



**Statement: UPR Pre-session on the United Kingdom**

**Palais des Nations, Geneva, Switzerland**

**Monday 29th August, 2022**

**Bruce Adamson,**

**Children and Young People's Commissioner Scotland.**

### **Introduction**

My role was established by the Scottish Parliament to [promote and safeguard](#) the human rights of children and young people in line with UN principles. I am independent of the UK and Scottish Governments.

This presentation includes my own priorities and also issues highlighted by my Young Advisers.

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## **Incorporation and Accountability<sup>1</sup>**

A number of states, including [Slovakia](#) and [Chile](#), recommended incorporation of international human rights treaties, particularly UNCRC, into domestic law.

[Croatia](#), [Montenegro](#) and [others](#) called on the UK Government to ratify the third Optional Protocol of UNCRC. Others made recommendations concerning proposed repeal of the Human Rights Act 1998.

In March 2021 the [Scottish Parliament unanimously voted](#) to incorporate the UNCRC. But the [UK Supreme Court ruled](#) that four sections of the bill require reconsideration. The Scottish Government has delayed this.

Accountability is essential when children's rights are breached and incorporation of human rights law is critical. Incorporation of the ECHR via the Human Rights Act demonstrated the accountability that incorporation provides.

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I ask you to recommend:

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<sup>1</sup> Previous recommendations (among others):

Slovakia - 134.60 "Integrate full the principles and provisions of the Convention on the Rights of the Child into its domestic law"

Chile - 134.65 "Speed up the adjustment of national legislation to the Convention on the Rights of the Child, both at State and Autonomous regions level"

Croatia - 134.22 "Consider ratifying the Optional Protocol to the UN Conventions on the Rights of the Child on a communications procedure"

Montenegro - 134.20 "Ratify the Optional Protocol to the Convention on the Rights of the Child on a communications procedure"

That the Scottish Government urgently brings forward amendments to address the Supreme Court ruling to enable the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill to become law.

That the UK Government protects the Human Rights Act and further incorporates the UNCRC and other UN Human Rights Treaties into domestic law.

That the UK Government ratifies the third optional protocol to the UNCRC.

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## **Youth Justice<sup>2</sup>**

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<sup>2</sup> Previous recommendations:

Bulgaria 134.208 - Raise the minimum age of criminal responsibility in accordance with acceptable international standards

Albania 134.205 Raise the minimum age of criminal responsibility in accordance with the acceptable international standards and abolish the mandatory imposition of life imprisonment for offences committed by children under the age of 18

CRC Concluding Observations 2016 "Raise the minimum age of criminal responsibility in accordance with acceptable international standards"

CAT Concluding Observations 2019 "The Committee reiterates its previous recommendation that the State party raise the minimum age of criminal responsibility and ensure the full implementation of juvenile justice standards

At the last UPR, Scotland had the lowest Age of Criminal Responsibility in Europe – just 8 years old. [Bulgaria](#), [Albania](#) and [others](#) recommended raising the ACR to at least the minimum internationally acceptable age of 14, as did the [Committee on the Rights of the Child](#) and [Committee Against Torture](#).

The law has been changed, but despite direct interventions from the [Committee on the Rights of the Child](#) and the [Council of Europe Commissioner for Human Rights](#) the Scottish Government only raised it to 12., and even this change was delayed two years, coming into effect last year.

Children in Scotland are still sent to prison, despite recommendations made by the [Committee on the Rights of the Child](#) and Committee Against Torture. In the last two years 80% of the children in prison are there [prior to trial](#).

In May 2019, [Her Majesty's Inspector of Prisons in Scotland](#) raised serious concerns about self-harm and suicide amongst children and young people in prison. Recent cases reported include a child being remanded to prison for failing to appear as a witness and trafficking victims being imprisoned. Prison is not being reserved for serious or violent offences.

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CRC Concluding Observations 2016 "Ensure that children in conflict with the law are always dealt with within the juvenile justice system up to the age of 18 years and that diversion measures do not appear in children's criminal records"

CRC Concluding Observations 2016 "Ensure that child detainees are separated from adults in all detention settings"

I ask you to recommend:

That the Scottish Government immediately raises the Age of Criminal Responsibility to at least 14 and establishes an urgent timeframe for further increases.

That the Scottish Government legislates to ensure children under the age of 18 are not remanded or sentenced to prison (including young offenders institutions).

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### **Restrictive practices<sup>3</sup>**

In their 2016 Concluding Observations, [Committee on the Rights of the Child](#) recommended that all methods of restraint against children for disciplinary purposes be abolished in all institutional settings. In 2018 my office investigated the use of

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<sup>3</sup> Previous recommendations:

CAT Concluding Observations 2019 " In accordance with rules 63 and 64 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (General Assembly resolution 45/113, annex), instruments of restraint and force can only be used in exceptional cases, where all other control methods have been exhausted and failed."

CRC Concluding Observations 2016 - "Abolish all methods of restraint against children for disciplinary purposes in all institutional settings, both residential and non-residential, and ban the use of any technique designed to inflict pain on children; Ensure that restraint is used against children exclusively to prevent harm to the child or others and only as a last resort; Systematically and regularly collect and publish disaggregated data on the use of restraint and other restrictive interventions on children in order to monitor the appropriateness of discipline and behaviour management for children in all settings, including in education, custody, mental health, welfare and immigration settings."

restraint, restrictive practices and seclusion in Scotland's schools and recommended the Scottish Government develop national, rights-based standards and guidance across all settings including education, health (including mental health), care and youth justice.

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I ask you to support the recommendations on restrictive practices, as outlined in SCLD and VIAS's written submission.

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## **Young Advisers Priorities**

### **Mental Health<sup>4</sup>**

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<sup>4</sup> Previous recommendations:

CRC Concluding Observations 2016 - (a) Regularly collect comprehensive data on child mental health, disaggregated across the life course of the child, with due attention to children in vulnerable situations and covering key underlying determinants;

(b) Rigorously invest in child and adolescent mental health services and develop strategies at the national and devolved levels, with clear time frames, targets, measurable indicators, effective monitoring mechanisms and sufficient human, technical and financial resources. Such strategy should include measures to ensure availability, accessibility, acceptability, quality and stability of such services, with particular attention to children at greater risk, including children living in poverty, children in care and children in contact with the criminal justice system;

(c) Expedite the prohibition of placing children with mental health needs in adult psychiatric wards or police stations, while ensuring the provision of age-appropriate mental health services and facilities;

(d) Support and develop therapeutic community-based services for children with mental health conditions;

I 2021 [survey](#) showed 72% of young people have struggled with their mental health and as my young advisers stated access to mental health care has worsened because of the pandemic.

Community mental health services for children and young people are [inconsistent and fragmented](#).

Children with complex, non-acute mental health conditions, disabled children and those not attending school are often unable to access appropriate treatment.

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I ask that you recommend:

That the UK Government and devolved administrations enhance mental health services to guarantee that children with mental health conditions have access to appropriate mental health services, including community-based care, which respect their dignity and human rights

## **Education<sup>5</sup>**

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(e) Review current legislation on mental health to ensure that the best interests and the views of the child are taken duly into account in cases of mental health treatment of children below the age of 16 years, in particular with regard to hospitalization and treatment without consent.

<sup>5</sup> Previous recommendations:

CRC Concluding Observations 2016 - With reference to its general comment No. 9 (2006) on the rights of children with disabilities, the Committee recommends that the State party adopt a human rights-based approach to disability, set up a comprehensive strategy for the inclusion of children with disabilities and:

(a) Ensure full respect of the rights of children with disabilities to express their views and to have their views given due weight in all decision-making that affects them, including on access to and

My young advisers [highlighted](#) some children face additional barriers to their right to an education.. [Disabled children](#), those [living in poverty](#), [care experienced](#) children and black and minority ethnic children are amongst those disproportionately affected.

I ask you to recommend:

That the UK Government and devolved administrations ensure that resources are available to ensure all children have the support they need to access education, including disabled children, children in poverty, black and minority ethnic children and children in alternative care.

## **Poverty<sup>6</sup>**

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choice of personal support and education;

(b) Set up comprehensive measures to further develop inclusive education, ensure that inclusive education is given priority over the placement of children in specialized institutions and classes and make mainstream schools fully accessible to children with disabilities;

(c) Provide children with disabilities with a comprehensive and integrated package of services for transition to adulthood, from a sufficiently early stage, by coordinating legislation, policy and programmes across relevant sectors, and ensure fully informed decisions by children with disabilities on their personal choice in the transition, by involving them in the design of services and by providing advice and information on available options.

<sup>6</sup> Previous recommendations:

Singapore 134.614 - Provide more targeted social policies to help disadvantaged families and in particular their children, so as to boost social mobility

Syria 134.168 - Develop clear national strategies for the eradication of the poverty of about four million children, as indicated in the United Kingdom universal periodic review summary report of the stakeholders submissions

Hungary 134.191 - Increase efforts to eliminate child poverty and bring domestic legislation in line with the Convention on the Rights of the Child

Kazakhstan 134.192 - Increase government efforts to eradicate child poverty and in this regard undertake an assessment of the impact of the welfare reform on children from disadvantaged families



[My young advisers](#) highlighted the life-long impact of child poverty as reflected by previous recommendations by Hungary, Kazakhstan and Singapore. The UK Government's benefit policies violate children's right to an adequate standard of living and to benefit from social security.

The UK is in a [cost of living](#) crisis, with energy prices set to rise alarmingly and with inflation higher than it has been in decades. Before the pandemic, [almost a quarter](#) of children in Scotland lived in poverty. Yet the benefit cap has decreased from £26,000 in 2013 to £20,000 today. In 2015, the UK Supreme Court found the benefit cap may be [incompatible with Article 3\(1\) of the UNCRC](#) but was unable to take that into account as the UNCRC is not incorporated into UK law.

Along with my counterparts in Wales and Northern Ireland I have consistently called and for the £20 per week uplift to Universal Credit to be made permanent. Neither has happened.

I ask you to recommend:

That the Scottish Government urgently set out how it can use devolved powers to reduce the impacts of rising poverty, meet its statutory child poverty targets and expand suitable social housing.

That the UK Government remove the benefit cap and the two-child limit and reinstate the £20 uplift to Universal Credit.