

Universal Periodic Review: UK 4th Cycle Education

Suggested questions for the UK:

- Please indicate the steps taken at UK and devolved level to ensure the right to education of disabled children and children with Additional Learning Needs (ALN)/Special Educational Needs and Disabilities (SEND) are protected, including ensuring that sufficient funding is in place?
- What steps are being taken at UK and devolved level to address rates of formal and informal exclusions in schools, in particular for children with SEND and from ethnic minority backgrounds?
- What steps are being taken at UK and devolved level to address the attainment gap related to poverty, ethnic background, care experience, disability, ALN and other factors?
- What measures are being taken to end academic selection in Northern Ireland and replace it with a children's rights compliant system that ends educational inequalities?
- What measures are being taken to end school segregation by religion in Northern Ireland?
- What steps are being taken at UK and devolved level to repeal or amend legal provisions for compulsory religious worship/observance?

Suggested recommendations for the UK:

- The UK and devolved governments should ensure that there is sufficient funding for children with ALN/SEND so that they have better outcomes and can get the support they need without delays.
- The UK and devolved governments should reduce school exclusions and ensure that it is only used as a last resort. They should also address the over-representation in exclusion rates of groups of children such as children eligible for free school meals, those with additional/ special educational needs and disabilities, Gypsy, Roma and Traveller (GRT) children and Black children.
- The UK and devolved governments should intensify efforts to reduce the attainment gaps related to poverty, ethnic background particularly GRT and Black Caribbean, care experience, disability and additional/special educational needs.
- The UK Government and relevant devolved governments should repeal the requirement for schools to provide collective worship/religious observance; give children the right to withdraw from compulsory attendance at collective worship/religious observance in school; and ensure meaningful educational alternatives for children whose parents have withdrawn them from collective worship/religious observance, guaranteeing their spiritual, moral, social, and cultural development is not disadvantaged.

Children with Additional Learning Needs/Special Educational Needs and Disabilities (SEND)

Schools in England have experienced a continued per capita fall in funding for addressing SEND.¹ As a result, applications for Education, Health and Care Plans (EHCP) which provide the highest levels of SEND funding and ring-fenced provision to individual children have increased, as families try to secure support.² The system has not kept up with this pressure, meaning children don't get the support they need³ and often end up excluded from school. The quality of decision-making is also poor. Appeals against local authority decisions to refuse support are largely successful.⁴ The UK Government has consulted on its long-awaited SEND and Alternative Provision (AP) Review. However, we are concerned these proposals will lead to greater exclusion for children with SEND from mainstream schools to AP.⁵

In Wales, reform of education arrangements for children with Additional Learning Needs (ALN) are progressing in line with strengthened legislation, yet children still face many barriers when accessing appropriate, consistent and timely support⁶ with the challenges faced by children with ALN during the pandemic of notable concern.

In Northern Ireland, systemic failures have impacted adversely on children with SEND. Numbers of children requiring specialist educational provision are increasing annually⁷ but there are insufficient specialist placements available to accommodate children who cannot attend mainstream schools. Entrenched failures within Northern Ireland's Education Authority have been consistently highlighted in recent years,^{8,9} particularly regarding governance and accountability mechanisms.¹⁰ While pathways to improvement have been developed, they require close and constant scrutiny given the substantial failings to date.

In Scotland, pupils with additional support needs continue to have poorer attendance and qualification rates than their peers. Implementation of Additional Support for Learning legislation has been fragmented with the result that children often do not have access to the support they need.¹¹

¹ National Audit Office (2019) *Support for pupils with special educational needs and disabilities in England* <https://www.nao.org.uk/wp-content/uploads/2019/09/Support-for-pupils-with-special-education-needs.pdf>

² Department for Education statistics (2019) *Statements of SEN and EHC plans: England 2019* https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/805014/SEN2_2019_text.pdf

³ Ibid. See table % of new EHC plans issued in 20 weeks (20 weeks being the lawful time limit from request to completion)

⁴ Keer, M. (18 June 2019) 'The latest SEND Tribunal figures paint a troubling picture' Special Needs Jungle <https://www.specialneedsjungle.com/latest-send-tribunal-figures-paint-a-troubling-picture/>

⁵ Department for Education and Department for Health and Social Care (2022) 'SEND and AP Review: Right Place, Right Support, Right Time' <https://www.gov.uk/government/consultations/send-review-right-support-right-place-right-time>

⁶ Wales UNCRC Monitoring Group (2020) *State of Children's Rights in Wales: CSO submission to the UN*

⁷ Education Authority NI Planning for Special Education Provision: Draft Strategic Area Plan 2022-27 (Para 3.1) <https://www.eani.org.uk/sites/default/files/2022-01/draft%20Special%20Education%20Strategic%20Area%20Plan%202022-27.pdf>

⁸ Northern Ireland Audit Office (June 2017) *Report on Special Educational Needs*. <https://www.niauditoffice.gov.uk/publications/special-educational-needs>

⁹ Northern Ireland Commissioner for Children and Youth People (March 2020) *A Rights Based Review of Special Educational Needs Provision in Mainstream Schools*. <https://www.niccy.org/media/3515/niccy-too-little-too-late-report-march-2020-web-final.pdf>

¹⁰ Northern Ireland Assembly (February 2021) *Public Accounts Committee Report on Impact Review of Special Educational Needs*. <http://www.niassembly.gov.uk/assembly-business/committees/2017-2022/public-accounts-committee/reports/report-on-impact-review-of-special-educational-needs/>

¹¹ Together (2020). Report to inform the List of Issues Prior to Reporting. p32. https://www.togetherscotland.org.uk/media/1767/together-loipr_final.pdf

School exclusions

Despite a recent fall in formal exclusion levels, they are still unacceptably high in both England¹² and Wales¹³ and disproportionately affect certain groups of children: those eligible for free school meals,¹⁴ with special educational needs,¹⁵ boys, GRT and Black Caribbean children.¹⁶ The review system to challenge unfair and unlawful school exclusion remains ineffective.¹⁷ The appeal bodies for reviewing school exclusions still lack power to reinstate a child at a school.¹⁸ There is no legal aid available so families must argue cases involving complex law principles.¹⁹ The UK Government has recently published revised versions of both the Exclusion and Behaviour Statutory Guidance for England.²⁰ Unfortunately, they have removed an important paragraph in the Exclusions Guidance that lists the different groups of children that are disproportionately affected by exclusions as mentioned above.

The Welsh Government's plans to revise statutory guidance should provide an opportunity to both prevent and reduce school exclusions. In Wales, the exclusion and isolation of young children showed that in the 2018-19 academic year there were 768 fixed term exclusions issued to children aged eight and under across 19 local authorities.²¹ In Scotland, the use of formal exclusions is in decline. However, children with additional support needs and/or experience of deprivation continue to be disproportionately represented.²²

¹² There were 5,057 permanent exclusions and 310,733 fixed-term exclusions in the academic year ending in 2020, compared with 7,849 and 438,265 respectively for the year ending 2019. While these statistics show that permanent exclusions and suspensions have decreased, 2019/20 was interrupted by the first national lockdown. Therefore, school closures have had a substantial effect on the number of permanent exclusions and suspensions so caution should be taken when comparing figures across years. Department for Education statistics (July 2021) *Permanent and fixed-period exclusions in England*

<https://www.gov.uk/government/statistics/permanent-exclusions-and-suspensions-in-england-2019-to-2020>

¹³ The rate of permanent exclusions has remained the same (0.5 per 1,000 pupils) in 2019/20, compared to 0.5 per 1,000 pupils in 2018/19. The rate of fixed term exclusions (over 5 days) has decreased in 2019/20 (1.2 exclusions per 1,000 pupils). The rate of fixed term exclusions (5 days or less) has decreased in 2019/20 to 27.2 per 1,000 pupils. Welsh Government (2021) *Permanent and Fixed term Exclusions from School* <https://gov.wales/permanent-and-fixed-term-exclusions-schools-september-2019-august-2020.html#:~:text=The%20rate%20of%20permanent%20exclusions,1.2%20exclusions%20per%201%20000%20pupils>.

¹⁴ Ibid. The permanent exclusion rate for pupils eligible for FSM is 0.16, compared to 0.04 for those not eligible. In both cases these rates have decreased in the last year. The suspension rate is also higher at 9.34 for pupils eligible for FSM, compared to 2.58 for those not eligible.

¹⁵ Ibid. The permanent exclusion rate for pupils with an education, health and care (EHC) plan is 0.10, and for pupils with SEN with no EHC plan (SEN support) is 0.20, compared to 0.04 for those without SEN. The suspension rate is also higher: 11.70 for EHC pupils and 10.98 for SEN support pupils, compared to 2.43 for those without SEN.

¹⁶ Ibid. For the year ending 2020, the national rate of permanent exclusion was 0.6, the rate of fixed term exclusions was 3.76. The rate for Gypsy/Roma learners was 0.23 and 15.28 respectively. For Travellers of Irish heritage, the rates were 0.14 and 10.12. For Black Caribbean learners, the rates were 0.14 and 7.3.

¹⁷ Justice (2019) *Challenging School Exclusions* <https://justice.org.uk/our-work/administrative-justice-system/challenging-school-exclusions/>

¹⁸ Department for Education (2022) *Suspension and Permanent Exclusion from maintained schools, academies and pupil referral units in England, including pupil movement* Page 54, para 187: https://consult.education.gov.uk/school-absence-and-exclusions-team/revised-school-behaviour-and-exclusion-guidance/supporting_documents/Suspension%20and%20permanent%20exclusion%20guidance.pdf

¹⁹ LAG (2014) *The education problems still covered by legal aid* <https://www.lag.org.uk/article/202534/the-education-problems-still-covered-by-legal-aid>

²⁰ Department for Education (2022) *School suspensions and permanent exclusions statutory guidance*

<https://www.gov.uk/government/publications/school-exclusion> Department for Education (2022) *Behaviour in Schools: Advice for Headteachers and school staff* https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1089687/Behaviour_in_Schools_guidance_July_2022.pdf

²¹ Children's Commissioner for Wales (2020) *Building Blocks: Inclusion in the Foundation Phase* <https://www.childcomwales.org.uk/publications/building-blocks/>

²² Scottish Government (2021). *Summary Statistics for schools in Scotland*. pp31-32. <https://www.gov.scot/publications/summary-statistics-schools-scotland/documents/>

Informal exclusions continue to occur across the UK although data is difficult to ascertain.²³ In Northern Ireland, children with SEN and/ or disabilities continue to experience ‘informal exclusions’. In Scotland, informal exclusions continue to occur, despite calls from charities to end their use and Scottish Government guidance that all incidents of exclusion must be recorded.²⁴

Educational attainment

There continues to be increased educational inequality between different groups of children across the UK. The attainment gap between children living in poverty in England and their peers grew in 2019 for the first time in 12 years. Disadvantaged children²⁵ are nine months behind their peers in primary school, and an average of 18 months behind their peers by secondary school exam age.²⁶ In Wales, pupils from poorer backgrounds are around two years behind their peers.²⁷ This has worsened after school and nursery closures for two terms during lockdowns in 2020 and 2021.²⁸ There continues to be a gap between children of different ethnic backgrounds particularly Gypsy, Roma and Travellers, looked after and Black Caribbean children in England.²⁹ Similar patterns exist for Wales,³⁰ Scotland³¹ and Northern Ireland.³²

Academic Selection

In Northern Ireland, the use of unregulated ‘transfer tests’ (i.e. academic selection) determines whether children attend a grammar or non-grammar post-primary school. Academic selection differentially adversely affects children from disadvantaged groups.

School segregation by religion

School segregation by religion continues in Northern Ireland. Children from different communities attend separate schools largely as the result of families choosing schools whose ethos aligns with their faith/ community background. ‘Integrated education’ occurs in schools which balance pupil proportions from communities they serve, aiming at 40% Catholic, 40% non-Catholic (Protestant) and 20% other. Only 6% of

²³ Informal exclusions are where children are sent home early from school, educated part-time for lengthy durations, or with no suitable school placement. They are unregulated, potentially unlawful, discriminating on the basis of disability and often indicative of unidentified learning difficulties or unmet need.

²⁴ Scottish Government (2017). Included, Engaged and Involved, Part 2 Guidance. <https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2017/06/included-engaged-involved-part-2-positive-approach-preventing-managing-school/documents/00521260-pdf/00521260-pdf/govscot%3Adocument/00521260.pdf>

²⁵ Disadvantage is defined by the DfE as a student who has been in receipt of free school meals at any time in the preceding six years. Education Policy Institute (2020) *Education in England: annual report* https://epi.org.uk/wp-content/uploads/2020/09/EPI_2020_Annual_Report_.pdf

²⁶ Ibid

²⁷ Education Policy Institute (2022) Inequalities in GCSE results across England and Wales <https://epi.org.uk/publications-and-research/inequalities-in-gcse-results-across-england-and-wales/>

²⁸ Department for Education (2021) *Understanding Progress in the 2020/21 Academic Year: Findings from the summer term and summary of all previous findings* https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1055351/Understanding_progress_in_the_2020_to_2021_academic_year.pdf

²⁹ Gypsy/Roma pupils are nearly three years behind their peers by the end of secondary school, and Travellers of Irish Heritage two years behind. Black Caribbean students are 11 months behind white British students at the end of their GCSEs. Education Policy Institute (2020) *Education in England: annual report* https://epi.org.uk/wp-content/uploads/2020/09/EPI_2020_Annual_Report_.pdf

³⁰ Wales UNCRC Monitoring Group (2020) *State of Children’s Rights in Wales: CSO submission to the UN*

³¹ Together (2020). Report to inform the List of Issues Prior to Reporting. p31. https://www.togetherscotland.org.uk/media/1767/together-loipr_final.pdf

³² Educational Underachievement in Northern Ireland: Evidence Summary <https://www.stran.ac.uk/research-paper/creu-2020-evidence-summary/>

primary and 16% of non-grammar post-primary pupils are educated in integrated schools. Integrated schools are unable to meet demand, particularly at post-primary level.³³

Compulsory religious worship

No action has been taken to permit pupils to withdraw from compulsory religious worship/observance in Northern Ireland or Scotland. Parents have a legal right to withdraw their children from collective worship but there is no equivalent right for children - ignoring the fact that, under both the Human Rights Act 1998 and CRC Article 14, children also have the right to freedom of religion or belief. In Northern Ireland, even when parents request an exemption, the process of withdrawal is often difficult and children are rarely given a meaningful alternative of equal educational value during the time their peers are attending worship.³⁴

Recommendations referenced from the UK's UPR 2017 (3rd cycle)

134.174	Step up efforts to promote racial equality and social inclusion in the education system in Northern Ireland	Botswana A/HRC/36/9/ Add.1 - Para. 3	Supported
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About us

Children's Rights Alliance for England (CRAE)

CRAE works with around 100 members to promote children's rights and monitor government implementation of the CRC in England. See: www.crae.org.uk Contact: king@crae.org.uk

Together (Scottish Alliance for Children's Rights)

Together is an alliance of almost 500 NGO and individual members that works to improve the awareness, understanding and implementation of the CRC in Scotland. See: www.togetherscotland.org.uk Contact: juliet@togetherscotland.org.uk

Wales UNCRC Monitoring Group

The Wales UNCRC Monitoring Group is a national alliance of non-governmental and academic agencies tasked with monitoring and promoting the CRC in Wales. It is currently facilitated by Children in Wales, the national umbrella organisation. See: www.childreninwales.org.uk Contact: sean.oneill@childreninwales.org.uk

Children's Law Centre

The Children's Law Centre is a registered charity and specialist children's human rights centre in Northern Ireland, founded on the principles enshrined in the CRC. See: www.childrenslawcentre.org.uk Contact: fergalmcFerran@childrenslawcentre.org

³³ NI NGO submission to the UN Committee on the Rights of the Child (December 2020) <https://childrenslawcentre.org.uk/?mdocs-file=4166>

³⁴ Milliken, M (2019) *Religion and Education*, Transforming Education, Briefing Paper 2, p3. Available at: https://www.ulster.ac.uk/_data/assets/pdf_file/0003/476076/transforming-education-02-Religion-and-Education.pdf