



# Universal Periodic Review



## Human Rights

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## LIST OF ABBREVIATIONS

AAC	Augmentative and Alternative Communication
ASL	Additional Support for Learning
BSL	British Sign Language
CAMHS	Child and Adolescent Mental Health Services
CONTEST	UK Counter-Terrorism Strategy
COPFS	Crown Office and Procurator Fiscal Service
COSLA	Convention of Scottish Local Authorities
CRWIA	Child Rights and Wellbeing Impact Assessments
CTRS	Council Tax Reduction Scheme
CYP Act	Children and Young People (Scotland) Act 2014
CYPSC	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
EBS	Equality Budget Statement
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EHRC	Equality and Human Rights Commission
EQIA	Equality Impact Assessment
EU	European Union
FGM	Female Genital Mutilation
FM	First Minister
FAI	Fatal Accident Inquiry
FE	Further Education
FNP	Family Nurse Partnership
FoI	Freedom of Information
GIRFEC	Getting it Right for Every Child
HE	Higher Education
HMCIPS	Her Majesty's Chief Inspector of Prisons for Scotland
HMIPS	Her Majesty's Inspectorate of Prisons for Scotland
HRA	Human Rights Act 1998
ICESCR	International Covenant on Economic, Social and Cultural Rights
LGBTI	Lesbian, Gay, Bisexual, Transgender and Intersex
MA	Modern Apprenticeships
MWC	Mental Welfare Commission
NHS	National Health Service
NPF	National Performance Framework
OECD	Organisation for Economic Cooperation and Development
OJEU	Official Journal of the European Union
OPCAT	Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
PfG	Programme for Government

<b>PSED</b>	<b>Public Sector Equality Duty</b>
<b>RO</b>	<b>Religious Observance</b>
<b>RSHP</b>	<b>Relationships, Sexual Health and Parenthood</b>
<b>SAMH</b>	<b>Scottish Association for Mental Health</b>
<b>SDGs</b>	<b>Sustainable Development Goals</b>
<b>SDS</b>	<b>Skills Development Scotland</b>
<b>SFA</b>	<b>Scottish Football Association</b>
<b>SG</b>	<b>Scottish Government</b>
<b>SHRC</b>	<b>Scottish Human Rights Commission</b>
<b>SLAB</b>	<b>Scottish Legal Aid Board</b>
<b>SNAP</b>	<b>Scotland's National Action Plan for Human Rights</b>
<b>SPA</b>	<b>Scottish Police Authority</b>
<b>SP</b>	<b>Scottish Parliament</b>
<b>SPCB</b>	<b>Scottish Parliamentary Corporate Body</b>
<b>SP EHRiC</b>	<b>Scottish Parliament Equalities and Human Rights Committee</b>
<b>SPFL</b>	<b>Scottish Professional Football League</b>
<b>SPS</b>	<b>Scottish Prison Service</b>
<b>STEM</b>	<b>Science, Technology, Engineering and Maths</b>
<b>SWF</b>	<b>Scottish Welfare Fund</b>
<b>UCAS</b>	<b>Universities and Colleges Admissions Service</b>
<b>UNCRC</b>	<b>UN Convention on the Rights of the Child</b>
<b>UNCRPD</b>	<b>UN Convention on the Rights of Persons with Disabilities</b>
<b>UNGPs</b>	<b>UN Guiding Principles on Business and Human Rights</b>
<b>UPR</b>	<b>Universal Periodic Review</b>
<b>WSA</b>	<b>Whole System Approach</b>
<b>YOI</b>	<b>Young Offenders Institution</b>

## Ministerial Foreword

**“ [our] effort is guided by our commitment to human rights. Dignity and equality are human rights principles. So are empowerment and partnership. That’s why we are determined to put human rights at the heart of our policy-making.”**

First Minister, February 2017

**Human rights belong to all of us. They underpin every aspect of our daily lives – safeguarding individuals and empowering communities across the whole of Scottish society. They reflect and implement the national vision we share, of a Scotland where everyone is able to live with human dignity.**

Human rights also shape the world around us. Scotland is a successful and progressive nation. We have a duty to demonstrate leadership and to speak out for human rights – to set standards, and to ensure that we measure up to the standards we ask others to meet.

Human rights are integral to the Scottish Government’s work across every ministerial portfolio. Ours is an ambitious programme of action designed to tackle inequality, deliver social justice, and build a fairer, more inclusive Scotland.

I am therefore pleased to present this position statement as our contribution to the third Universal Periodic Review (UPR) of the United Kingdom’s record on human rights.

This statement sets out the work the Scottish Government has undertaken to implement and uphold our international human rights obligations since Scotland last participated in the UPR in 2012.

Our record of achievement covers a great deal of ground – from advancing gender equality to improving conditions in places of detention; from combating human trafficking to raising educational attainment; from protecting children’s rights to promoting fair work.

It reflects the full spectrum of internationally-recognised human rights – civil, political, economic, social and cultural. It is a record that has been further underpinned over the last year by our *Fairer Scotland Action Plan*, Scotland’s *Race Equality Framework* and, most recently, by our UN Convention on the Rights of Persons with Disabilities (UNCRPD) delivery plan, *A Fairer Scotland for Disabled People*.

The Scottish Government embraces both the UPR and the examinations conducted under individual human rights treaties. We do so not only as an opportunity to present Scotland’s successes to the world, but also as a process through which we can benefit from informed recommendations and commentary.

We recognise the responsibility we have as Scotland’s national government to challenge ourselves, to strive to go further and to achieve more. We do not have a monopoly on wisdom, and Scotland has never been a nation that is too proud to learn from the success of others.

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

First Minister, November 2015

Underpinning all of the initiatives and actions set out in this statement is our commitment to defending the vitally-important legislation which protects human rights in Scotland and in the UK – including both the Human Rights Act (HRA) 1998 and the constitutional protections built into the Scotland Act 1998.

While UK Ministers have called into question these fundamental safeguards, and cast doubt on the UK’s long-term commitment to the European Convention on Human Rights (ECHR), the Scottish Government has been unequivocal in standing up for human rights. And while the UK Government seeks to deconstruct the benefits we enjoy as a member of the European Union, and the rights secured by the EU Charter of Fundamental Rights, the people of Scotland remain convinced of the case for EU membership.

The Scottish Parliament decided on 28 March 2017 that there should now be a second referendum on Scottish independence. That decision reflects Scotland’s tradition of popular sovereignty. It is rooted also in our commitment to human rights, democracy and the rule of law. The people of Scotland are entitled to determine the form of government most suited to their needs, to shape their own future and to freely pursue their economic, social and cultural development.

Human rights will be central to the forthcoming independence and Brexit debates. The ultimate standard against which the actions of all governments must be judged is the extent to which they act conscientiously to uphold human dignity and secure human rights. That standard is embedded in Scotland’s core values. Whatever else may change, it is a standard we remain determined to meet.

The Scottish Government welcomes scrutiny of its human rights record, both domestically and internationally. We undertake to respond positively and constructively to the recommendations which emerge from the UN Human Rights Council on 4 May, and to take forward our commitment to embed human rights at the heart of everything that we do.



**Angela Constance**  
Cabinet Secretary for Communities,  
Social Security and Equalities



# Legal framework for protecting human rights and combating discrimination

## Human Rights

### Scotland benefits from a sophisticated and constitutionally-robust framework of laws designed to protect and secure human rights.

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

The Scotland Act 1998<sup>1</sup>, in combination with the Human Rights Act (HRA) 1998<sup>2</sup>, 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 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 Scottish Ministers and public bodies can be challenged in the Scottish courts.

In addition to these legally-enforceable guarantees, the Scottish Ministerial Code<sup>3</sup> 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 Scottish Government has consistently opposed UK Government 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<sup>4 5</sup> and in evidence submitted to the Scottish Parliament European and External Relations Committee<sup>6 7</sup>. 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.

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1 Scotland Act 1998 <http://www.legislation.gov.uk/ukpga/1998/46/contents>

2 Human Rights Act 1998 <http://www.legislation.gov.uk/ukpga/1998/42/contents>

3 <http://www.gov.scot/Publications/2016/08/1393>

4 <http://news.gov.scot/speeches-and-briefings/human-rights>

5 <http://news.gov.scot/speeches-and-briefings/snap-human-rights-innovation-forum>

6 [http://www.parliament.scot/S4\\_EuropeanandExternalRelationsCommittee/General%20Documents/Scottish\\_Government.pdf](http://www.parliament.scot/S4_EuropeanandExternalRelationsCommittee/General%20Documents/Scottish_Government.pdf)

7 <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=10416&i=95872>

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.

The Scottish Parliament has been similarly 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. Any attempt by the UK Parliament to repeal or replace the HRA would require the legislative consent of the Scottish Parliament. The position of the Parliament has been definitively expressed in two motions, in 2014 and in 2017:

- on 11 November 2014 a motion in support of the HRA was passed by 100 votes to 10.<sup>8</sup>
- 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 of Human Rights (EHCR), 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.”<sup>9</sup>

## Equality

Scotland also benefits from sophisticated and effective legislation designed to secure equality and combat discrimination.

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. Scottish Ministers have made direct use of devolved powers to make Regulations<sup>10</sup> which place specific equality duties on Scottish public authorities<sup>11</sup>. 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.<sup>12</sup> Under the Regulations, there is a duty on Scottish Ministers to publish proposals to help public authorities in Scotland to make progress on equality.

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 Scottish Government has committed to commencing the socio-economic duty set out in section 1 of the Equality Act 2010<sup>13</sup>. This requires 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’.

8 <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=9616>

9 <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=10722&i=98397>

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

11 <http://www.gov.scot/Topics/People/Equality/PublicEqualityDuties/PublicSectorEqualityDutyScottishSpecificDuties>

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

13 Fairer Scotland Action Plan (October 2016) <http://www.gov.scot/Publications/2016/10/9964>

## Framework within which human rights are promoted

**The Scottish Government is committed to creating a modern, inclusive Scotland which protects, respects and realises internationally recognised human rights.**

Ministers have made clear their own commitment 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. That desire to work collaboratively includes a commitment to explore the potential benefits of further incorporation of human rights treaties into the law of Scotland.

The Scottish Government's Programme for Government (PfG) for the current parliamentary year *A Plan For Scotland: The Scottish Government's Programme For Scotland 2016-17*<sup>14</sup> contains an undertaking to engage directly with people and communities across the whole of Scotland to explore how to give further and better effect to the economic, social and cultural rights set out in United Nations and other international treaties. The PfG also commits to working to integrate human rights and the Sustainable Development Goals (SDG) within Scotland's National Performance Framework (NPF),<sup>15</sup> to help locate human rights at the centre of policy-making and delivery for government and public sector.

Following the Scottish Parliament General Election in May 2016, the Scottish Parliament established an Equalities and Human Rights Committee<sup>16</sup>. This is the first time that a Scottish parliamentary committee has included an explicit reference to human rights in its title and remit.

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14 <http://www.gov.scot/About/Performance/programme-for-government>

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

16 <http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/Equalities-Human-Rights-Committee.aspx>

## Impact of Brexit

Membership of the European Union (EU) brings positive social and economic benefits. These include important fundamental rights, equality guarantees and social protections.

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*,<sup>17</sup> which contains proposals for mitigating the impact on Scotland of the UK's exit from the EU. It makes clear the importance of single market membership to both the UK and Scottish economy, and sets out proposals to protect Scotland's interests. It also calls for a substantial transfer of power from Westminster to Scotland in order to protect Scotland's interests, and the rights currently enjoyed by all people resident in Scotland, including non-UK EU and EEA citizens. The UK Government has declined to engage in constructive fashion with this compromise plan. It decided instead to trigger Article 50 without seeking to agree a UK-wide approach and without taking proper account of Scotland's interests.

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."<sup>18</sup> The UK Prime Minister has confirmed that her aim is to reach a Brexit agreement covering a future relationship within two years.

The Scottish Parliament decided on 28 March 2017 that an independence referendum should be held in Scotland once the terms of Brexit are clear. This is essential to enable the people of Scotland to have the final say on their own future, and to do so before the UK formally ceases to be a member of the EU.

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

18 <https://news.gov.scot/speeches-and-briefings/scotland-in-eu>

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# Civil and Political Rights

**“ Ensuring that rights have meaning for individuals – in neighbourhoods, schools, hospitals, workplaces – that’s the ambition for the Scottish Government.”**

First Minister Nicola Sturgeon,  
SNAP Innovation Forum, 9 December 2015



# 1. Combating violence against women and girls

The Scottish Government is preparing legislation for the creation of a specific offence of domestic abuse in the current parliamentary year. It will cover not just physical abuse but also other forms of psychological abuse and coercive and controlling behaviour that cannot easily be prosecuted using the existing criminal law. In March 2016 the Scottish Parliament passed the **Abusive Behaviour and Sexual Harm Act**,<sup>19</sup> which will, once implemented, create a specific offence of sharing private intimate images without consent.

The Scottish Government is implementing *Equally Safe*,<sup>20</sup> 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. Central to the Scottish Government approach is primary prevention of violence, which seeks to change attitudes and tackle inequality. Funding is at record levels: £24 million from the Equalities portfolio over 2015-17 and an additional £20 million over 2015-18 from Justice budgets. The 2016-17 PfG contains a commitment to bring forward delivery plans for 'Equally Safe' over the current parliamentary session, and a draft Delivery Plan was published for consultation on 23 March.<sup>21</sup>

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. Third sector organisations across Scotland, including local Women's Aid groups and Rape Crisis Centres, are providing front line support for women and girls who have experienced violence and 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 'complainer' 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, 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.

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

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

21 [https://consult.scotland.gov.uk/violence-against-women-team/equally-safe/user\\_uploads/equally-safe---consultation-on-a-draft-delivery-plan-2017-21.pdf](https://consult.scotland.gov.uk/violence-against-women-team/equally-safe/user_uploads/equally-safe---consultation-on-a-draft-delivery-plan-2017-21.pdf)

## Forced marriage

The Forced Marriage etc. (Protection and Jurisdiction) Scotland Act 2011<sup>22</sup> 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<sup>23</sup> made it a criminal offence to force a person into marriage. The Scottish Government funds a number of specialist organisations (£485,000 for 2016-17) that provide support and assistance to those affected or who may be affected by forced marriage. The Scottish Government commissioned independent research into forced marriage in Scotland and a final research report was published at the end of January 2017.<sup>24</sup> Findings from that research will inform future thinking on tackling the issue.

## Female genital mutilation

In February 2016, *Scotland's National Action Plan to Prevent and Eradicate Female Genital Mutilation (FGM) 2016-2020*<sup>25</sup> was published. A Multi Agency Implementation Group has been established to oversee implementation and monitor progress of the actions from the plan. The Scottish Government is investing over £220,000 for 2016-17 to raise awareness of FGM, support those affected and work with third sector and statutory partners, including those in potentially affected communities.

FGM has been unlawful in Scotland since 1985. The Prohibition of Female Genital Mutilation (Scotland) Act 2005<sup>26</sup> 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. The Scottish Government funded a community based consultation with a cross-section of potentially affected communities to hear their views on further legislative provisions in the Serious Crime Act 2015 (England and Wales) (Part 5 71-75). This consultation, which considered how any new legislation would meet the needs of potentially affected communities, produced a final research summary report and Scottish Ministers are considering next steps.

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22 [http://origin-www.legislation.gov.uk/asp/2011/15/pdfs/asp\\_20110015\\_en.pdf](http://origin-www.legislation.gov.uk/asp/2011/15/pdfs/asp_20110015_en.pdf)

23 <http://www.legislation.gov.uk/ukpga/2014/12/contents/enacted>

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

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

26 <http://www.legislation.gov.uk/asp/2005/8/contents>

## 2. Combating human trafficking

The Scottish Government held a Human Trafficking Summit in October 2012, which led to the development of the Human Trafficking and Exploitation (Scotland) Act 2015.<sup>27</sup> Among other things, the Act consolidates and strengthens criminal law against human trafficking and exploitation. The offences in the Act now carry a maximum sentence of life imprisonment. It also introduces trafficking and exploitation prevention and risk orders. The Act also 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 Scottish Ministers to provide support and assistance for adult victims of human trafficking.

The first provisions came into force on 31 May 2016 and most of the remaining provisions will do so later in 2017. Children are supported through the child protection system and eligible children are given the additional support of an independent child trafficking guardian. The 2015 Act also requires the development of a Trafficking and Exploitation Strategy, which is to be laid before the Scottish Parliament by 31 May 2017 and to be reviewed every three years. A draft strategy has been produced by working closely with stakeholders, including victims of trafficking and exploitation.

The Victims and Witnesses (Scotland) Act 2014<sup>28</sup> obliges Police Scotland to direct victims of crime towards the Victims' Code for Scotland,<sup>29</sup> 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 the Scottish Legal Aid Board (SLAB).

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

28 <http://www.legislation.gov.uk/asp/2014/1/contents/enacted>

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

### 3. Fighting discrimination and hate crime

Since 2012, the Scottish Government has invested over £100 million to promote equality and tackle discrimination, and works closely with partner organisations to advance the vision of 'One Scotland'. In 2016-17 the Scottish Government has committed funding of £20.3 million. The Equality Budget supports the infrastructure and capacity of equality communities and provides focus and support on issues such as violence against women, hate crime, community cohesion and the integration of refugees. It supports strategic and frontline/local projects across the protected characteristics. The Scottish Government has a legal duty to consider equality in developing its policies and spending plans.<sup>30</sup> Each year, alongside the Draft Budget, an Equality Budget Statement (EBS) is published, which grounds equality considerations in financial decision-making. Specific initiatives to tackle discrimination and advance equality in Scotland include:

- the *Race Equality Framework for Scotland 2016-2030* (March 2016)<sup>31</sup> was developed to advance race equality and address the barriers that prevent people from minority ethnic communities realising their potential
- allocation of £507,916 of equality funding to faith and belief organisations in 2016-17, including £145,000 to Interfaith Scotland
- a commitment in the 2016-17 PfG to 'review and reform gender recognition law so it is in line with international best practice for people who are transgender or intersex.' A consultation on specific issues to inform the development of this legislation will be published before Summer 2017
- 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
- over £200,000 funding in 2016-17 to organisations working with Gypsy/ Travellers, and publication of minimum quality standards for Gypsy/Traveller sites and core rights and responsibilities for site tenants.<sup>32</sup> Further development of a strategic programme of work is ongoing
- the Housing (Scotland) Act 2001<sup>33</sup> places a statutory duty on local authorities to prepare a Local Housing Strategy supported by an assessment of housing provision and related services. Revised guidance on preparing strategies was published in 2014<sup>34</sup> and sets out what local authorities should consider in determining a strategy for addressing the needs of Gypsy/Travellers

The Scottish Government has accepted the recommendations of the Independent Advisory Group on Hate Crime, Prejudice and Community Cohesion (23 September 2016).<sup>35</sup> 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. The Scottish Government is working to improve the capture of data to better understand the scale and severity of hate crime.

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30 Equality Act 2010, section 149 - <http://www.legislation.gov.uk/ukpga/2010/15/section/149>

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

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

33 [http://www.legislation.gov.uk/asp/2001/10/pdfs/asp\\_20010010\\_en.pdf](http://www.legislation.gov.uk/asp/2001/10/pdfs/asp_20010010_en.pdf)

34 <http://www.gov.scot/Publications/2014/08/3070>

35 <http://www.gov.scot/Publications/2016/09/3565>

## 4. Protecting human rights and countering terrorism

### Counter-terrorism

The Scottish Government takes a full and active role in the delivery of the UK's Counter-Terrorism Strategy (CONTEST) and works with Scotland's law enforcement and other bodies to ensure they have all the tools they need to effectively tackle terrorism. The Scottish Government works with the UK Government to ensure that any new proposals fit with what is a separate and distinct Scottish legal system, respects the current devolution arrangements and are taken in the context of proper engagement and consultation with the public bodies who would be affected by these proposals in Scotland. The Scottish Government also 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.

### Prevent

*Prevent* is part of the UK Government CONTEST strategy, however the way that *Prevent* is delivered in Scotland is through devolved functions. It reflects Scottish differences and is specific to the challenges faced by Scottish communities. The strategy has been intentionally aligned to existing safeguarding procedures to ensure the wellbeing of individuals and communities. Doing so is consistent with the Christie Commission findings,<sup>36</sup> which encourage a shift to public sector investment towards early intervention and prevention programmes.

The strategy is part of Scotland's wider work to promote a community-led approach to building stronger communities. Partners continue to engage and work alongside communities to address existing and emerging challenges across the broad spectrum of threat, including the threat posed by Northern Ireland related terrorism, Al-Qaeda inspired violent extremism or the threat posed by the extreme right wing in Scotland. Delivering *Prevent* in this manner, ensures no one section of the community is singled out or stigmatised.

### Stop and search

There is no evidence to indicate that stop and search is used disproportionately in relation to ethnic minorities in Scotland. Police Scotland has eliminated the non-statutory stopping and searching of children under 12. The Stop and Search Code of Practice,<sup>37</sup> laid before Parliament on 11 January 2017, 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.

The Scottish Parliament has legislated to ensure that Police Scotland must publish information about how many searches are carried out, how many persons are searched on two or more occasions, the age and gender, and the ethnic and national origins of the person searched.<sup>38</sup> The Scottish Government will monitor this information and keep it under review.<sup>39</sup> Subject to parliamentary approval, the Code of Practice will come into effect on 11 May 2017, after which non-statutory stop and search will be unlawful.

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36 <http://www.gov.scot/About/Review/publicservicescommission>

37 <http://www.gov.scot/Publications/2017/01/5821>

38 Criminal Justice (Scotland) Act 2016, Section 69

39 <http://www.scotland.police.uk/about-us/police-scotland/stop-and-search/stop-and-search-data-publication/>

## 5. Treatment of detainees

### Conditions of detention

**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). The Scottish Prison Service (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.**

In March 2015, Her Majesty's Chief Inspector of Prisons for Scotland (HMCIPS) published 'Standards for Inspecting and Monitoring Prisons in Scotland'.<sup>40</sup> A new system of independent monitoring of prisons in Scotland came into effect on 31 August 2015. Around 150 volunteer members of the community have responsibility for monitoring the care and treatment of prisoners and there is a statutory requirement that at least one independent prison monitor must visit each prison once a week. The HMCIPS 2015-16 annual report<sup>41</sup> 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. The reintegration of people leaving custody remains 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. 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.

The Scottish Government is committed to reducing the use of short-term imprisonment through the greater use of robust community sentences. 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 years olds (or under 21s) fell by 61% between 2006-7 (3,270) and 2015-16 (1,262).<sup>42</sup> The reduction in the number of under 21s receiving custodial sentences has been driven by the adoption of the Whole System Approach (WSA), 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.

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

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

42 <http://www.gov.scot/Resource/0051/00512934.pdf>

## Women prisoners

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<sup>43</sup>. 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.

## Children

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, and can only take place when:

- 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
- the child is likely to engage in self-harming conduct
- the child is likely to cause injury to another person

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. Those young people do not mix with the adult population. 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. 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

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

Mechanical restraints or spit hoods are not used in secure accommodation services in Scotland. 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*  guidance<sup>44</sup> 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.

### **Children of persons in custody**

The Criminal Justice (Scotland) Act 2016<sup>45</sup> 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.

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

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

## 6. Access to justice

### Legal aid

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 the SLAB. 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 Scottish Government announced a comprehensive, independent review of legal aid on 1 February 2017. The review is expected to last 12 months. With legislation 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 2016 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.

### Pre-trial custody

On pre-trial time limits, the Crown must indict within 80 days in custody cases. Once in force, provisions in the Criminal Justice (Scotland) Act 2016 will increase the time between service of the indictment and first diet in the Sheriff and Jury Court from 15 to 29 days, to match the existing timetable in the High Court. This will ensure that all parties are given adequate time to consider and prepare for hearings, and will result in fewer adjournments and late pleas. The Act will also bring the pre-trial detention limits for Sheriff and jury proceedings into line with the limits already prescribed by the High Court. In addition, provisions in the Act will prevent the accused being tried on indictment in the Sheriff Court where the first diet is not commenced within 11 months of the first appearance on petition; and also provides that an accused person must be liberated after 110 days if no first diet has been held, and after 140 days if a first diet has been held, unless the trial begins within that period.

## Employment tribunal fees

The Scottish Government strongly opposed the introduction of employment tribunal fees on the basis that it restricts access to justice and creates a financial barrier for legitimate claims. Since fees were introduced there has been a dramatic decrease in the number of cases being taken forward. Ministry of Justice statistics released in September 2016 show a two thirds reduction in single claims in the first half of 2016 compared to the same period in 2013.

Section 39 of the Scotland Act 2016 allows for the transfer of administration and operation of employment tribunals. In its 2015 PfG, the Scottish Government committed to abolishing employment tribunal fees once it is clear how this transfer of powers and responsibilities will work. Following commitments in both the *Labour Market Strategy* and the 2016-17 PfG to work with stakeholders to help frame how the Scottish Government can best use new powers around employment tribunals, an Employment Tribunal Stakeholders' Forum has been established. The Forum met for the first time on 11 January 2017.



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# Economic, Social and Cultural Rights

**“ we want to embed human rights – including economic and social rights – in the way we make decisions as a nation; in the way public authorities deliver services, and in the way we can empower individuals and communities”**

First Minister Nicola Sturgeon  
Pearce Institute, Govan, 23 September 2015



## 7. Business and human rights

### UN Guiding Principles

The Scottish Government, Scottish Human Rights Commission (SHRC) and other partners are committed to developing a co-ordinated plan of action in Scotland to give effect to the UN Guiding Principles (UNGPs) on Business and Human Rights,<sup>46</sup> building on the UK's Action Plan. A national baseline assessment was published in October 2016.<sup>47</sup> Further engagement activity will take place around this evidence base in 2017, from which a process to develop a national action plan will be initiated.

### Scotland's Labour Market Strategy

Scotland's *Economic Strategy*<sup>48</sup> sets out an overarching framework to achieve a more productive, cohesive and fairer Scotland. It prioritises boosting investment and innovation, supporting inclusive growth, and maintains a focus on increasing internationalisation. Throughout the Strategy there is a clear focus on the mutually reinforcing objectives of increasing competitiveness and tackling inequality. The Scottish Government has adopted this approach not just because it ensures better social outcomes, but because there is growing international evidence that countries with more equal societies typically enjoy stronger, more sustainable growth over the long-term.

Building on the *Economic Strategy*, the Scottish Government's *Labour Market Strategy*<sup>49</sup> 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.'

The *Labour Market Strategy* sets out the steps the Scottish Government is taking to persuade and influence businesses of the benefits of fair and inclusive work. It also 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.

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46 [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

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

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

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

## Promoting fair work and responsible business

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*<sup>50</sup> defines fair work as work that offers effective voice, opportunity, security, fulfilment and respect; that balances the rights and responsibilities of employers and workers; and that can generate benefits for individuals, organisations and society.

## Scottish Business Pledge

The Scottish Business Pledge<sup>51</sup> 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.

## The Living Wage

The Scottish Government has long championed the payment of the Living Wage and the real benefits to Scotland's economy of treating people who work 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.

The Scottish Government is using all the powers at its disposal to promote fair pay and conditions. Of the four countries of the UK, Scotland has the highest proportion of employees – around 80% – paid the Living Wage. Furthermore, the Scottish Government is providing the resources to enable local authorities to commission care services that pay care workers the full Living Wage. This will give up to 40,000 people, mainly women, doing some of the most valuable work in Scotland, a pay rise.

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

51 [www.scottishbusinesspledge.scot](http://www.scottishbusinesspledge.scot)

## Public procurement

Specific duties made by Scottish Ministers (Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012)<sup>52</sup> 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 Public Sector Equality Duty (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 regulations<sup>53</sup> 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, 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 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<sup>54</sup> 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. Statutory guidance under the Procurement Reform (Scotland) Act 2014<sup>55</sup> was published on 5 October 2015, providing guidance to public bodies on how to address Fair Work practices, including the Living Wage, when selecting tenderers and awarding contracts.<sup>56</sup>

## Blacklisting

The Public Contracts (Scotland) Regulations 2015<sup>57</sup> (higher value OJEU (Official Journal of the European Union) threshold contracts) and the Procurement (Scotland) Regulations 2016<sup>58</sup> (lower value contracts) require public bodies to exclude from competition any businesses which have been found to have breached the Employment Relations Act 1999 (Blacklists) Regulations 2010, 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.

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

53 <http://www.gov.scot/Topics/Government/Procurement/ProcurementReform/ProcReformAct/ProcurementScotlandRegulations2016>

54 <http://www.gov.scot/Resource/0050/00501072.pdf>

55 <http://www.legislation.gov.uk/asp/2014/12/contents>

56 <http://www.gov.scot/Publications/2015/10/2086>

57 <http://www.legislation.gov.uk/ssi/2015/446/contents/made>

58 <http://www.legislation.gov.uk/sdsi/2016/9780111030868>

## Trade Unions

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 International Covenant on Economic, Social and Cultural Rights (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 Review*<sup>59</sup> underlines that a progressive approach to industrial relations and to trade unionism is at the heart of a fairer, more successful society.

The Scottish Government has established the Fair Work Convention, which brings together trade unions and employers across the public, private and third sectors to define fair working practices in a Framework for Scotland. The Scottish Government encourages staff to join and play an active part in an appropriate trade union. Where strikes do occur, the Scottish Government has given a guarantee that it would not employ agency staff to cover strike action.

## Zero hours contracts

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. 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. The Scottish Government has taken action to discourage the inappropriate use of zero hours contracts:

- statutory guidance around addressing Fair Work practices in procurement
- Scottish Business Pledge companies do not use exploitative zero-hours contracts – the Pledge website<sup>60</sup> highlights that they would be considered exploitative if they caused hardship to individuals due to regularly changing patterns of work, denied individuals their basic employment rights, and/or deterred workers from asserting their basic employment rights

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59 <http://www.gov.scot/Publications/2015/08/7871>

60 [www.scottishbusinesspledge.scot](http://www.scottishbusinesspledge.scot)

## Employability and skills

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

- Youth Employment Strategy – *Developing the Young Workforce*<sup>61</sup>
  - 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<sup>62</sup> and December 2016<sup>63</sup>
- The Equalities Action Plan for Modern Apprenticeships (MA) in Scotland<sup>64</sup>
  - the five-year plan includes specific improvement targets for MA participation by disabled people, including part-time and flexible engagement, to be achieved by 2021. Skills Development Scotland will report on these annually
  - providing young disabled people with the highest level of MA funding for their chosen MA Framework until the age of 30<sup>65</sup>
- Scotland's Devolved Employment Services<sup>66</sup>
  - newly devolved powers on employment support will be exercised from 1 April 2017 and, following a one year transitional service, from April 2018 a new Scottish employability programme will be introduced
  - will reflect the need for effective, person-centred services and in-work support, and 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

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

62 <http://www.gov.scot/Publications/2015/12/7463>

63 <http://www.gov.scot/Publications/2016/12/2989>

64 [http://www.skillsdevelopmentscotland.co.uk/media/40691/2869\\_sds\\_equalities\\_action\\_plan\\_digital\\_v7.pdf](http://www.skillsdevelopmentscotland.co.uk/media/40691/2869_sds_equalities_action_plan_digital_v7.pdf)

65 <http://www.skillsdevelopmentscotland.co.uk/news-events/2016/december/more-apprenticeship-opportunities-for-disabled-people-and-care-experienced-young-people/>

66 See for example: <http://www.employabilityinscotland.com/policy-and-partnership/scotlands-devolved-employment-services/>

- for disabled people for whom it is appropriate, the Scottish Government will expect providers of employment services to offer supported employment

Examples of specific programmes to increase employment rates, particularly for the most disadvantaged groups, include: Modern Apprenticeships;<sup>67</sup> Opportunities for All;<sup>68</sup> Activity Agreements;<sup>69</sup> Scotland's Employer Recruitment Incentive;<sup>70</sup> Open Doors Consortium – In-work support;<sup>71</sup> Community Jobs Scotland.<sup>72</sup>

The Scottish Government is working with the EHRC to tackle pregnancy and maternity discrimination. The Minister for Employability and Training is chairing a working group whose remit 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.

The Scottish Government will work with large employers to help women who have had career breaks back into the workplace. Equate Scotland has been awarded funding of up to £50,000 to deliver the first stage of activity to support women to return to work. This 12-month project will provide at least 40 women with support to re-enter the STEM (science, technology, engineering and maths) sector by offering one-to-one guidance, career clinics and access to webinars and three month paid placements with a STEM employer. The placements will focus on life sciences, digital skills and engineering. However, STEM is not the only sector where women experience barriers to re-entry, and the Scottish Government will look to develop returner programmes in other sectors where a need is identified. These projects will help women update skills and knowledge and smooth the transition back into the workplace for both women and employers.

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67 <https://www.skillsdevelopmentscotland.co.uk/what-we-do/our-products/modern-apprenticeships/>

68 <http://www.gov.scot/Publications/2012/11/7618>

69 <http://www.youthlinkscotland.org/Index.asp?MainID=12711>

70 <https://www.skillsdevelopmentscotland.co.uk/what-we-do/our-products/scotlands-employer-recruitment-incentive/>

71 <https://www.ourskillsforce.co.uk/media/2229/odc-factsheet-of-additional-support-16-17.pdf>

72 <http://www.scvo.org.uk/jobs-employability/cjs/>

## 8. Combating poverty

### Welfare reform mitigation

Across 2013-16, the Scottish Government invested £296 million to mitigate the worst aspects of UK welfare policy, via the Scottish Welfare Fund (SWF), Discretionary Housing Payments, Council Tax Reduction Scheme (CTRS) and other activity, such as advice and advocacy support services. The Scottish Government is providing a further £100 million in 2016-17. This investment continues to support people affected by the UK Government's welfare cuts in a range of different ways:

- fully mitigating the bedroom tax - spending £35 million in 2016-17 and £47 million in 2017-18 - to help over 70,000 households in Scotland, an estimated 80% of which contain at least one disabled person, to sustain their tenancies; the Scottish Government is committed to using newly devolved social security powers to effectively abolish the bedroom tax
- a further £10.9 million will be available to local authorities to mitigate the impact of other UK Government welfare reforms and help claimants of Housing benefit or Universal Credit maintain tenancies
- providing another £38 million this year for the SWF. Between 1 April 2013 and 30 September 2016, the Fund has supported over 230,000 households in Scotland, including around 77,000 families with children. 77,000 awards were made to households containing at least one disabled person
- since April 2013 the Scottish Government has committed £92 million for the CTRS over and above the funding transferred from the UK Government upon abolition of Council Tax Benefit. In 2017-18, this funding will increase to an additional £31 million, resulting in a total of £351 million being included in the local government finance settlement paid to local authorities in relation to the scheme
- In addition, the Scottish Government is making significant investment in advice and advocacy support services to enable people to access expert support in applying for benefits and appealing adverse decisions.

## Fairer Scotland

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* (October 2016)<sup>73</sup> sets out the actions the Scottish Government will take. It 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; 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 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 also sets out 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. A key action in the Plan is the introduction of the Child Poverty (Scotland) Bill, which establishes ambitious statutory income-based targets for reducing child poverty by 2030, and puts in place a robust framework for measuring, monitoring and reporting on child poverty at a national and local level. The Child Poverty (Scotland) Bill<sup>74</sup> was introduced to the Scottish Parliament on 9 February 2017.

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*,<sup>75</sup> 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.

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73 <http://www.gov.scot/Publications/2016/10/9964>

74 <http://www.parliament.scot/parliamentarybusiness/Bills/103404.aspx>

75 <http://www.gov.scot/Publications/2016/01/1984>

## Social security

The Scottish Government publication *Creating a Fairer Scotland: Social Security*<sup>76</sup> sets out how new social security powers, despite their limited scope, will provide opportunities to develop different policies for Scotland that are fairer and help tackle inequalities and poverty, ensuring that people are treated with respect and dignity.

The Scottish Government has already indicated some of the policies it will take forward, such as the introduction of a new Best Start Grant, which will see support for qualifying families increase from the £500 payable only for the first child under the existing UK Government Sure Start Maternity Grant, to £1,100 for the first child and £800 for second and subsequent children over the term of the benefit; the raising of Carer's Allowance; and effectively abolishing the UK Government's bedroom tax.

The 2016-17 PfG contains a commitment to introduce a Social Security Bill by June 2017, and the response to a Social Security Consultation conducted over three months in 2016 will be the foundation for how the Scottish Government uses new devolved powers. Independent analysis of the social security consultation was published in February 2017.<sup>77</sup> The Scottish Government's response, *A New Future for Social Security*,<sup>78</sup> outlined that social security as a human right will be enshrined in the foundation and functions of Scotland's new social security agency.

## Housing

The Scottish Government's *More Homes Scotland* approach supports the target to deliver at least 50,000 affordable homes (including 35,000 for social rent) over the period 2016-17 to 2020-21, backed with investment of over £3 billion. The previous target of 30,000 affordable homes over the 2011-16 parliamentary session was exceeded: to the end of March 2016, 33,490 affordable homes had been delivered, including 22,523 for social rent and, within that, 5,992 council homes.

In Scotland, social landlords (local authorities and housing associations) are responsible for the allocation and management of social housing on an objective and non-discriminatory assessment of need. The Housing (Scotland) Act 1987<sup>79</sup> 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 under unsatisfactory housing conditions.

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76 <http://www.gov.scot/Publications/2015/10/3498>

77 <https://consult.scotland.gov.uk/social-security/social-security-in-scotland/>

78 <http://www.gov.scot/Resource/0051/00514404.pdf>

79 <http://www.legislation.gov.uk/ukpga/1987/26/contents>

The Private Housing (Tenancies) (Scotland) Act 2016<sup>80</sup> will introduce a new modernised, open-ended tenancy for all future private rented sector 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.

## Homelessness

Since 2012, all those assessed by local authorities as being homeless through no fault of their own have been entitled to settled accommodation. Furthermore, anyone threatened with or experiencing homelessness is legally entitled to a minimum of temporary accommodation, advice and assistance from their local authority. The Scottish Government has focused on the holistic and person-centred 'Housing Options' approach<sup>81</sup> to homelessness prevention, which features early intervention and explores all possible tenure options. 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 2014<sup>82</sup> 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 limit of 14 days. The Scottish Government plans to strengthen this and ensure that all temporary accommodation is the same standard as permanent accommodation. In April 2016 the Scottish Government introduced mandatory collection of data on time spent in temporary accommodation, which will help inform the approach in future.

## Food poverty

The Scottish Government provided £1 million of funding over 2014-16 as part of the Emergency Food Action Plan. In October 2015, the Scottish Government established the Independent Short-Life Working Group on Food Poverty 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 response<sup>83</sup> to the Working Group's report, *Dignity: Ending Hunger Together in Scotland*<sup>84</sup> (30 June 2016). Notably, a commitment was made 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.

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80 <http://www.legislation.gov.uk/asp/2016/19/contents/enacted>

81 <https://beta.gov.scot/policies/homelessness/housing-options/>

82 <http://www.legislation.gov.uk/ssi/2014/243/contents/made>

83 <https://beta.gov.scot/publications/food-poverty-response-to-working-group/>

84 <http://www.gov.scot/Publications/2016/06/8020>

## 9. Gender equality, disabled people and older persons

### Equality in the workplace

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 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, launched in June 2015, which encourages public, private and third sector organisations to work towards gender balance on their own boards by 2020.

### 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

### Early learning and childcare

The CYP (Scotland) Act 2014 increased the amount of funded early learning and childcare to 600 hours per year for all 3-4-year olds. This has been extended to over a quarter of 2-year olds who may benefit most, including those with a parent in receipt of out of work benefits or on low income; and those who are looked after, the subject of a kinship care order, or with a parent appointed guardian. The Scottish Government is committed to increasing the amount of funded early learning and childcare for 3 and 4-year olds and eligible 2-year olds to 1,140 hours by 2020.

## Disabled people

On 2 December 2016 the Scottish Government published a Disability Delivery Plan (DDP), *A Fairer Scotland for Disabled People*,<sup>85</sup> which will work to remove the barriers disabled people can face when it comes to finding and sustaining employment, and developing their careers. The Scottish Government is also developing a framework to support disabled children and their families. 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 its national skills agency Skills Development Scotland 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 from April 2017
- further 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
- autism and learning disabilities strategies
- developing internships and piloting work experience for disabled young people

## Older people

In 2016-17 the Scottish Government provided funding of over £535,000 to older people’s organisations and third sector organisations to tackle barriers to independent living experienced by older people and to promote older people’s rights. Significant resources are also being provided to tackle loneliness and social isolation, including the £500,000 Social Isolation and Loneliness Fund (2016-17), which focuses on support for community-based projects tackling social isolation. Thirty-six organisations have been successful in receiving grants from this fund. In addition, the concessionary travel scheme for older and disabled people provides health and wellbeing benefits and is a major contributor to tackling loneliness and isolation. During 2017, a National Social Isolation Strategy will be developed to ensure a holistic approach across government to problems of loneliness and isolation.

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 assist those coming from longer term care to enable establishment in the community.

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85 <http://www.gov.scot/Publications/2016/12/9835>

Public funding for older people's (over 65s) social care services has increased by 33% under the current Scottish Government, from £1.02 billion in 2006-7 to £1.35 billion in 2014-15, and overall expenditure on adult social care and social work services has increased by 29% over the same period, from £2.3 billion to £2.97 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 77,000 people each year. The Public Bodies (Joint Working) (Scotland) Act 2014<sup>86</sup> 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.

In Summer 2017 the Scottish Government will also consult on the terms of a future review of long-term care capacity. The voices and experiences of service users, including disabled people and the organisations that represent them, will be at the centre of these reforms and will shape planning and implementation and improve outcomes.

## Self-directed support

*The National Self-Directed Support Strategy 2010-2020*<sup>87</sup> 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-rights based values and 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) Act 2013,<sup>88</sup> introducing a new approach which gives adults, children and carers who require social care support more choice and control over how their support is delivered. This makes sure individuals are empowered to be equal partners in their care and support decisions and to participate in social and economic life.

## Dementia

The Scottish Government's third three-year *National Dementia Strategy*<sup>89</sup> will focus on ensuring more people are diagnosed earlier; rolling out Scotland's distinctive post-diagnostic service offer of a year's worth of support co-ordinated by a Link Worker; integrated home care; and developing palliative and end of life services.

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86 [http://www.legislation.gov.uk/asp/2014/9/pdfs/asp\\_20140009\\_en.pdf](http://www.legislation.gov.uk/asp/2014/9/pdfs/asp_20140009_en.pdf)

87 <http://www.selfdirectedsupportscotland.org.uk/self-directed-support/strategy>

88 <http://www.legislation.gov.uk/asp/2013/1/contents/enacted>

89 <http://www.gov.scot/Topics/Health/Policy/Adult-Health-SocialCare-Integration/Dementia>

## 10. Protecting children's rights

### Law, policy and budgeting

Provisions in individual aspects of Scots Law have strengthened children's rights in Scotland. For example the Children (Scotland) Act 1995,<sup>90</sup> Children's Hearings (Scotland) Act 2011,<sup>91</sup> Human Trafficking and Exploitation (Scotland) Act 2015.<sup>92</sup> The CYP (Scotland) Act 2014<sup>93</sup> (CYP Act) places specific duties on 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 UNCRC requirements and to take steps identified by that consideration. 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 UNCRC.

The 2016-17 Equality Budget Statement<sup>94</sup> 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 Budget Equality 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 free early learning and childcare, free school meals, attainment, and child and adolescent mental health services (CAMHS). In May 2016, Scotland's 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."<sup>95</sup>

Child Rights and Wellbeing Impact Assessments<sup>96</sup> (CRWIA) have been introduced to ensure that all parts of the Scottish Government consider the impact of proposed policies and legislation on the rights and wellbeing of children and young people, including consideration of specific groups of children and young people, such as those with disabilities or vulnerabilities. Completed CRWIAs are published on the Scottish Government website. The process ensures that policy officials take account of the views of children and young people and consider both direct and indirect impacts on children and young people, as well as any necessary mitigation steps.

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90 <http://www.legislation.gov.uk/ukpga/1995/36/contents>

91 <http://www.legislation.gov.uk/asp/2011/1/contents>

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

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

94 <http://www.gov.scot/Publications/2015/12/3449>

95 <http://news.gov.scot/speeches-and-briefings/priorities-speech-taking-scotland-forward>

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

The Scottish Government's *Getting it Right for Every Child* (GIRFEC)<sup>97</sup> approach focuses on considering each child's needs in a holistic way, looking at their whole wellbeing and encouraging early intervention/prevention and co-ordination around the family. When commenced, the Named Person and Child's Plan provisions in the CYP Act will place these parts of GIRFEC on a statutory footing. Some areas already deliver these on a non-statutory basis, and the CYP 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). GIRFEC is for all services and practitioners working with children and their families.

## Children's Commissioner

The Commissioner for CYP (Scotland) Act 2003<sup>98</sup> established the role of the Commissioner for Children and Young People in Scotland. The Act 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. When commenced in 2017, provisions in Part 2 of the CYP Act will empower the Commissioner to conduct such investigations on behalf of individual children.

## Participation

The Scottish Government is working with partners to meaningfully and sustainably engage children and young people in policy making on issues that affect them. Some recent examples are: the Commonwealth Games 2014 Legacy; the National Conversation; underage drinking; 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.

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97 <http://www.gov.scot/Topics/People/Young-People/gettingitright/what-is-girfec>

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

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 Children and Young People Commissioner Scotland (CYPCCS) 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.

### Diversity and equality in schools

The Scottish Government is committed to delivering excellence and equity in Scottish education: 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* (December 2016)<sup>99</sup> 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

Within this framework the Scottish Attainment Challenge<sup>100</sup> aims to deliver equity in educational outcomes, with a particular focus on closing the poverty-related attainment gap. It is supported by the £750 million Attainment Scotland Fund, which currently targets support to schools and local authorities with the highest numbers of pupils living in areas of multiple deprivation and, from 2017-18, will provide additional financial support to schools-based on the number of pupils eligible for free school meals, reaching around 95% of schools in Scotland. In addition to improving literacy and numeracy, the challenge will support the health and wellbeing of children in school, at home and in the community.

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

100 <http://www.gov.scot/Topics/Education/Schools/Raisingeducationalattainment>

Support for children and families in the early years is critical, and the Scottish Government has established the Children and Young People Improvement Collaborative (CYPIC),<sup>101</sup> which joins the Early Years Collaborative and the Raising Attainment for All Programme. The CYPIC is supporting schools, early learning and childcare settings, health services and family support services to use the 3-Step Improvement Framework to test, measure and implement better ways of working to make services more effective and responsive to the needs of children, young people and families.

In Scotland 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 Scottish Government is reviewing, in 2017, the guidance for schools and education authorities on mainstreaming to take account of more recent legislation and policy developments. The Education (Additional Support for Learning) (Scotland) Act 2004 (as amended) requires education authorities to identify, provide for and review the additional support needs 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 social and emotional factors.

The Scottish Government *Equality Outcomes and Mainstreaming Report 2013*<sup>102</sup> set a specific equality outcome for education with a focus on disability, Gypsy/Travellers, sex and bullying. The *Equality Outcomes and Mainstreaming Report 2015*<sup>103</sup> reported on progress, including how equality is being mainstreamed in education policies.

Within this educational context there has been a broad range of recent activity to support the realisation of the human rights of children and young people. The following are some examples:

- Revised Scottish Government guidance, *Planning improvements for disabled pupils' access to education* (Autumn 2014),<sup>104</sup> supports education authorities to meet their duties under Scottish legislation<sup>105</sup> to develop and publish accessibility strategies to increase pupils' access to education – this duty is further to responsible bodies' duties under the Equality Act 2010 to make reasonable adjustments for disabled pupils
- *Scotland's Youth Employment Strategy*<sup>106</sup> addresses recommendations in the *Commission for Developing Scotland's Young Workforce* report (June 2014), including those relating to equality issues<sup>107</sup> in education and employment

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101 <http://www.gov.scot/Topics/People/Young-People/early-years/early-years-collaborative>

102 <http://www.gov.scot/Publications/2013/04/2397>

103 <http://www.gov.scot/Publications/2015/04/7781>

104 <http://www.gov.scot/Resource/0046/00462611.pdf>

105 [http://www.legislation.gov.uk/asp/2002/12/pdfs/asp\\_20020012\\_en.pdf](http://www.legislation.gov.uk/asp/2002/12/pdfs/asp_20020012_en.pdf)

106 <http://www.gov.scot/Publications/2014/12/7750/1>

107 <http://www.gov.scot/Publications/2014/12/7750/7>

- The Education (Scotland) Act 2016<sup>108</sup> supports a range of improvements covering the attainment of pupils from poorer backgrounds, giving children a voice in matters that affect them, and extending the rights of children with additional support needs
- In response to recommendations of the Doran Review,<sup>109</sup> a National Commissioning Group will soon consult on a draft ten year 'Strategy for the Education Provision for Children and Young People with Complex Additional Support Needs'
- The Scottish Government is currently (Spring 2017) consulting widely on the draft guidance 'improving educational outcomes for children and young people from travelling cultures'

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?*, *How Good is Our School?*, and *How Good is our College?*

In 2017 the Scottish Government is refreshing the 2010 guidance *The National Approach to Anti-Bullying for Scotland's Children and Young People*.<sup>110</sup> This will communicate and promote a common vision, and aims to make sure that work across all sectors and communities is consistently and coherently contributing to a holistic approach to anti-bullying, including prejudice based bullying, in Scotland. The Scottish Government continues to fund and support Scotland's anti-bullying service 'respectme', which provides direct support to local authorities, schools, youth groups and all those working with children and young people. It is jointly managed by the Scottish Association for Mental Health (SAMH) and LGBT Youth Scotland.

The Scottish Government is also refreshing the 2011 guidance *Included Engaged and Involved Part 2: a positive approach to preventing and managing school exclusions* (IEI2).<sup>111</sup> The refreshed guidance will focus on prevention, early intervention and response to individual need in line with the GIRFEC principles. Exclusion should only be used as a last resort, a proportionate response where, having considered all the facts and circumstances, there is no alternative. Where exclusion is used, it should be a short-term measure with the aim of improving outcomes, and there is a right of appeal against a decision to exclude.

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108 <http://www.legislation.gov.uk/asp/2016/8/contents/enacted>

109 <http://www.gov.scot/Topics/Education/DoranReview/StrategicCommissioning>

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

111 <http://www.gov.scot/Publications/2011/03/17095258/0>

The promotion of diversity and equality remains an important aspiration of Scotland's Curriculum for Excellence.<sup>112 113</sup> Relationships, Sexual Health and Parenthood (RSHP) education is an integral part of the health and wellbeing area of the curriculum. Scottish Government guidance<sup>114</sup> clearly states how important it is that RSHP education addresses diversity and reflects issues relating to LGBTI young people or children with LGBTI parents, such as same sex marriage and hate crime reporting. Children will be encouraged to discuss these subjects with their peers and parents, and teachers should discuss proposed lessons and resources with parents in advance. If parents or carers feel the content is not appropriate they can withdraw a primary school-aged child from all or part of a planned programme, and arrangements should be made for the child to have alternative positive educational provision.

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. On 14 September 2016 the Humanist Society Scotland served a petition for Judicial Review on Scottish Ministers to challenge certain aspects of the Scottish Government's position on Religious Observance (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 sist the Judicial Review action for three months to March 2017 and the Scottish Government is carrying 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 Curriculum for Excellence 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 (Scotland) Act 2014 and the current Education Governance Review. The Scottish Government welcomes the opportunity to work with key interests to discuss how to ensure this approach is fully reflected through religious observance guidance.

The Scottish Government works closely with the Scottish Funding Council, local authorities, the Students Awards Agency for Scotland and the college sector to ensure that further education funding and student support mechanisms are designed to best meet the needs of students with additional support needs. For example, the (non-income assessed) Additional Support Needs for Learning Allowance and the 'Access and Inclusion' fund.<sup>115</sup>

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112 <http://www.gov.scot/Topics/Education/Schools/curriculum>

113 The OECD report 'Improving Schools in Scotland: An OECD Perspective' (December 2015) observed that: "Scottish schools are inclusive. Scottish schools do very well on measures of inclusion and mix."

114 'Conduct of Relationships, Sexual Health and Parenthood (RSHP) education in schools' – <http://www.gov.scot/Publications/2014/12/8526>

115 <http://www.sfc.ac.uk/Priorities/Access/Initiatives/AccessInitiatives.aspx>

## Higher education

The Scottish Government believes that access to higher education should be based on the ability to learn and not the ability to pay. To support this, 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. 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 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 UCAS (Universities and Colleges Admissions Service) to attend university than ever before. Scottish domiciled full-time first degree university entrants rose 12% between 2006-07 and 2015-16, from 25,790 to 28,770. Latest figures also 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 has accepted the ambitious agenda for change laid out by the Commission on Widening Access, including stretching national and institutional targets.

## 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 2015<sup>116</sup> 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 they will be able to vote in the May 2017 local government elections.

## Minimum age of criminal responsibility

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 report<sup>117</sup> recommended that the age be raised from 8 to 12, and that the move be accompanied by a number of safeguards.

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

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

The Scottish Government announced on 1 December 2016 that it will be introducing a Bill in the current parliamentary session to increase the minimum age of criminal responsibility from 8 to 12, with appropriate safeguards in relation to issues such as police powers in exceptional cases to investigate harmful behaviours, or to take and retain forensic samplings, disclosure, and the impact on victims. This will align the age of criminal responsibility with the minimum age of prosecution in Scotland.

### **Physical punishment of children**

The existing legislation in Scotland makes it illegal to punish children by shaking, hitting on the head or using an implement. The Scottish Government remains opposed to physical punishment of children but does not intend to bring legislation forward to repeal all legal defences and ban physical punishment, which could potentially criminalise parents for lightly smacking their children.

### **Recruitment to the armed forces**

The UK Government is responsible for recruitment to the armed forces. Armed Forces (Enlistment) Regulations 2009 (SI 2009/2057)<sup>118</sup> 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.

### **Child sexual exploitation**

An updated *National Action Plan to Prevent and Tackle Child Sexual Exploitation*<sup>119</sup> was published in March 2016 and the Scottish Government continues to work with a national working group on implementation, as well as working across government and in consultation with external stakeholders to update the *Child Internet Safety Action Plan*,<sup>120</sup> ensuring that this is linked to both the digital participation and cyber resilience strategies and to work being taken forward in schools. The plan will be published in Spring 2017.

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118 <http://www.legislation.gov.uk/uksi/2009/2057/made>

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

120 <http://www.gov.scot/Publications/2010/02/09154928/0>

## Historic abuse of children

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*** 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.<sup>121</sup> On 31 January 2017 the inquiry hosted a preliminary hearing, which provided an update on its work including details of the investigations currently underway. These investigations include institutions run by faith based organisations, other major care providers, boarding schools and local authorities. Public hearings will proceed in phases, with the first commencing on 31 May 2017.

On 29 September 2016 the 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***<sup>122</sup> 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.

On 16 November 2016, the Scottish Government introduced a Bill to the Scottish Parliament to remove the three year limitation period for civil actions arising out of childhood abuse (defined to include sexual, physical and emotional).

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121 <https://www.childabuseinquiry.scot/>

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

## 11. Promoting health

*The Healthcare Quality Strategy for NHS Scotland*<sup>123</sup> contains three quality ambitions of safe, effective and person-centred care. The Patient Rights (Scotland) Act 2011<sup>124</sup> gives all patients certain rights concerning the healthcare they receive, including a right to raise concerns or complaints, and requires Scottish Ministers to publish a *Charter of Patient Rights and Responsibilities*. The Scottish Government's 2020 Vision<sup>125</sup> 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.

### Access to 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 are entitled to the full-range of NHS care and services while in Scotland, regardless of the status of their application.

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.

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123 <http://www.gov.scot/Topics/Health/Policy/Quality-Strategy>

124 <http://www.gov.scot/Topics/Health/Policy/Patients-Rights>

125 <http://www.gov.scot/Topics/Health/Policy/2020-Vision>

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 Hear* (April 2014),<sup>126</sup> sets out a commitment that adults and children should expect a seamless provision of assessment, care and support, and the same access to public services including healthcare, employment, education, leisure, and social care as everyone else. NHS Health Scotland is working with NHS Boards across Scotland to support improvements in the provision of British Sign Language (BSL) interpreting services in health settings. These and other actions the Scottish Government is taking to improve access to health services for people whose first or preferred language is BSL will be included in Scotland's first BSL National Plan, which will be published in October 2017 as required by the British Sign Language (Scotland) Act 2015.<sup>127</sup>

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)<sup>128</sup> and *Now Hear Me* (2015).<sup>129</sup> In April 2016, Part 4 of the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016<sup>130</sup> received Royal Assent. This legislative duty on the provision of communication equipment and support gives children and adults across all age ranges and 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 access the communication equipment and support they need.<sup>131</sup>

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.<sup>132</sup> 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<sup>133</sup> and NHS Health Scotland<sup>134</sup> publish evidence summaries for each equality characteristic.

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126 <http://www.gov.scot/Publications/2014/04/7863>

127 <http://www.legislation.gov.uk/asp/2015/11/enacted>

128 <http://www.gov.scot/resource/0039/00394629.pdf>

129 <http://www.nowhear.me.co.uk/about-us/>

130 <http://www.legislation.gov.uk/asp/2016/14/contents/enacted>

131 <http://www.legislation.gov.uk/asp/2016/14/notes/division/2/4>

132 <http://www.gov.scot/Topics/Statistics/Browse/Health/careexperience>

133 <http://www.gov.scot/Topics/People/Equality/Equalities/HealthSocialCare>

134 <http://www.healthscotland.com/Equalities/characteristics/index.aspx>

## Autism

In 2011, the Scottish Government launched the *Scottish Strategy for Autism*,<sup>135</sup> which focuses on reducing the inequalities faced by people who have autism. It has been reframed into an Outcomes Approach<sup>136</sup> with four key outcomes that aim to ensure that people with autism should be afforded the same rights as all citizens.

## Learning disabilities

In 2013, the Scottish Government launched the *Keys to Life* strategy,<sup>137</sup> which has been reframed into an Implementation Framework<sup>138</sup> with four key outcomes that aim to ensure that people with learning disabilities should be afforded the same rights as all citizens.

## 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 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.

The Scottish Government is currently funding the Links Worker pilot programmes in Dundee and Glasgow, which see 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 Scottish Government will increase the number of community Links Workers in disadvantaged areas to 250 over the next five years, with 40 to be recruited by September 2017, to ensure that anyone who needs psychosocial support receives it.

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 now in 10 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.

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135 <http://www.autismstrategyscotland.org.uk/strategy/linking-goals-aims-and-recommendations.html>

136 <http://www.autismstrategyscotland.org.uk/strategy/key-documents.html>

137 <http://www.gov.scot/resource/0042/00424389.pdf>

138 <http://keystolife.info/wp-content/uploads/2015/06/The-Keys-to-Life-Implementation-Framework-and-Priorities.pdf>

## Mental health

The Scottish Government has a Ministerial post dedicated to mental health and over five years is investing an additional £150 million in mental health. A new strategy for mental health, which will set out a vision for the next 10 years and how to transform services, will focus on themes 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 Scottish Government remains committed to meeting its target of 90% of those referred for specialist Child and Adolescent Mental Health Services (CAMHS) starting treatment within 18 weeks, and is continuing to work with NHS boards to help them to make the necessary improvements. The Scottish Government is implementing the Mental Health (Scotland) Act 2015 and will promote independent advocacy and advance statements, alongside a rights-based approach in the statutory guidance on the use of mental health legislation.

The aim of the NHS/SPS multi-disciplinary Mental Health Team is to provide mental health care within prisons equivalent to the care provided for people in the community but designed to meet the recognised increased mental health needs of prisoners. Following the transfer of responsibility for healthcare from SPS to NHS Health Boards in November 2011, clinical treatment and support for prisoners with mental health problems sits with NHS. SPS still 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. 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. On 29 November 2016, SPS launched its new Suicide Prevention Strategy, *Talk to Me*,<sup>139</sup> which replaces *ACT2Care*. The 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.

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139 <http://www.sps.gov.uk/Corporate/Publications/Publication-4678.aspx>

## Suicide prevention

Data published in 2016 show that the suicide rate in Scotland fell by 18% in the period 2001-05 to 2011-15.

The Scottish Government *Suicide Prevention Strategy 2013-2016*<sup>140</sup> 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 communications and 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.

## 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.<sup>141</sup>

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.<sup>142</sup> 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 towards the end of 2017.

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

141 Adults with Incapacity (Scotland) Act 2000, section 47

142 <http://www.gov.scot/Publications/2016/07/5000>

## 12. Promoting development overseas

**Respect for human rights is embedded in the Scottish Government's International Framework.<sup>143</sup>**

The Scottish Government's International Development Fund<sup>144</sup> focuses on working in partnership to achieve real and tangible outcomes on the ground. It does not provide any direct funding to governments. In order to promote democracy, the rule of law and fundamental human rights across the world, the Scottish Government expects all states to comply with and respect human rights law and condemn human rights abuses wherever they occur.

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143 <http://www.gov.scot/Topics/International/strategy>

144 <http://www.gov.scot/Topics/International/int-dev>





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