



## UNISON Scotland response: UNCRC (Incorporation) (Scotland) Bill October 2020

### **Introduction**

UNISON is Scotland's largest trade union with members across the public, private and voluntary sectors. Our members work in a wide range of occupations within children's services, including early learning and childcare, education, health and social work. UNISON also represents members in areas such as housing which are vital to children's wellbeing as well as in a number of children's charities across Scotland.

We welcome the chance to take part in this consultation on embedding children's rights into Scots law. Our response focuses on questions 1 and 4, which are about resources.

This bill will make children's UNCRC rights binding on all public authorities. UNISON believes public authorities must also be resourced and empowered to uphold children's rights. This is not the case at present. Even where there is an understanding and a commitment to act in the interests of children and young people that action is constrained by resources.

### **Summary**

- Incorporation into law is insufficient.
- For children to exercise their rights in practice requires investment in essential public services. These have been starved of funds for the past decade.
- Without this, a rights-based approach may lead to greater inequality.
- The United Nations Committee on the Rights of the Child called on the Scottish Government in 2016 to *"Define budgetary lines for children in disadvantaged or vulnerable situations that may require affirmative social measures and make sure that those budgetary lines are protected even in situations of economic recession"*<sup>1</sup> This has not happened.
- The Financial Memorandum shows the Government's expectations of this bill are far too limited. Public services are being asked to do more with the little they already have. This is not realistic.
- This is not a child-centred approach to legislating. By definition it is resource-driven rather than rights or needs based.
- To rebuild from the pandemic we need a public services-driven recovery focused on children's rights.

### **Overview**

UNISON is arguing for a public services driven recovery from the pandemic.<sup>2</sup> We believe investment in children and families should be central to this.

The foundation of Britain's recovery from the Second World War was investment in housing, education and health: one million council homes, the reform of state education, and the creation of the NHS. Together they transformed the lives of the generation of children born during and just after the war.

By the same approach – investment in the foundation economy - we can transform the lives of the current generation, extend their rights, and also create thousands of good jobs across Scotland.

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<sup>1</sup> [UN CRC Periodic Review 2016](#)

<sup>2</sup> [UNISON response on economic recovery from the pandemic](#)

Over the last decade local authorities and their partners have developed innovative approaches and services for tackling a range of issues within children's services. But typically these are time-limited 'pilots', or 'targeted' programmes, which are never rolled out because of the lack of sustainable funding. Austerity funding to local authorities has also had a severe impact on the specialist children and family services delivered by the third sector.

We must invest in public services to make sure children and their parents get the help they need, when they need it, in line with the principles of Getting It Right For Every Child: in community based therapeutic mental health services, trauma recovery services for children, in holistic family support and adult education in all schools, in domestic abuse services, in support for care leavers, in children and families social work, intensive family support in the community, out of school and holiday programmes, music & creative arts opportunities. Expanding employment within anchor institutions will benefit communities across Scotland – creating jobs which are rooted here and cannot be outsourced or relocated overseas.

UNISON is fully behind “ensuring public authorities take proactive steps to ensure compliance with children's rights in their decision-making and service delivery.” However local government and the NHS must be financially enabled to provide for these rights. There must also be a much greater prioritisation toward preventative spending on children *within* budgets.

At the same time, low wages and insecure work are the primary cause of child poverty. UNISON believes the Scottish Government can do much more about this, including creating sectoral bargaining arrangements for all parts of the economy and using conditionality in all public sector procurement.

Our response addresses consultation questions 1 & 4:

1. Will the Bill make it easier for children to access their rights?
4. If you work for an organisation or public authority, what resources do you need to help children and young people access their rights?

Children must be able to exercise their rights in practice, and public services hold the key to this. For years, UNISON has pointed out how the disproportionate cuts made to local government have adversely affected its ability to meet the needs presented in communities.<sup>3</sup> We have seen how the pandemic has disproportionately affected children in poverty, children at risk of harm, those with additional support needs in education including disabilities. These inequalities must now be addressed in the strategy for post-covid economic recovery which we can do by investing in the foundation economy.

### **Redistribution through public services**

Class, sex and race inequalities prevent children from fulfilling their potential. Discrimination against minority groups including children with disabilities and LGBT+ children multiply these barriers. Public services are redistributive and help to address the fact that some groups of children are less able to exercise their rights than others: working class children, children with disabilities, looked after children, black and minority ethnic children, and children who are asylum seekers, refugees or those who have been trafficked.

Universal Basic Public Services such as quality child care are essential for tackling inequality and guaranteeing children's rights.<sup>45</sup> The head of the International Monetary Fund has said that access to

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<sup>3</sup> [UNISON Scotland Combating Austerity report](#)

<sup>4</sup> [Oxfam Briefing Paper 2014](#)

<sup>5</sup> [Quality childcare for all Jan 2020](#)

health and education is key to tackling inequality.<sup>6</sup> Covid has demonstrated that public services **are** the essential infrastructure of our society and must be invested in.

This includes public services to support parents; these are vital to enable children's rights and needs to be met. In the current climate, through no fault of their own, many parents are struggling to meet their children's most basic needs as a result of low pay, insecure work, shortage of social housing and high private rents, an inadequate and punitive social security system as well as in some cases difficulties with mental health and addictions.

*The Government's financial memorandum sets out the expectation that public services can deliver children's rights within existing resources. This is not realistic.*

UNISON is concerned that, without additional resources, a rights-based approach may lead to even greater inequality. We see this already in relation to additional support needs where the most socioeconomically advantaged parents can use the system to have their child's rights realised. However with a fixed budget this is always at the expense of children whose parents do not have the same 'social capital.' Enabling children to litigate for their rights is fine, but which children are empowered to do this? Resources are fundamental for tackling social and economic inequality.

Equalities impact assessments are intended to prevent budget decisions disproportionately benefiting or disadvantaging specific populations with protected characteristics. However UNISON's experience is that these processes tend to be done very poorly and are therefore ineffectual.

### **UNCRC: the financial gap**

UNISON believes there are two major issues: the overall level of resources and the prioritisation of children within these. A series of recent reviews and research reports have highlighted the practical effect of these two – the level of resources and the prioritisation of adults over children – on children accessing their rights.

### **Austerity and children's services**

*"...increasing levels of need... and resource constraints are intensifying the processes that prioritise children and young people in order to ration limited resources. The consequences of the extended period and impact of austerity on public services are of serious concern."<sup>7</sup>Angela Morgan, review of additional support for learning p.35*

Reports from CoSLA<sup>8</sup>, the Improvement Service<sup>9</sup>, Audit Scotland<sup>10</sup> and SPICe<sup>11</sup> confirm that local government has borne the brunt of cuts over the past decade. Over £2 billion of 'efficiencies' have been achieved at a time when demand for many services has risen.

Scotland's health boards are also struggling. According to Audit Scotland they are not financially sustainable, with 4 of the 14 territorial boards needing government bailouts to break even in 2018/19.<sup>12</sup> The collective backlog of capital maintenance works across all the health boards is in excess of £900 million.

In local government the pressure is exacerbated by the growth of ring fencing and the many additional legal obligations placed on councils by central government. CoSLA estimate that together these now account for 61% of Council budgets. This means all of the rest of council spending commitments must

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<sup>6</sup> [Christine Lagarde International Monetary Fund](#)

<sup>7</sup> [Review of Additional Support for Learning p.35](#)

<sup>8</sup> [Invest in Essential Services](#)

<sup>9</sup> [Local Government Benchmarking Report](#)

<sup>10</sup> [Local Government in Scotland 2019](#)

<sup>11</sup> [Local Government Finance Facts and Figures](#)

<sup>12</sup> [Audit Scotland NHS in Scotland 2019](#)

be funded from the remaining 39%. As a result cuts have fallen entirely on those areas.<sup>13</sup> UNISON has tracked some of the impact that this has had on services and the UNISON members who provide them staff through our 'Damage' series of reports.<sup>14</sup>

In 2016 the United Nations Committee on the Rights of the Child called on the Scottish Government to:

*“Define budgetary lines for children in disadvantaged or vulnerable situations that may require affirmative social measures and make sure that those budgetary lines are protected even in situations of economic recession”<sup>15</sup>*

However this has not been happening. Children and family social work services presents a clear case. In 2016 Audit Scotland warned about the extreme financial pressures faced by social work services.<sup>16</sup> It said funding must increase by 16-21% by 2020 to maintain services. Instead real terms funding has fallen.

While councils have tried to protect statutory provision for children, austerity cuts made to local government budgets have affected children and family services. This was clear to the United Nations Committee on the Rights of the Child, when it carried out its periodic review of children's rights in Scotland and the rest of the UK in 2016 (see below).

### **Prioritisation of adults over children**

Elderly care has dominated the concerns of the Integrated Joint Boards from the outset.<sup>17</sup> The urgent social and economic case for preventative spending on maternity, infancy, childhood and adolescence is easily eclipsed.<sup>18</sup>

- To take the example of mental health, children are 35% of the Scottish population<sup>19</sup> and 1 in 10 have a diagnosable mental health condition, but only 6.6% of the mental health budget is spent on children.<sup>20</sup>
- 3 in 10 pupils in Scotland (199,000 children) have additional support needs, with emotional and behavioural difficulties being the most common. The Morgan Review was told by senior figures in public sector finance that learning support tends to be overlooked at corporate level due to the focus on the other very real challenges of providing adult and older people services.<sup>21</sup> But stealing from auld Peter to pay wee Paul is not the answer.

## **The Evidence of Underfunding**

### **The picture in 2016**

The United Nations Committee on the Rights of the Child in its most recent periodic review of children's rights in Scotland<sup>22</sup> (2016) flagged the lack of – or deficiency in - service provision for children in a number of areas - a few of which are presented below - and asked the Scottish Government to take action. Scotland is not short of strategies, action plans and taskforces in these areas, just the funding for local authorities and their partners to deliver.

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<sup>13</sup> [Invest in Essential Services](#)

<sup>14</sup> [UNISON Scotland Damage Reports](#)

<sup>15</sup> [UN CRC Periodic Review 2016](#)

<sup>16</sup> [Social work in Scotland 2016](#)

<sup>17</sup> [Integrated Children's Services Report 2018](#)

<sup>18</sup> [Review of Additional Support for Learning Implementation Report Theme 4](#)

<sup>19</sup> [2019 mid-year estimates of population](#)

<sup>20</sup> [Scottish Children's Services Coalition](#)

<sup>21</sup> [Review of Additional Support for Learning p.35](#)

<sup>22</sup> [UN CRC Periodic Review 2016](#)

<b>Concerns to be addressed</b>
Standard of Living (UNCRC articles. 6, 18 (3), 23, 24, 26, 27 (1)-(3) and 33)
Housing: guaranteed stable access for all children to adequate housing that provides physical safety, adequate space, and accessibility for children with disabilities.
Housing: the lack of adequate and culturally sensitive accommodation for Roma, gypsy and traveller children.
Violence against children (UNCRC articles 19,24(3), 28(2), 34,37(a),39.)
Sexual exploitation and abuse: the lack of comprehensive services to support children who are victims or at risk of these. (In most areas of Scotland there remains no service provision <sup>23</sup> despite the existence for a number of years of a National Group on Child Sexual Exploitation. <sup>24</sup> )
Child sexual abuse: The lack of comprehensive multisectoral preventative programmes on child sexual abuse, including online, to ensure effective prevention, early detection and intervention. (Provision remains patchy and is insecurely funded.)
<b>Education, Leisure, Culture</b> (articles 28-30)
<b>Leisure:</b> the underfunding of play and leisure policies in Scotland; and the lack of provision for children with disabilities, children in disadvantaged areas, and places for teenagers to socialise.
<b>Family environment and alternative care</b> (articles. 5, 9-11, 18 (paras. 1 and 2), 20-21, 25 and 27 (para. 4))
Education: sufficient human and financial resources to improve access to early childhood education and childcare, with special attention to children in the most vulnerable situations. (Lack of investment in staffing has delayed the expansion of early years education) <sup>25</sup>
Social work: cases where timely early intervention measures have not been carried out, and parents have not been provided with adequate family support.
<b>Disability, basic health and welfare</b> (articles 6, 18, 23 – 27 (1)-(3))
Mental health: long waiting times for specialist mental health assessment and treatment and insufficiently developed therapeutic community-based services.
Disabilities: children with disabilities are not sufficiently involved in decisions affecting them and support for transition to adulthood is still not sufficient, timely or coordinated.

## The latest evidence

Since 2016 a range of reports, reviews and research – many commissioned by the Scottish Government – have highlighted the impact of austerity cuts on the under-resourcing of services for children and families.

### Housing and homelessness

Shelter estimates 70,000 children are currently on local authority housing waiting lists<sup>26</sup> while Scottish Government statistics show that homeless households with children are waiting far longer than other household types for a home due to the shortage of family sized social housing. Meanwhile low income families with children are increasingly reliant on private rented accommodation, often unsuitable and of low quality.<sup>27</sup> More social homes are needed and children should be involved in designing their new communities and yet in its Housing to 2040 consultation the Scottish Government suggests that public investment in social housing cannot be sustained. UNISON has argued that we must maintain and build upon the current level of affordable housing supply funding post-2021.<sup>28</sup>

### Social work services

The practical consequences of budget cuts to local authorities are well evidenced.

<sup>23</sup> [The Right to Recover](#)

<sup>24</sup> [National Group on Child Sexual Exploitation](#)

<sup>25</sup> [UNISON Scotland press release March 2020](#)

<sup>26</sup> [Shelter Scotland press release](#)

<sup>27</sup> [Overview of private rented housing reforms in Scotland](#)

<sup>28</sup> [UNISON Scotland Housing to 2040 consultation response](#)

In a UNISON Damage survey last year, over three quarters of social workers said their teams did not have enough staff, and 82% said their workload had got heavier.<sup>29</sup> In 2018 and 2019, children and family social workers in West Dunbartonshire Council voted for industrial action over concerns about unsafe practices putting vulnerable service users at risk.<sup>30</sup>

The under-resourcing of area social work teams has led to higher thresholds for children and families in order to access social work support.<sup>31</sup> This is the opposite of the prevention and early intervention approach of GIRFEC. The Care Inspectorate's report, Learning from Significant Case Reviews: March 2015 to April 2018, highlighted that policies around neglect remained inadequate to protect children from serious harm.<sup>32</sup> A recurring theme was that children remained unnoticed in neglectful situations until behaviour escalated and the threshold for child protection was reached. This was a factor in just over half of the cases reviewed.

Eight years ago, the need for greater financial resources was identified by a Scottish Government commissioned Review of Child Neglect.<sup>33</sup> It said resources needed to be spread across the spectrum of service provision to enable a shift in focus towards earlier intervention. At that time (2012) participants in the review reported a 'general unease and some anxiety' that by the following year there might be a risk of closure or reductions to family support services in their area, and possibly even cuts to statutory social work services through non-filling of posts. New research by NSPCC Scotland shows that this has now happened, with access to intensive family support services reduced or removed in many areas of the country, and high thresholds preventing access to statutory social work support.<sup>34</sup>

Evidence from the Independent Care Review<sup>35</sup> and children's charities<sup>36</sup> shows that while more looked after children are being placed in the care of relatives, close or distant ('kinship care') this is often not accompanied by the necessary resources. Adoptive families also do not receive the ongoing support services they require, according to the Care Review.

#### Child and adolescent mental health services (CAMHS)

It is very well documented that specialist CAMH services lack the capacity to meet demand. The result is growing levels of rejected referrals, and longer waiting times to receive treatment.<sup>37</sup> The system of mental health support for children at community level is largely the responsibility of local government or IJBs and dependent on the voluntary sector, but is inconsistent and fragmented according to Audit Scotland. The Children's Mental Health Taskforce said the range of generic less specialist services that is needed is often missing or undeveloped.<sup>38</sup> The government's Mental Health Strategy has action points for children but Audit Scotland says it is unclear how and when these will be completed.<sup>39</sup>

#### *Trauma recovery services*

The most traumatised children are unable to access the support they need, according to the Children and Young People's Mental Health Taskforce.

- In 2018 its interim report highlighted a major gap in provision for children who have experienced the most serious and multiple traumatic experiences in their lives, those who are on the edge of, or in

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<sup>29</sup> [UNISON survey of social work teams Nov 2019](#)

<sup>30</sup> [UNISON Scotland press release April 2019](#)

<sup>31</sup> [Review of Additional Support for Learning Implementation Report Theme 4](#)

<sup>32</sup> [Learning from Significant Case Reviews](#)

<sup>33</sup> [Review of Child Neglect in Scotland](#)

<sup>34</sup> [Challenges from the Frontline - Revisited](#)

<sup>35</sup> [The Promise](#)

<sup>36</sup> [Challenges from the Frontline - Revisited](#)

<sup>37</sup> [Audit Scotland Children and Young People's Mental Health](#)

<sup>38</sup> [Denise Coia Interim Findings Children and Young People's Mental Health Taskforce](#)

<sup>39</sup> [Together State of Children's Rights 2019](#)



the care system.<sup>40</sup> This includes services for children in infancy (0-3 years) where Scotland currently has little or no provision.<sup>41</sup>

- NSPCC research in 2017 found that for children who had experienced sexual abuse, there had been little or no improvement in access to therapeutic recovery services in Scotland in 25 years. In most local authorities children below the age of 13 had no access to support, unless their parents could pay for it privately. Services which did exist were insecurely funded and unable to meet demand.<sup>42</sup>
- There has been a well evidenced and significant increase in domestic abuse during the pandemic.<sup>43</sup> Specialist services already had long waiting lists. Scottish Women's Aid has called on the Scottish Government and Community Planning Partnerships to allocate more resources to specialist services.<sup>44</sup>

## Early learning and childcare

UNISON has argued consistently that increased investment is needed to support the expansion of early learning and childcare (ELC) and deliver the promised 1140 hours per child free at the point of use.<sup>45</sup> Lack of this is the main reason for the postponement of the expansion.

UNISON believes that to deliver a high quality service, investment is needed not just in additional numbers of staff, but in highly qualified staff who are properly paid for their work. We have said the expansion must be resourced at a level sufficient to improve pay within the sector, to address recruitment and retention issues linked to low pay levels.<sup>46</sup> We have argued that ASN must be fully mainstreamed into the expansion of ELC from the start. This will require additional funding including higher staff/child ratios as well as specific and ongoing training for the staff involved; a people to people service requires investment in people. We have also been clear that to be fully effective the proposed expansion of "free hours" in ELC will also require investment in a range of public services not just nurseries, as different services, occupations and disciplines need to work together to meet children's needs. That is why better resourced direct provision by the public sector makes greatest sense.

## Schools

The education budget has reduced by 2.5% since 2010/11 but the number of primary school pupils and preschool registrations has increased by 30,000. Real terms spend per pupil has fallen since 2010/11, by 8% for primary pupils and 4% for secondary pupils.<sup>47</sup>

*Hard lessons*, UNISON's 2017 survey of school support staff<sup>48</sup> described the cuts to school budgets and salami-slicing of staffing resulting in nearly 2000 fewer support staff across Scotland, including librarians, classroom assistants, additional support needs workers, technicians and home-school link workers as well as janitors, cleaners and clerical workers. We reported the disproportionate impact these cuts were having on pupils from poorer households, and those with additional learning needs. UNISON members tell us that across their schools, library hours, sports and other lunch/afterschool clubs, music tuition and cleaning have all been cut. These are all vital for pupils' attainment, broadening

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<sup>40</sup> [Denise Coia Interim Findings Children and Young People's Mental Health Taskforce](#)

<sup>41</sup> [Rare Jewels report](#)

<sup>42</sup> [The Right to Recover](#)

<sup>43</sup> [Support and recovery for children and young people](#)

<sup>44</sup> [Crisis and resilience](#)

<sup>45</sup> [UNISON response Early Learning and Childcare Model](#)

<sup>46</sup> *Ibid.*

<sup>47</sup> [UNISON Scotland response Feb 2019](#)

<sup>48</sup> [UNISON Damage report Hard Lessons](#)

their knowledge and experience and building confidence and can be purchased outside school by better-off families.

### Additional Support for Learning

Just under a third (31%) of Scottish children have additional support needs and the number has been rising. UNISON has argued for some time that substantial investment is needed in a range of different staff to support children in mainstream education and specialist schools for those children that need it.<sup>49</sup> This means staff who can identify pupils' additional support needs, for example educational psychologists, counsellors, school nurses and social workers. There also need to be staff in place to provide appropriate support, this includes specialist teachers, specialist support staff, mental health workers, counsellors, speech and language therapists, social workers, youth workers and medical staff to meet the healthcare needs of pupils.

In addition to staffing we need sustained investment in training and ongoing professional development for all staff so that they are able to identify and meet children's needs. UNISON has consistently raised concerns about the lack of training and ongoing professional development for the staff who provide support for children with ASN. Even where training does take place it is often not appropriate or detailed enough to allow staff to meet the needs of the children they work with.

Underfunding has been identified as the **main** issue in a series of reviews, parliamentary committee inquiries, and research reports in recent years. The 2020 review led by Angela Morgan<sup>50</sup> underlined this, saying:

- It is seriously concerned by the impact of a lengthy period of austerity on public services and the consequences of this for children with ASN;
- the underfunding of local government has led to the rationing of resources for these children, and thresholds for receiving help have risen.
- children whose parents are not able to advocate for them have their needs overlooked, exacerbating inequality;
- there is a considerable gulf between national policy and the reality of families' experiences of trying to have their child's needs properly met, which is described as a fight;
- The continuity and financial sustainability of the early intervention family support services provided by the voluntary sector is very concerning;
- Resource constraints are the underpinning issue in decision making about placing children in special education.
- School staff consider that access to other public services, especially in health and social work, is requiring significantly higher thresholds and preventing access to the services children and young people need.

### The Scottish Attainment Challenge and underfunding

The need for this targeted programme highlights the inadequacy of current levels of mainstream funding for education, and confirms the findings of the Morgan review. The Attainment Challenge is a scheme of fixed term additional funding - £750 million - mainly targeted on 9 out of Scotland's 32 local authorities<sup>51</sup> and is aimed at closing the poverty-related education attainment gap. The programme is targeted at authorities with the highest concentrations of deprivation using the Scottish Index of Multiple Deprivation.

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<sup>49</sup> [UNISON written evidence Additional Support for Learning](#)

<sup>50</sup> [Review of Additional Support for Learning Implementation](#)

<sup>51</sup> Schools in 12 local authorities receive Pupil Equity Funding which is part of the overall Attainment Challenge budget, and provided directly to head teachers.



This additional resource has been invested by local authorities in support and services to help overcome barriers to children's learning including interventions to help with emotional, social and behavioural difficulties (nurture groups, play therapy, family education, health and wellbeing groups, family support, extra learning support staff). However, *every* child with additional needs, *wherever* they live, has the right to this support. It *should* be resourced as part of mainstream education funding from central government.

## **Conclusion**

Getting it Right for Every Child (GIRFEC) is about making all of our services and systems child-centred. The incorporation of the UNCRC into Scots law may assist with some cultural change - there are various different barriers to this, not money alone.

However, the evidence strongly suggests that the underfunding of public services is a major barrier to children exercising their rights. Most of all this underfunding affects the rights of children with additional support needs, including children and young people with disabilities, children living with complex family adversity, children in homeless households, and children and young people who have suffered forms of abuse and neglect.

Our failure to fund the public services they need in childhood carries long term consequences, for them as individuals, and for society as a whole. Investing in public services for children and their families is redistributive and makes society more equal. It is the type of preventative spending that is vital for wider social and economic wellbeing. It is not realistic – as the financial memorandum suggests – for local government and other public agencies to fulfil children's rights within their existing resources. Investment in jobs and services in the care economy must be part of the economic recovery if we are to transform children's lives and allow them to access their rights in practice.

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**October 2020**

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