

Evidence to the JCHR: The state of children's rights for highlighted groups



Scotland's Commissioner
for Children & Young People

Briefing

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The [Joint Committee for Human Rights \(JCHR\)](#) recently carried out a short inquiry into how well the UK complies 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 **the state of children's rights** for highlighted groups of children and young people.

The state of children's rights

Migrant children and children who have been trafficked

The Scottish Guardianship service [has reported](#) that asylum seeking families in Scotland continue to live on very low incomes and are forced to move accommodation regularly. This can prevent children from settling into their local school and community, or may necessitate unaffordably long commutes.

The Commissioner welcomed the recent introduction of the [Human Trafficking and Exploitation \(Scotland\) Bill](#). He hopes that the measures it contains will help tackle human trafficking and enable protection of the rights and needs of those who have been trafficked. He also hopes the Bill will make sure a victim-centred, rights-based approach to human trafficking is embedded in policy-making and practice across Scotland.

However, the Commissioner is concerned with the Bill's lack of references to the rights, vulnerabilities and needs of trafficked, exploited and separated children. He believes the Bill provides an opportunity to identify how these are taken into account. He feels this is particularly important in the case of 16 and 17 year olds, who should be regarded as children rather than becoming involved in the adult processes of identification, protection and support.

For these reasons, the Commissioner has called for the Bill:

- to specifically take into account the vulnerabilities of children
- to define a child as someone under 18 years of age
- to clearly state the services 16 and 17 year olds have access to
- to provide for the non-prosecution of children and young people who may have committed crimes as a direct consequence of being trafficked
- to place the [guardianship service](#) on a statutory footing.

The Commissioner has also called for the Bill to contain a clause on presumption of age, where young people whose age is disputed are treated as children until an age assessment has been completed.

Children in custody

Scotland's age of criminal responsibility is 8. The Commissioner believes this to be woefully low.

The Commissioner supports the Scottish Prison Service's [vision for young people in custody](#), which aims to make sure that all such young people are able to prepare for a positive future.

Children's access to justice and legal aid

Currently, children and young people in Scotland who can't access the Children's Hearing System face a significant barrier to accessing justice.

Part 2 of the [Children and Young People \(Scotland\) Act 2014](#) extended the Commissioner's powers to investigate rights violations on behalf of individual children and young people. The exact nature of this extension is currently being considered by the Scottish Parliament, but the Commissioner believes it to be vital for his office to be resourced so that children and young people can obtain access to child-friendly complaints processes and methods of redress.

Children and young people's access to legal aid has been recently reduced through changes to the [Advice and Assistance \(Scotland\) Amendment Regulations 2010](#) and the [Civil Legal Aid \(Scotland\) Amendment Regulations 2010](#). If a child applies for assistance, consideration must now be given to financial circumstances of those who owe a duty of aliment to that child or young person. The Commissioner feels that these changes place severe limitations on a child's access to justice, and compromises both confidentiality and the ability of a child to access justice in their own right.

Further information

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

For further information on any issues raised in this briefing, please contact Máire McCormack, Head of Policy: maire.mccormack@sccyp.org.uk