

The [Joint Committee for Human Rights \(JCHR\)](#) recently carried out a [short Inquiry](#) into how well the UK is complying with [the United Nations Convention on the Rights of the Child \(UNCRC\)](#). The Commissioner welcomed the Inquiry, and provided it with written evidence on:

- **key achievements** in Scotland for children's rights
- **key concerns** in Scotland for children's rights
- **the state of children's rights** in Scotland for specific groups highlighted by the Committee.

This briefing focuses on five **key concerns** for children's rights in Scotland.

Key concerns for children's rights

1: Non-incorporation of the UNCRC

The Commissioner's voice is one of many calling for full incorporation of the UNCRC into Scots Law, but the Scottish Government has not yet taken the opportunity to do so. While the [Children and Young People \(Scotland\) Act 2014](#) requires public authorities to publish a report of the steps they've taken to improve realisation of the UNCRC, it does not place a duty on them to have due regard to it.

In addition, some of Scotland's legislation and policies breach the UNCRC. Examples include:

- use of non-statutory stop and search
- a low age of criminal responsibility
- the defence of 'justifiable assault' of a child
- the unequal use of eligibility criteria for service provision.

2: Problems with engagement and participation

The Commissioner is concerned that:

- no strategic or cohesive approach to engaging children is being applied across public bodies or the Scottish Government.
- the views of the most vulnerable and marginalised children are not routinely captured or taken into account. This may affect children with a disability, younger children, gypsy/travellers, or black and minority ethnic children and young people.

3: Impacts of austerity and child poverty

It's clear that in Scotland – and elsewhere in the UK – austerity measures and welfare reform are disproportionately affecting children and young people.

As Contact a Family's [Counting the Costs](#) campaign showed, disabled children and their families can be forced to go without food and heating because of benefit cuts and rising bills. Meanwhile, [the Scottish National Action Plan for Human Rights](#) states that "budget decisions do not generally take human rights into account and a combination of welfare reform measures are thought to risk

increasing poverty.”

The Commissioner is concerned that the Scottish Government is not – as required by the UNCRC – allocating the maximum available resources for children’s rights to be implemented. He is keen to make sure that future Scottish budgets fully reflect children’s rights, and believes that impact assessments and rights-based budgeting processes must both play a part in making this the case.

4: Poor access to mental health services

Lack of access to appropriate mental health services for children is a real problem in Scotland. [Childline states](#) that between 2013 and 2014 they received more than 37,000 calls from Scottish children and young people with issues like depression and low self-esteem. The Mental Welfare Commission, meanwhile, [reports](#) that admissions to non-specialist inpatient settings rose for a second year in 2013-14 and in a few complex cases there was a need for cross-border transfer.

The Commissioner is concerned by reports of long waiting times, insufficient numbers of trained staff, treatment in inappropriate settings and a lack of specialist facilities. Because of this, he supports significant investment in order to improve mental health services for children and adolescents in Scotland.

The Commissioner is also troubled by the fact that not all children who require services due to a learning disability or mental health issue have access to independent advocacy, even though they have a right to this under law. Advocacy organisations [have reported](#) that they are increasingly required to prioritise adults facing compulsory measures, and that children are being detained and receiving treatment without access to independent advocacy.

5: A lack of equal protection

Children and young people have the same rights as adults to respect for their human dignity and physical integrity. They are entitled to equal protection under the law, both in the home and elsewhere.

Section 51 of [the Criminal Justice \(Scotland\) Act 2003](#) prohibits adults from delivering blows to the head, shaking and using an implement to ‘punish’ children. However, it permits the ‘justifiable assault’ of a child. As this contravenes the UN Committee on the Rights of the Child’s call to prohibit all corporal punishment in the family, the Commissioner is opposed to it. He has called for the Scottish Government to urgently address the matter in the forthcoming [Criminal Justice \(Scotland\) Bill](#), to make sure that the right of children and young people to live free from violence is protected.

Further information

[Read the Commissioner’s evidence to the JCHR](#), which this briefing is based on.

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