected to report within four years of starting work on 1 October 2015. The first phase of public hearings started on 31 May 2017 and ended on 12 July. This phase included hearing evidence from expert witnesses, Scottish Government, survivor groups and care providers. Phase 2 will begin in November 2017 and will examine evidence it has gathered relating to residential child care establishments run by Catholic Orders.

On 29 September 2016 Future Pathways, Scotland's In Care Survivor Support Fund, was launched. The fund, which is open to individuals who were abused whilst in care in Scotland, co-ordinates access to and delivery of resources, integrated care and support tailored to the needs of the individual. Additionally, since 2009, the Scottish Government has invested £9 million in third and voluntary sector organisations which offer a wide range of local services across Scotland that support survivors of child abuse. The *Survivor Scotland Strategic Outcomes and Priorities 2015-2017*⁶³ sets out a clear strategy and broad vision to support survivors of child abuse, and includes a wide range of actions covering prevention, awareness raising, training, innovation across third and voluntary sector practice, as well as care, treatment and support where it is needed.

Limitation period

The Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005⁶⁴ removed remaining time limits for the prosecution of 'historic' sexual offences against children. The Limitation (Childhood Abuse) (Scotland) Act 2017⁶⁵ removed the three year limitation period for civil actions arising out of childhood abuse (defined to include sexual, physical, and emotional abuse, and abuse which takes the form of neglect).

3.7 Physical punishment of children⁶⁶

UPR recommendations⁶⁷

- Prohibit corporal punishment, including in the family, schools and educational institutions, and all other institutions and forms of alternative care; repeal all legal defences, such as "reasonable chastisement".

62 <http://www.shrcinteraction.org/Portals/23/Action-Plan-on-Historic-Abuse-of-Children-in-Care-Nov-2013.pdf>

63 <http://www.gov.scot/Publications/2015/10/3487>

64 <https://www.legislation.gov.uk/asp/2005/9/contents>

65 <http://www.legislation.gov.uk/asp/2017/3/contents/enacted>

66 ICCPR (2015), para 20; UNCAT (2013), para 29; CEDAW (2013), para 35; CRC (2016), para 41

67 134.193-134.199

The existing legislation in Scotland makes it illegal to punish children by shaking, hitting on the head or using an implement. The Scottish Government is opposed to physical punishment of children and intends to support a proposed member's Bill in the Scottish Parliament. This would remove an existing defence which parents and carers can use, and would have the effect of banning all forms of physical punishment of children.

With regard to support for parents and carers, see section 5.1.

3.8 Armed forces - recruitment of young people⁶⁸

UPR recommendations⁶⁹

- Withdraw interpretive declaration to Article 1 of CRC protocol on the involvement of children in armed conflict, and unconditionally forbid children from taking part in hostilities.

The UK Government is responsible for recruitment to the armed forces. Armed Forces (Enlistment) Regulations 2009 (SI 2009/2057) prohibit persons under the age of 18 from joining the Armed Forces without the consent of prescribed persons; in Scotland, those with parental responsibilities. All Service personnel have a statutory right to claim discharge up to their 18th birthday, and the right of discharge is made clear to all Service personnel on joining the Armed Forces.

While defence policy is reserved to the UK Government, wellbeing of young people is not. The Scottish Government expects the Ministry of Defence to comply fully with its obligations to ensure that those recruited to the armed forces, including those from Scotland, do not see active service in conflict before the age of 18.

3.9 Human trafficking⁷⁰

UPR recommendations⁷¹

- Continue efforts to combat human trafficking, increasing protection and support for victims, particularly children, and ensuring proportionate punishment for perpetrators
- Adopt a comprehensive (victim-centred) national framework to prevent trafficking in women and girls
- Strengthen the National Referral Mechanism to identify and assist victims of human trafficking

Legislation

The Human Trafficking and Exploitation (Scotland) Act 2015⁷² consolidates and strengthens criminal law against human trafficking and exploitation. The

68 CRC (2016), para 85, 87

69 134.22

70 CEDAW 2013, para 39, 55; CRC 2016, para 83

71 134.138-147

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

offences in the Act now carry a maximum sentence of life imprisonment. It also introduces trafficking and exploitation prevention and risk orders.

The Act takes forward improved protection for victims, through the Lord Advocate's instructions on the presumption against the prosecution of victims of trafficking and exploitation in certain circumstances, and by placing a duty on the Scottish Ministers to provide support and assistance for adult victims of human trafficking.

The first provisions of the Act came into force on 31 May 2016 and most of the remaining provisions will do so in 2018.

Prosecutions

The 2015 Act makes it more straightforward for Scotland's law enforcement agencies to take action but trafficking is a complex crime, with control and coercion often exerted by traffickers over victims in subtle and hidden ways. Victims can be highly traumatised and can take time to fully describe what has happened to them and who was involved. These factors can combine to make building a case a time-consuming process. It is also important to remember that:

- for each proceeding there could be multiple charges and multiple victims
- there may be cases where warrants are outstanding for accused persons
- there may be cases that have been deserted with a view to re-raise at a later date
- there may be cases that are currently on-going or not been prosecuted yet
- there will be situations where accused have been reported to the COPFS for human trafficking offences but prosecuted for offences other than human trafficking offences

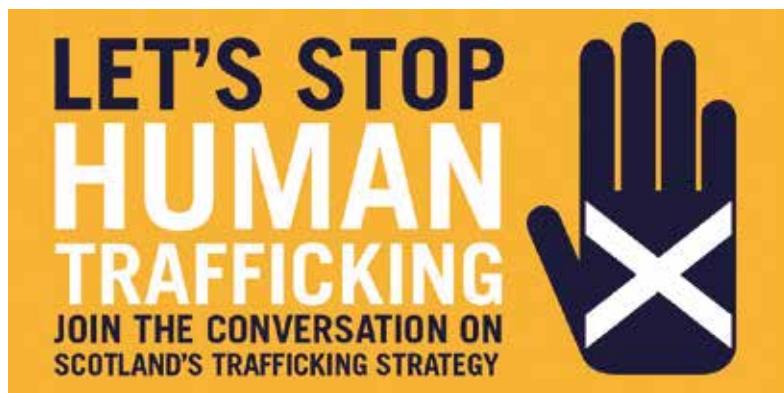
Trafficking and Exploitation Strategy

The 2015 Act requires the development of a Trafficking and Exploitation Strategy. This was laid before the Scottish Parliament on 30 May 2017 and will be reviewed every three years.⁷³ The Strategy has been produced by working closely with stakeholders, including victims of trafficking and exploitation, and implementation is being taken forward in conjunction with stakeholders. Key elements of the Strategy are to identify victims and support them to safety and recovery; identify perpetrators and disrupt their activity; and address the issues that foster trafficking and exploitation.

73 <http://www.gov.scot/Publications/2017/05/6059>

Actions contained within the Strategy include the development of a public awareness raising campaign of the issue of human trafficking; raising awareness with those who may encounter potential victims in the course of their work; developing clear processes and pathways for victims to access support; making full use of the powers available to disrupt the activities of perpetrators; and supporting UK-wide activity resulting from the Transparency in Supply Chains (TISC) duty under the UK Modern Slavery Act 2015.

The public awareness raising campaign was launched by the Cabinet Secretary for Justice on 29 August 2017⁷⁴ and highlighted that human trafficking and exploitation can happen anywhere, including in small towns and villages in Scotland and to anyone, if they are vulnerable.



Support for adult and child victims

The Scottish Government currently provides funding of nearly £800,000 to two organisations (Trafficking Awareness Raising Alliance (TARA) and Migrant Help) to provide specialist support to adult victims, and of £70,000 per annum to the Anchor service to provide psychological trauma support to adult victims.

On 13 June 2017, the Cabinet Secretary for Justice announced that regulations would increase the length of time for which adult victims of human trafficking and exploitation recovered in Scotland would be provided with support from 45 to 90 days.

Children are supported through the child protection system and eligible children are given the additional support of an independent child trafficking guardian. Section 4 of the Trafficking and Exploitation Strategy makes clear that local Child Protection Committees should ensure that there are specific and appropriate arrangements on child trafficking and exploitation in place through guidance, protocols or procedures, which are known and complemented by relevant services.

74 <https://news.gov.scot/news/human-trafficking-is-closer-to-home-than-most-scots-think>

In 2013, the Scottish Government published *Inter-agency Guidance for Child Trafficking*,⁷⁵ which provides information and guidance to all members of the children's workforce so that professionals and others are able to identify child victims to ensure they can receive appropriate support and protection. The Scottish Government has already invested in an additional guardianship support service for unaccompanied child trafficking victims. However, where a child for whom no one in the UK holds parental rights or responsibilities has been, or is suspected of having been, trafficked, the Act makes provision for an independent child trafficking guardian to be appointed to provide additional assistance and support. A consultation with stakeholders will take place this year regarding the roles and responsibilities of this new guardianship service, which will work alongside existing statutory provision.

The 2015 Act also requires relevant authorities to presume that a victim of human trafficking is a child in circumstances where the age of a victim is uncertain but there are reasonable grounds to believe that the victim is a child (under 18 years of age). The victim is presumed to be a child for the purpose of receiving immediate age appropriate support and services until their age is formally established. To reflect the change in legislation, the 2012 Age Assessment Guidance for social workers is being revised. The Scottish Government is also seeking to bring forward guidance on the use of sections 22 and 25 of the Children (Scotland) Act 1995 regarding provision of accommodation and support.

Under section 8 of the 2015 Act, the Lord Advocate's instructions for prosecutors state that: if there is sufficient evidence that a child aged 17 or under has committed an offence, and there is credible and reliable information to support the fact that the child is a victim of human trafficking or exploitation, and the offending took place in the course of, or as a consequence of, being the victim of human trafficking or exploitation, then there is a strong presumption against prosecution of that child for that offence.

Implementation of those actions specific to children will be supported and overseen by the Child Trafficking Strategy Group. Action to tackle child trafficking cuts across existing Scottish Government strategies and is referenced in the update of the *National Action Plan to Prevent and Tackle Child Sexual Exploitation* and the *National Action Plan on Child Internet Safety in Scotland* (see section 3.6). These are all workstreams included within the current CPIP.

The Victims and Witnesses (Scotland) Act 2014 obliges Police Scotland to direct victims of crime towards the Victims' Code for Scotland,⁷⁶ which contains information about compensation and is available in a number of languages. In addition, victim support organisations routinely assist victims in understanding the support that may be available. In Scotland, the position of victims of trafficking in criminal proceedings and their access to legal aid is no different to that of other victims of crime with an interest in a criminal case. Access to legal aid on some human trafficking matters is not contingent on formal recognition of victim status. Beyond the provision of legal aid, assistance can be provided through grant funding programmes. An assessment of the provision of legal aid to victims of trafficking was recently carried out by SLAB.

75 <http://www.gov.scot/Publications/2013/11/3285>

76 <https://www.mygov.scot/victims-code-for-scotland/>

The Scottish Government is committed to partnership working with the UK Government, police, prosecutors, support agencies and others to combat human trafficking and exploitation. In addition, the remit of the Independent Anti-Slavery Commissioner covers the whole of the UK.

Justice

“ Injustice anywhere is a threat to justice everywhere.”

Martin Luther King



4. JUSTICE

4.1 Access to justice⁷⁷

UPR recommendations⁷⁸

- Facilitate access to justice for minority groups.
- Ensure accessibility of appropriate legal aid, particularly for the most marginalised groups.

Accessibility

Publicly funded legal assistance allows people to pursue or defend their rights, or pay for their defence when they could not otherwise afford to do so. It can be provided for criminal or civil matters, or in relation to children's hearings and associated court proceedings. The eligibility criteria for those accessing legal aid are consistent and transparent.⁷⁹

There is no requirement to be resident in Scotland when applying for legal aid in Scotland. If it is a matter of Scots Law (including UK law that applies in Scotland) and could be heard in a Scottish Court, an application can be made to SLAB.

A person looking for advice on an immigration case has open to them the full range of publicly funded legal assistance available in Scotland. The eligibility criteria has the same statutory tests and there is no residency test for accessing this funding. For those requiring representation for a case at the Immigration and Asylum Tribunal, an applicant can access Assistance by Way of Representation (ABWOR). In most cases only a means test is applied and all of these applications will be passed on merit.

Of particular relevance to victims of domestic violence, in criminal proceedings publicly funded legal assistance in the form of ABWOR is available for complainers seeking to make representations regarding the recovery of their medical or other sensitive documents by the defence in a case. This is non-means tested.

Children

Children can access legal advice and representation on the same broad range of issues that adults can, so long as they have the capacity to instruct a solicitor. The statutory tests applied by SLAB for children's legal aid are: whether it is reasonable in the circumstances of the case to make it available; and whether the expenses of the case could not be met without causing undue financial hardship to the applicant or their dependants. Where the applicant is a child, SLAB must also be satisfied that the grant of legal aid is in the child's best interests. Furthermore, in appeals cases there must be substantial grounds for taking or responding to the appeal.

77 ICCPR (2015), para 22; ICESCR (2016), para 21; CERD (2016), para 21, 39; CEDAW (2013), para 23, 57; CRC (2016), para 31

78 134.115, 134.154

79 <http://www.slab.org.uk/public/>

In certain prescribed circumstances, automatic children's legal aid will be made available to a child. This is intended to ensure that representation can be made available in urgent cases where a child appears without having secured representation and the issues are such that it would be inappropriate for the hearing to proceed without the child being represented.

Children's legal aid is automatically available in non-urgent cases where a deprivation of the child's liberty is in prospect but the child has not secured representation ahead of the hearing. In those situations, SLAB will appoint a solicitor and maintains a national duty solicitor scheme to ensure that this can happen. The automatic grant of children's legal aid is only available for the purposes of the immediate hearing.

Financial eligibility

Depending on the assistance type, either the solicitor or SLAB will assess both the applicant's disposable income and disposable capital to determine whether a grant can be made and, if so, whether the applicant must pay a contribution toward the cost of their legal advice and representation.

If an applicant is in receipt of certain means tested benefits, such as income support or job seekers allowance, legal assistance will automatically be granted. As an interim measure, Universal Credit is treated in this way, to make sure that those receiving it are not disadvantaged. Certain other benefits, such as Personal Independence Payment or war pensions, are disregarded when an applicant's disposable income is calculated.

Undue hardship

As with the financial eligibility test, the applicant's disposable income and disposable capital are assessed for the undue hardship test. Again, if an applicant is in receipt of certain means tested benefits, legal assistance will automatically be granted, and certain other benefits are disregarded when calculating disposable income.

Unlike the financial eligibility test, however, the financial circumstances of the applicant are considered more widely to determine whether the expenses of the case can be met without undue hardship to the applicant or to their dependants. This means that, while the resources to be considered available to an applicant to pay their expenses are set out in regulations, there is discretion to award legal assistance to which this test applies in any case where the expenses cannot be met without undue hardship.

The Scottish Government announced a comprehensive, independent review of legal aid on 1 February 2017 to fulfil the commitment to maintaining access to public funding for legal advice and representation in both civil and criminal cases alongside measures to expand access to alternative methods of resolving disputes.⁸⁰ The review is expected to last 12 months. With legislation

80 <http://www.gov.scot/About/Review/legal-aid-review>

in Scotland dating back nearly 30 years, the review will explore how best the legal aid system can contribute to improving people's lives now and in the future. It will ensure that Scotland has a flexible and progressive system which is sustainable and cost effective.

Provisions in the Criminal Justice (Scotland) Act 2016⁸¹ will ensure that every person detained at a police station has the right to a private consultation with a lawyer and to have a lawyer present during interview, and this applies also to those attending voluntarily for interview, where they are suspected of committing an offence. The requirement for legal aid contributions for advice and assistance given in a police station was removed on 1 April 2016 and it is now free for every person detained at a police station to have access to a lawyer.

4.2 Criminal justice system⁸²

The Scottish Parliament passed the Criminal Justice (Scotland) Act 2016 and the Scottish Government, with justice agencies in Scotland, is now implementing it. This legislation enacted a range of recommendations by Lord Carloway, who is now Lord President (Scotland's senior judge), which were drawn up explicitly with the rights of victims and suspects in view. The Act makes a number of changes to address delays in the legal system, but it addresses in particular the investigation phase, setting out clearly the rights of suspects and the powers and duties of the police. Another important feature of the Act is support for vulnerable persons.

The Scottish Government intends to carry out a major programme of research to understand better how juries operate, as an important part of considering justice reform in the round. It believes this research is required to make informed decisions on reforming the system: any future reforms to the justice system involving juries will have a clear evidence base, enabling a balanced package of proposals rather than piecemeal changes.

Concerning the use of closed material procedures in particular, consideration of "secret evidence" must be dealt with by a judicially managed process involving special counsel. This is set out in the disclosure regime established by the Criminal Justice and Licensing (Scotland) Act 2010.⁸³ However, there is little, if any, actual experience with special counsel in Scotland.

81 <http://www.legislation.gov.uk/asp/2016/1/contents/enacted>

82 ICCPR (2015), para 22

83 <https://www.legislation.gov.uk/asp/2010/13/contents>; see Part 6

4.3 Victims and witnesses⁸⁴

The Victims and Witnesses (Scotland) Act 2014⁸⁵ introduces measures to improve support for victims and witnesses and helps meet Scotland's obligations under European Directive 2012/29/EU,⁸⁶ which establishes minimum standards on the rights, support and protection of victims of crime.

Children and vulnerable witnesses giving evidence

In Scotland, children are entitled to special measures to assist with giving evidence in court. This can include the court allowing pre-recorded statements to be admitted into evidence by means of a prior statement (as evidence-in-chief) or allowing evidence to be taken by a commissioner appointed by the court. Evidence by a commissioner can be used for evidence-in-chief, cross examination and re-examination, and must be visually recorded.

For child witnesses, the prior statement can take the form of a visually recorded Joint Investigative Interview (JII), which is carried out by a police officer and a social worker who are trained and competent to conduct it. It is used to elicit the child's account of events (if any) which require investigation, particularly where there is information indicating that a child has suffered or may be at risk of abuse or neglect. The Scottish Government published good practice guidance on JII in 2011.⁸⁷

The Scottish Courts and Tribunals Service (SCTS) has been leading work on the Evidence and Procedure Review, which is intended to take Scotland towards a criminal justice system at the forefront of best practice in relation to children and vulnerable witnesses. This included the publication of the 2015 *Evidence and Procedure Review*⁸⁸ and the 2016 *Evidence and Procedure Review - Next Steps*.⁸⁹

The Review considered whether the best use is being made of pre-recorded evidence. In June 2017 the Scottish Government published a consultation to further build on improvements and seek views on legislative changes that may be required to enable a much greater use of pre-recorded evidence for children and vulnerable witnesses, so that evidence can be taken at an early stage and without them appearing in court. To facilitate these legislative changes, in September 2017 the Scottish Government announced plans to introduce a Bill on Vulnerable Witnesses and Prerecorded Evidence.

84 CRC (2016), para 81, 83

85 <https://www.legislation.gov.uk/asp/2014/1/contents>

86 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0057:0073:EN:PDF>

87 <http://www.gov.scot/Publications/2011/12/16102728/0>

88 <http://www.scotcourts.gov.uk/docs/default-source/aboutscs/reports-and-data/reports-data/evidence-and-procedure-full-report---publication-version-pdf.pdf?sfvrsn=2>

89 <http://www.scotcourts.gov.uk/docs/default-source/SCS-Communications/evidence-and-procedure-report---next-steps---february-2016.pdf?sfvrsn=2>

The SCTS has launched a revised High Court Practice Note, *Taking of evidence of a vulnerable witness by a commissioner*,⁹⁰ which came into effect on 8 May 2017. The Practice Note aims to encourage better preparation in the use of existing legislation to allow child and other vulnerable witnesses to provide pre-recorded evidence in front of a person commissioned by the court, avoiding the need to attend court to give evidence at the trial, thereby reducing the risk of future trauma to the witness.

The 2016 Next Steps report emphasised the importance of ensuring that initial interviews of child witnesses are of a consistently high standard and produce the best possible outcome in terms of both the witness' experience and the quality of the evidence elicited. A working group was established to develop further recommendations⁹¹ for how the current model of JIIs could be strengthened and support the wider use of audio-visual recording of evidence from children. The Scottish Government is working with partners to implement these recommendations, which will include updating and publishing statutory guidance for JIIs, and reviewing the technology, training and other facilities available to support child victims and other vulnerable witnesses to provide the best possible evidence.

Child victims of offences covered by CRC-OP-SC

Under the Scotland Act 1998, the COPFS is required, in each individual case, to consider whether prosecution is in the public interest, and in such cases may certainly be entitled to decide it is not. This would prevent inappropriate prosecutions of child victims of offences under the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. There is also a general presumption against prosecuting children under the age of 16 for all but the most serious offences, with such cases instead being referred to the Children's Reporter.

Section 3.9 - human trafficking contains information on new provisions for a presumption against prosecution of victims of human trafficking and exploitation.

Provision of a competent and statutory guardian during the criminal justice process

Children are supported through the child protection system and eligible children are given the additional support of an independent child trafficking guardian (see section 3.9 - human trafficking).

90 <http://www.scotcourts.gov.uk/docs/default-source/rules-and-practice/practice-notes/criminal-courts/criminal-courts---practice-note---number-1-of-2017.pdf?sfvrsn=4>

91 <http://www.scotcourts.gov.uk/docs/default-source/aboutscs/reports-and-data/reports-data/evidence-and-procedure-review.docx?sfvrsn=4>

Where a child or young person has been the subject of some form of sexual exploitation, the child or young person would enter the child protection system and a multi-agency case conference would take place to identify the most appropriate course of action for them. The *National Child Protection Guidance*⁹² is underpinned by the *Getting it right for every child* principles, which aim to make support easy to access and seamless, with the child at the centre, and to ensure that everyone works together to improve outcomes for the child or young person. At the heart of the *Getting it right for every child* approach is a shift towards early, proactive intervention in order to create a supportive environment and identify any additional support that may be required as early as possible.

4.4 Police custody⁹³

UPR recommendations⁹⁴

- Train public officials in human rights, in particular the police and the military, including on the excessive use of force.

Integrity, fairness and respect are central to Police Scotland's Professional Ethics and Values.

Police Scotland training has been reviewed to ensure that human rights, organisational values and the Code of Ethics (CE)⁹⁵ must be considered in the design specification of every course. New recruits receive training on the ethics and values, as well as on both the ECHR and the HRA. In addition, all police officers are required to make the 'Declaration of Constable', which includes a commitment to uphold fundamental human rights.

These principles have been incorporated into central functions, such as Standard Operating Procedures and Operational Orders, and the personal development review process has been revised to ensure that the values and CE are central tenets for development and progression.

A presentation on the CE, which includes the protection of human rights, has been delivered to senior management teams for cascading to all police officers and staff, and all staff have been sent a pocket guide on the values, CE and the National Decision-Making Model.

Children

Where a child is to be retained in custody it will normally be to a "place of safety" as defined in the Children's Hearings (Scotland) Act 2011.⁹⁶

92 <http://www.gov.scot/Publications/2014/05/3052/0>

93 UNCAT (2013), para 35

94 134.134

95 <http://www.scotland.police.uk/about-us/code-of-ethics-for-policing-in-scotland/>

96 <https://www.legislation.gov.uk/asp/2011/1/contents>

Children will only be kept at a police station if there are no other options, for example if the police believe that they are a danger to themselves or to others. The police liaise with the local authority social work departments and make joint decisions regarding the appropriate place of safety. In cases where children are retained at a police station, under no circumstances will they be held in a cell with adult accused, and preference must be given to the location of the cell that protects a child from surrounding adult custodies.

A child will not be retained in a police station unless the criteria of the Lord Advocate's Guidelines to the Chief Constable on the Reporting of Offences to the Procurator Fiscal alleged to have been committed by children are met. There are exceptional circumstances (as defined in Section 43(4) of the Criminal Procedure (Scotland) Act 1995).⁹⁷ When a decision is taken to detain a child in a place of safety or at a police station this must be endorsed by an officer of the rank of inspector or above. Police Scotland has introduced a National Custody System, which will record the number of times overnight police detention occurs.

In cases where a strip search of a child or young person is considered necessary, it must be carried out in accordance with Annex C of the Code of Practice on Stop and Search, which came into force on 11 May 2017.⁹⁸ Under the Code, a strip search of a child or young person must normally take place with a responsible adult present, unless the child has indicated in the presence of that adult that they don't want them to be there during the search. The child's decision not to have an adult present must be recorded and signed by the adult. If the situation is urgent and there is a risk of serious harm to the child or to others, this approach above may be departed from, but only to the extent absolutely necessary.

All strip searches (not just those of children) must be conducted "with proper regard to the sensitivity and vulnerability" of the person being searched, with every reasonable effort made to secure cooperation and minimise embarrassment. Strip searches must be carried out as quickly as possible, by a person of the same sex, and where the person being searched cannot be seen by anyone who doesn't need to be present.

4.5 Court custody

Her Majesty's Chief Inspector of Prisons for Scotland (HMIPS) has published standards for inspecting court custody provision in Scotland.⁹⁹ The standards are referenced against relevant law, international and professional guidance, policy and research findings. By articulating what is expected to be found within court custody units, they are intended to assist those who are running such units, and to encourage openness and transparency in the scrutiny of places of detention. The standards have been drawn up in collaboration with the SCTS, the Scottish Prison Service (SPS) and the current custody service

97 <https://www.legislation.gov.uk/ukpga/1995/46/contents>

98 [Code of Practice on the use of Stop and Search](#)

99 <https://www.prisonsinspectoratescotland.gov.uk/publications/standards-inspecting-court-custody-provision-scotland>

provider, G4S. Each organisation is highly supportive of the work of HMIPS in this area, and are firmly of the view that the standards will contribute positively to the effective scrutiny of court custody provision in Scotland and encourage continuous improvement in the quality of care and custody of people held in court cells.

4.6 Treatment of detainees and conditions in places of detention¹⁰⁰

UPR recommendations¹⁰¹

- Continue the independent monitoring of places of detention; respect detainees' rights and improve conditions of detention.
- Take measures to decrease prison population, address overcrowding and improve prisoner safety including in relation to homicides, assaults, self-harm and suicides.

Monitoring

The UK National Preventive Mechanism (NPM) was set up in 2009 to ensure regular visits to places of detention in order to prevent torture and other ill-treatment, as required by the Optional Protocol to UNCAT (OPCAT). The NPM is made up of 21 statutory bodies, including six based in Scotland, that independently monitor places of detention. Information on the material, human and budgetary resources of these bodies can be found in their respective annual reports:

- Her Majesty's Inspectorate of Prisons for Scotland (HMIPS)¹⁰²
- Her Majesty's Inspectorate of Constabulary for Scotland (HMICS)¹⁰³
- Scottish Human Rights Commission (SHRC)¹⁰⁴
- Mental Welfare Commission (MWC) for Scotland¹⁰⁵
- Care Inspectorate¹⁰⁶
- Independent Custody Visitors Scotland (ICVS)¹⁰⁷

HMCIPS continues to be responsible for ensuring that a systematic programme of inspection is carried out on individual prisons in Scotland and, in August 2015, was given a statutory role in overseeing the new arrangements for independent monitoring of prisons in Scotland. HMCIPS is accountable to the Scottish Ministers and operates independently and impartially from the SPS. He

100 UNCAT (2013), para 14, 31, 35; CEDAW (2013), para 55

101 134.137, 158-162

102 https://www.prisonsinspectoratescotland.gov.uk/publications?tid_1=1

103 <http://www.hmics.org/publications>

104 <http://www.scottishhumanrights.com/policy-publications/>

105 <http://www.mwccscot.org.uk/publications/corporate-reports/>

106 <http://www.careinspectorate.com/index.php/publications-statistics/43-corporate-annual-reports-accounts/annual-reports-accounts>

107 <http://www.spa.police.uk/icvs/>

must report to Ministers on the findings of individual inspections and annually on (a) the conditions in prisons and the treatment of prisoners; and (b) the exercise of functions of independent prison monitors. Annual reports must be laid before the Scottish Parliament. HMCIPS assesses the treatment and care of prisoners across the prison estate against a pre-defined set of standards, which are set out in *Standards for Inspecting and Monitoring Prisons in Scotland* (March 2015).¹⁰⁸ The standards articulate what is expected of a well-run prison and clearly identify what will be monitored and inspected.

Under the new arrangements for monitoring prisons in Scotland, monitoring is now carried out by Independent Prison Monitors (IPM), who are members of the public and representatives of civil society. Section 7D of the Prisons (Scotland) Act 1989 sets out the powers and duties of IPMs, including the power to visit and access any part of the prison to which they have been assigned and speak in private with any prisoner, visitor, prison officer or other person working at the prison. There is a statutory requirement that at least one independent prison monitor must visit each prison once a week.

A Prison Monitoring Advisory Group has been established by HMCIPS, in line with section 7F of the Prisons (Scotland) Act 1989, to keep the effectiveness of prison monitoring under review, contribute to the guidance published by HMCIPS and keep that guidance under review. A feature of the new arrangements is that an obligation was placed on the Scottish Ministers in terms of section 7G of the 1989 Act to make arrangements for prison visits by the Subcommittee on the Prevention of Torture established under Article 2 of OPCAT.

Prison custody

The *HM Chief Inspector of Prisons Annual Report 2015-16*¹⁰⁹ notes that prisons in Scotland fulfil their responsibility to work with those in prison to reduce the likelihood of reoffending and to prepare them positively for returning to the community to a high degree.

Scotland's prison population has continued to fall over the past few years. The average daily population in 2015-16 stood at 7,675, roughly 6% lower than the equivalent figure in 2011-12 (8,178).

Evidence shows that short-term imprisonment is not effective and can in fact increase long-term offending by weakening social bonds and decreasing job stability.

The Scottish Government is committed to reducing the use of short-term imprisonment and, following a public consultation, announced in the 2017-18 PfG that the presumption against short prison sentences would be extended from three months to cover sentences of 12 months or less, once the Domestic Abuse Bill is in force. The majority of all respondents (85%) to the public consultation on proposals to strengthen the presumption supported an extension and, of those who expressed a view, 84% supported an extension to cover sentences of 12 months or less.

108 <http://www.gov.scot/Publications/2015/03/8256/0>

109 <https://www.prisonsinspectoratescotland.gov.uk/publications/hm-chief-inspector-prisons-scotland-annual-report-2015-2016>

There is also a drive to tackle reoffending through the greater use of robust community sentences. Individuals released from a custodial sentence of 12 months or less are reconvicted nearly twice as often as those who are given a Community Payback Order. Community sentences have accounted for a greater proportion of all penalties handed down by Scottish Courts every year since 2011-12 and the differential between the two has increased steadily over that time. In 2015-16, community sentences accounted for 19% of all penalties; whereas custodial sentences accounted for only 14% (fines were the single most common penalty in each of those years, accounting for over 50% of all penalties). The fall in the use of custodial sentences has been most pronounced among young people - the number of custodial sentences involving 16-20 year olds (or under 21s) fell by 61% between 2006-07 (3,270) and 2015-16 (1,262).

The 2017-18 PfG also reiterated the Scottish Government's commitment to addressing the underlying causes of offending and promoting the least intrusive intervention at the earliest possible time. There is a commitment to working with partners in Criminal Justice Social Work (CJSW) and the COPFS to maximise the availability and appropriate use of diversion schemes across the country.

Bail support and supervision is aimed at people who would otherwise be held on remand, enabling them to be supervised in the community. This allows families to stay together and sustain employment or stable housing, both of which are proven to reduce reoffending. The Scottish Government is committed to working with CJSW teams to share good practice and revise existing guidance on bail supervision to support its continued use.

The reduction in the number of under 21s receiving custodial sentences has been driven by the adoption of the Whole System Approach (WSA),¹¹⁰ which aims to achieve positive outcomes for young people by helping various statutory and non-statutory bodies to work together to build a more consistent approach to prevent and reduce offending by children and young people through early and effective intervention.

The SPS continues to invest in the modernisation of the prison estate and implement its transformational change agenda, which has an emphasis on building a person-centred, asset-based approach in order to invest in rehabilitation and reintegration services. The reintegration of people leaving custody is a priority for the SPS, including investment in the maintenance of family relationships and contact in prison, a review of purposeful activity provision and an emphasis on respectful relationships between staff and prisoners. Purposeful activity is a major component of the SPS Integration model, which provides a pathway to desistance-focused, asset-based approaches to assisting prisoners prepare for release. Approximately 40 Throughcare Support Officers across the prison estate provide support to people to help prepare for release and work with them beyond release in the community.

110 <http://www.gov.scot/Topics/Justice/policies/young-offending/whole-system-approach>

Training

In Scotland all prison staff undertake human rights awareness training, which was developed by the SPS College and is delivered by trained officers. The training is undertaken by existing prison staff and new recruits to the SPS. *Respecting Individuals and Recognising Rights Part 1* was introduced in 2006 and Part 2 in 2009. The last major revision to the course was undertaken in 2012 following an amendment to Prison (Scotland) Rules. The equality and diversity training course also undertaken by all staff includes specific reference to the ECHR.

Prisoner safety

The HM Chief Inspector of Prisons for Scotland: Annual Report 2015-16 states:

“We should never take for granted that Scotland’s prisons are in general well-run, ordered and stable places. It is to the credit of the men and women working in prisons that most prisoners say that they feel safe and that they are treated with dignity and respect.”

The SPS takes responsibility for prisoner safety extremely seriously. It operates a Violence Reduction Strategy whereby each prison has its own plan, which encompasses guidance on cell sharing risk assessments and anti-bullying measures. The SPS provides staff with appropriate training in order to detect, deter, de-escalate and, if necessary, protect themselves, prisoners and others from violent acts. SPS staff are required to demonstrate competence in the use of restraints on an annual basis. By training staff to the highest standard, SPS seeks to ensure that actions taken are lawful, necessary, reasonable and proportionate to the situation presented.

Healthcare services

Healthcare services in custody are provided by NHSScotland, and NHS standards for health care provision, including primary care, apply within the prison setting. The Scottish Government expects health boards to act appropriately to meet these standards.

The General Medical Council (GMC) has statutory responsibility for ensuring proper standards in the practice of medicine and for registering all doctors who are allowed to practise in the UK, whatever their employment conditions. The GMC has powers to investigate allegations which call into question a doctor's fitness to practice and, where allegations are proven, take appropriate action. Such action may include issuing a warning, removing the doctor from the register, or suspending or placing conditions on a doctor's registration.

The Scottish Government has recently established a Health and Justice Collaboration Improvement Board, which will bring together senior leaders from across Health and Justice to improve outcomes for people and communities including prisons; support ambitions to reduce health inequalities and risk of offending; improve performance and achieve greater value for money across the whole system; improve collaborative working; and prioritise prevention.

Mental health services

In comparison to the general population, the prevalence of mental health problems among those in contact with the justice system is high. Mental health issues commonly co-exist with problem substance use (alcohol and drugs), chronic physical health conditions, learning difficulties, and homelessness. Relationships with families and other supports may be limited or absent. The transition from prison back to the community is a particularly high-risk period for people's mental health, and continuity of care is important.

Partners across Health and Justice, including the SPS and NHS Boards work together to support the delivery of high quality, safe, effective and consistent services to prisoners.

Action 15 of the Mental Health Strategy commits the Scottish Government to give access to dedicated mental health professionals to all A&Es, all GP practices, every police station custody suite, and to prisons. Over the next five years, additional investment will increase to £35 million for 800 additional mental health workers in those key settings.

The SPS has a role to play in providing support and activities for prisoners with mental illness and mental health issues, and an environment that encourages prisoners with mental health issues to engage with staff and services. The SPS has funded training for Residential Officers in managing prisoners with challenging behaviours and personality disorders, and NHS Psychiatry operates an in-reach service across establishments in Scotland with a mixture of forensic psychiatrists and general adult psychiatrists in attendance. Several third sector agencies also provide additional services and support for prisoners with mental health issues.

4.7 Self-harm and deaths in custody¹¹¹

According to its Annual Report 2015-16,¹¹² the PIRC investigated two deaths in police custody and 12 into deaths following police contact. As with all other deaths of which they are informed, the police are required to investigate the death and report the circumstances to the relevant Procurator Fiscal. All deaths in police custody are subject to a Fatal Accident Inquiry (FAI).

The SPS records all deaths in custody in calendar years and publishes information for the preceding ten years.¹¹³ The SPS is committed to the preservation of life and to ensuring that lessons are learned from previous deaths in custody through its Self-Inflicted Death in Custody Audit, Analysis and Review (SIDCAAR) Policy. Under the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016,¹¹⁴ all deaths in prison are subject to a FAI.

111 ICCPR (2015), para 16; UNCAT (2013), para 31

112 http://pirc.scotland.gov.uk/news/2241_commissioner_publishes_2015-16_annual_report

113 <http://www.sps.gov.uk/Corporate/Information/PrisonerDeaths.aspx>

114 http://www.legislation.gov.uk/asp/2016/2/pdfs/asp_20160002_en.pdf

In November 2016, the SPS launched its new Suicide Prevention Strategy, *Talk to Me*, which replaces *ACT2Care*. This new strategy is intended to enable the whole prison community to work together to identify vulnerable individuals, share information and encourage those “at risk” to accept help and support. All prison staff and partners working with prisoners are provided with mandatory training on *Talk to Me* to ensure that they are competent to fulfil their role in the management of prisoners with suicidal ideation.

In instances of self-harm which present to the NHS, the Scottish Government expects clinicians to investigate thoroughly and to support the patient both to recover and to avoid repetition of the self-harming.

All instances of death by suicide under NHS care are subject to review by the relevant NHS Board, which will also work with Healthcare Improvement Scotland to establish what lessons can be learned to improve future safety for patients. Healthcare Improvement Scotland also coordinates a Suicide Review Community of Practice, which coordinates learning from a range of sources in order to help inform improvements in patient safety across the NHS in Scotland.

All suicides in Scotland are reported to the Scottish Fatalities Investigation Unit (SFIU), a specialist unit within the COPFS. The SFIU reports to the Lord Advocate, who is responsible for the investigation of deaths in Scotland, and will consider whether there has been a systematic failure in care which contributed to the person taking their life, and will ordinarily request and consider the relevant NHS Board’s review reports into a significant adverse event. In addition, when investigating cases, the SFIU may consider instructing an independent expert to consider the circumstances, which may include consideration of the review report and its learning outcomes. At the conclusion of its investigation, the SFIU will consider whether there should be an FAI.

The Mental Welfare Commission (MWC) for Scotland has clear notification criteria which apply following the death of an individual by suicide. In particular, it requires notification of suicides of people detained under the Mental Health (Care and Treatment) (Scotland) Act 2003.¹¹⁵ The MWC may formally investigate circumstances of the person’s care to identify if there were any deficiencies in care or treatment and if there are any issues to inform wider learning. These investigation reports would be shared with the specific NHS Board and would be anonymised if published.

The Scottish Government is to conduct a review, under section 37 of the Mental Health (Scotland) Act 2015, into the arrangements for the investigation of deaths of certain categories of people with mental health conditions, including patients detained in mental health services.

115 <http://www.legislation.gov.uk/asp/2003/13/contents>

4.8 Women prisoners¹¹⁶

Scotland has established standards for treatment of women in a custodial and non-custodial setting, which comply with the broad principles set out in the Bangkok Rules.¹¹⁷

Following a period of consultation in 2015, the Scottish Government announced the decision to build a new national prison for women on the current site of HMP and Young Offenders Institution Cornton Vale and up to five small community based custodial units across Scotland. All aspects of the custodial estate will be run and managed by the SPS but services will be delivered through multi-disciplinary teams working together to provide a consistent and holistic approach to the management of women who are held in custody and, importantly, linking them to the services they will need on their release back into the community.

The Scottish Government has also provided local justice and third sector organisations with additional funding to develop local community justice services for women. This includes funding for female mentoring services, Bail Supervision, and Early and Effective Intervention services.

See also section 4.6 - Treatment of detainees and conditions in places of detention.

4.9 Children of persons in custody¹¹⁸

Sentencing

In all cases it is for courts to decide on the most appropriate sentence, within the overall legal framework. The complete independence of the judiciary in making sentencing decisions is at the heart of the criminal justice system in Scotland and it is appropriate that sentencing decisions are entirely a matter for judges, who hear all the facts and circumstances surrounding the offence and the offender, and take into account any factors which they consider to be relevant before reaching a view on whether a custodial sentence or non-custodial sentence should be imposed.

At the point of sentencing by the court, the courts can request a CJSW Report when considering imposing a custodial sentence on a parent. As part of the reporting process, the report writer will interview the individual who is being considered for a custodial sentence and the report writer may also decide to interview other people. This could include family members, in order to take into account their views and explore the impact on the family of the offending behaviour. The report writer will also consider the potential impact of a community disposal as well as the implications of a custodial sentence for children and other family members.

116 UNCAT (2013), para 32; CEDAW (2013), para 55

117 UN Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders

118 CRC (2016), para 55

The Criminal Justice (Scotland) Act 2016 introduced a provision which will require the SPS to ask prisoners whether they are a parent or guardian of a child. If this is the case, the parent must be asked for information that will help SPS identify the child's Named Person service provider (in terms of the Children and Young People (Scotland) Act 2014). A commencement date for the Named Person provisions and the SPS provision is still to be confirmed.

Family strategy

The SPS *Family Strategy 2017-22*¹¹⁹ sets out how the SPS will review, develop and deliver national and local policies, and procedures relating to the care of children, young people and families who have a family member in prison.

The SPS maintains safety and security for all, however will, as far as practicable, also create a welcoming, relaxed and comfortable environment to include a child-friendly space which encourages positive relations between people in and leaving their care, and their child or children.

All establishments seek to maximise suitable visiting opportunities for families and children through regular and constructive contact. The Family Strategy sets out SPS's key objectives:

- facilitate children's visits that take account of school hours and public transport in order to avoid disruption to schooling where possible
- encourage and promote meaningful relationships by enhancing family contact where possible
- work with establishments and partners to develop their capacity to provide facilities conducive to supporting children and families affected by imprisonment and create a welcoming environment and reception
- provide a visiting environment that meets the needs of children and families, and create clean, comfortable and child-friendly spaces that encourage personal contact, and are conducive to play and positive relations between parents and their children
- promote activities which encourage family interaction and learning, such as healthy eating and arts and crafts
- provide a programme of family days and special events

Visitor centres

In 2015 the Scottish Government committed £1.8 million (over 3 years) towards Prison Visitor Centres, which focus mainly on the family rather than the prisoner. Services help families deal with the issues they face as a result of their family member's imprisonment and allow them to access independent and impartial advice, information and support on a range of matters.

¹¹⁹ <http://www.collegedevelopmentnetwork.ac.uk/wp-content/uploads/2017/08/CBL-Family-Strategy-2017-22.pdf>

The National Performance Framework for Prison Visitors' Centres in Scotland¹²⁰ emphasises the provision of child friendly visit facilities, which includes providing a designated space for children's play with toys and books as essential for all visitor centres. The visitor centres also try to provide books and reading material for adults and young people, and ensure play areas are inviting, safe and offer an exciting range of toys and activities appropriate for children of all ages.

4.10 Minimum age of criminal responsibility¹²¹

UPR recommendations¹²²

- Review and raise the minimum age of criminal responsibility in accordance with acceptable international standards.

The current age of criminal responsibility in Scotland is 8-years old, however a child under 12 cannot be prosecuted through the courts but can be referred on an offence ground to the children's hearing system. A Minimum Age of Criminal Responsibility Advisory Group was established to address the underlying issues of a change in the minimum age of criminal responsibility, with a view to bringing forward recommendations for public consultation in early 2016. The Advisory Group report¹²³ recommended that the age be raised from 8 to 12, and that the move be accompanied by a number of safeguards.

On 1 December 2016, the Scottish Government announced that it will be introducing a Bill in the current Parliamentary session, which will increase the age from which a child can be held criminally responsible from 8 to 12 years old; aligning it with the current minimum age of prosecution and reflecting Scotland's commitment to international human rights standards.

It will ensure harmful behaviours can still be investigated and responded to, contain appropriate safeguards for the gravest cases, and retain victims' rights to information and support.

4.11 Youth justice¹²⁴

UPR recommendations¹²⁵

- Consider abolishing mandatory life imprisonment for offences committed by children when under the age of 18.
- Adopt approaches to achieve a sustainable reduction in the number of children in detention.

120 https://www.familiesoutside.org.uk/content/uploads/2017/06/Nat_Perf_Frame_VCs.pdf

121 ICCPR (2015), para 23; UNCAT (2013), para 27; CRC (2016), para 79

122 134.205-134.208

123 <http://www.gov.scot/Publications/2016/03/3627>

124 ICCPR (2015), para 23; CRC (2016), para 79

125 134.203-134.205

In Scotland, a child would never be sentenced to life imprisonment. They would be placed in a secure unit up to the age of 17 and, if their sentence went beyond that age, they would transfer to a Young Offenders Institution (YOI) and then to a prison on reaching 21. The Criminal Procedure (Scotland) Act 1995 indicates that a person under the age of 18 who commits murder cannot be sentenced to life imprisonment but is sentenced to be detained without limit of time and in a place as directed by the Scottish Ministers.

No child in Scotland under the age of 16 years is detained in a prison. Young people aged 16-17 who are not subject to a compulsory supervision order can be sentenced or remanded by the court to a YOI.

In terms of current operational practice, Police Scotland attempts to ensure that all children and young people are kept in custody for as short a time as possible. When very minor crimes are committed it is common for children not to be taken to a custody centre at all, but rather taken home, and, if deemed necessary, cautioned and charged in front of their parents or carers.

Section 50 and 51 of the Criminal Justice (Scotland) Act 2016 will, when implemented next year, place a duty on Police Scotland not to detain a person (which includes a child) unnecessarily in custody and to consider a child's wellbeing as a primary consideration when making decisions in relation to a child, including a decision whether or not to hold a child in custody. Police Scotland operating procedures will be updated to reflect these provisions.

Through the WSA there is a strong focus on keeping under 18s out of the criminal justice system and statutory processes by way of early intervention, diversion and appropriate timely support.

Most current youth justice diversion schemes adopt a deferred prosecution model in that prosecution is suspended until the young person has successfully completed the diversion programme. If successful then it would not lead to criminal conviction. However, a diversion from prosecution is regarded as an alternative to prosecution in terms of the Rehabilitation of Offenders Act 1974 and, as such, would be disclosable for a period of three months, after which time it would be considered spent. For the purposes of disclosure of criminal record information, a "relevant matter" is either a conviction which is not a protected conviction or a caution which is not spent. A diversion from prosecution would not normally be disclosed after it was spent unless the police considered it to be "other relevant information".

Secure accommodation

The majority of young people placed in secure accommodation are placed through the children's hearings system as a result of a secure accommodation authorisation (SAA) made in conjunction with, for example, a compulsory supervision order. A compulsory supervision order may only include an SAA if:

- (a) the order contains a requirement that the child resides at a specified place,

- (b) one or more of the following conditions are met:-
 - (i) the child has previously absconded and is likely to abscond again and, if the child were to abscond, it is likely that the child's physical, mental or moral welfare would be at risk
 - (ii) the child is likely to engage in self-harming conduct
 - (iii) the child is likely to cause injury to another person, and
- (c) having considered other options available (including a movement restriction condition) the children's hearing is satisfied that it is necessary to include an SAA in the order.

Responsibility for implementing an SAA rests with the chief social work officer and can only be done with the consent of the person in charge of the establishment containing the secure accommodation. In considering the possibility of placing a child in secure accommodation, a chief social work officer needs to identify the aim and objectives of such a placement in terms of the child's assessed behaviour and needs, and the capacity of the establishment to meet those aims and objectives.

Placement in secure accommodation is designed to rehabilitate the child and, where necessary, protect the public. Secure placements, once made, are only for so long as it is in the best interests of the child. The suitability of the placement must be reviewed at intervals of not more than three months, or sooner if necessary or appropriate in light of the child's development.

A Secure Care Strategic Board (SCSB) is now in place and will lead the development of a strategic approach to responses to children and young people in, and on the edges of secure care in Scotland, providing a clear set of strategic proposals. The board will develop Secure Care National Standards to improve the experiences and outcomes for some of Scotland's most vulnerable young people. The SCSB is due to report to Ministers in December 2018.

Reducing offending

The Scottish Government has identified reducing reoffending as a principle where proactive improvement could make a significant contribution to reducing crime, improving public life, and reducing the prison population.

The Scottish Government will continue to drive improvement in preventative approaches to offending involving children and young people, building on the proven success of the WSA, which has seen a marked reduction in the number of young people receiving custodial sentences. The Youth Justice Strategy, *Preventing Offending: Getting it right for children and young people* (2015),¹²⁶ continues to promote the use of the WSA, ensuring that young people receive appropriate interventions and services that help to address and minimise offending and improve life chances.

126 <http://www.gov.scot/Publications/2015/06/2244>

At HMYOI Polmont:

- a community safety unit has been created, working with a wide range of partner organisations from the community, education sector and Scottish Government. Polmont has been designated as a ‘community’ for specific focus by the Scottish Government Community Safety Steering Group.
- Police Scotland has committed to a ‘campus cop’ resource on site to challenge constructively attitudes to authority and support anti-violence work, both in the establishment and in the community on release. A range of interventions is being developed and deployed on site:
 - restorative practices for conflict resolution
 - anti-violence and anti-bullying workbooks
 - group work for bullying and knife crime
 - associated staff training
- SPS is undertaking development work on issues such as domestic abuse and those types of crime which undermine equality and diversity in society, as well as creating links between the community safety and parenting teams on site to support integrated learning.
- Research is being taken forward on a number of issues to inform understanding of the needs of young men. Many of the underlying issues which lead to violent behaviour, such as trauma, bereavement, and learning difficulty, are being addressed through education-based interventions and assessment. Speech and language therapy resources from NHS have been increased and a review of the wider regime is in progress.
- Arrangements have been put in place to reduce the population on-site at Polmont, with a view to each young man having access, where possible, to a room of their own. This is already improving the environment and allowing more intensive staff interaction.
- Following a curriculum review undertaken by Education Scotland, a wide range of additional activities, including those focused on relationship skills and citizenship, is being developed. These include life skills, parenting, peer support and one-to-one support for those who are most disengaged, many of whom also exhibit violent behaviour.
- All staff at Polmont are receiving training, co-delivered with Education Scotland, which focuses on the emotional and social wellbeing of young people and their personal development.

The SPS has now adopted as policy a *Vision for Young People in Custody*,¹²⁷ which sets out medium and longer-term intentions for young people’s learning and development while in custody, based upon individual needs.

127 <http://www.sps.gov.uk/Corporate/Publications/Corporate12.aspx>

4.12 Removal from association and restraint¹²⁸

Removal from association/separation

The SPS recognises that all those in its care are individuals with their own unique needs, and promotes equality by dealing sensitively and appropriately with all those in its care, including children and young people.

In accordance with Rule 95 of The Prisons and Young Offenders Institutions (Scotland) Rules 2011, removal from association is used for the purpose of:

- maintaining good order or discipline
- protecting the interests of any prisoners
- ensuring the safety of other persons and only where there is a clear justifiable reason and for the minimum time necessary

Young people in secure accommodation are never held in solitary confinement. Each unit has its own written policy on the use of single separation/segregation, which is an extreme measure to be taken only when other appropriate measures have been tried and have been unsuccessful. Segregation is never used as punishment and should only be used as a last resort to:

- prevent the young person from significantly injuring themselves or others
- prevent the young person from absconding from the building
- prevent significant damage to property
- calm a potentially disruptive situation

Normally single separation should continue for no longer than three hours in any 24 hour period and for no more than two separate occasions in 24 hours. Statute requires that every use of this practice is recorded and places strict limits on its implementation. During the period of segregation the young person will be monitored at least every 15 minutes.

Restraint

The SPS is committed to providing appropriate, proportionate, effective and safe responses when managing difficult, confrontational and threatening situations. Staff will, wherever possible and practicable, use communication skills and other non-physical techniques to enlist the willing co-operation of prisoners and to seek to de-escalate any challenging situations. The use of force will only be considered when all other means have been exhausted or are deemed unlikely to succeed.

The SPS does not use spit hoods. In all cases where force has been used a 'Use of Force Report' is required to be completed and submitted. SPS Heads of Operations ensure that there is a robust recording process in place at each establishment in order to accurately review situations where force has been

128 UNCAT (2013), para 28; CRC (2016), para 40, 79

used. Where necessary, the Head of Operations will fully investigate any identified concerns.

Mechanical restraints or spit hoods are not used in secure accommodation services in Scotland. Pain compliance techniques are not part of any training programme used in residential or secure accommodation. Young people in secure care will only be physically restrained by trained care staff when:

- they are behaving in an unsafe or dangerous way
- there is a serious risk of harm to themselves or another person, and
- there is no other effective way of keeping the young person or others safe

If it is necessary to physically restrain a young person they will only be restrained for the shortest time possible, using as little force as necessary. The *Holding Safely* guidance¹²⁹ was amended in 2012 to encourage all secure services to develop clear plans for reducing the use of physical restraint.

The Care Inspectorate is responsible for the regulation of secure care services for children and young people in Scotland. It ensures children and young people in these services are kept safe and that their rights to privacy, choice and dignity are promoted. It carries out inspections of secure units, including restraint procedures; gathers information on all incidents of a child being restrained; and reviews selected cases to ensure staff carrying out the restraint are fully trained and best practice followed.

The Scottish Government has requested that the Care Inspectorate gather information regarding restraint practice in secure units during 2016-17 to inform improvement. In addition, the Inspectorate plans to review its notifications and annual returns information and consider the preparation of new notification guidance for service providers about the recording and reporting of notifications in regard to restraint incidents during 2016-17.

4.13 Mental health detention¹³⁰

Legislative framework

In general, detention in hospital and treatment on an involuntary basis would not be lawful in Scotland, but is authorised in restricted circumstances under the Mental Health (Care and Treatment) (Scotland) Act 2003,¹³¹ which provides the framework for detention in hospital and compulsory medical treatment for those with a medical disorder; and the Adults with Incapacity (Scotland) Act 2000,¹³² which provides for medical treatment to safeguard or promote the physical or mental health of an adult who is unable to consent (see section 4.14).

129 <http://www.gov.scot/Topics/People/Young-People/protecting/lac/residentialcare/Publications/Holding-Safely>

130 UNCAT (2013), para 31; CRC (2016), para 61

131 <http://www.legislation.gov.uk/asp/2003/13/contents>

132 <http://www.legislation.gov.uk/asp/2000/4/contents>

The 2003 Act is underpinned by a set of principles and also contains various measures to protect the rights of those detained. The bulk of the provisions of the Mental Health (Scotland) Act 2015¹³³ came into force on 30 June 2017.

A person can only be detained if strict criteria are met (including that they have a mental disorder; that the person's decision-making ability is significantly impaired by the mental disorder; that without treatment there is a significant risk to the person or others; and that the order or certificate is necessary). Any civil order longer than 28 days must be granted by the independent Mental Health Tribunal for Scotland or the courts, and must be regularly reviewed.

Rights contained in the 2003 Act include making an advance statement, access to independent advocacy, and appointing a 'named person' (often a family member or carer) to represent the person's interests. Implementation of the 2015 Act included promotion of independent advocacy and advance statements, alongside a rights-based approach in the statutory guidance on the use of mental health legislation.

Anyone carrying out functions under the 2003 Act must have regard to certain principles, including having regard to the present and past views and feelings of the patient, the importance of the patient participating as fully as possible, and carrying out functions that involve the minimum restriction on the freedom of the patient as is necessary. There are additional safeguards with regard to certain treatments and additional provisions relating to children. Treatment can only be given without consent under certain strict circumstances, with certain treatments subject to additional safeguards.

Child and adolescent mental health services (CAMHS)

In relation to detention of children, see sections 4.4 and 4.11.

Children and young people referred to CAMHS will generally be treated in the community, however there may be times when it is necessary to admit them to hospital for specialist treatment. Should this be the case they would be admitted to one of the three regional CAMHS inpatient units. For adolescent inpatient beds, the boards collaborate in three regions:

Unit	No. of beds	Area served
Royal Edinburgh Hospital	12	South East of Scotland: Lothian, Fife and Borders
Skye House, Stobhill, Glasgow	24	West of Scotland: Greater Glasgow and Clyde, Forth Valley, Lanarkshire, Dumfries and Galloway, Ayrshire and Arran
Dudhope House, Dundee	12 (increased from 6 in May 2015)	North of Scotland: Tayside, Grampian, Highland, Shetland, Orkney and Western Isles

133 <http://www.legislation.gov.uk/asp/2015/9/contents/enacted>

The clear expectation is that children and young people requiring psychiatric admission would be admitted to a Child and Adolescent Mental Health (CAMH) specialist unit. However, it may be clinically judged to be more appropriate to admit young people to adult wards, or the young person and their family may have a preference for admission to a local adult ward. There would always be a specific individual reason for this, for example the immediate unavailability of a specialist CAMH bed, or a clinical decision made with the patient and appropriate family members that a local adult bed might be better in rural situations to facilitate ongoing family contact. All admissions would be discussed with patients and appropriate family members prior to admission, ensuring the child and their carer's views form part of a broader consideration of the child or young person's best interests. Consideration would also be given to whether the child or young person is old and mature enough to manage in an adult ward. Most such admissions will be young people aged 16 or 17. The use of adult beds for CAMHS admissions has fallen.

Monitoring

Mental health and incapacity legislation confers statutory duties on the independent MWC to fulfill its safeguarding role. Its work, which includes investigation, monitoring and visiting, is intended to ensure that care, treatment and support are lawful, respect rights and promote the welfare of individuals with mental illness, learning disability and related conditions. Service users and carers are represented on the MWC Board and also act as visitors.

4.14 Adults with incapacity

The Adults with Incapacity (Scotland) Act 2000 contains provisions covering the personal welfare and financial affairs of adults who lack capacity to make some or all decisions on their own behalf, and provides safeguards through the roles and functions of the statutory bodies involved.

The 2000 Act sets out arrangements for guardianship orders and intervention orders made by the Sheriff Court, which provide legal authority for someone to act on behalf of the person with impaired capacity, to safeguard and promote their interests. Authority to make welfare decisions can include placement in care settings if specified.

The 2000 Act allows for a person with capacity to grant a power of attorney to someone they trust in the event of loss of capacity and, if they are given health care decision-making powers, they can give consent for medical treatment. Where there is no proxy, a doctor is authorised to provide medical treatment in that specific instance, subject to certain safeguards.

Following the Scottish Law Commission's review of the 2000 Act on compliance with Article 5 of ECHR, specifically in relation to deprivation of liberty in hospital and care home settings, the Scottish Government consulted on the Commission's recommendations and published an analysis of the responses. Work in the longer term is being undertaken with stakeholders on these and wider issues around guardianship, and consideration of circumstances in which supported decision-making can be promoted. Further public consultation will follow in early 2018.

Freedoms

“ Let us remember: One book, one pen, one child, and one teacher can change the world.”

Malala Yousafzai



5. FREEDOMS

5.1 Family life¹³⁴

UPR recommendations¹³⁵

- Provide protection to the family as a natural and fundamental unit in society

Baby boxes

The Scottish Government is determined that every child, regardless of their circumstances, should get the best start in life, and Scotland's Baby Box ensures that families have access to essential items in the first few months of a child's life. It has been awarded British Safety Standard accreditation as a crib for domestic use and, as well as health care items for babies, contains breast pads and maternity towels.

The registration process for Scotland's Baby Box offers health professionals the opportunity to engage with parents at timely intervals throughout pregnancy. This is an important step in encouraging the small number of expectant mothers who do not currently register for ante natal services to do so, and to receive appropriate support and health care for themselves and their baby. The Baby Box also provides health professionals with a timely opportunity to introduce expectant parents to a wide range of health promotion information, such as adopting healthy eating and lifestyle habits, smoking cessation and carbon monoxide monitoring, as well as 'no alcohol' messaging.

Registration for Scotland Baby Box opened on 15 June 2017, with over 10,000 registrations to date. Delivery began on 15 August and over 3,000 boxes have already been despatched. From 1 November, Baby Boxes will be delivered at least four weeks before the baby's due date.

Health visitors

To support and improve family life, the Scottish Government is investing resources into the early years and has committed to increase the number of health visitors by 500 by the end of 2018. There is strong evidence that health visitors can have a positive effect on child and family health, playing a pivotal public health role in relation to individuals, families and communities.

Recognising the need for transformational change to health visiting services to enhance the quality of care and improve outcomes for families, in October 2015 the Scottish Government published a Universal Health Visiting Pathway,¹³⁶ along with a set of tools and resources to support delivery. The pathway integrates the work of health visitors with children's services to create a joined up whole-system, consistent approach across all agencies, delivered in the context of the duties and provisions set out in *Getting It Right For Every Child* and the CYP Act 2014. The report *Evidence in support of the Universal Health Visiting Pathway*

134 ICSECR (2016), para 44; CRC (2016), para 51, 53, 73; CEDAW (2013), para 47, 49

135 134.152

136 <http://www.gov.scot/Publications/2015/10/9697>

(May 2015)¹³⁷ reported significant benefits, including mothers having a more relaxed experience of parenting, being able to use health services appropriately (reduced use of emergency or GP care), and improvements in the home environment. Full rollout of the pathway is expected by 2020.

Early learning and childcare

It is widely acknowledged that the provision of universally accessible and high quality early learning and childcare enriches children with skills and confidence to carry into, and further develop throughout school, and is a cornerstone for closing the poverty-related attainment gap. The Scottish Government will deliver a transformative change in the early learning and childcare (ELC) provision in Scotland by almost doubling the funded entitlement to up to 1,140 hours per year by 2020 for all three and four year olds and eligible two year olds.

The Children and Young People (Scotland) Act 2014 (CYP Act) increased the annual entitlement from 475 to 600 hours for all three and four year olds, and introduced provision for eligible two year olds. To support implementation, £969.2 million has been committed to local authorities over six years (from 2014-15).

The CYP Act extended provision to those two year olds who were looked after (including those in kinship care) and those whose parents were in receipt of out of work benefits. From August 2015, provision for two year olds was extended to include families receiving some in-work benefits, with eligibility now estimated to capture around a quarter of the two year old population. Once a child becomes entitled to ELC, they will stay entitled even if their parent becomes employed, their income increases or their situation with a parent or carers changes.

Recognising that access to funded provision can be problematic for some families, the CYP Act also made it a legal requirement for local authorities to increase flexibility and choice in how funded hours are offered, informed by ongoing consultation with parents.

The Scottish Government's vision for the expansion was set out in *A Blueprint for 2020* consultation in October 2016, underpinned by the following principles:

- **Quality** - the expansion will ensure a high quality experience for all children, which complements other early years and educational activity to close the attainment gap, and recognises the value of those entrusted to give our children the best start in life
- **Flexibility** - the expansion will support parents and carers in work, training or study, through greater choice of provider and patterns of provision that are better aligned with working patterns whilst delivering this in a way that ensures a high quality experience for the child

137 <http://www.healthscotland.com/documents/27638.aspx>

- **Accessibility** - ELC capacity is sufficient and is as conveniently geographically located as possible - particularly in areas of higher deprivation and in rural communities - to support families and enable parents and carers to work, train and study, while also appropriately meeting the needs of children who require additional support and parents who request ELC through the medium of Gaelic
- **Affordability** - the expansion will increase access to affordable ELC, which will help to reduce barriers to participating in the labour market that parents and carers face

A Blueprint for 2020 Action Plan for 2017-18¹³⁸ commits to 31 actions to ensure that the expansion of ELC is rooted in a high quality experience for children and to support delivery partners in building additional capacity. The Scottish Government has committed to publishing annual action plans and themed progress reports up to 2020.

The Action Plan highlighted that the Scottish Government's approach to delivering funded ELC is fundamentally provider neutral. This means that a model will be created, by 2020, which prioritises the settings that are best placed to deliver quality outcomes for children regardless of which sector they are provided by. This approach, which will be built upon a Funding Follows the Child model, will safeguard quality provision of ELC while offering parents a greater choice of settings, and ensuring financially sustainable provision across all sectors.

Local authorities will continue to play a vital role in delivering the funded ELC entitlement – as the primary guarantors of quality and the key enablers of flexibility and choice. Local authorities will retain statutory responsibility for ensuring that funded ELC entitlement is available to all eligible children in their area, and will receive funding from the Scottish Government to enable them to discharge this responsibility.

The Scottish Government is committed to ensuring that a career in ELC is an attractive and long-term option. Public sector staff working in ELC in Scotland already receive the Living Wage, but most of those working in the private and third sectors do not. The Scottish Government wants to see all childcare workers delivering the funded entitlement paid the Living Wage from the introduction of the expanded entitlement in 2020. The Scottish Government is committed to providing sufficient additional funding to allow local authorities to agree rates with funded providers in the private and third sectors that enables them to pay the Living Wage to care workers providing the funded entitlement.

138 <http://www.gov.scot/Publications/2017/03/8937>

Improving children's outcomes

The Scottish Government will publish a Quality Action Plan by the end of October 2017 that sets out what more needs to be done to strengthen quality in ELC, and will use this as a driver for improving children's outcomes. The expansion will continue to ensure a high quality experience for all children, supporting positive child development and helping children to develop their physical, cognitive and social skills, including their ability to self-regulate. From the earliest stage the aim is to equip every child with the early speech, language and communications skills and the foundations for numeracy to support their learning and achievement, and ensure that every child has the same chance to succeed.

This learning starts in the home, and ELC provision must be integrated with support for families, in particular in supporting parents and carers to improve and enrich the home learning environment. For example, initiatives such as PlayTalkRead and Bookbug provide support and material to help parents and carers to bond with their children and give them the best start in life, as well as having some fun at the same time. However, for young children who face the greatest disadvantages, additional support may be required to support the ambition to close the attainment gap. That is why the Scottish Government has committed to ensuring that, by 2018, nurseries in Scotland's most deprived areas will benefit from an additional qualified teacher or graduate.

ELC expansion will support the vision, set out in the National Improvement Framework, of an education system that delivers both excellence and equity in equal measure for all children in Scotland. It will complement other early years and educational activity, such as *Getting it right for every child* and the Play Strategy (and accompanying Action Plan), to help those children who stand to benefit the most. It will also make a vital contribution to efforts to make demonstrable progress in closing the attainment gap between the most and the least disadvantaged children during the current parliamentary session, and to substantially eliminate the gap over the next decade.

Strengthening inclusion

ELC provision must ensure equality of access and account for the varying needs of all children. These needs can vary depending on a number of factors, including whether a child is disabled or has additional support needs (ASN), is from an ethnic minority background, lives in a deprived area, or has challenging family circumstances.

The Scottish Government will continue to support implementation of the Additional Support for Learning Act 2004 (as amended) to ensure children's ASN are identified and provided for. That includes those who are identified from birth as having a disability and are brought to the attention of the education authority as needing additional support. The Scottish Government already has plans to revise and improve the statutory guidance on the 2004 Act, in particular by clarifying responsibilities.

Accessibility will be promoted in the design principles for new ELC infrastructure, recognising the impact of good design principles on children with ASN and disabilities, with examples of sensory rooms and space to create relaxed, calm environments for children to be highlighted within the section about use of space.

In March this year, the First Minister announced a new ELC Inclusion Fund to be in place by early 2018. This £2 million fund (over four years) will enable staff to support children with ASN or disabilities. This could cover funding for specialist training for ELC staff, as well as funding for equipment for adaptations, providing sensory areas or establishing equipment banks in local areas.

In addition, the action plan included a commitment to improve the data collected on children with ASN to enhance understanding of the additional support needs of this age group and the support plans in place for them.

Support for parents and carers

Through the Children, Young People and Families Early Intervention Fund, the Scottish Government provides significant funding to organisations that support parents, carers, children and families. This funding enables a wide range of support to be provided, with a particular focus on helping families develop and maintain positive relationships, including supporting parents, children and wider family members experiencing relationship difficulties or conflict. Funding in this area allows organisations such as Relationships Scotland, The Spark, Cyrenians and Mellow Parenting to deliver services including mediation, counselling, child contact centres, parenting programmes and practical resources.

Parental leave and flexible working

Although the legal powers governing shared parental leave and flexible working are currently reserved to the UK Government, the Scottish Government is committed to working with employers, directly and through their representative bodies, to promote and support flexible working. Underpinning this commitment is a recognition that flexible working arrangements are critical to enabling families to spend time together and forge positive relationships. The Scottish Government funds, and is an active member of Family Friendly Working Scotland, working in partnership with Working Families, Parenting Across Scotland and Fathers Network Scotland to support and promote the development of family-friendly workplaces across Scotland.

Recognising the importance of developing and maintaining positive relationships within families, and dealing with conflict when it arises, the Scottish Government provides more than £2 million per year in funding, through the Children, Young People and Families Early Intervention Fund, for organisations that provide counselling, mediation, child contact centres, and a range of high quality resources.

Removal of children from their families

The Scottish Government expects that all professionals dealing with children and their families act in accordance with the *National Guidance for Child Protection in Scotland 2014*¹³⁹. The Guidance outlines that, unless the level of risk posed to the child requires emergency measures to immediately protect that child (sections 351-353 of the Guidance outline emergency legal measures to protect children at risk), procedures to remove a child from its family will only start after extensive efforts to keep the child with the family. Scotland's *Getting it right for every child* approach enshrines the principle of the best interests of the child at the heart of decision making.

A core component of *Getting it right for every child* and the CYP Act 2014 is the Child's Plan (Part 5 of the Act). Within the context of child protection activity, where this plan includes action to address the risk of significant harm, it will incorporate a Child Protection Plan and any meeting to consider such a plan is known as a Child Protection Case Conference (CPCC). CPCCs are a core feature of inter-agency co-operation to protect children and young people. Their primary purpose is to consider whether the child – including an unborn child – is at risk of significant harm and, if so, to review an existing Child's Plan and/or consider a multi-agency action plan to reduce the risk of significant harm.

As the Guidance outlines, in Scotland there are two different ways a local authority can ask to remove a child from its family. If the child is in immediate danger the local authority can ask a Sheriff Court to grant a child protection order (CPO). Otherwise the local authority can refer the case to a children's reporter, who will decide if it is necessary to refer a child to a children's hearing for compulsory measures of supervision, which may include supervision at home, or away from home. The hearing is explicitly charged with determining the course of action that it believes is in the child's best interests, based on the Child's Plan and with input from professionals. The hearing discusses the child's circumstances fully with the child or young person themselves, with the parents and with other relevant representatives and professionals before reaching a decision.

Looked after children

The *Getting It Right For Looked After Children and Young People Strategy*¹⁴⁰ reflects the on-going collaborative work between the Scottish Government, local authorities, professionals, carers, families and children and young people to improve the lives of looked after children and young people. The Scottish Government approach makes clear what children can expect and what the government's responsibilities are concerning children's rights to care and protection where they are looked after or adopted, and their right to have their views heard.

139 <http://www.gov.scot/Resource/0045/00450733.pdf>

140 <http://www.gov.scot/Resource/0048/00489805.pdf>

5.2 Marriage¹⁴¹

The number of marriages and civil partnerships entered into in Scotland by people aged 16 or 17 is low (33 in 2015). The Scottish Government has no intention of changing the minimum age of marriage or civil partnership in Scotland, and would have concerns that increasing the marriage age to 18 might remove rights from some people aged 16 or 17 who do wish to marry or enter a civil partnership. In Scotland 16 year olds can vote in some elections and can leave school to work full time and pay taxes, which aligns with the minimum age of marriage and consent. If the age were raised, consideration would need to be given as to whether changes to the age of consent were also required.

The marriage notice form in Scotland¹⁴² already makes clear that couples seeking to marry must be capable of understanding the nature of a marriage ceremony and of consenting to marrying.

5.3 Education¹⁴³

Raising attainment and closing the attainment gap

The Scottish Government is committed to delivering excellence and equity in Scottish education through a focus on raising attainment for all children and young people, and closing the gap in attainment between Scotland's least and most disadvantaged young people. The *National Improvement Framework and Improvement Plan*¹⁴⁴ is designed to help deliver the twin aims of excellence and equity, galvanising efforts and aligning collective improvement activities across all partners in the education system to address the key priorities of:

- improvement in attainment, particularly in literacy and numeracy
- closing the attainment gap between the most and least disadvantaged children
- improvement in children and young people's health and wellbeing
- improvement in employability skills and sustained, positive school leaver destinations for young people

In support of the National Improvement Framework, the Scottish Attainment Challenge was launched in 2015 to help achieve equity in educational outcomes, with a particular focus on closing the poverty-related attainment gap. The Challenge prioritises improvements in literacy, numeracy, health and well-being of those children adversely affected by poverty in Scotland's primary and secondary schools, and builds on the range of initiatives and programmes already in place to raise attainment and reduce inequity for children across Scotland.

141 CRC (2016), para 20, 47

142 <https://www.nrscotland.gov.uk/files/registration/m10-notes-and-m10-form-revised-october-2015.pdf>

143 ICESCR (2016), para 64; CRC (2016), para 36, 49, 57, 65, 73; CEDAW (2013), para 45; CERD (2016), para 35

144 <http://www.gov.scot/Publications/2016/12/8072>

The Attainment Scotland Fund (the Fund) will provide £750 million over the current parliamentary session to make demonstrable progress in closing the poverty-related attainment gap. In 2017-18 it will allocate:

- up to £50 million to provide targeted support to specific Scottish Attainment Challenge authorities, children and young people living in communities affected by high levels of deprivation, as well as a number of national programmes, including staffing supply and capacity, professional learning and school leadership
- £120 million additional Pupil Equity Funding directly to schools¹⁴⁵ to deliver activities and interventions that support children and young people affected by poverty (based on the number of children in P1-S3 known to be eligible to receive free school meals). It is available for head teachers to use for additional staffing or resources that they consider will help raise attainment¹⁴⁶

There is evidence emerging through the Fund that action is being taken to ensure that children and young people in equality groups are provided with the support they need to benefit from the activities and interventions in place. For example, investment in speech and language development, additional support for speakers of English as an additional language, and/or funding for educational psychologists, counsellors and nurture bases.

A number of local authorities and schools are using some of the Fund for parental engagement interventions and activities, such as home link workers, family learning programmes, parent workshops, breakfast clubs and book groups. The Scottish Government is working with the nine local authorities with the greatest concentration of primary-age children living in the 20% most deprived areas in Scotland to develop progressive family learning programmes by the end of 2017. Support will then be provided to roll out such programmes in remaining local authorities in 2018.

Evidence is showing local improvements in outcomes for pupils from the most deprived areas, and work is also on-going to scale up local successes and spread good practice.

Through the Children and Young People Improvement Collaborative (CYPIC), the Scottish Government is supporting local authorities, health boards and third sector organisations to apply quality improvement (QI) to their work. Embedding QI across public services enables practitioners, teachers and other professionals to test, measure, evaluate and implement more effective and responsive ways of working with the resources they have available. This is helping to improve life chances, close the poverty-related attainment gap and ensure that children and young people receive support for their health, wellbeing and learning wherever they live.

145 [Pupil Equity Funding – School Level Allocations, 2017/18](#)

146 [Pupil Equity Funding - National Operational Guidance, 2017](#)

Diversity and equality in schools

The Equality Act 2010 places duties on responsible bodies (local authorities, managers of independent and grant aided schools) to actively deal with inequality, harassment or victimisation of pupils on the basis, or a perceived basis, of their religion or belief, race, sex (gender), disability, sexual orientation, pregnancy or maternity.

In the 2013 *Equality Outcomes and Mainstreaming Report*¹⁴⁷ the issue of inequality in education was framed around three protected characteristics, which evidence showed needed to be priorities: disability, sex (gender) i.e. boys underperforming compared to girls, and race, specifically Gypsy/Travellers. The religion of pupils is not recorded. Bullying was also identified as a key issue that impacts on educational experience and outcomes. The *Equality Outcomes and Mainstreaming Reports* in 2015¹⁴⁸ and 2017¹⁴⁹ reported on progress, including how equality is being mainstreamed in education policies.

In recent years the Scottish Government has undertaken a broad range of activity to address inequalities in the education of children and young people. Some of these are specific to children who are disadvantaged because of a protected characteristic; some are aimed at children who are disadvantaged for another reason, such as poverty; and some relate to before a child even starts school. All are aimed at achieving equity and improving educational outcomes for children and young people. Further information about these initiatives can be found in the 2017 *Equality Outcomes and Mainstreaming Report*.

Inclusion and Additional Support for Learning

Reflecting language used in the CRC, section 1 of the Standards in Scotland's Schools etc. Act 2000¹⁵⁰ requires education authorities to ensure that education is directed to the development of the personality, talents and mental and physical abilities of the child or young person to their fullest potential. Separately, an education authority has a duty under the Education (Scotland) Act 1980 to secure adequate and efficient provision of education in their area, regardless of whether the children are nationals of the UK or not.

The Scottish education system is recognised internationally for its inclusive approach. There is a presumption that the education of all children should be provided in mainstream schools, with some specified exceptions - what is key is meeting the individual needs of children and young people. The Education (Additional Support for Learning) (Scotland) Act 2004 (as amended)¹⁵¹ requires education authorities to identify, provide for, and review the ASN of their pupils. Additional support may be required to overcome needs, short and long-term, arising from learning environment, health or disability, family circumstances, or

147 <https://beta.gov.scot/publications/equality-outcomes-mainstreaming-report/>

148 <https://beta.gov.scot/publications/equality-outcomes-mainstreaming-report-2015/>

149 <https://beta.gov.scot/publications/equality-outcomes-mainstreaming-report-2017/>

150 <http://www.legislation.gov.uk/asp/2000/6/contents>

151 <http://www.legislation.gov.uk/asp/2004/4/contents>

social and emotional factors. Ninety five per cent of children with ASN learn in mainstream schools, and only 1% of all pupils learn in a special school. Those who benefit from the Scottish Government's additional support approach include children who speak English as an additional language, children who experience interrupted education and children with a disability. The Scottish Government is currently reviewing the guidance available on presumption of mainstreaming. It will restate and reframe the necessity of inclusion in Scottish schools, and will be accompanied by guidance on inclusive practice and how to create an inclusive school environment for all pupils. This same focus on inclusion will be applied to special schools and to specialist units to ensure that all education provision is inclusive.

A specific quality indicator on ensuring wellbeing, equality and inclusion has been included in the national self-evaluation tools, *How Good is Our Early Learning and Childcare?*¹⁵² *How Good is Our School?*¹⁵³ and *How Good is our College?*¹⁵⁴

Support for children and young people with disabilities

In addition to responsibilities under the Equality Act 2010, the Accessibility Strategies and Pupils Educational Records Act requires education authorities to prepare and produce accessibility strategies. In support of the implementation of these duties the Scottish Government published revised guidance on Accessibility Strategies in 2014.¹⁵⁵ Accessibility strategies aim to ensure that disabled children are supported so that they are able to access the curriculum, school information and school buildings.

A recently-launched refreshed dyslexia toolkit¹⁵⁶ supports those working with pupils with dyslexia to ensure effective identification and support, and the Scottish Government also launched the first module of training for teachers and support staff in schools.

In addition, to support those working with pupils with autism in schools, the Scottish Government has funded the development and publication of the Autism Toolbox¹⁵⁷. This online national tool provides information to support the identification, support and planning of learning for pupils with autism. The Toolbox provides a forum for continually updating and disseminating good practice.

152 <https://education.gov.scot/improvement/Pages/frwk1hgioearlyyears.aspx>

153 <https://education.gov.scot/improvement/frwk2hgios>

154 <https://education.gov.scot/improvement/Documents/frwk18-how-good-is-our-college151216.pdf>

155 <http://www.gov.scot/Publications/2014/10/8011>

156 <https://education.gov.scot/improvement/inc35addressing-dyslexia-toolkit>

157 www.autismtoolbox.co.uk/

Future activity to support equality, diversity and inclusion in schools includes:

- in response to recommendations of the Doran Review, the National Commissioning Group will publish a ten year 'Strategy for the Education Provision for Children and Young People with Complex Additional Support Needs' - the draft strategy is currently open to consultation¹⁵⁸
- following consultation, publishing new guidance for schools and education authorities on:
 - 'Improving educational outcomes for children and young people from travelling cultures'¹⁵⁹
 - 'Healthcare needs in schools'¹⁶⁰
 - the presumption of mainstreaming
 - a refreshed 'Supporting children's learning code of practice'¹⁶¹ which is statutory guidance on additional support for learning
- using findings from the latest Behaviour in Scottish Schools Research (BISSR) to inform policy development - the latest research has been developed to provide a richer picture of relationship and behaviour issues related to a protected characteristic, in the context of abuse towards another pupil, and abuse toward a member of staff by a pupil
- responding to the Education and Culture Committee's recommendations on the attainment of pupils with sensory impairment
- strengthening, modernising and extending the Parental Involvement Act 2006 following the National Parent Forum review¹⁶²

Anti-bullying

The Scottish Government is committed to refreshing the *National Approach to Anti-Bullying for Scotland's Children and Young People*¹⁶³ to ensure that it remains current. *Respect for All: National Approach to Anti-Bullying for Scotland's Children and Young People* will help everyone involved in the lives of children and young people to identify and address bullying, including racist, homophobic and abusive behaviour, whether it happens online or offline.

Following the Scottish Parliament EHRC's evidence session on bullying and harassment of children and young people in schools, the Deputy First Minister agreed to put *Respect for All* on hold to allow meaningful input from the Committee. The Scottish Government has now received the Committee's report, will respond to its recommendations, and publish the refreshed guidance later in 2017.

158 <https://consult.scotland.gov.uk/support-and-wellbeing/complex-additional-support-needs-2017-2026/>

159 <https://consult.scotland.gov.uk/support-and-wellbeing/improving-educational-outcomes-for-children/>

160 <https://consult.scotland.gov.uk/supporting-learners/guidance-on-healthcare-needs-in-schools/>

161 <https://consult.scotland.gov.uk/supporting-learners/code-of-practice/>

162 <http://www.nfps.org.uk/category/review-of-parental-involvement-act/>

163 <http://www.gov.scot/Publications/2010/11/12120420/0>

The Scottish Government will continue to wholly fund respectme, a national anti-bullying service, to build confidence and capacity to address all types of bullying effectively, aligned to the National Approach.

Human rights

The Scottish Government supports schools becoming UNICEF rights respecting schools.¹⁶⁴ Each school should have the flexibility to determine how to do this. The resource *Recognising and Realising Children's Rights*¹⁶⁵ is available on the Education Scotland website, the National Improvement Hub.

Exclusion

The Scottish Government published its refreshed guidance, *Included, Engaged and Involved Part 2: A Positive Approach to Preventing and Managing School Exclusions*, in June 2017.¹⁶⁶ The guidance works on the principle that exclusion should only be used as a last resort, where it is a proportionate response, and where there is no alternative.

When considering exclusion, the guidance states it is important to take the child or young person's views into account and the views of their parents. The refreshed guidance also states that all exclusions from school must be formally recorded and children or young people cannot be 'informally excluded' or sent home from school to 'cool off'. This is a legal obligation, provided for by the Schools General (Scotland) Regulations 1975, which stipulate the school must notify the pupil and/or parent in writing of the reasons for their exclusion and provide details of how to appeal against an exclusion. The right of appeal against exclusion is already provided for in legislation, under both the Education (Scotland) Act 1980 and the Standards in Scotland's Schools etc. Act 2000.

Under section 14(3) of the Education Scotland Act 1980, a child or young person still has the right to receive education during a period of exclusion from school. This legislation places a duty on education authorities, without undue delay, to: provide school education for the excluded pupil in a school managed by them; make arrangements for the excluded pupil to receive such education in any other school, the managers of which are willing to take the excluded pupil; or make special arrangements for the excluded pupil to receive education at a place other than at an educational establishment (this could include in a library or community centre, or at home). This is referred to in section 8 of the refreshed guidance on preventing and managing school exclusions.

164 <https://www.unicef.org/rights-respecting-schools/>

165 <https://www.education.gov.scot/improvement/inc50recognising-and-realising-childrens-rights>

166 <http://www.gov.scot/Publications/2017/06/8877>

Where a child or young person has ASN, any decision to exclude them must take into account the local authority's duties under both the Education (Additional Support for Learning) (Scotland) Act 2004 (as amended) and the Equality Act 2010. The 2004 Act also provides that the education authority must take all reasonable steps to ensure that appropriate provision can be made to meet the child or young person's ASN during the period of exclusion.

Seclusion of a child or young person within a separate space should only be used as a last resort to ensure the safety of a child or young person, or others. The use of this form of physical intervention should be included in an agreed plan for the individual. Where seclusion is used it must be in a place that is safe; it should be managed under supervision; it should take into account the additional support needs of the child or young person; and it should be time limited. The rights of all children and young people must be a key consideration where physical intervention is being considered.

Gypsy/Travellers and Roma

Gypsy/Travellers, Roma, and other Traveller students are entitled to support when they need it under the Education (Additional Support for Learning) (Scotland) Act 2004 (as amended). Leavers in the 'Gypsy/Travellers' and 'other' categories perform worse than the average in terms of attainment and positive destinations, and these groups experience high rates of exclusion and relatively low attendance rates throughout the school journey.

The Scottish Government has worked with stakeholders to develop guidance for schools and education authorities on *Improving educational outcomes for children and young people from travelling cultures*.¹⁶⁷ The recent consultation on the draft guidance sought and received input from, and on behalf of, different travelling communities. The guidance, which will be published later in 2017, recognises the impact of bullying, exclusion and absences, and provides guidance on how schools, education authorities and others can support Traveller children and young people and their families to engage in school education.

Relationships, sexual health and parenthood education

Relationships, sexual health and parenthood (RSHP) education is an integral part of the health and wellbeing area of the school curriculum in Scotland. The curriculum is not statutory but it is expected that all schools will deliver on this subject in line with the experiences and outcomes detailed in Curriculum for Excellence (CfE), and it is for local authorities and schools to decide how to deliver the curriculum based on local needs and circumstances.

167 <https://consult.scotland.gov.uk/support-and-wellbeing/improving-educational-outcomes-for-children/>

Health and Wellbeing (along with numeracy and literacy) is described as the ‘responsibility of all’, which means everyone in the school system has a responsibility to teach children and young people about health and wellbeing (physical, social, mental and emotional), including food and health skills (diet, nutrition and hygiene). It supports children and young people to leave school equipped with the knowledge, skills and experience they need to be able to take responsibility for their own health and wellbeing.

RSHP education is intended to enable children and young people to build positive relationships as they grow older and should present facts in an objective, balanced and sensitive manner within a framework of sound values and an awareness of the law on sexual behaviour.

Learning about RSHP education begins early on in primary school and continues up to S4-S6. Schools will equip young people with information on a wide range of issues, depending on their age and stage. They will be encouraged to discuss these subjects with their peers and parents, to help them gain knowledge, and the skills to become confident in making healthy and safe lifestyle decisions for themselves.

The Scottish Government asks teachers to work closely with parents in the delivery of RSHP education by discussing proposed lessons and resources with them in advance. If parents or carers feel that the content is not appropriate, they can withdraw a primary school-aged child from all, or part of a planned programme of lessons, and arrangements should be made for the child to have alternative positive educational provision.

The Scottish Government is committed to working with the Time for Inclusive Education (TIE) campaign “to promote an inclusive approach to sex and relationships education.” This work will seek to take forward TIE’s pledges and will include considering whether legislation is required for schools to be proactive in tackling homophobia, biphobia and transphobia, as well as recording specific incidents of homophobic, biphobic and transphobic bullying in schools.

The Scottish Government is also committed to undertaking a national review of Personal and Social Education (PSE) and the role of guidance in local authority schools, and also a review of services for counselling and their evidence base for children and young people. PSE is a taught subject that covers aspects of planning for choices and changes, substance misuse, relationships, sexual health and parenthood, in addition to aspects of physical activity, sport and health.

Religious observance and religious education

Religious and Moral Education is one of the eight curriculum areas, and the experiences and outcomes help children and young people to explore the world’s major religions and views which are independent of religious belief, and to be challenged by these different beliefs and values.

There is no legal requirement in Scotland for schools to “hold acts of collective worship.” instead the terms ‘Religious Observance’ (RO) or ‘Time for Reflection’ are used in statute and guidance. Education Scotland guidance on RO (Time for Reflection), which was developed in collaboration with stakeholders, explains how effective Religious Observance may take a variety of forms and need not include worship at all.

On 14 September 2016 the Humanist Society Scotland served a petition for judicial review on the Scottish Ministers to challenge certain aspects of the Scottish Government’s position on RO. The petition was narrowed in scope, with the remaining point relating to a request that Scottish Government guidance on RO make clear mention of children’s rights in any decisions about withdrawing. The Court granted a further motion to sest the Judicial Review action for three months to March 2017 and the Scottish Government carried out a consultation process with a small number of stakeholders - the consultation period ran until 24 February 2017.

While there is currently no legal right for pupils to remove themselves from RO, the flexible approach to learning and teaching afforded by CfE encourages schools to discuss options with both parents and their children, including in relation to a decision to withdraw from RO. Listening to the views of young people themselves on all aspects of education is very important, as the Scottish Government has clearly recognised through its approach in the CYP Act 2014 and the current Education Governance Review.

Revised guidance was issued on 27 March 2017.¹⁶⁸ The main revision was the importance of considering the views of children and young people in decisions about exercising the parental right of withdrawal from Religious Observance. The petition for judicial review has been formally dismissed with no expenses being due to or by either party.

Future activity

On 15 June 2017 the Scottish Government published *Education Governance: Next Steps – Empowering Our Teachers, Parents and Communities to Deliver Excellence and Equity for Our Children – An executive summary*.¹⁶⁹ The paper sets out work to fully deliver bold but necessary reform to Scottish education in order to drive improvement and enable Scotland’s education system to realise excellence and equity for all.

The Scottish Government will continue to progress actions in the National Improvement Plan¹⁷⁰ and will monitor progress against a revised equality outcome for education for the period 2017-2021:

“Within the longer-term outcome that every child and young person should thrive and have the best opportunity to succeed regardless of their social circumstances or additional needs, there will be progress by 2021 in the educational experience of those for which evidence indicates their success is impacted negatively due to a protected characteristic.”

168 <http://www.gov.scot/Resource/0051/00516155.pdf>

169 <http://www.gov.scot/Publications/2017/06/7994>

170 <http://www.gov.scot/Topics/Education/Schools/NationalImprovementFramework>

Post-school transition and further education

The 2004 Act requires that education authorities plan for transition to post-school no later than one year in advance of the transition for pupils with ASN who require support with transition. This means that transition planning would begin at its earliest when the pupil is 14 years old. The statutory code of practice which guides authorities in these duties is being updated and has recently been subject to public consultation.

For leavers that have been assessed or declared disabled there have been continued improvements in attainment and initial destinations. Figures show that, since 2011, the percentage of leavers attaining one or more SCQF level 4 has increased faster than for non-disabled leavers, and the percentage in positive initial destinations has improved at about the same rate as for other leavers.

Nearly 17% of all learning hours were delivered to students with a declared disability in 2015-16 (an increase of 0.8% since 2014-15). The Scottish Government has continued to work closely with the Scottish Funding Council (SFC), local authorities, the Students Awards Agency for Scotland (SAAS) and the college sector to ensure that further education funding and student support mechanisms are designed to best meet the needs of students with ASN. For example, the (non-income assessed) Additional Support Needs for Learning Allowance and the 'Access and Inclusion' fund.

The Scottish Government is committed to doing more to ensure support is equitable and fair for further (and higher) education students, particularly the most vulnerable, and is undertaking a comprehensive review with an independent chair.¹⁷¹

The Scottish Government has continued a programme of work under *Developing the Young Workforce – Scotland's Youth Employment Strategy*¹⁷² to address a number of recommendations relating to equality issues, with a focus on gender, race, disability and care leavers, in education and employment. The *Developing the Young Workforce 2nd Annual Report* (December 2016)¹⁷³ noted significant progress, including work around the SFC's *Gender Action Plan* to address, linking to schools, gender imbalances in colleges and higher education; and Skills Development Scotland's *Equalities Action Plan* to support more young people from diverse backgrounds to take up a Modern Apprenticeship. There has been good progress around further education:

- In 2015-16 women accounted for 51% of college enrolments
- the number of women studying full-time courses has increased by 13% since 2006-7
- the SFC is addressing gender imbalance on college courses, in line with the recommendations of the Commission for Developing Scotland's Young Workforce and as part of its gender action plan

171 <http://www.gov.scot/Topics/Education/UniversitiesColleges/studentsupportreview>

172 <http://www.gov.scot/Publications/2014/12/7750>

173 <http://www.gov.scot/Topics/Education/developingtheyoungworkforce/annualreport2015-16>

- nearly 17% of FTE college places were from Scotland's 10% most deprived areas in 2015-16, and over 30% came from the 20% most deprived areas
- six per cent of all college learning hours in 2015-16 were delivered to minority ethnic students (up from 5.6% in 2014-15 and the highest on record)
 - higher than their proportion of the population (4% according to the 2011 Scottish Census)
- in 2015-16, 71.8% of minority ethnic students successfully completed college courses lasting 160 hours or more (up from 70.2% in 2014-15), compared to 69% for all enrolments
- The 2017-18 budget of over £107 million in college bursaries, childcare and discretionary funds is a real-terms increase of 32% since 2006-7

5.4 Higher education¹⁷⁴

Believing that access to higher education should be based on the ability to learn and not the ability to pay, the Scottish Government pays tuition fees for eligible full-time Scottish domiciled and EU students studying their first Higher National Certificate/Diploma or undergraduate degree at Scottish higher education (HE) institutions. These students are also eligible to access free funded university places.

Bursaries and student loans are available to ensure that Scottish-domiciled HE students are able to support themselves, and a minimum income guarantee provides financial living support for the poorest households. In October 2016 the Scottish Government launched a comprehensive review of student funding for both Further (FE) and Higher Education to ensure it is fair and equitable to students throughout their learner journey. The review will report in Autumn 2017.

More Scots are being accepted through the Universities and Colleges Admissions Service (UCAS) to attend university than ever before. Scottish domiciled full-time first degree university entrants rose 12% between 2006-7 and 2015-16, from 25,790 to 28,770.

The Scottish Government's ambition is that every child, regardless of socio-economic background, should have an equal chance of entering university. Latest figures show a 1.1% increase in entry rates for 18-year olds from the 20% most deprived areas in Scotland. The entry rate for this group is the highest on record (10.9%) and is, proportionately, 51% higher than in 2006. The Scottish Government is investing more than £51 million each year to support approximately 7,000 additional places for access and articulation from college, and is working with stakeholders to implement the recommendations of the Commission on Widening Access,¹⁷⁵ which include stretching national and institutional targets.

174 ICESCR (2016), para 66

175 <http://www.gov.scot/Resource/0049/00496619.pdf>

5.5 Right to vote and take part in government¹⁷⁶

UPR recommendations¹⁷⁷

- Revoke the blanket ban on prisoners' right to vote in order to comply with the rulings of international courts.

Prisoner voting

The Scotland Act 2016 devolved responsibility for the franchise for Scottish Parliament elections, making it necessary for the Scottish Parliament to consider the issue of prisoner voting. It would be for the Scottish Parliament as a whole to consider prisoner voting but the Scottish Government has not brought forward any proposals on the issue.

On 7 September 2017, the Parliament's Equalities and Human Rights Committee heard evidence on prisoner voting from a wide range of stakeholders, including justice organisations and bodies involved in the administration of elections. The Committee has agreed to hold another evidence session on the topic and to write to the Scottish Government to enquire about the forthcoming consultation. The Committee minute notes that once such views have been received it will "consider what further action, if any, it wished to take on this issue."

The Scottish Government will consider the Committee's findings and take forward any necessary action.

Voting age

The Scottish independence referendum in 2014 was the first occasion at which all eligible 16 and 17-year olds were able to vote in a national electoral event. The Scottish Elections (Reduction of Voting Age) Act 2015¹⁷⁸ lowered the voting age to 16 for elections to the Scottish Parliament and local government elections in Scotland. This allowed 16 and 17-year olds to vote in the 2016 Scottish Parliament election and the May 2017 local government elections.

In Scottish schools, political literacy is central to citizenship education. It is the particular combination of attributes and capabilities, skills, knowledge and understanding that helps learners to become responsible citizens and to participate in society's decision-making processes. Political literacy enables young people, through discussion and debate, and developing knowledge and understanding, to make informed choices about the kind of society they want to live in. Skills in discussion are developed in everyday situations so that children and young people learn to respect, value and recognise each other's views, and develop the attributes, capabilities and skills of political literacy in depth.



176 ICCPR (2015), para 25; CRC (2016), para 33

177 134.161

178 <http://www.legislation.gov.uk/asp/2015/7/contents/enacted>

5.6 Freedom of assembly¹⁷⁹

The Scottish Government is opposed to the use of mosquito anti-loitering devices. It does not believe their use is consistent with its approach to tackling antisocial behaviour, nor is it consistent with the government's desire to promote strong and supportive communities where people's rights are recognised and respected.

To improve understanding of the impact of the device on young people, the Scottish Government has been working with Young Scot and the Scottish Youth Parliament to conduct a survey of young people's experiences of the mosquito device. The Scottish Government will consider the results fully, along with any other evidence, before deciding what steps need to be taken, including any potential changes to legislation.

The Minister for Community Safety and Legal Affairs has written to all local authorities, and other public bodies, reminding them of the Scottish Government's position on the use of mosquito anti-loitering devices.

5.7 Freedom of information

The Scottish Government supports Freedom of Information (FoI) as an essential part of open democratic government and responsive public services. In acknowledgement of its wider commitment to openness and transparency, the Scottish Government has been given pioneer status by the Open Government Partnership and has set out ambitious objectives in its Scottish National Action Plan.¹⁸⁰

The Scottish Government seeks to ensure that FoI legislation remains robust and up-to-date. The purpose of the legislation is clear: a person who requests information from a Scottish public authority that holds it is entitled to be given it by the authority.

Given the constantly changing public service delivery landscape, since 2005 there have been significant legislative updates in respect of coverage, including orders extending scope, for example to multiple arm's length organisations and private prison contractors. The Scottish Government is currently considering responses following consultation on extending coverage to Registered Social Landlords.

In respect of human rights, this is a developing area of case law and the Scottish Government considers all relevant judgements for implications in terms of domestic access to information law.

The Scottish Government is committed to ensuring that its performance in responding to FoI requests is of the highest standard. In addition, it will work with the independent Scottish Information Commissioner and others to review

179 CRC (2016), para 37

180 <https://beta.gov.scot/publications/open-government-partnership-scottish-action-plan/>

the government's approach to accessing information, so as to proactively secure increased openness and transparency in line with international best practice.

The Scottish Government also engages with numerous stakeholder networks, including the Open Government Partnership, which are forums for discussion on all issues relating to openness and transparency, including FoI.

5.8 Freedom of expression¹⁸¹

The Royal Charter on self-regulation of the press, which puts in place a process to implement the recommendations of the Leveson Report, was agreed by the Scottish and UK Governments, and was unanimously passed in the Scottish Parliament and by all the major parties at Westminster. The Scottish Government is engaging with UK Government counterparts on implementation of the Royal Charter and is happy to engage with the Scottish press and other stakeholders on independent self-regulation.

Detail on Scottish Government activity to tackle discrimination and advance equality can be found in section 6. Balanced portrayals of particular communities in the media is also key to building a more inclusive Scotland, and as an action in the Race Equality Framework, the Scottish Government will work to improve ethnic diversity in the media workforce and how minority ethnic communities are represented and portrayed. Further, the Scottish Government recently ran a social media campaign about the benefits of hiring disabled people, which was well received. The portrayal of LGBTI communities in the media has tended to be negative, humiliating and intrusive, however, there has been increased positive coverage of transgender and non-binary people in Scottish media more recently, and there is also increased prominence of LGBTI-specific media which is operating alongside mainstream media. For example, Pink Saltire is a charity promoting equality and diversity in Scotland through the media, and Xpress Radio is the voice for equality and diversity in radio with a clear focus on Scottish LGBTI issues and lifestyles.

5.9 Privacy and data protection¹⁸²

UPR recommendations¹⁸³

- Bring all legislation concerning communication surveillance in line with international standards.

The UK Government's Investigatory Powers Act 2016 updates the statute with regard to interception of communications, the acquisition of communications data, the use of bulk powers by the security and intelligence services and interference with electronic equipment. It puts in place an enhanced oversight regime, which is judicially-led and includes an additional judicial element to the authorisation process for interception of communications.

¹⁸¹ CEDAW (2013), para 33

¹⁸² ICCPR (2015), para 24

¹⁸³ 134.148-134.151

The Scottish Government is supportive of law enforcement agencies and the security and intelligence services having access to the powers they require in order to keep communities safe from serious criminals and terrorists. However, the Scottish Government is clear that the use of these powers must be subject to the strongest safeguards and robust oversight.

Scottish public authorities who require to make use of other investigatory powers (such as covert surveillance and the use of covert human intelligence sources) are subject to the legislative requirements of the Regulation of Investigatory Powers (Scotland) Act 2000 (RIP(S)A).¹⁸⁴ RIP(S)A provides a framework within which the authority must demonstrate that any covert activity that interferes with an individual's right to privacy is necessary and is proportionate to what it seeks to achieve. The use of these powers is subject to routine inspection by the independent, judicially-led Investigatory Powers Commissioner's Office (IPCO); prior to September 2017, the Office of Surveillance Commissioners (OSC) carried out the oversight function. The OSC reported annually to the Scottish and UK Parliaments¹⁸⁵ and this duty to report will continue with regard to IPCO.

5.10 Tackling extremism¹⁸⁶

UPR recommendations¹⁸⁷

- Ensure that the planned counter-extremism bill is in compliance with international law and does not single out certain organisations based on general characteristics such as religion and race.

Scotland has a different legal, institutional and community context to the rest of the UK, and therefore the Scottish Government's approach to building cohesive communities and addressing prejudice and hate crime is distinct. The Scottish Government will consider the merits of any additional legislation and new measures against the current legislative provisions and options already in place to deal with such issues across Scotland.

Safeguarding Vulnerable Individuals through Prevent

The Scottish Government continues to work with partners and communities to safeguard vulnerable individuals from being drawn into criminality and being exploited by those promoting violent extremism and terrorism. Part of its approach includes supporting specified authorities to demonstrate compliance with the Prevent duty, which is part of the UK Government's Counter Terrorism Strategy (CONTEST). While national security is a reserved matter, the delivery of Prevent in Scotland is through devolved functions.

Therefore, the Scottish Government continues to ensure implementation reflects the specific challenges and circumstances faced by Scottish communities. Governance structures are in place at both sector and geographic levels to oversee implementation.

184 <http://www.legislation.gov.uk/asp/2000/11/contents>

185 <https://osc.independent.gov.uk/about-us/annual-reports-2/>

186 CERD (2016), para 19; CRC (2016), para 22

187 134.131

A concerted effort has been made to ensure that the preventative, rights-based approach taken in Scotland is both balanced and proportionate and aligned to existing safeguarding procedures. Scottish specified authorities must ensure their approach to safeguarding vulnerable individuals is compliant with other legal duties to support freedom of speech, equality and human rights.

The Scottish Government approach aims to address the broad spectrum of terrorist and violent extremist threat. No matter the ideology or idea that sits behind vulnerability, the collective focus is always the early identification of risk to an individual in order to safeguard their wellbeing. This prevents particular sections of our communities feeling stigmatised or isolated and sits alongside wider efforts to build resilient, and more inclusive communities.

The Scottish Government recognises the important role that schools have. Using CfE, teachers are encouraged to give pupils the opportunity to discuss current global and political issues within the classroom and, importantly, understand and respect wider beliefs and values, and how they are fundamental in both local and global communities. While developing critical thinking skills, they remain resilient and equipped to challenge divisive narratives.

5.11 Counter terrorism¹⁸⁸

UPR recommendations¹⁸⁹

- Ensure that counter-terrorism legislation does not discriminate against particular groups on grounds of race, ethnic background or religion, particularly Muslim communities, and is in conformity with the UN Charter and international human rights law, including due respect for necessity and proportionality.
- Establish an evaluation mechanism of the anti-terrorist strategy that takes into account the observations made by Special Procedures and Treaty Bodies, and that evaluates its human rights implications.

The Scottish Government takes a full and active role in the delivery of CONTEST and works with Scotland's law enforcement and other bodies to ensure they have all the tools they need to effectively tackle terrorism.

Although counter-terrorism is a reserved matter, the Scottish Government works with the UK Government to ensure that any new proposals fit with the separate and distinct Scottish legal system, respect the current devolution arrangements and are taken in the context of proper engagement and consultation with the public bodies that would be affected by these proposals in Scotland.

The Scottish Government works closely with affected communities across Scotland to offer assurances and commitment to their security, and Police Scotland is also in contact with community representatives.

188 ICCPR (2015), para 14, 15; CERD (2016), para 19; CRC (2016), para 22

189 134.62, 134.128-134.130

5.12 Police powers – stop and search¹⁹⁰

Police Scotland's practice of non-statutory (or consensual) searches, in which people are searched without a legal basis, was ended on 11 May 2017 with the implementation of the *Code of Practice on the use of Stop and Search*.¹⁹¹

The Code of Practice sets out the circumstances in which a search may be carried out, the procedures to be followed, the record to be kept, and the right of someone to receive a copy of that record. Police officers are not permitted to search someone based purely on their appearance, including their race; rather there must be "reasonable suspicion" based on facts, information, and/or intelligence that the person being searched is likely in possession of an illegal object.

The Code of Practice provides clear guidance to all police officers and places the rights of the individuals at the centre of any decision to carry out a search. Searches must be carried out with fairness, integrity, respect and compliance with human rights. All frontline officers received training before the Code came into force.

The Scottish Government has legislated to require Police Scotland to publish information about how many searches are carried out; how many persons are searched on two or more occasions; and the age, gender, and ethnic and national origins of the person searched. The Scottish Government will monitor this information and keep it under review.

The Independent Advisory Group on Stop and Search, supported by Police Scotland, will assist the Scottish Government to assess and review evidence after the Code has been in force for 12 months, with an interim assessment after six months, to see if any changes are required to the Code or to legislation.

5.13 Migration¹⁹²

UPR recommendations¹⁹³

- Effectively guarantee the rights of refugees and migrants.
- Review immigration law (Immigration Act 2016) to ensure that it is compatible with human rights conventions.
- Consider revising changes introduced to visas for foreign spouses based on income criteria.
- Introduce a statutory time limit on immigration detention, seek alternatives to detention, and ensure that detention is not used in the case of vulnerable individuals or groups.
- Implement the 1954 Convention Relating to the Status of Stateless Persons to ensure that stateless persons in Britain access British nationality. Categorise statelessness as a protection status and provide stateless persons expedited and affordable access to British nationality.

190 ICCPR (2015), para 11; CERD (2016), para 27; CRC (2016), para 38

191 <http://www.gov.scot/Resource/0051/00512924.pdf>

192 ICCPR (2015), para 21; CERD (2016), para 39; CRC (2016), para 77

193 134.82, 134.98, 134.121, 134.190, 134.213-134.221, 134.225

- Revise regulation and administrative practices in order to protect the human rights of female domestic migrant workers, particularly when their work permits are linked to their employer and they have been victims of human trafficking and work exploitation.

Scotland has a large, established migrant community, welcomes the contribution that migrants can make to our economy and to society and, as a confident and responsible global citizen, wants to continue to be a vibrant, diverse country that faces outwards.

Although immigration, nationality, citizenship and asylum are matters reserved to the UK Government, the Scottish Government supports a system of sensible, managed migration which meets Scotland's needs, and continues to push for an immigration system that recognises individual circumstances and provides a welcoming environment for new Scots and their families. The 2017-18 PfG includes a commitment to set out the case for further extending the powers of the Scottish Parliament in key areas to support economic growth, including immigration.

It is right that the exploitation of migrants is addressed and that those working illegally are appropriately managed by enforcement agencies. However, an undue focus on irregular migration and the increased criminalisation of migrants, detracts from the contributions that migrants make. The Scottish Government opposed many of the provisions in the UK Immigration Act 2016, including around housing, licensing and asylum support, and remains concerned that many of the Act's provisions will have a detrimental impact on the lives of vulnerable people and will further marginalise vulnerable families.

For UK citizens, the Immigration Rules were made more restrictive in 2012 and many UK citizens are unable to meet the criteria for sponsoring their non-EU family members, including spouses, to join them in the UK. Recent research has shown the negative impact of these family migration policies, and the Scottish Government remains deeply concerned, supports greater flexibility in the rules, and continues to push for the rules to be changed.

The Scottish Government support calls for a 28 day time limit on immigration detention and for the presumption to be in favour of community-based solutions. The Scottish Government believes that children should not be held in immigration detention.

5.14 Asylum seekers and refugee integration¹⁹⁴

UPR recommendations¹⁹⁵

- Effectively guarantee the rights of refugees and migrants, and review the policy of "safe return reviews" for refugees.
- Develop inclusive social integration policies towards, and improve conditions for, migrants and refugees.

¹⁹⁴ ICESCR (2016), para 25; CEDAW (2013), para 57; CRC (2016), para 77

¹⁹⁵ 134.82, 134.98, 134.121, 134.222, 134.224

- Establish family reunification mechanisms for unaccompanied asylum seeking children, and for children relocated to the UK, or who have been recognised as refugees; and reduce the minimum age for family reunion from 21 to 18.

Asylum is a matter reserved to the UK Government. This includes the processing of applications and accommodation and financial support for asylum seekers. The Scottish Government believes that asylum seekers must be treated fairly and with dignity and respect at all stages of the asylum process. The approach that integration should begin from day one, and not just when leave to remain has been granted, is reflected in *New Scots: Integrating Refugees in Scotland's Communities*.¹⁹⁶ *New Scots* provided a clear framework from 2014 to 2017 for all those working towards refugee integration in Scotland. The strategy has assisted in co-ordinating the work of the Scottish Government, its partner organisations and others in the public, private and third sectors.

Development of the next *New Scots* strategy is again being conducted through partnership, led by the Scottish Government, COSLA and the Scottish Refugee Council. Engagement took place over Summer 2017 and involved professionals and volunteers supporting refugees, our communities and, crucially, refugees and asylum seekers themselves.

NHSScotland provides health services to all asylum seekers in Scotland, including those whose claims have been refused, and asylum seekers in Scotland have access to legal services and legal aid to enable them to pursue their cases. Furthermore, the Scottish Government believes that asylum seekers should be able to work while their claims are under consideration.

The Scottish Government part-funded the establishment of the Scottish Guardianship Service (SGS) in 2010 to offer local authorities specific support with issues affecting unaccompanied children. The SGS has enabled separated children to learn about the welfare and immigration processes directly, making the information relevant to their specific circumstances. The Scottish Government currently provides £300,000 grant aid per year to the SGS, which has enabled the provision of assistance, support and representation to over 200 unaccompanied asylum seeking children since the service started.

Under the Human Trafficking and Exploitation (Scotland) Act 2015, the independent child trafficking guardian has been put on a statutory footing. A child's eligibility for this service will be where there is reason to believe that the child has been subject to trafficking or is at risk of trafficking, and where there is no one with parental rights and responsibilities for that child. The Scottish Government is currently consulting on the role, responsibilities and functions of the Guardian.

Refugees are entitled to be reunited with certain family members who remain abroad, and the Scottish Government believes that the process should be made easier and quicker. The Scottish Ministers have pressed the UK Government on issues such as 30 day visas and the extension of eligibility criteria.

196 <http://www.gov.scot/Publications/2013/12/4581>

Equality and Non-discrimination

“ In a vibrant, modern Scotland, everyone should be treated equally. Equality is everyone’s business and there can be no compromise in our drive to achieve this”

Angela Constance MSP,
Cabinet Secretary of Communities, Social Security and Equalities



6. EQUALITY AND NON-DISCRIMINATION

6.1 Equality funding

For the eighth year in a row, the Scottish Government has protected the level of spend for the Equality Budget at £20.3 million in 2017-18. Maintaining the budget at this level underlines a commitment to advancing equality and addressing violence against women and girls.

This funding supports strategic and frontline projects to address inequality and discrimination; supports the infrastructure and capacity of equality communities; provides support for activity and interventions to improve outcomes; supports the mainstreaming of equality and the improvement of public sector delivery; and enables the government to support the advancement of human rights and preventing violent extremism.

The Scottish Government has a legal duty to consider equality in developing its policies and spending plans. Each year, alongside the Draft Budget, an Equality Budget Statement (EBS) is published, which grounds equality considerations in financial decision-making.

6.2 Equality legislation¹⁹⁷

UPR recommendations¹⁹⁸

- Further reinforce measures to combat all forms of discrimination and inequality.
- Simplify, harmonise and reinforce the current legal norms on equality in favour of those most vulnerable.

Equality Act 2010

The Scottish Parliament and Scottish Government have limited powers over equal opportunities, including some aspects of the public sector equality duty (PSED). Powers transferred under the Scotland Act 2016 do not enable Scotland to commence the provisions on dual discrimination.

The 2016 Act transferred powers over the inclusion of persons with protected characteristics in non-executive posts on boards of Scottish public authorities with mixed functions or no reserved functions. See section 6.5 - gender equality for more detail on how these powers will be used in Scotland.

In 2012, specific duties were placed on some Scottish public authorities to help the better performance of their PSED, so it is now appropriate to consider whether or not those specific duties need to be updated or revised in the light of the experience of the last five years.

¹⁹⁷ ICESCR (2016), para 23; CERD (2016), para 8; CRC (2016), para 22; CEDAW (2013), para 17

¹⁹⁸ 134.81, 134.125, 134.165, 134.169

Socio-economic duty

The Scottish Government has committed to commencing the socio-economic duty, as set out in section 1 of the Equality Act 2010, before the end of 2017. This will require public authorities to have due regard, in the context of strategic decision-making, to the desirability of exercising functions in a way “designed to reduce the inequalities of outcome which result from socio-economic disadvantage.”

The Scottish Government is considering how best to commence that duty in Scotland. A consultation on relevant issues took place over summer 2017 and will inform the development of guidance for public authorities covered by the duty. The Scottish Government will continue to engage with the EHRC in its role as regulator of the Equality Act.

Caste discrimination

Caste discrimination is not well understood and the Scottish Government recognises the need for the law to provide protection to individuals but also to be enforceable. While the development of case law is of critical importance, there is not a sufficient body of evidence from employment tribunals that can be relied upon in this complex area. Case law will be slow in arising, developing, and subsequently testing the existing legislation and, during that time, individuals will not be adequately protected. Therefore, the Scottish Government considers that the enactment of Section 9(5) of the Equality Act 2010 should proceed as the most effective way to guard against this type of discrimination.

6.3 Race, religion, faith and belief¹⁹⁹

UPR recommendations²⁰⁰

- Develop a comprehensive strategy to address inequalities experienced by ethnic minority groups.
- Combat racism, xenophobia and Islamophobia, and eliminate all forms of discrimination against migrants and members of racial, religious and ethnic minority groups.
- Develop a plan of action to implement the activities of the Decade of People of African Descent, which would, *inter alia*, address concerns of racial profiling of people of African Descent.

The *Race Equality Framework for Scotland 2016-2030* (REF)²⁰¹ was developed to advance race equality and address the barriers that prevent people from minority ethnic communities realising their potential.

199 CERD (2016), para 14, 23

200 134.82, 134.83, 134.87, 134.93-134.95, 134.97

201 <http://www.gov.scot/Publications/2016/03/4084>

The Scottish Government has appointed an independent Race Equality Framework Adviser to champion race equality and help drive implementation.



The *Race Equality Framework (REF) Implementation Approach* (February 2017)²⁰² looks at how the Framework can remain responsive and flexible to accommodate new evidence and change in the demographic and policy environments. The Scottish Government will publish an action plan in December 2017, setting out key actions for the current parliamentary session to drive positive change for minority ethnic communities.

Intersectionality is a key principle underpinning the Framework. In Summer 2016 the Scottish Government held a series of intersectional engagement activities, which specifically included stakeholders that represented disability and older people, giving these groups the opportunity to discuss the delivery of and future actions in the Framework.

Throughout 2017 a series of Framework-themed roundtables will be held, involving policy officials and key experts from a range of statutory and third sector organisations and from academia.

Minority ethnic women

A minority ethnic women's network is being established, with support from the Scottish Government and Council of Ethnic Minority Voluntary Sector Organisations, to link in to REF actions.

Events in February and May 2017 looked at the development of a minority ethnic professional women's network for mentoring, peer support, capacity building, training, and influencing workforce/workplace policies and practices – such as increasing the number of minority ethnic women in senior management roles within the public sector.

202 <http://www.gov.scot/Publications/2017/02/7935>

One area of concern highlighted by many minority ethnic women at previous events has been safety for women. Thus, an event held on 20 September 2017 focused on the delivery plan for the *Equally Safe* strategy, which is currently being redrafted following a public consultation with a view to publish a final delivery plan at the end of the year.

Minority ethnic young people

The Scottish Government commissioned Young Scot to co-design the Fairer Future project,²⁰³ which brought together young minority ethnic people to gather their insights, experiences and views on race equality. Fairer Future is a panel of 16 young people aged 14-21 exploring (among other topics) the six core themes of Scotland's REF and how it relates to young people.

A Fairer Future event on 29 June 2017 gathered together young people, youth organisations, minority ethnic organisations and relevant policy makers. Following a presentation from the youth panel and workshops to provide feedback, a shared vision for the future was created. A report will be published in Autumn 2017.

Funding

The Scottish Government is providing over £2.6 million (2017-18) to organisations working to advance race equality in Scotland. In 2016-17, £507,916 of equality funding was allocated to faith and belief organisations, including £145,000 to Interfaith Scotland.

6.4 Gypsy/Travellers²⁰⁴

UPR recommendations²⁰⁵

- Develop a general strategy (in consultation with communities) to ensure a systematic and coherent approach to addressing problems faced by Gypsy/Travellers and Roma, including discrimination and stigmatisation.

Strategy

Following direct engagement with members of the Gypsy/Traveller community in 2017, the Scottish Government intends to publish a Gypsy/Traveller Strategic Programme of Work document in late 2017. The document will bring together relevant policies across government that help secure improved outcomes for Gypsy/Travellers. The Scottish Government will also publish a Race Equality Action Plan in late 2017 which will include specific actions for Gypsy/Travellers.

203 <http://www.youngscot.net/fairer-future-youth-vision-for-scotland/>

204 ICESCR (2016), para 50; CERD (2016), para 25; CEDAW (2013), para 61; CRC (2016), para 71

205 134.89-134.92

The Scottish Government has allocated over £300,000 from the Equality Fund to organisations working with Gypsy/Traveller and Roma communities in 2017-18, and is planning an event in 2018 to celebrate the contribution made to Scottish life by Gypsy/Traveller communities.

Site provision

The government's role is to set a robust framework and promote good practice. The Scottish Government's desire is for the most effective approaches to be used across the whole country to meet the needs of both Gypsy/Traveller and settled communities. Local authorities receive a General Capital Grant to fund capital expenditure, and it is for each individual local authority to decide how to best use its resources to meet both local needs and national priorities. This includes how much it chooses to allocate to the provision of Gypsy/Traveller sites.

Decisions about the provision of Gypsy/Traveller sites are best made at the local level, by those with local knowledge and accountability. Local authorities are required by law to produce a Local Housing Strategy (LHS) that sets out its priorities and plans for the delivery of housing and related services, including for Gypsy/Travellers. An LHS must be supported by a Housing Need and Demand Assessment (HNDA). In 2014 the Scottish Government published revised guidance for LHS and HDNAs to help make sure the accommodation needs of Gypsy/Travellers are fully taken into account by councils as they plan accommodation provision.

The Scottish Government understands the concerns of Gypsy/Travellers in relation to site provision. The Scottish planning system is plan-led, with individual development proposals being determined in accordance with the relevant local development plan unless material considerations would indicate otherwise. Requiring, permitting, or prohibiting specific types of development in legislation is not compatible with this plan-led approach. Planning authorities are expected to consider provision of Gypsy/Traveller sites in development plans.

The Scottish Ministers have made it clear that they want Scotland's plan-led system to be more effective, meaning plans are up-to-date, understandable and most of all deliverable.

National planning policy, *Scottish Planning Policy*, was published in 2014. It recognises that HDNAs will evidence need for sites for Gypsy/Travellers. Development plans and local housing strategies should address any need identified, taking into account their mobile lifestyles. The forthcoming Planning Bill will give new statutory status to *Scottish Planning Policy*,²⁰⁶ which is due to be reviewed between 2018 and 2020.

In the current city regions, the strategic development plan should have a role in addressing cross-boundary considerations. If there is a need, local development plans should identify suitable sites for these communities. They should also consider whether policies are required for small privately-owned sites for Gypsy/Travellers. The community should be appropriately involved in identifying sites for their use.

206 <http://www.gov.scot/Publications/2014/06/5823>

The Scottish Government funded a project by PAS (formerly Planning Aid Scotland) to increase awareness of the needs of Gypsy/Travellers in accessing the planning system. It resulted in the publication of five planning guides in April 2015, aimed at Gypsy/Travellers, planning professionals, elected members and community councillors respectively. The fifth was aimed at the media.

In 2015 the Scottish Government published *Improving Gypsy/Traveller Sites*,²⁰⁷ which sets out minimum standards for Gypsy/Traveller sites, covering: fabric standards; energy efficiency; facilities and amenities; safety and security; maintenance and repairs; fair treatment; and consultation. A core set of rights and responsibilities for site tenants was also introduced. The standards, which are similar to those enjoyed by social housing tenants under the Scottish Housing Quality Standards, were developed in consultation with Gypsy/Travellers living on sites, local authorities and others stakeholders. The deadline for compliance with the standards is June 2018. The Scottish Government is currently reviewing progress towards implementing the guidance with site tenants, site providers and other stakeholders. As part of this process, officials will visit a number of Gypsy/Traveller sites and talk to site residents about the standards on their site. The new site standards are now part of the Scottish Social Housing Charter Outcomes, the results of which will be reported on by the Scottish Housing Regulator from 2018-19.

In April 2017, the Scottish Government published fully revised guidance for local authorities on managing unauthorised encampments In Scotland.²⁰⁸ During the review of this guidance, officials met with local authorities, Police Scotland, Gypsy/Travellers, landowners and equality groups, and visited the location of a number of unauthorised sites to see them at first hand to ensure the views and experiences of Gypsy/Travellers were considered. Local authorities must balance a range of issues and needs when managing unauthorised sites, including helping to ensure those on such sites have access to the services needed to address any education, health, and other needs. The revised guidance outlines the issues a local authority will need to consider when deciding its strategy for managing unauthorised sites in its area, and includes a suggested process for responding to such sites. The Scottish Government expects each local authority to consider the revised guidance, and their own local arrangements, to ensure the management of unauthorised sites reflects best practice.

6.5 Gender²⁰⁹

UPR recommendations²¹⁰

- Address problems of discrimination against women in the political, economic and social spheres, particularly in the labour market, social security and participation in politics; give particular consideration to black and minority ethnic women, LGBTI women and disabled women.
- Continue efforts to close the gender pay gap, including by considering efficient means of following up on the reports made by the employers.

207 <http://www.gov.scot/Publications/2015/05/4938>

208 <http://www.gov.scot/Publications/2017/04/6796>

209 ICCPR (2015), para 12; ICESCR (2016), para 27; CEDAW (2013), para 31, 33, 43, 47, 59, 65

210 134.96, 134.175-134.179

Discrimination against women

The Scottish Government has taken action to address the inequalities that women experience in relation to work; new measures to improve the representation of women in senior and decision-making roles; initiatives to challenge the gender imbalance in Science, Technology, Engineering and Maths (STEM) and steps to strengthen the government's response to all forms of violence against women and girls. In addition, the Scottish Government has committed to establish an Advisory Council for Women and Girls.

Using new powers transferred to the Scottish Parliament through the Scotland Act 2016, the Scottish Government has committed to bring forward legislation to improve the representation of women on the boards of public bodies in Scotland. The Scottish Government also continues to champion the *Partnership for Change 50/50 by 2020* campaign, which encourages public, private and third sector organisations to work towards gender balance on their own boards by 2020. For the first time, in 2015 more women than men were appointed by Ministers to the boards of regulated public bodies (41% of applicants and 54% of new appointees were women).

The Scottish Government is committed to ensuring that women are represented in all senior and decision-making roles, including in the boardroom and in politics. The First Minister is a signatory to the *Women 50:50* campaign and has led by example, with one of the very few gender-balanced cabinets anywhere in the world.

Other Scottish Government activity includes:

- working with the EHRC to tackle pregnancy and maternity discrimination.
- The Minister for Employability and Training chairs a working group, the remit of which includes creating guidelines for employers to ensure best practice, as well as improving access to guidance for pregnant women and new mothers.
- approving six projects, with a total value above the £200,000 previously announced, to deliver a Returners programme to assist women who struggle to re-enter the workforce following a career break. This includes: funding returners projects to tackle the under-representation of women in the STEM, finance, security and manufacturing sectors; increasing business start-up rates for women in childcare; and increasing the number of women in management positions. One project specifically supports black and minority ethnic women.
- the Scottish Government is delighted that the UK Supreme Court has ruled employment tribunal fees to be unlawful. The Scottish Government will continue to work with stakeholders to ensure that the new employment tribunal system in Scotland provides access to justice and contributes to the vision for fair work to be embedded in all workplaces in Scotland.
- funding the Family Friendly Working Scotland Partnership (£169,000 in 2017-18) – the Scottish Government works with Working Families (a leading UK work-life balance organisation), Parenting Across Scotland and Fathers Network Scotland to support and promote the development of family-friendly workplaces across Scotland and encourage take up of shared parental leave.

- the First Minister has committed to mentoring a young woman aged 18-23 and invited other women leaders to join her to inspire and support the next generation of aspiring women leaders.
- a new £500,000 Workplace Equality Fund, based on recommendations made in the *Race Equality Framework* and the findings of the Equal Opportunities Committee inquiry into *Removing Barriers: Race, Ethnicity and Employment*. The aim of the Fund will be to address long standing barriers to accessing the labour market. It is likely to focus on recruitment and progression for women, disabled people, ethnic minority people and older workers.
- a commitment to paying the real Living Wage of £8.45 an hour to adult social care workers – giving up to 40,000 people, mainly women, doing some of the most valuable work in Scotland a well-deserved pay rise.
- the commitment, as part of the almost doubling of funded early learning and childcare entitlement to 1,140 hours by 2020, to provide sufficient additional revenue funding to allow local authorities to agree rates with funded providers in the private and third sectors that enables them to pay the Living Wage to childcare workers providing the funded entitlement.

Gender pay gap

The gender pay gap for full-time employees in Scotland decreased from 7.7% in 2015 to 6.2% in 2016. Scotland's public sector pay policies require public bodies to ensure that pay is fair and non-discriminatory, and the Scottish Government continues to support work to raise awareness and encourage action by employees and employers to tackle the causes of pay inequality:

- providing £205,000 to Close the Gap in 2016-17 to challenge and change employment practices and workplace cultures
- introduced a National Indicator ('reduce the pay gap') to monitor performance in tackling the various drivers of the pay gap
- reduced the threshold for listed public authorities to report their gender pay gap and publish statements on equal pay and occupational segregation, from those with more than 150 employees to those with more than 20 employees

6.6 Children²¹¹

UPR recommendations²¹²

- Give consideration as to how to ensure that children's views are taken into consideration in line with the CRC

Legislative framework

Provisions in individual aspects of Scots Law have strengthened children's rights in Scotland. For example the Children (Scotland) Act 1995, Children's Hearings (Scotland) Act 2011, Human Trafficking and Exploitation (Scotland) Act 2015.

211 CRC (2016), para 8-11, 13, 16, 23, 31, 65, 75

212 134.59-134.60, 134.65

The Children and Young People (Scotland) Act 2014²¹³ (CYP Act) places specific duties on the Scottish Ministers 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 CRC requirements, and to take steps identified by that consideration as appropriate. The CYP Act requires Ministers to promote public awareness and understanding of children's rights, and to report every three years to the Scottish Parliament on relevant progress and their plans for the subsequent three year period. The CYP Act also places a duty on a wide range of public authorities, including local authorities and health boards, to report every three years on the steps they have taken in that period to secure better or further effect to the requirements of the CRC.

In the 2017-18 PfG, the Scottish Government has committed to undertaking a comprehensive audit on the most effective and practical way to further embed the principles of the UN Convention on the Rights of the Child into policy and legislation.

Budgeting

The 2016-17 Equality Budget Statement included a section on the impact of budget decisions for children and young people and their rights and wellbeing. This is also a feature of the 2017-18 Equality Budget Statement. The Scottish Government has prioritised funding allocations to areas of expenditure that benefit children and young people and their families, including access to health visitors, expanding funded early learning and childcare, free school meals, measures to address the poverty-related attainment gap, and child and adolescent mental health services (CAMHS). In May 2016, the First Minister identified the Scottish Government's defining mission as ensuring that all children in Scotland have equality of opportunity and "a fair chance in life."²¹⁴

Impact assessment

Scotland's Child Rights and Wellbeing Impact Assessments (CRWIA) support policy officials to consider the possible direct and indirect impacts of proposed new policies and legislation on the rights and wellbeing of all children and young people, no matter what their individual backgrounds and circumstances, and any necessary mitigation. There are no plans to make this a statutory obligation.

Detailed training and guidance on the CRC and children's rights is available to officials undertaking CRWIAs and best practice online materials will continue to be updated. The CRWIA approach has been published for use by public authorities (and other organisations) when developing and refreshing local policies and procedures.

213 <http://www.legislation.gov.uk/asp/2014/8/contents/enacted>

214 <https://beta.gov.scot/publications/first-minister-speech-priorities-for-government/>

The Scottish Government will continue to undertake and publish²¹⁵ CRWIAs to support policy improvement, for example in relation to the establishment of a child death reviews process; the Child Poverty Bill; the Delivery Plan for *Equally Safe: Scotland's strategy to tackle all forms of violence against women and girls*; the Domestic Abuse Bill; the National Low Emission Framework; the *CRPD Delivery Plan: A Fairer Scotland for Disabled People*; the National Framework for Disabled Children, Young People and their Families; the Internet Safety Action Plan; the Mental Health Strategy; and the programme for the expansion of funded early learning and childcare entitlement.

Getting It Right For Every Child

The *Getting it right for every child* approach puts the rights and wellbeing of children and young people at the heart of the services that support them. It means services, such as early years services, schools, and the NHS, work with and for children, young people and families to give them the best possible support by offering the right help, at the right time, from the right people. When commenced, the Named Person and Child's Plan provisions in the Children and Young People (Scotland) Act 2014 will place these parts of *Getting it right for every child* on a statutory footing. Some areas already deliver these on a non-statutory basis, and the 2014 Act has put into statute a holistic definition of wellbeing for children and young people, as set out by the wellbeing indicators (safe, healthy, achieving, nurtured, active, responsible, respected and included).

Participation

The Scottish Government is working with partners to meaningfully and sustainably engage children and young people, across all diverse groups, on issues that affect them. Some recent examples are: the Commonwealth Games 2014 Legacy, the National Conversation, underage drinking, Child Poverty, Children and Young People's regional summits in 2015 (which contributed to the Year of Young People 2018 agenda and *Fairer Scotland*), and the co-design work on the Year of Young People 2018.

The Scottish Sentencing Council's Business Plan, detailing work up to October 2018, includes consideration of the application of sentencing for children and young people being dealt with within Scottish courts. The Family Law Committee of the Scottish Civil Justice Council, which advises on civil court rules and procedures, is carrying out work on the voice of the child, following a policy paper prepared by the Scottish Government. In particular, it is looking at Form F9, used by the courts to obtain a child's views in cases such as contact, residence and parental responsibilities and rights.

In 2018 the Scottish Government will consult on reviewing part 1 of the Children (Scotland) Act 1995, including to consider what more can be done to obtain the voice of the child in contact cases, in line with the CRC.

215 <http://www.gov.scot/Topics/People/Young-People/families/rights/child-rights-wellbeing-impact-assessment>

In undertaking CRWIAs, officials can be supported to seek the views of children and young people by a range of Scottish Government-funded youth organisations, including the Scottish Youth Parliament, the Children's Parliament, Article 12 in Scotland, and Young Scot. The CYPSCS can also advise.

The Scottish Government is committed to doing more to ensure that the voices of children and young people are heard. It acknowledges that existing participation structures do not always meet the needs and aspirations of all children and young people, and that more needs to be done to establish systematic, co-ordinated and sustainable participation structures for engaging meaningfully with children and young people in local and national decision-making. In February 2017, Cabinet Ministers held their first meeting with children and young people (supported by the Scottish Youth Parliament and the Children's Parliament) to discuss issues that are important to them. Cabinet Ministers recognise the importance of involving children and young people in policy development on an ongoing basis, and agreed that their meeting with children and young people will be an annual event.

The extension of the franchise to 16 and 17-year olds in the 2014 Scottish Independence Referendum and recent elections to the Scottish Parliament allowed young people to express their views in the democratic process. Young people were widely commended for their ability to engage with the issues and express their opinions seriously and enthusiastically.

One of the aims of the Year of Young People is to celebrate the lives of young people and their contribution to Scottish society. The Scottish Government has worked with key stakeholders, including the CYPSCS, NGOs and children and young people themselves to address the negative portrayal of children and young people within the media and wider society. This has included initiatives to celebrate the contribution that children and young people make at both national and local levels. For example, the Scottish Government's Saltire Awards, which celebrate youth volunteering and other measures to celebrate youth overseas partnership working, and the Sunday Mail Young Scot Awards, which celebrate the excellent achievements of young people in Scotland.

Rest, leisure, play, recreation and cultural life

In 2013 the Scottish Government published a *National Play Strategy*²¹⁶ and a supporting action plan.²¹⁷ The strategy sets out Scotland's vision for play, the policy context, why play matters and the fact that it is a child's right. The Scottish Government's vision seeks to improve the play experiences of all children and young people, including those with disabilities or from disadvantaged backgrounds. It aims to ensure that all children and young people can access play opportunities in a range of settings which offer variety, adventure and challenge.

216 <http://www.gov.scot/Publications/2013/06/5675>

217 <http://www.gov.scot/resource/0043/00437132.pdf>

In support of the strategy the Scottish Government published *Playing with quality and equality: a review of inclusive play in Scotland*²¹⁸ (March 2015), which gives recommendations to help the government, local authorities and those involved in community planning ensure equal access to inclusive play services across Scotland.

In addition, in November 2015 the Scottish Government launched a book called *Play This Way* aimed at all children throughout Scotland aged 8-10 years old. The aim of this project is to bring to life some of the key elements of the Play Strategy in a way that is relevant and engaging for children and their families. It communicates different ways to play, explains the importance of play and explains how every child has the right to play. The book has been published in both English and Gaelic, and inclusive play is a key theme throughout. It was distributed in June 2016 to every child in Primary 3, 4 and 5 in Scotland.

Go2Play is a £3.5 million, six year fund delivered by Inspiring Scotland in partnership with the Scottish Government. It aims to support the development and expansion of free play in disadvantaged communities across Scotland. In the period 2015-16 to 2017-18, the Scottish Government invested £11,524,859. Sixty five per cent of the Play Ranger organisations felt they worked with vulnerable children and/or in areas of social deprivation, and 8-12% of the children supported by Play Rangers fell into the broadest spectrum of additional support needs.

As part of the work of the Play Strategy Implementation Group the Scottish Government has:

- contributed to the development of a renewed Place Standard Tool, to enable individuals and communities to assess the strengths and weaknesses of their local areas
- established, through Play Scotland, a refreshed Play Council supporting the play sector to share good practice, and develop its collective capacity to positively influence policy and practice at both local and national levels
- developed and published a Play Map resource to support Community Planning partnerships integrate play into local policy and planning
- mapped the links between the Play Strategy and other key policy documents and initiatives such as physical activity, health strategies, place-making, parenting, reducing inequality and anti-poverty strategies

The year-long campaign, ‘Away and Play’, launched in Summer 2017, is funded by the Scottish Government and powered by Inspiring Scotland, an independent charity focused on tackling some of Scotland’s toughest, long-term social problems. The campaign will highlight the benefits of free and unstructured play in encouraging imagination, promoting risk-taking, improving health and helping collaboration. Because 2017 is the Year of History, Heritage and Archaeology, ‘Away and Play’ will work with partners such as Historic Environment Scotland (HES) and the Forestry Commission to give ideas to parents for year-round, all-weather outdoor play in Scotland, and encourage them to allow their children to play in a less structured and more imaginative manner.

218 <http://www.gov.scot/Publications/2015/10/1795>

PlayTalkRead (PTR) is the Scottish Government's campaign to highlight the importance of playing, talking and reading with children from birth to three years old to boost their development. The campaign tours across Scotland, visiting each local authority to take messages of how crucial to a child's development, playing, talking and reading are in the first three years of a child's life. The project offers practical support and ideas on how to create the best foundations for children's development. Bessie, Benjie and Bertie, the PTR buses, are designed as free drop-in playgrounds where parents and carers can pick up tips on exciting new ideas to play, talk and read more with little ones in a relaxed and comfortable environment.

Sexual and reproductive health policy

The Scottish Government's *Sexual Health and Blood Borne Virus Framework* specifically highlights the needs of young people in relation to sexual health, ensuring that this work is integrated into wider workstreams to address inequalities and focus on building resilience.

The Scottish Government encourages young people to delay sexual activity until they are ready and encourages them to practice safer sex when they do become sexually active. It is essential that anyone who is, or is considering becoming, sexually active has access to guidance and services, which is why the Scottish Government has asked NHS Boards and councils to ensure young people's sexual health 'dropin'-services are available within or near every school in Scotland.

Section 5.3 provides more information on relationships, sexual health and parenthood education in Scottish schools. Many sexual health services based within schools offer free condoms. Professionals within school-based services will signpost for access to routine and emergency contraception where appropriate. The *Pregnancy and Parenthood in Young People Strategy* was published in 2016. The Strategy aims to drive actions that will decrease the cycle of deprivation associated with pregnancy in young people under 18. It also provides extra support for all young parents, particularly those who are looked after, up to the age of 26. It was developed with the input of young people from across Scotland.

A key aim of the Strategy is to enable and empower young people so they feel a sense of control over their own lives, allowing them to build self-efficacy, and providing equality of opportunity for the future. The Strategy highlights key interventions that will support young people to plan for their future – including pregnancy and parenthood.

The Strategy highlights education as a fundamental intervention for reducing the risk of pregnancy in young people. Additionally, it specifically mentions the importance of supporting positive relationships and sexual wellbeing, high quality relationships, sexual health and parenthood education, as well as the need for comprehensive sexual and reproductive health services in relation to young people. The importance of help and advice for young people who become pregnant is clearly set out, as are the ways in which support should be provided to young parents.

Children and Young People's Commissioner Scotland

The Commissioner for Children and Young People (Scotland) Act 2003²¹⁹ makes clear that the Commissioner is not to be regarded as a servant or agent of the Crown and is not subject to direction or control of any Member of the Scottish Parliament, the Scottish Government or the Scottish Parliamentary Corporate Body (SPCB). The SPCB sets the terms of the Commissioner's appointment, including funding support.

The 2003 Act provides for the Commissioner to undertake investigations in respect of how service providers have taken account of the rights, interests and views of groups of children and young people in decisions that affect them. Provisions in Part 2 of the CYP Act, which were commenced on 7 August 2017, empower the Commissioner to conduct such investigations on behalf of individual children.

6.7 Football club registration

The Scottish Government has discussed the concerns with the football authorities, clubs, PFA Scotland, the Children's Commissioner and the petitioners.

The Public Petitions Committee has taken evidence from a number of stakeholders, and intends to publish a report. The Committee held a parliamentary debate on 26 September.

6.8 Older people²²⁰

The Scottish Government is committed to promoting and protecting equality and human rights for older people, and is working with older people's organisations to shape policies and services to ensure that, wherever possible, older people can enjoy a thriving 'third age'.

The Scottish Government is providing over £490,000 (2017-18) to older people's and third sector organisations to tackle barriers to independent living experienced by older people, and to promote older people's rights. This includes £365,000 to support work to address social isolation and loneliness experienced by older people. In 2016-17, the £500,000 Social Isolation and Loneliness Fund focused on support for 36 community-based projects tackling social isolation.

The Scottish Government is developing, in collaboration with partners and a wide range of interests, a national strategy to reduce social isolation and loneliness and encourage increased social engagement. In late Summer 2017 the Scottish Government will launch a wide-ranging consultation with stakeholders and communities on a draft strategy and hold a series of roundtable discussions with communities in different parts of Scotland.

219 <http://www.legislation.gov.uk/asp/2003/17/contents>

220 ICESCR (2016), para 60

The concessionary travel scheme for older and disabled people provides health and wellbeing benefits and is a major contributor to tackling loneliness and isolation. In 2017-18, Scottish Government funding for the scheme has been maintained at £196 million. On 25 August 2017 the Scottish Government published a public consultation on a number of options to ensure the longer-term sustainability of the scheme and on providing free bus travel for modern apprentices under the age of 21.

Through Crisis Grants and Community Care Grants, the Scottish Welfare Fund (SWF) assists those on a low income in need to overcome a crisis or emergency, or to settle or remain in their own home where there is risk of an individual needing to go into care institutions. It can also help establish in the community people coming from longer term care.

Local Authority net expenditure on social care services for over 65s has increased by 31% under the current Scottish Government, from £1 billion in 2006-7 to £1.3 billion in 2015-16, while net expenditure on adult (aged 18+) social care services increased by 38% over the same period, from £1.36 billion to £2.2 billion. The Scottish Government has protected and grown social care spending in Scotland, and remains committed to the provision of free personal and nursing care for over 65s in Scotland, which benefits around 78,000 people each year.

National standards of practice and behaviour for social services workers and employers are laid down in codes of practice published by the Scottish Social Services Council, in accordance with the Regulation of Care (Scotland) Act 2001. These were revised in 2016 and require workers to support the rights of people who use services, to promote their independence and empower them to understand and respect their rights. Workers must also work in a way that promotes diversity and respects different cultures and values. Employers must promote and publicise the codes of practice to workers and to people who use services. The codes of practice are part of the regulatory framework designed to enhance services and protect the public. Regulation of services by the Care Inspectorate, and of social services workers by the Scottish Social Services Council, takes account of them.

The Public Bodies (Joint Working) (Scotland) Act 2014 requires local integration of adult health and social care services to ensure that those who use services get the right care and support, whatever their needs, at any point in their care journey. Partnerships are placing a greater emphasis on community-based and more joined-up, anticipatory and preventative care. The Scottish Government is working with local authorities, providers, disabled people and other partners to deliver reform to adult social care. This will consider the commissioning of residential care and the role of new models of care and support in home care, and will enable progress towards the aim to end “time and task” based care and shift to care that focuses on achieving independent living for people who use social care services.

See also section 8.4 – Dementia.

6.9 Disabled people²²¹

UPR recommendations²²²

- Implement measures in support of enhanced participation of people with disabilities in the work force.

On 2 December 2016 the Scottish Government published a Disability Delivery Plan (DDP), *A Fairer Scotland for Disabled People*,²²³ which will work to remove the barriers disabled people can face when it comes to finding and sustaining employment, and developing their careers. To ensure that everybody who can and wants to work has the opportunity to find fulfilling jobs, suitable to their skills, the Scottish Government is working with its partners, for example Skills Development Scotland (SDS), to make Modern Apprenticeships more open, attractive and available to people with disabilities.

Other measures to increase the number of disabled people in the workforce and to half the disability employment gap include:

- the development and delivery of devolved employment services in Scotland
- promoting and supporting the delivery of the supported employment model
- *Developing the Young Workforce - Scotland's Youth Employment Strategy*
- Equalities Action Plan for Modern Apprenticeships in Scotland - SDS will report annually and published a Year 1 update on 18 July 2017.²²⁴
- autism and learning disabilities strategies
- developing internships and programmes for disabled people

The 150 employee threshold for equal pay statement publication was lowered to 20 in 2016. Most of the public authorities listed in the schedule to the Equality Act 2010 (Specific Duties)(Scotland) Regulations 2012 are now required to publish an equal pay statement at intervals of no more than four years. For most, their second statement was due by the end of April 2017.

An authority's first statement is required to include information on equal pay policy and occupational segregation between men and women; the second and subsequent statements must cover gender, race and disability. If a public authority wishes to publish disability data broken down by gender it can do so, although there is no legal requirement for this.

The specific duties have been in place since 2012 so it is now appropriate to consider whether or not they need to be updated or revised in the light of the experience of the last five years.

The Scottish Government is also developing a framework to support disabled children and their families.

221 CRC (2016), para 57

222 134.209

223 <http://www.gov.scot/Publications/2016/12/3778>

224 <http://www.skillsdevelopmentscotland.co.uk/media/43416/sds-equalities-action-plan-update-2017.pdf>

6.10 British Sign Language

On 24 October 2017, the Scottish Government published its first British Sign Language (BSL) National Plan.²²⁵ This sets out an ambition to make Scotland the best place in the world for BSL users to live, work and visit.

One of the ten long-term goals in the plan is that:

“ BSL users will be supported to develop the skills they need to become valued members of the Scottish workforce, so that they can fulfil their potential, and improve Scotland’s economic performance. They will be provided with support to enable them to progress in their chosen career.”

The Scottish Ministers have committed to taking a range of separate actions – by 2020 – to make measurable progress towards this goal. These include:

- provide a wide range of information, advice and guidance in BSL for pupils and students to support their career and learning choices and the transition process into Further or Higher Education, or into employment
- ensure that every Scottish Government-funded employment programme and training opportunity is accessible to BSL users and that tailored support is available to them
- provide up to 12 months support to BSL users who access in-work support services
- establish a Workplace Equality Fund to address long standing barriers in access to the labour market for people with a range of characteristics, including BSL users

Ministers will publish a National Progress Report in 2020 and a further set of actions.

6.11 Lesbian, gay, bisexual, transgender, intersex²²⁶

UPR recommendations²²⁷

- Review the Equality Act in relation to gender identity and the rights of intersex persons in the context of rights to health services.

The Scottish Government has introduced in Parliament the Historical Sexual Offences (Pardons and Disregards) Bill,²²⁸ which will, if passed by Parliament, provide an automatic pardon to people convicted of same-sex sexual activity that is now legal.

The Bill introduces a scheme to enable people to apply to the Scottish Ministers to have these convictions disregarded from central conviction records. Where an application is granted, these convictions will never be disclosed in a criminal record check.

225 <http://www.gov.scot/Publications/2017/10/3540>

226 CRC (2016), para 47

227 134.125

228 <http://www.parliament.scot/parliamentarybusiness/Bills/106236.aspx>

In Scotland, a married transgender person with an interim Gender Recognition Certificate (GRC) can apply to the Sheriff Court for a full GRC. The 2016-17 PfG contains a commitment to “review and reform gender recognition law so it is in line with international best practice for people who are transgender or intersex.” The Scottish Government intends to consult later in 2017 on changes generally to the legislation on gender recognition.

The Scottish Government has added intersex equality to its approach to sexual orientation and gender identity equality, and has provided £45,000 each year since 2015-16 to the Equality Network to facilitate engagement. Later in 2017, the Scottish Government intends to consult on how best to support intersex children and their families.

6.12 Hate crime²²⁹

UPR recommendations²³⁰

- Continue efforts to tackle hate crime, including by assessing the impact of action already taken; further strengthening effective legislative and judicial measures; increasing the effectiveness of reporting; raising awareness with regard to minorities and foreigners; adopting measures on integration and inclusion; and prosecuting perpetrators. Government, parliaments, human rights institutions and civil society should work together.
- Improve services for victims of hate crime, and ensure access to fair and effective mechanisms for reparation.
- Strengthen data collection in relation to hate crime.
- Condemn racist rhetoric and hate speech, including by politicians, and dedicate more resources to combat negative stereotypes in the media against the most affected minority groups, for example LGBTI, Gypsies, Muslims, refugees and persons granted asylum.



229 ICCPR (2015), para 10; CERD (2016), para 16

230 134.84-134.85, 134.99-134.123

Since 2012, the Scottish Government has invested over £100 million to promote equality and tackle discrimination, and is continuing to work closely with partner organisations to advance the vision of 'One Scotland'. The Scottish Ministers have shown leadership in condemning hate crime as unacceptable and in challenging rhetoric that seeks to divide communities.

There has been no evidence of a significant rise in hate crime in Scotland following the EU Referendum in 2016. Ministers were active in the period immediately following the Referendum in engaging with non-UK EU nationals to hear and understand their concerns.

The Scottish Government accepted the recommendations of the Independent Advisory Group on Hate Crime, Prejudice and Community Cohesion (published 23 September 2016) and, on 13 June, set out an ambitious programme of work to take them forward Tackling Prejudice and Building Connected Communities.²³¹ A delivery group chaired by the Cabinet Secretary for Communities, Social Security and Equalities is being established and will meet for the first time later this year.

On 26 January 2017, the Scottish Government announced an independent review of hate crime legislation chaired by Lord Bracadale.²³² Lord Bracadale is considering whether changes need to be made to the current laws; whether existing offences should be extended to cover other groups; and whether all hate crimes should be brought into one area of legislation. The review will include public consultation with stakeholders and is expected to report to Ministers in early 2018.

Police Scotland has a strong commitment to tackling hate crime and the Crown Office has in place a presumption to prosecute where a crime has been aggravated by prejudice. There are laws in place to ensure that perpetrators are prosecuted.

The Scottish Government is working to improve the capture of data to better understand the scale and severity of hate crime. The 'Hate Has No Home in Scotland' campaign,²³³ launched in October 2017, aims to raise awareness of what hate crime is, and encourage victims and witnesses to report it to Police Scotland or a third party reporting centre.

231 <http://www.gov.scot/Publications/2017/06/1336>

232 <https://beta.gov.scot/news/review-of-hate-crime-legislation/>

233 <http://onescotland.org/campaigns/hate-crime-campaign/>

Solidarity and Standard of Living

“ In a world of great wealth and technological advances, no person anywhere should be left behind. No person should go hungry, lack shelter or clean water and sanitation, face social and economic exclusion or live without access to basic health services and education. These are human rights, and form the foundations for a decent life.”

Ban Ki Moon, UN Secretary General

HUMAN RIGHTS



7. SOLIDARITY AND STANDARD OF LIVING

7.1 Business and human rights²³⁴

UPR recommendations²³⁵

- Introduce measures to ensure oversight of British companies and accountability for any adverse human rights and environmental impacts of business operations overseas, including in conflict areas.
- Repatriate illicit funds and proceeds of corruption.

UN Guiding Principles on Business and Human Rights

The UN Guiding Principles on Business and Human Rights (UNGPs) were endorsed by the UN Human Rights Council in 2011. They are based on a framework of state responsibility to protect human rights; business responsibility to respect human rights; and the requirement for *remedy* for negative human rights impacts.

The Scottish Government, SHRC and other partners are committed to developing a coordinated plan of action in Scotland to give effect to the UNGPs, building on the UK's Action Plan. A national baseline assessment (NBA) was published in October 2016 and sets out the current legal, policy and institutional framework in Scotland in relation to the UNGPs.²³⁶ Further engagement with stakeholders in 2017 will help prioritise the NBA's recommendations and identify participants of a working group to draft an action plan.

Scotland's Economic Strategy

*Scotland's Economic Strategy*²³⁷ sets out an overarching framework to achieve a more productive, cohesive and fairer Scotland. It prioritises boosting investment and innovation, supporting inclusive growth, and increasing internationalisation. Throughout the Strategy there is a clear focus on the mutually reinforcing objectives of increasing competitiveness and tackling inequality.

Labour Market Strategy

The Scottish Government's *Labour Market Strategy*²³⁸ demonstrates how a labour market that is fair and inclusive, and that provides sustainable and well-paid jobs, is key to tackling income inequality and addressing wider issues, including health, crime, deprivation and social mobility. It sets out a vision for:

"A strong labour market that drives inclusive, sustainable economic growth characterised by growing, competitive businesses, high employment, a skilled population capable of meeting the needs of employers, and where fair work is central to improving the lives of individuals and their families."

234 ICESCR (2016), para 12; CRC (2016), para 19

235 134.80, 134.127, 134.153, 134.155

236 <http://www.snaprights.info/action-areas/better-world/business-and-human-rights>

237 <http://www.gov.scot/Publications/2015/03/5984>

238 <http://www.gov.scot/Publications/2016/08/2505>

The Strategy also sets out the steps the Scottish Government is taking to persuade and influence businesses of the benefits of fair and inclusive work. It demonstrates action to ensure that every person, regardless of background, has the opportunity to participate successfully in the labour market and, in turn, to ensure that Scotland's workforce has the right skills and attributes to meet the needs of the evolving labour market.

Fair Work Convention

The Fair Work Convention provides independent advice to the Scottish Government on matters relating to innovative and productive workplaces, industrial relations, fair work and the Living Wage in Scotland. The *Fair Work Framework*,²³⁹ which provides a clear guide to the steps employers should strive to be taking, defines fair work as work that offers effective voice, opportunity, security, fulfilment and respect, and that can generate benefits for individuals, organisations and society.

Scottish Business Pledge

The *Scottish Business Pledge*²⁴⁰ is a shared mission between government and business, with the goal of boosting productivity, competitiveness, fair work and employment. Businesses are not expected to adopt all nine elements straight away. However, paying the Living Wage is the core requirement and they are encouraged to apply for formal accreditation from the Living Wage Foundation over time.

Public procurement

The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 include an explicit procurement duty requiring contracting authorities to have due regard to whether both award criteria and contract performance conditions should include considerations to enable the better performance of the PSED. Tools and supporting guidance have been produced to assist contracting authorities identify and address how they can optimise economic, social and environmental outcomes of procurement activity (including equality).

The Scottish public procurement regulations²⁴¹ contain provisions to enable the exclusion of a bidder from tendering for public contracts where it can be demonstrated it has breached social, environmental or labour laws established by EU law, national law or collective agreements, including child labour and human trafficking. The regulations also permit a contract not to be awarded to a bidder where it can be shown that its bid does not comply with applicable obligations in the fields of social, environmental and labour law, and it is

239 <http://www.fairworkconvention.scot/framework/FairWorkConventionFrameworkFull.pdf>

240 <https://scottishbusinesspledge.scot/>

241 <http://www.gov.scot/Topics/Government/Procurement/policy/ProcurementReform/implementEUDirProcRef>

mandatory to reject a bid that has been established as abnormally low because it does not comply with such laws.

Furthermore, guidance has been published which included model Terms and Conditions to allow for contract termination in the event of the contractor's failure to comply with applicable obligations in the fields of social, environmental and labour law in the performance of a contract.²⁴²

The Scottish Government will continue to strive to promote a positive approach to human rights in its procurement, and part of this will include continuing to work alongside a variety of organisations on further development of its procurement tools and supporting guidance.

7.2 Taxation²⁴³

The Scottish Government supports the vision of an adequate, progressive and socially equitable fiscal policy. It already delivers this within the limited tax powers devolved to Scotland, and will continue to do so with all taxes where policy responsibility lies in Scotland, as well as showing strong leadership in tackling and disincentivising tax avoidance and abuse. The Scottish Government will continue to encourage the UK Government to follow a similar approach with reserved taxes, especially where these are levied on taxpayers in Scotland.

The Scottish approach to taxation

The Scottish Government aims to set all tax policy in line with the Scottish approach to taxation,²⁴⁴ which centres on the four principles of certainty, efficiency, convenience and proportionality to ability to pay. The approach also comprises two additional elements: embracing a collaborative approach to tax policy development and a strong commitment to taking the toughest possible approach to tackling tax avoidance where the Scottish Government has the powers to do so.

While the Scotland Act 2016 provides for the assignment of a proportion of VAT revenues, the Scottish Government will not have any policy responsibility for this tax. The Scottish Government will always encourage the UK Government to ensure that public services are funded in a progressive way and, if devolution of responsibility for any of these tax powers were ever forthcoming, would implement a tax policy that was in line with the Scottish approach and the Adam Smith principles.

These principles have formed the core of policy proposals on the fully devolved taxes: Land and Buildings Transactions Tax (LBTT) and Scottish Landfill Tax; income tax and Air Departure Tax and Aggregates Levy (both newly devolved through the Scotland Act 2016).

242 <http://www.gov.scot/Topics/Government/Procurement/buyer-information/standardformsanddocs/SGtsandcs>

243 ICESCR (2016), para 17

244 <https://www.revenue.scot/about-us/scottish-approach-tax>

The Scottish Government has taken a collaborative approach in developing its legislative plans for the two fully devolved taxes, working with the professional law and accountancy bodies, housing and property sector, waste and resources industry and wider environmental bodies through regular forums. For Air Departure Tax, an expert stakeholder forum was established in August 2015 and the Scottish Government has launched two public consultations to help inform its approach for introducing the tax in Scotland. This positive approach to consultation has been welcomed by a number of stakeholders in their evidence to the Scottish Parliament Finance and Constitution Committee.

Tax avoidance and abuse

The Scottish Government takes the issue of tax avoidance very seriously. The Scottish General Anti-Avoidance Rule (GAAR), established by the Revenue Scotland and Tax Powers Act 2014,²⁴⁵ allows Revenue Scotland to take counteraction against tax avoidance arrangements considered to be artificial, even if they otherwise operate within the letter of the law. Revenue Scotland is the tax authority responsible for the administration and collection of Scotland's devolved taxes, and will be responsible for Air Passenger Duty from April 2018, therefore the GAAR will apply to each of these taxes.

As HMRC will continue to be responsible for the collection and management of income tax, the Scottish Government has no direct role in tackling abuse. HMRC is committed to providing the same tax enforcement and compliance standards to Scottish income tax as to that in the rest of the UK where the same level of risk occurs, with the Scottish Government also having the ability to request additional enforcement and compliance activity if income tax policy diverges.

Tax revenue

The Scottish Government will always consider impacts of changes to tax rates on revenue, for example by asking the Council of Economic Advisors to comment on revenue risks from increasing the additional rate of income tax to 50%, and any mitigating actions that can be taken. The Scottish Government's approach to setting rates and bands for fully devolved taxes, such as LBTT, has shown its intention to ensure that fiscal policy is progressive and socially equitable. In the first two years of this tax, the Scottish Government has lifted 19,000 homebuyers out of the tax altogether and ensured that over 90% of homeowners pay less or no tax on the purchase of their home.

The Scottish Government will continue to take an open, collaborative and evidence-based approach when making legislative changes to existing taxes and introducing new taxes. It will continue to use its existing stakeholder forums to ensure it receives a wide range of views from industry bodies and others on how fiscal policy is influencing the economy in Scotland.

245 <https://www.legislation.gov.uk/asp/2014/16/enacted>

The Scottish Government is currently legislating for a replacement of Air Passenger Duty in Scotland. To improve transparency and aid scrutiny, it has committed to undertaking and publishing a range of impact assessments in advance of finalising its plans. This includes an independent economic assessment, a Strategic Environmental Assessment, and assessments of greenhouse gas emissions and noise impacts. In addition to this, the legislation places two duties on the Scottish Ministers:

- to have regard to the projected economic, environmental and social impacts when preparing draft secondary legislation on tax bands and rate amounts
- to keep these impacts under review when the tax bands and rate amounts are in force

7.3 Employability and skills²⁴⁶

The success of Scotland's *Labour Market Strategy* will be closely tied in to educational reforms. Scotland's education system, along with the range of employability and training opportunities, must ensure that every person is equipped with the rights skill sets and attributes.

- Youth Employment Strategy - *Developing the Young Workforce*²⁴⁷ (DYW)
 - an integrated approach across education, training, employment and local government to reduce youth unemployment by 40% by 2021
 - the aim is for Scotland to respond with meaningful world class vocational education by broadening and improving the quality of what is on offer to young people, to produce more work-ready young people, with the skills relevant to current and emerging business skills needs
 - Scottish Ministers have committed to annual reporting on progress: reports have been published in December 2015 and December 2016²⁴⁸
- The Equalities Action Plan for Modern Apprenticeships (MA) in Scotland
 - the five-year plan includes specific improvement targets for MA participation by disabled people, including part-time and flexible arrangements, to be achieved by 2021. Skills Development Scotland (SDS) will report on these annually and published a Year 1 update on 18 July 2017
 - providing young disabled people with the highest level of MA funding for their chosen MA Framework until the age of 30
- Scotland's Devolved Employment Services
 - newly devolved powers on employment support have been exercised since 1 April 2017 and, following a one year transitional service, from April 2018 a new Scottish employability programme will be introduced - Fair Start Scotland (FSS)
 - FSS will reflect the need for effective, person-centred services and in-work support

246 ICESCR (2016), para 30; CERD (2016), para 33; CEDAW (2013), para 47

247 <http://www.gov.scot/Publications/2014/12/7750>

248 <http://www.gov.scot/Topics/Education/developingtheyoungworkforce>

- FSS will include tailored and personalised provision for disabled people for whom work is a reasonable objective and others who struggle in the labour market, including women and those from minority ethnic backgrounds
- in developing the programme, the Scottish Government consulted widely with disabled people and their representatives, service providers and funders, and will work to integrate much more effectively with other services in Scotland already supporting disabled people, such as health and social care
- for disabled people for whom it is appropriate, the Scottish Government will expect providers of employment services to offer supported employment²⁴⁹

Examples of specific programmes to increase employment rates, particularly for the most disadvantaged groups, include: Modern Apprenticeships; Opportunities for All (including Activity Agreements); Scotland's Employer Recruitment Incentive (including the Open Doors Consortium - In-work support); and Community Jobs Scotland.

Pregnancy and maternity

The Scottish Government is working with the EHRC to tackle pregnancy and maternity discrimination. The Minister for Employability and Training chairs a working group, the remit of which includes: improving employers' access to advice to ensure best practice; developing an industry-specific communications strategy around the benefits of positive pregnancy and maternity policies; and strengthening health and safety advice.

Women

The Scottish Government will work with large employers to help women who have had career breaks return to work. Equate Scotland has been awarded funding of up to £50,000 to deliver the first stage of activity. This 12-month project will provide at least 40 women with support to re-enter the STEM sector by offering one-to-one guidance, career clinics and access to webinars, and three month paid placements that focus on life sciences, digital skills and engineering. The Scottish Government will look to develop returner programmes in other sectors where a need is identified. The projects will help women update skills and knowledge and smooth the transition back into the workplace for both women and employers.

In its call inviting proposals for the returners initiative in April 2017, the Scottish Government asked organisations to consider proposals which could help minority ethnic women returners.

249 <http://www.employabilityinscotland.com/employability-pipeline/supported-employment/>

Minority ethnic groups

The employment rate for people from minority ethnic groups in Scotland decreased from 58.9% to 57.6% over the year to December 2016, compared with an overall employment rate (16-64 year olds) in Scotland of 72.9%. Employment rates for females from minority ethnic groups are typically around 24% lower than for minority ethnic males; whereas the gap between all males and females living in Scotland is approximately 7%.²⁵⁰

The *Race Equality Framework for Scotland* (REF) sets out a vision for minority ethnic people to have equal, fair and proportionate access to employment and representation at all levels, grades and occupation types in Scotland's workforce, and experience fewer labour market, workplace and income inequalities.

Actions in the REF focus on measures for young minority ethnic people, ensuring they have equal access to different post-school destinations and highlight the importance of careers advice and guidance. One of the themed roundtables organised as part of implementation of the REF (see section 6.3) will discuss employability, employment and income.

As part of the implementation of DYW, a revised SDS school service offer has been rolled out in all secondary schools. This means that all young people will engage with SDS careers advisers earlier, starting during the P7/S1 transition and then continuing throughout their schooling. This provides the opportunity for every young person to have a 1-2-1 with an SDS careers adviser prior to making senior subject choices. Young asylum seekers and refugees will be offered an intensive coaching service from SDS advisers through ESOL Family Learning groups. SDS, Scottish Government, local authorities and members of the SDS Equality and Diversity Network, including those representing the interests of minority ethnic groups, continue to monitor the effectiveness of the implementation of the careers standards and guidance.

One of the key performance indicators for the SDS Equalities Action Plan is to increase the number of MA starts from minority ethnic communities to equal the population share by 2021.²⁵¹ The proportion of MA starts self-identifying as being from a Mixed or Multiple, Asian, African, Caribbean or Black, and Other ethnic group was 1.6% (equivalent to 414 starts) in 2015-16, and 1.7% (436 starts) in 2016-17. SDS will continue working directly with employers, the SAAB Employer Equalities Group and DYW groups to encourage the uptake of a more diverse workforce through MAs. SDS published a Year 1 update on 18 July 2017.

250 Regional Employment Patterns in Scotland: Statistics from the Annual Population Survey 2016 - <http://www.gov.scot/Publications/2017/05/8508>

251 According to the APS, 6.1% of 16-24 year olds in Scotland report being from a Mixed or Multiple; Asian; African; Caribbean or Black; Arab; and Other ethnic group (2.2% of 16-24 year olds in employment).

A £500,000 Workplace Equality Fund, based on recommendations in the REF and the findings of the Equal Opportunities Committee inquiry into *Removing Barriers: Race, Ethnicity and Employment*,²⁵² aims to address long standing barriers to accessing the labour market. It is anticipated that the Fund will help to identify and promote practice that reduces employment inequalities, discrimination and barriers, including recruitment and progression for women, disabled people, ethnic minorities and older people (aged over 50).

To continue its exploration of what more it can do on the recognition of overseas qualifications, the Scottish Government commissioned a short project to review and update the recommendations of the 2010 *Scoping Study on Support Mechanisms for the Recognition of Skills, Learning and Qualifications of Migrant Workers and Refugees* within the current context. This work was undertaken by the University of Glasgow.

Employability support

Contracted employability support for long-term unemployed people is now devolved to Scotland. The Scottish Government is developing a long-term 2020 and beyond vision to identify specific needs of clients and develop a fully integrated and aligned service that helps people move into good quality, sustainable work. The intention is that some unemployed customers will have early access to the programme, and this will include refugees and those from a minority ethnic background. Service providers must demonstrate how they will engage positively to support customers into sustained employment, recognising the geographic variations in ethnic minority populations and being sensitive to the cultural issues affecting them, particularly women and refugees. The Scottish Government will work with successful bidders to ensure this requirement is met.

In 2016-17 the Scottish Government's initiative for responding to redundancy situations, *Partnership Action for Continuing Employment* (PACE),²⁵³ supported 15,167 individuals and 299 employers over 406 sites. The most recent survey (October 2016) showed that 71% of surveyed recipients obtained employment within six months.²⁵⁴

7.4 Migrant workers²⁵⁵

UPR recommendations²⁵⁶

- Revise regulation and administrative practices in order to protect the human rights of female domestic migrant workers, particularly when their work permits are linked to their employer and they have been victims of human trafficking and work exploitation

252 http://www.parliament.scot/S4_EqualOpportunitiesCommittee/Reports/EOS042016R01Rev.pdf

253 <http://www.gov.scot/Topics/Education/skills-strategy/pace>

254 <http://www.gov.scot/Resource/0050/00507033.pdf>

255 ICESCR (2016), para 35

256 134.220

Immigration matters are fully reserved to the UK Government.

The Human Trafficking and Exploitation (Scotland) Act 2015 includes the offences of human trafficking and of slavery, servitude and forced or compulsory labour. The Act requires the development of a Trafficking and Exploitation Strategy, which was created in conjunction with stakeholders and published on 30 May 2017. Implementation of the Strategy is being taken forward, including actions in relation to identifying victims and supporting them to safety and recovery; identifying perpetrators and disrupting their activity; and addressing the issues that foster trafficking and exploitation.

See sections 4.1, 7.5, 7.9 and 7.12 for information on the Scottish Government activity regarding access to justice, the Living Wage, employment tribunal fees and social security.

7.5 The Living Wage²⁵⁷

UPR recommendations²⁵⁸

- Consider, in consultation with stakeholders, adopting a universal basic income to replace the existing social protection system.

Employment Law is a reserved matter.

The Scottish Government actively promotes payment of the real Living Wage of £8.45 per hour, which is paid to all its employees 18 years old and over. It is calculated according to the basic cost of living and takes account of the adequacy of household incomes for achieving an acceptable minimum living standard.

The Scottish Government has long championed payment of the Living Wage and the real benefits to Scotland's economy of treating people more fairly. It has demonstrated its commitment by becoming an Accredited Living Wage Employer and by increasing funding for the Scottish Living Wage Accreditation Initiative to £300,000, to reach the target of 1,000 accredited Living Wage employers by Autumn 2017.²⁵⁹

The Scottish Government is using all the powers at its disposal to promote fair pay and conditions, and continues to encourage every organisation, regardless of size, sector or location, to ensure that all members of staff receive a fair level of pay. Of the four countries of the UK, Scotland has the highest proportion of employees - around 80% - paid the Living Wage.

The Scottish Government continues to respond to the Low Pay Commission consultation on the National Living Wage and the National Minimum Wage - that the National Living Wage should reflect the rate of the real Living Wage, which is paid to employees aged 18 and over, and not be merely an enhanced minimum rate for over 25s.

257 ICESCR (2016), para 37

258 134.167

259 <http://scottishlivingwage.org/>

Adult social care workers

The Scottish Government has committed to paying the Living Wage to adult social care workers from 1 October 2016, and has been working closely with health and social care partnerships and providers to make delivery successful. This is an ambitious commitment, which will allow councils to commission adult social care from the independent and voluntary sectors on the basis that care workers are paid the real Living Wage, giving up to 40,000 people, mainly women, doing some of the most valuable work in Scotland a well-deserved pay rise.

Public procurement

In relation to public procurement, the Scottish Government cannot make payment of the Living Wage a mandatory contract requirement. Any requirement on contractors, as part of a public procurement process or public contract, to pay their employees a living wage set at a higher rate than the UK's National Minimum Wage is unlikely to be compatible with EU law. This position was twice confirmed by the European Commission in correspondence with the Scottish Ministers (May 2012 and May 2014).

Despite this, and the fact that employment law is a reserved matter, the Procurement Reform (Scotland) Act 2014 took every opportunity to tackle payment of the Living Wage through procurement. The Act requires public bodies' procurement strategies to include a statement of their general policy on payment of a living wage to people involved in delivering public contracts. The *Statutory Guidance on Addressing Fair Work Practices, including the Living Wage, in Procurement*²⁶⁰ makes clear that payment of the Living Wage is a significant indicator of an employer's commitment to fair work practices.

Universal basic income

Four Scottish local authorities are currently considering how they can pilot elements of a citizen's universal basic income. One of its attractions is that it may help those on the lowest incomes back into work or help them work more hours, while providing an unconditional 'basic income' as a safety net. The Scottish Government has stated that bold and imaginative projects like this deserve support, whilst also recognising that the concept is currently untested in an advanced economy.

The 2017-18 PfG contains commitments to:

- establish a fund to help the local authorities develop their proposals further and establish suitable testing
- ask the independent Poverty and Inequality Commission in Scotland to consider how it could help to draw together findings from local authorities to inform the government's thinking

260 <http://www.gov.scot/Publications/2015/10/2086>

7.6 Blacklisting²⁶¹

The Scottish Government regards the practice of blacklisting in any form as unacceptable, particularly given the serious negative impacts it can have on the lives of those affected. A number of actions have been taken through procurement to effectively implement the Employment Relations Act 1999 (Blacklists) Regulations 2010.²⁶²

The Public Contracts (Scotland) Regulations 2015²⁶³ (higher value OJEU (Official Journal of the European Union) threshold contracts) and the Procurement (Scotland) Regulations 2016²⁶⁴ (lower value contracts), which came into force on 18 April 2016, contain provision to ensure that companies that are involved in blacklisting will be excluded from bidding for public contracts. Public bodies are legally required to exclude from bidding for public contracts any businesses which have been found to have breached the 2010 Regulations, or which have admitted to doing so, until they have taken appropriate remedial measures or a period of three years has elapsed - the longest period of exclusion EU law allows.

Statutory guidance, *Addressing Fair Work Practices, including the Living Wage, in Procurement* requires public bodies, before undertaking a procurement exercise, to consider whether it is relevant and proportionate to include a question on fair work practices as part of the competition. A positive approach to fair work practices may include progressive workforce engagement, for example having arrangements in place to ensure trade union recognition and representation and, in the absence of a recognised trade union, the existence of alternative arrangements to give staff an effective voice.

7.7 Trade unions²⁶⁵

Employment law and industrial relations are matters currently reserved to the UK Government.

The Scottish Government is strongly opposed to the UK Government's Trade Union Act 2016, which presents a direct threat to the rights of workers and to Scotland's approach to industrial relations. Particular concerns relate to the potential impact of provisions on Article 8(1)(c) of the ICESCR, the right of trade unions to function freely. The Scottish Government continues to make the case that this is unnecessary legislation and does not reflect the true position of trade unions in Scotland.

Working Together for a Fairer Scotland; Scottish Government Response to the Working Together Review²⁶⁶ underlines that a progressive approach to industrial relations and to trade unionism is at the heart of a fairer, more successful

261 ICESCR (2016), para 39

262 <http://www.legislation.gov.uk/ukdsi/2010/9780111490457/contents>

263 <http://www.legislation.gov.uk/ssi/2015/446/contents/made>

264 <http://www.gov.scot/Topics/Government/Procurement/policy/ProcurementReform/implementEUDirProcRef>

265 ICESCR (2016), para 39

266 <http://www.gov.scot/Publications/2015/08/7871>

society. The Scottish Government is committed to working collaboratively with trade unions, its social and economic partners, to promote strong industrial relations in Scotland and to limit the impacts of the Trade Union Act. The Scottish Government encourages staff to join and play an active part in an appropriate trade union and, where strikes do occur, has given a guarantee that it would not employ agency staff to cover strike action.

The Scottish Government has established the Fair Work Convention, whose remit is to drive forward Fair Work in Scotland. It looks to ensure that public bodies, trade unions and other partners work to embed Fair Work and the Fair Work Framework across Scottish industry, including public and third sectors. The Scottish Government is taking practical steps to retain and enhance the role of trade unions, and to embed the *Fair Work Framework* in its workplaces by providing £250,000 for a second year for the Trade Union and Fair Work Modernisation Fund. This will ensure that trade union reps are not needlessly diverted by the burdens of the 2016 Act from supporting members and promoting fairer work practices.

The Scottish Government is clear that the only way it can ensure the continuation of strong industrial relations in Scotland and limit the impacts of the Trade Union Act is if employment law is devolved to the Scottish Parliament. The Scottish Government will continue to press the UK Government for the full set of powers around employment law.

7.8 Zero hours contracts²⁶⁷

Employment Law is a reserved matter.

The Scottish Government has embedded fair work within its *Economic Strategy* and *Labour Market Strategy*, and in 2015 established the Fair Work Convention.

The Scottish Government does not directly employ people on zero hours contracts and condemns the inappropriate use of exploitative zero hours contracts. Unfair work practices like this are unacceptable and undermine ambitions to grow the economy and tackle inequalities. The Scottish Government does, however, recognise that the use of non-exploitative zero hours contracts can ensure flexible support for both businesses and individuals.

The use of reported zero hours contracts in Scotland's labour market is lower than in the UK as whole (2.2% and 2.8% respectively). The Scottish Business Pledge includes a commitment not to employ people on exploitative zero hours contracts (or comparable very low core hours), or to ensure that any such contracts are fair and appropriate.

Stability of employment and hours of work are important elements of fair work. Where feasible, these forms of employment, for example direct employment or fixed-term employment contracts, should be offered to workers to ensure that everyone is provided with adequate security, stability and the ability to more effectively plan for the future.

267 ICESCR (2016), para 32

Statutory guidance on *Addressing Fair Work Practices, including the Living Wage, in Procurement*, makes clear that a bidder's positive approach to fair work practices can have an impact on the quality of services, goods and works being procured. Public bodies must now consider, before undertaking a procurement exercise, whether it is relevant and proportionate to include a question on fair work practices as part of the competition.

7.9 Employment tribunal fees²⁶⁸

The Scottish Government wants all employers to adopt fair working practices but where this doesn't happen workers should have fair access to justice. The Smith Commission recommended the devolution of all powers over the operation and management of all reserved tribunals, including the employment tribunals. Section 39 of the Scotland Act 2016 allows for such a transfer of responsibilities.

The UK Government has written to the Scottish Government confirming that the operation and management of employment tribunals will be transferred to Scotland. Agreement by the UK and Scottish Parliaments on the terms of the transfer, which will be set out in an Order in Council, will be required. The Scottish Government is continuing to discuss the transfer of reserved tribunals to Scotland with stakeholders and the UK Government, including the proposed timetable of the devolution of responsibilities relating to the main jurisdictions.

On 26 July 2017 the Supreme Court ruled the UK Government's introduction of employment tribunal fees in 2013 as being unlawful and discriminatory against women. The Scottish Government strongly opposed the UK Government's introduction of the fees and is delighted with the Supreme Court ruling. The 2015 PfG committed to abolishing the fees in Scotland when the management and operation of employment tribunals were devolved.

The Scottish Government will continue to work with stakeholders, including trade unions, to ensure that the new employment tribunal system in Scotland provides access to justice and contributes to the Scottish Government's vision for fair work to be embedded in all workplaces in Scotland.

7.10 Welfare reform mitigation²⁶⁹

UPR recommendations²⁷⁰

- With consideration of the disproportionate impact of austerity measures, ensure the welfare of all segments of society; tackle poverty and inequality and enhance social mobility, with policies targeted at disadvantaged families and their children

The powers contained in the Welfare Reform Act 2012 are reserved to the UK Government. A report to the Scottish Parliament on the impacts on the people

268 ICESCR (2016), para 21; CEDAW (2013), para 47

269 ICESCR (2016), para 19, 41; CEDAW (2016), para 63

270 134.163

of Scotland of the Act and other welfare measures passed since 2010, *Welfare Reform (Further Provision) (Scotland) Act 2012 - Annual Report - 2017*,²⁷¹ was published on 29 June 2017.

Around £1 billion will be cut from welfare spending in Scotland each and every year by 2021, with a £0.2 billion cut due to changes this year alone. The Scottish Government remains concerned about many aspects of the UK Government's welfare reforms. It continues to press UK Ministers to make improvements and to ensure safeguards are in place for those who need them. The Scottish Government has made clear its continued opposition to the cuts and has taken a range of actions to help support marginalised groups and individuals.

Since 2013-14 the Scottish Government has invested over £350 million to mitigate UK Government welfare reform and support low income families, including fully mitigating the "bedroom tax" - ensuring more than 70,000 households save around £650 per year on average and are able to stay in their own home - and helping over 254,000 individual households - a third of which include children - through the Scottish Welfare Fund (SWF).

Discretionary Housing Payments (DHP) were devolved from April 2017. In addition to fully mitigating the bedroom tax, £10.9 million is available to local authorities to help support those worst affected by UK Government welfare reform to maintain their tenancies and avoid housing crisis. The Scottish Government will continue to work with partners in local government to ensure that DHPs remain an effective means of support to those who most require it. Forthcoming guidance will also ensure that the Scottish Government commitment to equality and support for protected groups is at the heart of the delivery of DHPs.

As part of measures to tackle poverty, the Scottish Government has invested over £1 billion in the Council Tax Reduction Scheme (CTRS) since 2013-14, assisting almost half a million households each year to meet their council tax.

The Scottish Government shares the concerns of stakeholders across Scotland regarding the impact of frozen benefits, especially Local Housing Allowance (LHA), which is limiting the affordability of homes in the rental sector. The Scottish Government has commissioned research on the impact of the extension of LHA rates to the social sector.

The Scottish Government has also made clear its opposition to sanctions and stated its belief that sanctions should be under the control of the Scottish Parliament. A range of independent evidence has shown that the current system is disproportionate and not fit for purpose. For example, the UK Parliament's Public Accounts Committee report, *Benefit Sanctions* (February 2017),²⁷² shows that there is no robust evidence on whether sanctions actually work, or even reliable data that shows what happens after people are sanctioned.

271 <http://www.gov.scot/Publications/2017/06/6808>

272 <https://publications.parliament.uk/pa/cm201617/cmselect/cmpubacc/775/775.pdf>

In 2017-18 the Scottish Government will spend around £454 million on measures that either directly mitigate the changes introduced by the Welfare Reform Act or are part of wider measures tackling poverty in Scotland.

The Scotland Act 2016 provided for a number of additional powers, including powers shared with the DWP over the housing element of Universal Credit (UC). The Scottish Government continues to engage with the DWP on using these powers to abolish the bedroom tax at source, and is also committed to restoring housing support to 18-21 year olds.

Through the 2016 Act, the Scottish Government will receive flexibilities in relation to the administration of UC, including the splitting of UC payments between individual members of a couple. There is substantial support for this across the equalities sector in Scotland. The Scottish Government has been carrying out workshops with stakeholders to consider how split payment policy could be developed.

7.11 Tackling poverty and delivering social justice²⁷³

UPR recommendations²⁷⁴

- With consideration of the disproportionate impact of austerity measures, ensure the welfare of all segments of society; tackle poverty and inequality and enhance social mobility, with policies targeted at disadvantaged families and their children.
- Increase efforts to eliminate child poverty, including through a clear national strategy, and by undertaking an assessment of the impact of the welfare reform on children from disadvantaged families.

The Scottish Government's work to mitigate the worst effects of the UK Government's welfare cuts forms part of a broader strategy to tackle poverty and deliver social justice. The *Fairer Scotland Action Plan*²⁷⁵ (October 2016) is built on five high-level ambitions for the period to 2030:

- a fairer Scotland for all
- ending child poverty
- a strong start for all young people
- fairer working lives
- a thriving third age

The Plan contains 50 fairness actions for the current parliamentary session that will help meet these ambitions, ranging across the responsibilities of government, including commencing the socio-economic duty in section 1 of the Equality Act 2010 (see section 6.2); commitments to promote good flexible working; and a new £29 million fund (with £12.5 million of European money) to support communities and the third sector to develop new, innovative

273 ICESCR (2016), para 48; CRC (2016), para 71

274 134.164, 134.168, 134.191-134.192

275 <http://www.gov.scot/Publications/2016/10/9964>

approaches to tackling poverty. It also features commitments from a range of organisations from across the UK who want to help build a fairer Scotland, and is the start of a long-term commitment to help shape a fairer Scotland.

The Plan sets out progress on meeting the recommendations of the first report of the Independent Advisor on Poverty and Inequality, *Shifting the Curve - A Report to the First Minister*,²⁷⁶ which the Scottish Government has agreed to implement in full. *Shifting the Curve* recognises anti-poverty actions that have already been introduced, particularly around welfare reform, supporting social housing and promoting the Living Wage.

The Scottish Government has already made significant progress in delivering these actions and will publish a progress report annually setting out updates on progress on the 50 actions, and on research and strategy actions that were set out alongside. The first of these updates was published on 23 November 2017.²⁷⁷

Child poverty

The Plan also describes a range of actions the Scottish Government will take in the current parliamentary session to tackle child poverty, including a new Best Start Grant to support low income parents in the early years of their children's lives; a baby box of essential items for all children born in Scotland; and a substantial increase in early learning and childcare provision. The Child Poverty (Scotland) Bill²⁷⁸ was introduced to the Scottish Parliament on 9 February 2017. If passed, it will establish ambitious statutory income-based targets for reducing child poverty by 2030 (in line with SDG 1²⁷⁹), and put in place a robust framework for measuring, monitoring and reporting on child poverty at a national and local level.

Fuel poverty

Recognising the importance of tackling fuel poverty, the Scottish Government designated energy efficiency as a national infrastructure priority. The cornerstone of this will be Scotland's Energy Efficiency Programme (SEEP),²⁸⁰ which will commence in 2018 for a 15-20 year period. In Autumn 2017 the Scottish Government will consult on a new fuel poverty strategy, including a fuel poverty target, and has committed to introduce a Warm Homes Bill in 2018 to help tackle fuel poverty.

The Scottish Government is delivering the 2016-17 PfG commitment to make half a billion pounds available over the next four years and, by the end of 2021, will have allocated over £1 billion pounds since 2009 on tackling fuel

276 <http://www.gov.scot/Publications/2016/01/1984>

277 <http://www.gov.scot/Publications/2017/11/7078>

278 <http://www.parliament.scot/parliamentarybusiness/Bills/103404.aspx>

279 Target 1.2 <http://www.un.org/sustainabledevelopment/poverty/>

280 <http://www.gov.scot/Topics/Business-Industry/Energy/Action/lowcarbon/LCITP/SEEP>

poverty and improving energy efficiency. This money will help install energy efficiency measures in thousands of homes across Scotland and build on the more than one million measures already delivered through a range of programmes to over one million Scottish households since 2008, helping to make homes and buildings warmer and cheaper to heat.

7.12 Social security²⁸¹

UPR recommendations²⁸²

- With consideration of the disproportionate impact of austerity measures, ensure the welfare of all segments of society; tackle poverty and inequality and enhance social mobility, with policies targeted at disadvantaged families and their children.

Foundational principles

Over the course of the current parliamentary session, responsibility for 11 forms of social security assistance, representing 15% of total welfare spend in Scotland will be devolved from the UK to the Scottish Parliament. The Scottish Government will use this important opportunity to promote fairness and equality in Scotland by taking a different approach to social security and building a new, distinctly Scottish system founded on fairness, dignity, respect and human rights.²⁸³

All aspects of the design and development of this new system will be defined by adherence to the following seven key legislative principles, established in Section 1 of the Social Security (Scotland) Bill²⁸⁴ introduced on 20 June 2017:

- social security is a human right, essential to the realisation of other human rights
- respect for the dignity of individuals is to be at the heart of the Scottish social security system
- the Scottish social security system is to be designed with the people of Scotland on the basis of evidence
- Scottish Ministers have a role in ensuring that individuals are given what they are eligible to be given under the Scottish social security system
- our processes and services will be evidence based and designed with the people of Scotland
- opportunities are to be sought to continuously improve the Scottish social security system in ways which put the needs of those who require assistance first
- the Scottish social security system is to be efficient and deliver value for money

281 ICESCR (2016), para 41

282 134.164, 134.167

283 <http://www.gov.scot/Topics/People/fairerscotland/Social-Security>

284 <http://www.parliament.scot/parliamentarybusiness/Bills/105267.aspx>

These principles deliberately correspond to fundamental aspects of the right to social security as outlined in key human rights instruments. The Scottish Government is determined that the new system will avoid the stigmatisation, complexity and adversarial nature of the UK Government's approach, which was strongly criticised in a consultation with the people of Scotland.²⁸⁵ The principles are established on the face of the Bill, in line with strong stakeholder and public support, with the intention of embedding the more positive, supportive ethos of the Scottish system from the very outset. The Scottish Government has committed to working with the people of Scotland and the Scottish Parliament to develop and improve the principles as the Bill progresses.

The principle that "Scottish Ministers have a role in ensuring that individuals are given what they are eligible to be given under the Scottish social security system" reflects the Scottish Government's commitment to help maximise people's incomes and to ensure that those who are eligible, but who are not currently making claims, receive the benefits to which they are entitled. The Scottish Government is already delivering a programme of activity to raise awareness of social security benefits. There will be a benefit take up campaign to help ensure people maximise their incomes, and the Scottish Government is committed to exploring whether such campaigns should specifically target particular groups where there is evidence that those groups are less likely to access their entitlement. This accords with General Comment 19 of the UN Committee on Economic, Social and Cultural Rights.²⁸⁶ There will also be a new Financial Health Check service for people on low incomes.

Of particular importance is the principle that social security is a human right, essential to the realisation of other human rights. A rights based approach is the cornerstone of the new system; from policy development and service design, through to the delivery of assistance and the interaction between agency staff and the people who use the new service. This principle is focused on ending the stigma associated with accessing assistance, which has been driven and encouraged by UK Government statements. In contrast, the new system in Scotland will support and encourage people to exercise their right to social security to the fullest possible extent.

The Scottish Government is working closely with the EHRC and the SHRC to ensure that the new system meets these very high standards in all of its processes and practices, and embeds dignity and respect in public services.

The forms of assistance being devolved represent just 15% of total welfare spend in Scotland, meaning it is not possible for the new system to completely eradicate the unfairness associated with the UK system. However, even with these political and financial constraints, the Scottish Government has continually looked for ways to extend the adequacy of assistance by increasing payment levels, widen eligibility and provide a more human, positive experience for people who will rely on the new system for support:

285 <https://consult.scotland.gov.uk/social-security/social-security-in-scotland/>

286 http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fc.12%2fGC%2f19&Lang=en

- commitment to increase Carer's Allowance to the level of Job Seeker's Allowance, including early introduction through an interim, supplementary payment
- commitment to introduce a new Young Carer's Allowance
- commitment to increasing Carer's Allowance for carers looking after more than one disabled child
- substantial increase in support offered by Best Start Grant (BSG) in comparison with the UK's Sure Start Maternity Grant - for a family with two children, the BSG will provide £1,900 of support over the early years period, compared to the £500 currently available from the UK Government
- commitment to ending unnecessary re-assessments for the disability benefits and to reducing, as far as possible, the need for face to face assessments
- to ensure that, where assessments are required, they are not carried out by the private sector - instead being conducted by trained professionals with expertise of the conditions they are tasked with assessing. Profit will never be put before people.
- introducing a Job Grant to support young people aged 16-24 years to meet the costs of returning to work after a period of 6 months' unemployment
- recruitment of over 2,300 people with direct experience of the current system to help design, build and refine a new and better social security model for Scotland
- the agency will also provide locally accessible face-to-face pre-claims advice and support co-located, where possible, in places people already visit
- commitment to ensure agency staff are trained in a way that is consistent with the principles and Charter, to see people as individuals with specific needs and to be responsive to the help and support that each person requires

The Scottish Government has also committed to a statutory requirement on the Scottish Ministers to produce a publicly accessible Charter that will convert the legislative principles from ambitious objectives to tangible commitments to deliver specific outcomes. It will also communicate, in the clearest possible terms, what people are entitled to expect from the system and will drive the culture and positive ethos of the new Scottish social security agency. Ministers will have a legal duty to report annually on progress against the commitments in the Charter, which will help hold the Scottish Government to account for the successful delivery of a fairer, more supportive system. In this way, the Charter can be seen as an accord or compact between the service and the people who use it, creating an additional mechanism for scrutiny, enhanced accountability and driving improvement.

Co-design

Every aspect of the new system will be developed in partnership with people who have direct personal experience of the current UK system. Over 2,400 people with direct experience of the current system have been recruited in Experience Panels to help design, build and refine a new and better model for Scotland. The first piece of research, *About Your Benefits and You*, involves a survey and focus groups to learn more about the panel members, what they

think works in the current system and where there is room for improvement. Sessions will be held in Edinburgh, Glasgow, Glenrothes, Dumfries, Hawick, Ayr, Perth, East Kilbride, Airdrie, Dundee, Aberdeen and Inverness, and work is ongoing to ensure that equalities groups and those with protected characteristics are strongly and fairly represented in the Experience Panels. The research will inform a work plan for the Panels.

This co-design goes much deeper than simply seeking feedback: people with direct experience are already helping to test and pilot some of the new technology and processes that are needed to make the system a success. Early examples include work on application processes and communications, including important details such as stopping the use of intimidating brown envelopes, eliminating jargon and large blocks of complex text, and using clearer, more positive language in correspondence. This co-design approach is intended to empower those who rely on social security, giving them an active and direct role in designing and developing the new system, ensuring that it meets their specific needs from the outset.

The Agency

It is crucial that the core principles are also strongly reflected in the operation of the new agency that will administer devolved benefits in Scotland. During the process of selecting the preferred operating model for the agency, one of the key tests applied was to place people at the heart of the system, exploring how it would feel for someone to interact with each of the different options. This led to a number of conclusions:

- the importance of a local presence for the new agency in locations people already commonly frequent
- the value of face-to-face contact between those in receipt of assistance and agency employees
- cash as opposed to in-kind provision is generally seen as the best option to allow people choice and flexibility
- medical assessments must be fair and undertaken by professionals with expertise in the conditions of the people they are assessing

An example of how the agency will improve the experience of those interacting with the new system is through the intended approach to staff training. The agency will work closely with Experience Panels and partner organisations to develop a training programme that fully reflects the core principles and the commitments that will be made in the Charter. This will include ensuring that staff are trained to understand the diverse needs of those interacting with the system and that they are able to tailor their approach to meet those needs.

A core element of this will be to emphasise the importance of listening. Agency staff will be trained to see people as individuals and to be responsive to the specific help and support that each person requires. The goal is to ensure that the system is not adversarial and that people are respected and fully supported through the entire process. This provides reassurance that people

will be dealing with professionals, trained to tailor their approach to the specific needs and characteristics of the individual.

Access to remedy

The new system will also make provision for people to complain, challenge and appeal decisions, including the right to access the services of a First-tier Tribunal (for appeals) and the Scottish Public Services Ombudsman (for complaints), as well as onward to further judicial review if required.

The agency's complaints and appeals procedures will be strongly reflective of the values and standards set out in the Charter, again strengthening the nature of the redress that is available to individuals. Ministers will have a statutory duty to report to Parliament on the extent to which the commitments made in the Charter have been delivered. In this way, the Charter can act as a mechanism to support the Scottish Government and Parliament to assess what is not working and where improvements require to be made.

The Scottish Government is also strongly committed to ensuring that meaningful redress is available to individuals where it is felt that some element of the system is failing to live up to the rights set out in the Charter. It is expected that identifying the best model will be considered during the co-design process. However, the Scottish Government does intend that there will be a new, independent body, convened to provide advice on, and scrutiny of, devolved Scottish social security matters.

7.13 Adequate food²⁸⁷

Food insecurity

The Scottish Government provided £1 million of funding over 2014-16 as part of the Emergency Food Action Plan. In October 2015, an Independent Short-Life Working Group on Food Poverty was established to identify the issues that lead people into food poverty and make recommendations on how they can be addressed. In November 2016 the Scottish Government published its response²⁸⁸ to the Working Group's report, *Dignity: Ending Hunger Together in Scotland*²⁸⁹ (30 June 2016). Notably, the Scottish Government made a commitment to explore with stakeholders how the right to food could be enshrined within Scots Law.

In 2016-17, the Scottish Government established the £1 million a year Fair Food Fund, which is intended to support projects that will deliver dignified and sustainable responses to food poverty and reduce the need for emergency food aid.

287 ICESCR (2016), para 54; CRC (2016), para 67

288 <https://beta.gov.scot/publications/food-poverty-response-to-working-group/>

289 <http://www.gov.scot/Publications/2016/06/8020>

Diet and obesity

Tackling obesity is a top priority for the Scottish Government and it will consult on a new diet and obesity strategy in 2017. This will include taking into account the views of a wide range of stakeholders and interested parties, and examining what further effective actions can be taken within the Scottish Government's powers.

The Scottish Government's vision for the diet and obesity strategy is of a Scotland where people eat healthily, have a healthy weight, and enjoy the same healthy life expectancy no matter where they live, as part of the full and equal enjoyment of economic and social rights, such as the right to health and food. The overall aim is a sustained reduction in obesity levels across the whole population, including women and children, where the disparities are the greatest.

The Scottish Government welcomes the UK Government's decision to introduce a soft drinks levy, although it cannot in isolation address the levels of obesity in the country. Through Food Standards Scotland, the Scottish Government is engaged in the reformulation programme led by Public Health England.

The Scottish Government has supported a national community food support network since 1996 and remains committed to tackling health inequalities and barriers to healthy, affordable food. It is supplementing national support with funding for regional networks to ensure local initiatives working with the most vulnerable in society are able to carry out their core functions.

Advertising

Broadcast advertising is reserved to the UK Government. Restrictions on advertising of food high in fat, salt and sugar around children's programming do not go far enough. The Scottish Government continues to lobby UK Ministers to extend these restrictions to 9pm, as this would significantly reduce children's exposure to the marketing of unhealthy foods and ensure measures like the soft drinks levy do not operate in isolation. Similar restrictions for non-broadcast media were brought in by the UK's Advertising Standards Authority in July 2017. The Scottish Government will in due course consider the efficacy of these new restrictions and reserves the right to propose a strengthening of the regulations where required.

The Scottish Government has an established social marketing programme, *Eat Better, Feel Better*,²⁹⁰ through which it supports families to make healthier choices. Importantly, this is run in collaboration with a range of partners, including retailers and community groups who work at a local level, in order to maximise reach and engagement.

290 www.eatbetterfeelbetter.co.uk

Maternal and infant nutrition

The Scottish Government is committed to promoting, supporting and maintaining breastfeeding throughout Scotland in the early days and beyond. *Improving Maternal and Infant Nutrition: A Framework for Action*²⁹¹ outlines the measures that should be taken by all organisations working with families to ensure that every parent is supported to give their baby the very best nutritional start in life. The Scottish Government provides funding of around £2.3 million per year to NHS health boards to implement the Framework's Action Plan, which includes a range of breastfeeding support activities and interventions. Smaller funding grants and allocations of around £388,000 have been made to support the National Breastfeeding Helpline, some of the breastfeeding voluntary organisations, and to support the charity that picks up and delivers donor breast milk for premature and sick infants in neonatal units across Scotland.

The Scottish Government also funds UNICEF to deliver Baby Friendly Initiative (BFI) accreditation assessments in maternity hospitals, in neonatal units, in community settings and universities that provide midwife and health visitor courses in Scotland. The BFI implementation is at an advanced stage and, this year, Scotland is celebrating the most progress in the UK in achieving the UNICEF UK Baby Friendly best practice standards.

The Scottish Government is carrying out the first Scotland-only Maternal and Infant Nutrition Survey. The information collected in this survey is not currently collected through universal data sources and will provide valuable insight into maternal nutrition, breastfeeding, infant feeding and wider health behaviours. The report is scheduled to be published in early 2018.

Nutrition in schools

The Schools (Health Promotion and Nutrition) (Scotland) Act 2007²⁹² makes health promotion a central purpose of schooling. A school is health promoting if it provides activities and an environment which promotes the physical, social, mental and emotional health and wellbeing of pupils in attendance at the school.

The 2007 Act is accompanied by the Nutritional Requirements for Food and Drink in Schools (Scotland) Regulations 2008,²⁹³ which set high nutritional standards that all food and drink served in schools must meet. The duties under the Act and Regulations are monitored by Education Scotland Health and Nutrition Inspectors.

Free school lunches are available to all pupils in primaries 1 to 3 at all publicly funded schools in Scotland. This policy helps save families an average of £380 per child per year, helps children develop healthy eating habits, and educates them about leading a healthy lifestyle. After primary 3, children are still entitled

291 <http://www.gov.scot/Publications/2011/01/13095228/0>

292 <https://www.legislation.gov.uk/asp/2007/15/contents>

293 <https://www.legislation.gov.uk/sdsi/2008/9780110816456/contents>

to free school meals where their parents (or guardians) are in receipt of specific qualifying benefits.²⁹⁴ Older pupils who receive any of those benefits in their own right can also claim free school lunches.

Schools are required by statute to promote school lunches and in particular free school lunches,²⁹⁵ and the Scottish Government expects all local authorities to undertake measures aimed at maximising the uptake of free school lunches among eligible people. One such example is Glasgow City Council, which will be introducing an automated registration system. The Scottish Government will be liaising with Glasgow City Council to monitor what impact this measure has.

These policies demonstrate the Scottish Government's commitment to children accessing balanced and nutritious food and contribute to the realisation of children's right to the highest attainable standard of health, which includes nutritious food and knowledge of nutrition. Children and young people are also taught about health and wellbeing in schools, including food and health skills.

Scotland's model of school food provision and food education is regularly used as an exemplar, including during a USA Senate hearing in 2014.

7.14 Housing²⁹⁶

Housing supply

The Scottish Government is determined to increase and accelerate housing supply across all tenures, and support the building industry and local authorities to deliver their housing priorities with quality homes in mixed communities that fit local needs.

Over the last parliamentary session, the Scottish Government exceeded its target of delivering 30,000 affordable homes by more than 10%. A total of 33,490 affordable homes were delivered, including 22,523 for social rent, well above the target of 20,000. Over the current parliamentary session, the Scottish Government is investing over £3 billion to deliver at least 50,000 affordable homes, 35,000 of which will be for social rent.

Most of these homes will be delivered by housing associations and councils, and will be sufficiently flexible to meet people's varying needs. Since 2012-13, funding through the Scottish Government's Affordable Housing Supply Programme (AHSP) has been allocated to local authorities in the form of Resource Planning Assumptions, giving each council the flexibility to apply resources to its own strategic priorities. The number and type of affordable

294 Income Support; Income-based Job Seeker's Allowance; any income related element of Employment and Support Allowance; Child Tax Credit (where income is less than £16,105); maximum Child Tax Credit and Working Tax Credit (where income is less than £6,420); Universal Credit (where take home pay is less than £610 per month); and support under Part VI of the Immigration and Asylum Act 1999.

295 <http://www.gov.scot/Publications/2008/05/08160456/0>

296 ICESCR (2016), para 50

homes delivered within each local authority area is dependent upon the priorities of local authorities, as identified in their HNDAs, LHS and Strategic Housing Investment Plans.

In January 2016, the Scottish Government increased housing subsidies by up to £14,000 for social and affordable homes for rent being delivered by councils and Registered Social Landlords (RSL). Flexibility also exists within the grant subsidy regime to accommodate the provision of more specialist housing where this is identified by local authorities as a priority.

During the current funding year (2017-18), over £590 million is available to increase the supply of affordable homes across Scotland, £18 million more than the previous year. For the first time, the Scottish Government has committed to year-on-year increases in funding for affordable homes, to be shared by local authorities over the next three years. As a result, more than £1.75 billion is being allocated to councils across Scotland.

The review of the planning system has highlighted a number of areas that could be improved to assist in the planning for new housing. The Scottish Government is working to find ways to provide greater certainty in the identification of housing requirements in plans, and is looking to streamline development plan preparation processes, which should assist in ensuring there is a plentiful and deliverable supply of land provided for new housing development.

The Scottish Government wants disabled people in Scotland to live life to the full in homes built or adapted to enable them to participate as full and equal citizens. It has placed requirements on local authorities to ensure their housing plans include a realistic target for wheelchair accessible housing to meet the needs of local communities.

The Scottish Government has been working with local authorities and their partners in five locations across the country to test fundamental changes to the delivery and funding arrangements for housing adaptations. An independent evaluation of this work was published in September 2017.²⁹⁷ Work is now underway to consider the recommendations and to work with stakeholders to think about and agree next steps.

Additionally, the Scottish Ministers committed to working with key stakeholders to develop guidance for housing and care providers on timescales for installing adaptations. This work is being taken forward as part of an overall approach to improve how adaptations are provided in Scotland.

Additionally, the Scottish Ministers have committed to working with key stakeholders to develop guidance for housing and care providers on timescales for installing adaptations. This work will start in 2017-18.

Scotland's National Dementia Strategy 2017-2020 states that the Scottish Government will work with local and national stakeholders to develop the next phase of the housing strategy for older people, *Age, Home and Community: a strategy for housing for Scotland's older people 2012-21*,²⁹⁸ and consider the potential of testing models of specialised dementia housing.

297 <http://www.gov.scot/Resource/0052/00524385.pdf>

298 <http://www.gov.scot/Publications/2011/12/16091323/0>

In Scotland, social landlords (local authorities and housing associations) are responsible for the allocation and management of social housing. Social housing allocations are based on an objective and non-discriminatory assessment of need. The Housing (Scotland) Act 1987²⁹⁹ sets out groups of people who must be given reasonable preference (priority) for housing. This includes people who are homeless or threatened with homelessness and people living in unsatisfactory housing conditions.

Home ownership

Since 2007, Scottish Government shared equity schemes have supported over 23,000 households to buy a home.

The Scottish Government Low Cost Initiative for First Time Buyers (LIFT) is made up of the Open Market Shared Equity (OMSE)³⁰⁰ and New Supply Shared Equity (NSSE)³⁰¹ schemes.

OMSE aims to help first time buyers on low to moderate incomes to buy homes that are for sale on the open market. Eligible applicants must contribute between 60 and 90 per cent of the purchase price through mortgage and deposit.

NSSE aims to help people on low to moderate incomes to purchase new build homes. Eligible applicants must contribute between 60 and 80 per cent of the purchase price through mortgage and deposit.

Priority access to the LIFT schemes is given to social renters, disabled people, serving members of the armed forces, armed forces veterans, and widows, widowers and other partners of service personnel.

The Help to Buy (Scotland) Affordable New Build³⁰² scheme aims to help first time buyers and existing home owners to purchase a new build home from participating builders. Eligible applicants must contribute at least 85% of the purchase price through mortgage and deposit.

Housing standards

The ‘Tolerable Standard’ is a statutory minimum standard for housing in Scotland and any housing which falls below it is unfit for human habitation. Scottish local authorities are required to prepare local housing strategies which include ensuring compliance with their duty to close, demolish or improve houses that do not meet the tolerable standard. Local authorities have a range of enforcement powers to require owners of property to carry out work on substandard housing and, if necessary, to do the work themselves and recover costs from the owners. Local authorities also have discretionary powers to provide financial and practical assistance to owners.

299 <https://www.legislation.gov.uk/ukpga/1987/26/contents>

300 www.mygov.scot/open-market-shared-equity-scheme/

301 www.mygov.scot/new-supply-shared-equity-scheme/

302 www.mygov.scot/help-to-buy/

There are additional standards which apply to private rented housing, social rented housing and houses in multiple occupation. In 2014, the Scottish Government set up the Common Housing Quality Standard Forum (CHQSF)³⁰³ to look at housing standards across all tenures and to make recommendations for improving and harmonising standards. Proposals in the Forum's report take account of the SHRC recommendation that the tolerable standard should be reviewed to ensure that it complies with the standard of habitability as set out by the UN Committee on Economic, Social and Cultural Rights in its General Comment no. 4 on the right to adequate housing (Article 11 ICESCR).³⁰⁴

A public consultation was carried out from April to June 2017 on changes to the minimum standard in private rented housing. The results of this consultation are currently being analysed by consultants. The Scottish Government intends to carry out a further consultation on fire and smoke alarms across tenures in September to December 2017; a further consultation on condition standards in owner occupied housing in 2018; and to review standards in social rented housing following the current review of the Energy Efficiency Standard in Social Housing, which is due to finish in Summer 2018. The Scottish Government will consider the results of these consultations and reviews with a view to changes to legislation and guidance to improve housing standards.

Private rented sector

The Private Housing (Tenancies) (Scotland) Act 2016³⁰⁵ will introduce a new modernised, open-ended tenancy for all future private rented sector (PRS) lets in Scotland. Expected to commence in December 2017, the new private residential tenancy will enhance the rights and protections for tenants by providing additional security, stability, and predictability.

A robust framework for the regulation of letting agents will be introduced in early 2018, and this will help to improve standards within the PRS through a mandatory register of letting agents and a statutory Code of Practice. The framework will give consumers and Ministers the ability to challenge poor practice by agents and make it easier for landlords and tenants to assert their rights.

Tenancy deposit schemes were introduced in 2012 to deal with the problem of landlords and letting agents who unfairly withhold deposits from tenants. Tenants can access a free adjudication service where there is a dispute with the landlord over the return of the deposit and can apply to the court for sanctions against irresponsible landlords who fail to safeguard deposits. Financial penalties of up to three times the amount of the deposit may be ordered by the sheriff if there is evidence of non-compliance.

303 <https://beta.gov.scot/publications/common-housing-quality-standard-topic-papers/>

304 http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fGEC%2f4759&Lang=en

305 <http://www.legislation.gov.uk/asp/2016/19/contents/enacted>

Local authorities are responsible for the administration and enforcement of landlord registration. The Scottish Government recently published revised statutory landlord registration guidance,³⁰⁶ which places a greater emphasis on effective enforcement, promotes good practice and encourages information sharing in order to raise standards across the sector.

In December 2015, local authorities gained new powers of property inspection and the ability to make an application to the First-tier Tribunal Housing and Property Chamber to enforce the repairing standard on behalf of vulnerable tenants. From 1 December 2017, the Chamber will assume jurisdiction from the sheriff courts for civil cases relating to the PRS (criminal cases will remain with the sheriff courts). It will also hear cases related to new private residential tenancies and the new letting agents regime. In addition, an Enhanced Enforcement Areas Scheme (EEAS) has been introduced, which enables councils to apply for additional discretionary powers so they can target specific areas with particularly poor conditions for tenants. To date, two EEASs are in operation, both based in Govanhill in South West Glasgow.

7.15 Homelessness³⁰⁷

Since 2012, all those assessed by local authorities as being homeless through no fault of their own have been entitled to settled accommodation. Anyone threatened with or experiencing homelessness is legally entitled to a minimum of temporary accommodation, advice and assistance from their local authority. The Homelessness etc. (Scotland) Act 2003 progressively introduced a fully justiciable right to housing. According to the UN factsheet on ICESCR this Scottish law has become a model for other States since 2003.³⁰⁸

The Scottish Government has focused on the holistic and person-centred ‘Housing Options’ approach to homelessness prevention, which features early intervention and explores all possible tenure options going beyond just the housing needs of an individual. The focus on housing options has included funding and supporting five regional local authority led Housing Options Hubs across Scotland, including all 32 local authorities, to share and develop practice in homelessness prevention.

The Scottish Government has announced its commitment to eradicate rough sleeping, recognising that it requires more than just the provision of housing and that every individual will have their own unique needs and challenges. A Homelessness and Rough Sleeping Action Group will be established to lead change in this area and develop responses on the actions, services and legislative changes required to end rough sleeping and transform the use of temporary accommodation.

306 <http://www.gov.scot/Publications/2017/09/9045>

307 ICESCR (2016), para 52; CRC (2016), para 71

308 UN Factsheet 33 page 14 <http://www.ohchr.org/Documents/Publications/FactSheet33en.pdf>

The Scottish Government is creating an Ending Homelessness Together Fund of £50 million over a five year period to support homelessness prevention initiatives and pilot solutions to drive faster change. This will involve engaging with people with lived experience of homelessness to understand their needs and what works.

Time spent in temporary accommodation should be as short as possible while consideration is given to the most appropriate housing option and appropriate settled accommodation is found. The Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2014³⁰⁹ outlines standards of accommodation which would be unsuitable for households with children and pregnant women unless there are exceptional circumstances. Where these conditions apply, households should only reside there for a limited period, which the Scottish Government has reduced to seven days.³¹⁰ Even if unsuitable accommodation is used, the 'safety standard' must always be met.

309 <http://www.legislation.gov.uk/ssi/2014/243/made>

310 <http://www.legislation.gov.uk/ssi/2017/273/made>

Health and Social Care

“ The delivery of health and social care services is at the core of protecting human rights”

NHS Health Scotland



8. HEALTH AND SOCIAL CARE

8.1 Health and social care³¹¹

UPR recommendations³¹²

- Strengthen measures to foster access of vulnerable populations, including migrants, to public services and social and health services

The Healthcare Quality Strategy for NHS Scotland contains three quality ambitions of safe, effective and person-centred care. The Patient Rights (Scotland) Act 2011 gives all patients certain rights concerning the healthcare they receive, including a right to raise concerns or complaints, and requires the Scottish Ministers to publish a *Charter of Patient Rights and Responsibilities*.³¹³ The Scottish Government is currently reviewing the Charter to ensure that it continues to accurately summarise the rights and responsibilities of people using healthcare services and that it is effective in raising people's awareness of their rights and responsibilities.

The Scottish Government's 2020 Vision is that everyone is able to live longer, healthier lives at home, or in a homely setting, and that by 2020 Scotland will have a healthcare system where, amongst other things, health and social care are integrated; there is a focus on prevention, anticipation and supported self-management; and, whatever the setting, care will be provided to the highest standards of quality and safety, with the person at the centre of all decisions.

Health and social care integration

The integration of health and social care is one of the most significant reforms since the establishment of the NHS. It is about ensuring that those who use services get the right care and support whatever their needs, at any point in their care journey. Bringing together NHS and social care services will ensure people get the right care and support for their individual needs, and that staff across health and social care are equipped to work together to make full use of their shared skills and resources.

The budget for 2017-18 includes an additional £107 million for NHS investment in social care and ensures that budgets for Integration Authorities next year will be higher than their budgets in 2016-17. This is in addition to the £250 million transfer in the 2016-17 budget, which will be part of the core budget for 2017-18 and beyond.

In June 2017 the Scottish Government launched the new *Health and Social Care Standards*,³¹⁴ which will come into effect on 1 April 2018. These Standards will, for the first time, be applicable to all health and social care services. Designed with a human rights-based approach, the Standards focus on supporting improvement and delivering better personal outcomes for those using health

311 ICESCR (2016), para 56, 60; CERD (2016), para 31; CEDAW (2013), para 53; CRC (2016), para 59

312 134.166

313 <http://www.gov.scot/Publications/2012/04/6273>

314 <http://www.gov.scot/Publications/2017/06/1327>

and/or care services. They seek to ensure that individuals are treated with respect and dignity, and that the human rights we are all entitled to are upheld.

Healthcare services

Anyone who is living in Scotland legally and for a specific purpose is able to register with a GP practice to receive NHS general medical services. This includes asylum seekers, refugees, migrant workers, Gypsy/Travellers, students and those joining their families. Asylum seekers who have made an application to the Home Office to remain in the UK are entitled to the full-range of NHS care and services while in Scotland, regardless of the status of their application.

The Scottish Government has established a short life working group to:

- recommend on the suitability of adapting the NHS England Patient Registration Guidance for use in Scotland
- agree a consistent approach for patient registration for asylum seekers and refugees, overseas visitors, students, people on work visas and those who are homeless
- agree a consistent approach for temporary residents
- agree a consistent approach for care on a private basis

A national standard has been introduced to ensure 48-hour access, or advance booking, to an appropriate member of the GP practice team during core hours, through either a face-to-face or a telephone consultation. Most NHS services, including those provided by GP practices, local pharmacies, hospitals or clinics and emergency services, are provided free of charge. There is also a right to free NHS eye examinations and free NHS dental examinations.

Health Boards are expected to design and put in place service models that best reflect local circumstances, and are responsible for ensuring that primary medical services in Scotland recognise cultural diversity and respond to the healthcare needs of all ethnic groups and communities.

Adult social care

The Scottish Government is undertaking a programme of reform of adult social care, focusing on new models of care and delivering change in the care at home sector, the reform of the National Care Home Contract, the workforce and self-directed support. The programme will be on supporting people who need social care support, to identify and work towards personal outcomes within a sustainable system in the broader context of integrated health and social care provision.

The *National Self-Directed Support Strategy 2010-2020*³¹⁵ is a joint Scottish Government and COSLA plan, dedicated to driving forward the personalisation of social care in Scotland. Self-directed support is founded upon the human

315 <http://www.gov.scot/Publications/2010/02/05133942/0>

rights principles of dignity, empowerment and collaboration, and stipulates that a human rights based approach needs to be at the forefront of assessments for social care provision and the resulting support.

In April 2014 the Scottish Government enacted the Social Care (Self-directed Support) (Scotland) Act 2013,³¹⁶ enshrining in law that adults, children and carers who require social care support must be given as much choice and control as they would like over how their support is delivered. This ensures that the rights of individuals are upheld and that they are empowered to be equal partners in decisions about their care and support. The Scottish Government has invested nearly £70 million of transition funding between 2011 and 2018 to embed this new approach. The *Self-directed Support Implementation Plan 2016-18*,³¹⁷ developed with a wide range of stakeholders, sets out strategic outcomes and details actions designed to address identified challenges to implementation.

The Scottish Care Experience Survey Programme is a suite of national surveys which aim to provide local and national information on the quality of health and care services from the perspective of those using them. Information on protected characteristics is routinely collected through national surveys conducted by the Scottish Government, and administrative systems used in the delivery of health care also capture a range of equality information. Both the Scottish Government and NHS Health Scotland publish evidence summaries for each equality characteristic.

The Scottish Government is currently updating the evaluation and monitoring framework around self-directed support and consulting on the data it collects around social care more broadly. The annual *Health and Care Experience Survey*³¹⁸ includes questions about experiences of care and support, focusing on feeling safe, quality of life, being treated with respect and having a choice in care and support provision. Discussions are underway on whether this limited data set can be linked to the Social Care Survey to draw robust conclusions. The data already include some user group differentiation and consultation will consider whether this can be improved.

In 2016-17 the Scottish Government conducted a feasibility study into extending free personal care to those under the age of 65 who are assessed as needing it. The 2017-18 PfG states that free personal care for those under the age of 65, who are assessed as needing it, irrespective of their condition, will receive this service. The Cabinet Secretary for Health and Sport announced that this would be in place nationally by April 2019. Implementation will require a significant amount of work, including assessment processes to separate personal and non-personal care, and putting the necessary legislative and guidance changes in place. The Scottish Government will work with local government and others to build up care capacity of properly qualified staff so that no-one who is currently receiving care sees that diminished. This is a change that will benefit at least another 9,000 people.

316 <http://www.legislation.gov.uk/asp/2013/1/contents/enacted>

317 <http://www.gov.scot/Publications/2016/12/5432>

318 <http://www.gov.scot/Publications/2016/05/9045>

Accessibility

Healthcare staff have a duty to ensure that information and services are accessible to all, for instance through arranging interpretation or advocacy services for those who need them.

The Scottish Government's national strategy on sensory impairment, See Hear³¹⁹ (April 2014), jointly endorsed by COSLA, sets out a commitment that adults and children should expect a seamless provision of assessment, care and support, and the same access to opportunities and public services, including health and social care, employment, education and leisure, as everyone else. The Patient Charter includes the right to be given information in a format or language the patient can understand. Under the Equality Act 2010, NHS Scotland is required to provide translation and interpreting services and written material wherever possible and reasonable. All NHS boards have a published accessibility policy and arrangements in place to support such needs.

People who are deaf or who are hard of hearing can access Scotland's national health and information service, NHS inform,³²⁰ using the "contactSCOTLAND BSL" service,³²¹ or by textphone and through web-chat, which is available on the NHS Inform website. NHS Health Scotland is working with NHS Boards across Scotland to support improvements, including sharing and building on best practice in the provision of British Sign Language (BSL) interpreting services in health settings, and has developed an agreed plan of work with boards that was endorsed by NHS Chief Executives in March 2017. These, and other actions the Scottish Government is taking to improve access to health services for people whose first or preferred language is BSL, were included in Scotland's first BSL National Plan,³²² published in October 2017 as required by the British Sign Language (Scotland) Act 2015.

The Scottish Government is committed to building on the work already delivered on augmentative and alternative communication (AAC) in Scotland through *A Right to Speak* (2012)³²³ and *Now Hear Me* (2015).³²⁴ In 2016 the Scottish Parliament passed legislation to give children and adults (across all care groups), who have lost their voice, or who are at risk of losing their voice or who have difficulty speaking, a statutory right to the provision of communication equipment and support in using that equipment (Part 4 of the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016).

8.2 Health inequalities

The Scottish Government recognises the need for a shift in emphasis from dealing with the consequences of health inequalities to tackling the underlying causes - ending poverty, promoting fair wages, supporting families and

319 <http://www.gov.scot/Publications/2014/04/7863>

320 <https://www.nhsinform.scot/>

321 <http://contactscotland-bsl.org/>

322 <http://www.gov.scot/Publications/2017/10/3540>

323 <http://www.gov.scot/Publications/2012/06/8416>

324 <http://www.nowhearame.co.uk/wp-content/uploads/2015/07/Final-AAC-Report-24.06.15.pdf>

improving physical and social environments. Scottish Government measures such as investment in affordable housing, free school meals and continuing commitments to free prescriptions, concessionary travel and free personal care, are the right approach, coupled with decisive action to address alcohol consumption, reduce smoking rates, encourage active living and healthy eating, and investment to improve mental health services.

Since 2014-15, NHS Health Scotland has used an internal prioritisation tool that includes consideration of human rights when planning work to help it focus resources on the things that will make the biggest difference in reducing health inequalities. This is being refined through an internal improvement project to align with a human rights based approach. NHS Health Scotland has also recently published its own NHSHS Equality Outcomes report.³²⁵

The Community Links Worker (CLW) programme, funded by the Scottish Government, involves a dedicated individual working in GP surgeries, helping patients on a one-to-one basis with non-medical problems that are making them feel unwell. The programme is being delivered in areas of socio-economic deprivation (including widespread and pocket deprivation, in both urban and rural/remote areas). It is focused on mitigating health inequalities and alleviating pressures in GP practice teams. Fifty three CLWs are now in post. The Scottish Government will work with Integration Authorities to increase this number in disadvantaged areas to 250 by the end of the parliamentary session.

The Scottish Government is expanding access to Family Nurse Partnership (FNP), an intensive, preventive, one-to-one home visiting programme for young, first time mothers and their children from early pregnancy until the child reaches the age of two. FNP aims to break the cycle of disadvantage by working directly with young mothers and their children to improve their health and wellbeing. It is currently available to first time mothers aged up to 19 in ten NHS health board areas and supports almost two-thirds of the first time, young mother population at any one time. There are high levels of engagement and retention. The expansion would see the programme offered to eligible first time mothers up to age 24.

8.3 Mental health³²⁶

Mental health strategy

The Scottish Government's vision for mental health is of a Scotland where people can get the right help at the right time, expect recovery, and fully enjoy their rights, free from discrimination and stigma. The Scottish Government has a Ministerial post dedicated to mental health and over five years is investing an additional £150 million.

A new strategy for mental health, published in March,³²⁷ sets out a vision for the next ten years and how to transform services, with a focus on themes

325 <http://www.healthscotland.scot/publications/nhs-health-scotland-equality-outcomes-2017-to-2021>

326 ICESCR (2016), para 58; CRC (2016), para 61, 63

327 <http://www.gov.scot/Publications/2017/03/1750>

including prevention and early intervention; responses in primary care settings; improving the physical health of those with mental health problems; and improving access to mental health services. The strategy contains an initial 40 actions. Progress will be reported on through a bi-annual stakeholder forum and through an annual report that the Minister for Mental Health will present to Parliament, starting in Summer 2018.

Parity between mental and physical health

Over the ten years of the Strategy, the Scottish Government will work on achieving parity between mental and physical health in the following areas:

- equal access to the most effective and safest care and treatment
- equal efforts to improve the quality of care
- allocation of time, effort and resources on a basis commensurate with need
- equal status within healthcare education and practice
- equally high aspirations for service users
- equal status in the measurement of health outcomes

The Scottish Government's guiding ambition for mental health is simple but, if realised, will change and save lives - to prevent and treat mental health problems with the same commitment, passion and drive as physical health problems. That means working to improve prevention and early intervention; access to treatment, and joined up accessible services; the physical wellbeing of people with mental health problems; and rights, information use, and planning.

Human rights approach

A human rights based approach is intrinsic to actions to improve mental health and intrinsic to actions in the Mental Health Strategy. This is being done using the PANEL principles (participation, accountability, non-discrimination and equality, empowerment, and legality). The Strategy also recognises that "inequality related to disabilities, age, sex, gender, sexual orientation, ethnicity and background can all affect mental wellbeing and incidence of mental illness." The Scottish Government's aim is that mental health services and professionals are welcoming to all, and respond to the mental health needs of individuals in a person-centred, safe, effective and respectful way.

Scotland's mental health and incapacity law sets out principles which have been at the forefront of a rights-based approach to law in this area. International law continues to develop and other jurisdictions have taken the step to overhaul their mental health and incapacity legislation. The approach taken in Scotland is to take account of UN treaty monitoring body observations, build on existing good practice, and learn from other jurisdictions about what works well.

Access to mental health services

As part of the additional £150 million funding, the First Minister announced a £54.1 million package of support to improve access to mental health services for adults and children in January 2016. This investment includes £24.7 million to improve capacity in health boards to see more people more quickly; £4.8 million through Healthcare Improvement Scotland to help redesign local services to be more efficient, effective and sustainable; and £24.6 million to improve workforce supply and train existing staff to deliver mental health services. This funding acknowledges the continued and substantial increase in demand for psychological therapies and CAMHS. As the capacity and provision of services have increased there has been a sustained increase in the numbers accessing treatment each quarter, and this should be welcomed.

Rural areas

The challenge presented by isolation is keenly felt by many in Scotland's rural communities. The National Rural Mental Health Forum has been established to help people in rural areas maintain good mental health and wellbeing. This forum will help develop connections between communities across rural Scotland so that isolated people can receive support when and where they need it.

Child and Adolescent Mental Health Services (CAMHS)

The Mental Health Strategy is all-inclusive and applies to all individuals and groups. The Scottish Government remains committed to meeting its target of 90% of those referred for specialist CAMHS starting treatment within 18 weeks, and is continuing to work with NHS boards to help them to make the necessary improvements.

Work on access to CAMHS and on reducing waiting times should ensure that CAMHS is available, accessible, acceptable, of a good quality, and pays particular attention to vulnerable children - such as those living in poverty, children in care, children in contact with the criminal justice system and children with a learning disability and/or autism. Improvement work on access should also consider variations in levels of demand that cannot be explained by factors such as different socioeconomic circumstances.

Relevant actions in the Mental Health Strategy include:

- Action 5 – ensure the care pathway includes mental and emotional health and wellbeing, for young people on the edges of, and in, secure care
- Action 6 – determine and implement the additional support needed for practitioners assessing and managing complex needs among children who present a risk to themselves or others
- Action 7 – support an increase in support for the mental health needs of young offenders, including on issues such as trauma and bereavement
- Action 8 – work with partners to develop systems and multi-agency pathways that work in a co-ordinated way to support children's mental health and wellbeing

A child or young person's wellbeing is influenced by everything around them, and by the different experiences and needs they have. The vision and practice of the *Getting it right for every child* approach empowers those working with children and families to operate across professional boundaries to provide support and to identify and address need at the earliest opportunity to prevent problems escalating. The eight wellbeing indicators can be used to identify what help and support a child or young person may need in order to improve their wellbeing and their mental health.

For a child, good relationships, starting with early attachment, create the setting for good mental health and resilience. A key factor is the quality of the parent-child relationship. The Scottish Government has supported the roll-out of evidence-based interventions that support children and their families with behavioural issues, through the Psychology of Parenting Programme (POPP). To build on the success of POPP there is a need for a range of solid, evidence-based interventions for emotional, behavioural and/or conduct issues where a child would not be diagnosed with a mental illness but could be helped by a psychologically-informed approach. This should include interventions to support children's parents or carers.

Antidepressant and ADHD prescription items

Between 2014-15 and 2015-16, the total number of antidepressant prescription items dispensed increased by 5% (from 5.8 to 6.1 million items), and the total number of ADHD prescription items dispensed rose by 10.4% (from 105,562 items to 116,556). Dispensing of antipsychotics, antidepressants, drugs for ADHD and drugs for dementia has been steadily increasing over the past ten years. Dispensing of hypnotics and anxiolytics has remained stable, although there was a small decrease (1.6%) this year.

The increase in the number of items reflects the continued and substantial increase in demand for CAMHS. More people have been prescribed antidepressants as a result of the reduction in stigma attached to mental health, as well as better diagnosis and treatment of depression by GPs. Consequently, there is a trend of increasing total cost for antidepressants and ADHD medication. However, due to reductions in drug prices and items coming out of patent, there has been a decrease in cost for hypnotics and anxiolytics, antipsychotics, and dementia drugs.

Guidelines on the prescribing of antipsychotic medications will be informed by best clinical practice and by national Scottish Intercollegiate Guidelines Network (SIGN) guidelines.³²⁸ SIGN develops evidence-based clinical practice guidelines for the NHS in Scotland. Its guidelines are derived from a systematic review of the scientific literature and are designed to accelerate the translation of new knowledge into action to reduce variations in practice and improve patient-important outcomes. The guidelines are produced in collaboration with patients, carers and members of the public, and requests for change can be addressed to the SIGN executive team within Health Care Improvement Scotland.

328 <http://www.sign.ac.uk/>

While pharmacological interventions for children and adults are recommended by the guidelines on autism as effective interventions in some circumstances, prescribing decisions in individual cases are always the responsibility of practitioners, in consultation with loved ones and other professionals involved in an individual's care.

Specialist services

Some children travel out-with Scotland to receive specialist care. While it is possible that, in order to provide the appropriate clinical care, some highly specialist services will always need to be provided out of the country where numbers of patients are very small, this should be minimised where possible. In order to reduce the need for vulnerable young people to travel outside Scotland for their health care and to improve the pathways of care, the Scottish Government has offered funding to support the capital development of a forensic CAMHS inpatient unit. Planning proposals are currently with the NHS.

The Scottish Government is also supporting work on potential mental health inpatient needs of children and young people with a learning disability (intellectual disability) and/or an autism spectrum disorder. In this regard, Action 20 of the Mental Health Strategy is to scope the required level of highly specialist mental health inpatient services for young people, and act on its findings.

Mental health legislation

The Scottish Government continues to work with stakeholders to ensure that mental health legislation works effectively and that it respects, protects and fulfils the rights of service users. This includes implementing the improvements to mental health legislation in the Mental Health (Scotland) Act 2015 and the review of whether current mental health legislation is appropriate for those with learning disabilities and autism spectrum disorders.

8.4 Dementia³²⁹

On 28 June 2017 the Scottish Government published its third *National Dementia Strategy* for the period 2017 to 2020,³³⁰ with a vision of a Scotland where people with dementia and those who care for them have access to timely, skilled and well-coordinated support from diagnosis to end of life, which helps them achieve the outcomes that matter to them. The third strategy continues to take a human rights-based approach to the treatment and support of people with dementia, and is based on close and ongoing engagement with people with dementia, as well as their families and carers, to ensure they receive the right care at the right time and in the right setting.

The strategy's priority areas include a continuing focus on Scotland's distinct offer that everyone newly diagnosed will be offered a guaranteed minimum

329 ICESCR (2016), para 60

330 <http://www.gov.scot/Publications/2017/06/7735>

of one year of appropriate post-diagnostic support, and enhancing the focus on the flexible and person-centred delivery of those post-diagnostic services. There is also a focus on greater integration of home care, and developing palliative and end-of-life services.

The Scottish Government is working with Healthcare Improvement Scotland to extend the improvement and scrutiny programmes currently in place in acute hospitals to non-acute hospitals and specialist mental health in-patient dementia settings. A National Action Plan supports the implementation of *Standards of Care for Dementia in Scotland* in acute hospital care.³³¹

Over 700 healthcare and social care staff have been trained as Dementia Champions and around 1,000 Dementia Ambassadors have been inducted in social care, with 70% in care home settings. *Standards of Care for Dementia in Scotland* contains clear standards on therapeutic and medical interventions, including how to manage stress and distress, and on the appropriate use of medication. As part of an ongoing programme of investment in the dementia workforce, the Scottish Government has developed a number of education and training initiatives that consider alternatives to medication, including *Psychological responses to stress and distress in dementia; Responding to distress in dementia*; and *The Pharmaceutical Care of People with Dementia*.

The Scottish Government is committed to the implementation of its national knowledge and skills framework for staff working with people with dementia, *Promoting Excellence*,³³² and continues to implement its human-rights based *Standards of Care for Dementia in Scotland*, a framework which outlines in depth the skills and knowledge that health and social work care staff should have depending on the role they play in supporting people with dementia.³³³

Both *Promoting Excellence* and *Standards of Care* are underpinned by the principles set out in the Scottish Parliament's Cross Party Group on Alzheimer's *Charter of Rights for People with Dementia and their Carers in Scotland*.³³⁴ Introduced in 2009 in pursuance of the Human Rights Act 1998 and the Scotland Act 1998, the rights set out in the charter are based on internationally-agreed human rights and are intended to promote the respect, protection and fulfilment of all human rights of people with dementia and their carers.

The Scottish Government continues to support the development of dementia-friendly communities throughout Scotland, as well as awareness-raising

331 10-Point National Action Plan <http://www.knowledge.scot.nhs.uk/dementiainhospitals/commitment-10.aspx>

332 Scottish Government, Promoting Excellence: A framework for all health and social services staff working with people with dementia, their families and carers (Edinburgh, 2011), <http://www.gov.scot/Publications/2011/05/31085332/>

333 Scottish Government, Standards of Care for Dementia in Scotland: Action to support the change programme, Scotland's National Dementia Strategy (Edinburgh, 2011), <http://www.gov.scot/Publications/2011/05/31085414/>

334 Charter of Rights for People with Dementia and their Carers in Scotland http://www.alzscot.org/assets/0000/2678/Charter_of_Rights.pdf

campaigns such as Dementia Awareness Week. Alzheimer Scotland has designed a logo for business premises, leisure centres, places of worship, schools and clubs as a sign that people are working towards creating a dementia-friendly community. In 2015 the Life Changes Trust invested £3.4 million in dementia-friendly communities across Scotland. A recent review of the projects has highlighted the significant benefits they are delivering to people with dementia, their families and carers, as well as the communities in which they live.³³⁵

This activity is framed within the context of health and social care integration, which is significantly changing services and opening up new opportunities to better support people, including those with dementia, in their homes and communities. In addition, the Carers (Scotland) Act 2016, which commences in 2018, aims to ensure that people who provide unpaid care are supported to look after their own health and wellbeing.

8.5 Autism

In 2011, the Scottish Government launched the *Scottish Strategy for Autism*,³³⁶ which focuses on reducing the inequalities faced by people who have autism. It has been reframed into an Outcomes Approach with four key outcomes that aim to ensure that people with autism are able to enjoy their human rights and access to public services without discrimination.

A key part of the strategy is to ensure that the health and social care workforce have an understanding of autism relevant to their role to ensure that people with autism are met with recognition and understanding. To support this, NHS Education for Scotland has developed the Scottish Autism Training Framework and resources. Work also focuses on improving the waiting times for diagnosis and transitions of young people into adult destinations.

Work is underway to develop and consult on the final stage of the strategy, which will see agreed priority actions to be delivered by the end of the strategy in 2021.

8.6 Learning disabilities

In 2013, the Scottish Government launched the *Keys to Life* strategy.³³⁷ The strategy has a strong emphasis on human rights and a specific focus on health inequalities. During 2015 a refreshed delivery approach was launched. The key features of this approach were an implementation framework predicated on four key strategic outcomes and a strong focus on cross policy working. The strategic outcomes were arrived at through a thorough review of the strategy content and recommendations. They are rights-based and centred on a healthy life, choice and control, independence and active citizenship.

335 <http://www.lifechangestrust.org.uk/sites/default/files/publications/Dementia%20Friendly%20Communities%20Third%20Report.pdf>

336 <http://www.gov.scot/Publications/2011/11/01120340/0>

337 <http://www.gov.scot/Publications/2013/06/1123>

The implementation framework as a whole is underpinned by detailed logic modelling and delivery set within the context of the PfG. Responsibility for delivery is assigned to Scottish Government policy officials working with strategic partners, Scottish Commission for Learning Disability and the Scottish Learning Disabilities Observatory, plus a range of delivery partners, including third sector providers and specialists such as Downs Syndrome Scotland and PAMIS (who work with people with profound and complex impairments). The implementation framework is linked to and informed by the development of *A Fairer Scotland for Disabled People*.

Work is underway to refresh the Implementation Framework and take forward priorities beyond 2017.

8.7 Carers

It is estimated that there are 745,000 adult carers and 44,000 young carers under the age of 18 in Scotland.³³⁸

While caring can be a positive and rewarding experience, it is crucial that carers are supported at an early stage to enable them to better cope with the stresses and demands of their role, and to look after their own health and wellbeing.

The Carers (Scotland) Act 2016³³⁹ will be commenced on 1 April 2018. The Act extends and enhances the rights of carers ensuring that they can continue to care, if they so wish, in better health and to have a life alongside caring. Provisions in the Act include:

- a duty on local authorities to provide support to carers, based on the carer's identified needs which meet the local eligibility criteria
- a specific Adult Carer Support Plan and Young Carer Statement to identify carers' needs and personal outcomes, including consideration of the impact on the carer of having one or more protected characteristics (within the meaning of the Equality Act 2010)
- a requirement for each local authority to have its own information and advice service for carers, which must provide information and advice on, among other things, emergency and future care planning, advocacy, income maximisation, and carers' rights

The Scottish Ministers will also prepare and publish a Carers' Charter, setting out the rights of carers as provided for in or under the Act.

The Scottish Government will deliver a new package of support for young carers to be rolled out during the course of this Parliament. A 'Young Carer Grant' worth £300 annually will be available for young carers aged 16 and 17, or 18 if still at school, who care for 16 hours or more each week and do not currently qualify for Carer's Allowance. Recipients of the grant will be entitled to free concessionary travel. Young carers aged 11-18 will also benefit from a new bespoke carers element to the Young Scot Card, providing non-cash benefits and rewards for young carers aged 11-18.

338 Scotland's carers (2015) <http://www.gov.scot/Publications/2015/03/1081>

339 <http://www.legislation.gov.uk/asp/2016/9/contents>

Carers make an immense contribution to society and it is unfair that the support they receive in the form of Carer's Allowance (currently reserved to the UK Government) is the lowest of all working age benefits. From Summer 2018 (backdated to April of that year), the Scottish Government's Carer's Allowance Supplement will increase Carer's Allowance (currently £62.70 p/wk) so that it is paid at the same level as Jobseeker's Allowance (currently £73.10 p/wk).

The Scottish Government has agreed with the UK Government that any new benefits or discretionary payments introduced by the Scottish Government, which provide additional income for a recipient, will not result in an automatic offsetting reduction by the UK Government in their entitlement elsewhere in the UK benefit system.

Global Cooperation

“ The UN’s Sustainable Development Goals offer a vision of the world that I believe people in Scotland share. From ending poverty and hunger; securing education and health services; combating inequality and achieving gender equality, the aims set out by the UN form an agenda for tackling some of the world’s greatest problems.”

First Minister Nicola Sturgeon



9.1 Environmental protection³⁴⁰

UPR recommendations³⁴¹

- Adopt a rights-based approach to the forthcoming emissions reduction plan.
- Place children's rights at the centre of climate change adaptation and mitigation strategies by mainstreaming child-sensitive risk and vulnerability reduction strategies into the National Adaptation Programme.

Scotland is a world-leader in tackling climate change, with sustained progress against ambitious statutory targets. Recent statistics show Scotland is well on track to meet its world-leading 2020 target of a 42% reduction (on 1990 figures) in greenhouse gas (GHG) emissions, with a 41% reduction as at 2015. Proposals for a new Climate Change Bill to set even more ambitious targets to reduce greenhouse gas emissions in response to the international Paris Agreement have already been announced.

In order to achieve future targets it has been acknowledged that the whole economy must work together. In January 2017 the Scottish Government laid a draft climate change plan before parliament. It offers a Scotland-wide approach to achieving GHG reduction goals up to 2032 and takes account of potential wider co-benefits and adverse side effects of climate policies, for example taking action to reduce greenhouse gases can lead to improvements in life expectancy as a result of cleaner air. The Scottish Government is collaborating on a research impact project on domestic climate justice, involving policymakers from key sectors, including built environment, energy, and agriculture and related land use. On climate adaptation, the Scottish Government has published a study on disadvantage and flooding, one of Scotland's main climate risks, and has set aside £50,000 funding in 2017-18 for further initiatives on domestic climate justice.

Although GHG emissions are inherent in food production, work continues on minimising any avoidable emissions, allowing for a reduction in the emissions intensity of the food that is produced in order to achieve a sustainable and secure food source for future generations.

The 2017-18 PfG contains a commitment to establish a Just Transition Commission to advise the Scottish Ministers on adjusting to a more resource-efficient and sustainable economic model in a fair way, which will help to tackle inequality and poverty, and promote a fair and inclusive jobs market.

The Scottish Government recognises the issue of intergenerational fairness and its Letter of Cooperation with the Government of California (signed on 3 April 2017) says that failing to take swift action to combat climate change will cost future generations dearly. The new Climate Change Bill will be impact assessed using the established CRWIA process to ensure it will respect, protect and fulfil children's rights.

340 CRC (2016), para 69

341 134.126, 134.189

Scotland's first national air quality strategy, *Cleaner Air for Scotland – The Road to a Healthier Future*³⁴² (November 2015), sets out intended action up until 2020. Levels of the main air pollutants have declined significantly over the last three decades, through major reductions in industrial pollution and improvements in vehicle technology and fuel quality. Between 2007 and 2014, nitrogen oxides have decreased by 39%, fine particulate matter by 2% and sulphur dioxide by 56%. Scotland has set more stringent air quality targets than the rest of the UK, and is the first country in Europe to legislate for particulate matter 2.5 – a pollutant of special concern for human health. The Scottish Government has announced plans to introduce Low Emission Zones into Scotland's four biggest cities between 2018 and 2020, and into all other Air Quality Management Areas by 2023. In addition, *Scottish Planning Policy* is clear that air quality can be a consideration in planning policies and decisions.

The Scottish Government is also championing climate justice globally, which aims to avoid the worst impacts of climate change falling on the poor and vulnerable, including women and children. The innovative international Climate Justice Fund will distribute £21 million between 2012 and 2021, and has already supported 11 adaptation projects in Sub-Saharan Africa including rights-based approaches to water access.

9.2 International development³⁴³

Respect for human rights is embedded in the *Scotland's International Framework*,³⁴⁴ which sets out the Scottish Government's internationalisation agenda and objectives.

The Scottish Government's International Development Fund focuses on working in partnership to achieve real and tangible outcomes on the ground. It does not provide any direct funding to governments.

As of 1 October 2017, the Scottish Government's Zambia and Rwanda Development Programmes³⁴⁵ are supporting a number of projects which promote human rights.

In Zambia these include a community ear and hearing care project which assists and rehabilitates people with disabling hearing loss (CBM UK) and a project to increase the numbers of young people involved in the production of sustainable food resulting in increased food security (Gaia Education).

In Rwanda the Scottish Government is funding projects which will improve outcomes, economic resilience and involvement in community decisions for disabled people (CBM UK), improve health and sanitation in vulnerable communities and schools (WaterAid), and improve sexual and reproductive health rights for victims of gender based violence (Oxfam).

Between 2015 and 2018, the Scottish Government is funding twenty projects in Malawi, worth a combined value of £9,245,384.³⁴⁶ Thematic priorities are

342 <http://www.gov.scot/Publications/2015/11/5671>

343 ICESCR (2016), para 15; CRC (2016), para 18

344 <http://www.gov.scot/Publications/2015/03/3466>

345 <https://beta.gov.scot/policies/international-development/development-assistance-programmes/>

346 <http://www.gov.scot/Topics/International/int-dev/Maps/Malawi/2015projects>

health, education, civic governance, sustainable economic development and renewable energy. Examples of specific projects include:

- using a human rights approach to maternity care
- building capacity of health professionals to provide a national eye care service for children and for people of all ages with diabetes
- improving health in the areas of malaria, maternal health and AIDS
- reducing hunger and promoting access and participation in primary education through the provision of a daily school meal
- improving learning and teaching and leadership of Malawian staff and young people
- providing micro-business owners, particularly women, with access to financial services and training in financial literacy and business development skills

In Pakistan, inspired by Malala Yousafzai, the Scottish Government is funding scholarships to support young women to go to university and children to attend school - to date over 400 women and 3,000 children have benefited. The FM has announced a further £650,000 to continue the Scholarships schemes for another 2 years (2017-19). Among other things, this will help more Pakistani women study subjects like science, technology engineering and maths – areas that are a priority for Pakistan but where women are underrepresented. It will also help even more children, with a particular focus on supporting children with disabilities.

9.3 Sustainable Development Goals

Scotland was one of the first nations to state its strong political support for the UN's Sustainable Development Goals (SDGs), and has been clear that the goals identified apply in a domestic context as well as on a global scale.

The Scottish Government is committed to achieving the SDG outcomes by 2030 and is currently working to integrate human rights and the SDGs within our National Performance Framework (NPF). This will locate human rights, equality and sustainable development at the centre of policy-making and ensure that both government and the wider public sector place an increasing emphasis on delivering against international obligations.

The SDGs align closely with Scotland's well-established aims and ambitions in areas such as tackling inequality, ensuring access to high quality education and healthcare, and in promoting gender equality. The SDGs offer a vision of the world which is shared not only by the Scottish Government but also by wider Scottish society and they further underline the existence of a common agenda focused on tackling critically important human rights and equality challenges both at home and abroad.



Annex A

International Human Rights Treaty Reporting

INTERNATIONAL HUMAN RIGHTS TREATY REPORTING

The information presented in this table can also be found on the Scottish Government [website](#). It is updated regularly.

TREATY/CONVENTION	RECOMMENDATIONS	SCOTTISH GOVERNMENT POSITION STATEMENT	NEXT ACTIVITY
Universal Periodic Review	2017	2017	Mid-term report (2019)
International Covenant on Civil and Political Rights	2015	2015	State party report (2020)
International Covenant on Economic, Social and Cultural Rights	2016	2016	State party report (2021)
UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment	2013		State party report (2017)
International Convention on the Elimination of All Forms of Racial Discrimination	2016		Follow-up response to recommendations (2017)
Convention on the Elimination of All Forms of Discrimination Against Women	2013		State party report (2017)
Convention on the Rights of the Child	2016	2016	State party report (2022)
Convention on the Rights of Persons with Disabilities	2017	*	Update on specific recommendations (2018)

* *A Fairer Scotland for Disabled People* is the Scottish Government's delivery plan for the CRPD.

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