THE LEGAL RIGHTS OF SCOTTISH GYPSY TRAVELLERS: SCOPING REPORT

April 2026

Report produced by the Glasgow Open Justice Centre and Making Rights Real

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ACKNOWLEDGEMENTS

We are immensely grateful to the Double Dykes, Bobbin Mill, and Tarvit Mill communities for their expert feedback on aspects of this work. Although the findings presented here are the result of our own original research, we are grateful for the opportunity to discuss and sense check certain contextual aspects with members of the communities, particularly those sections which outline the historical context and cultural identity of Scottish Gypsy Travellers.

We are indebted to Clare MacGillivray and Lorraine Barrie of Making Rights Real[1] for their valued collaboration in planning and conducting this research and in writing this report.

We express our thanks to Nwe Mon Mon Oo (Nicky Oo) for research assistance.

This project was funded by a University of Glasgow's ESRC Impact Acceleration Fund and the School of Law's GO Justice Centre.

All webpages and hyperlinks cited were accurate and active at 5 February 2026.

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FOREWORD

Europe's Roma and Traveller communities continue to endure some of the most pervasive denial of human rights on our continent. Too often, rights are affirmed on paper, but real, sustained progress towards equality remains elusive. Discrimination is still widespread, eroding access to opportunity and undermining trust in democratic institutions. As Council of Europe Commissioner for Human Rights, I have pledged to stand with Europe's largest ethnic minority throughout my mandate.

Change begins by listening - by rendering visible the lived experiences of those pushed to the margins, and by working alongside them for meaningful progress. Academia, community workers, civil society, and independent national human rights institutions and equality bodies all play vital roles in providing the evidence needed to shape policies that reflect and meet everyone's realities. Yet, this crucial work must be matched by determined political leadership to translate legal frameworks into tangible protections in people's daily lives. Throughout my work, I have witnessed the lasting impact that genuine partnership and solidarity can achieve.

This scoping report examines the barriers and gaps in protection affecting the rights and dignity of Scotland's Gypsy Traveller communities, including the intersectional vulnerabilities they face. Importantly, it underscores the essential role of law in securing a better, more inclusive future for these communities. The report outlines actionable pathways - through legal, administrative, and policy reforms - to remedy injustice and strengthen protections for all. I hope its insights provoke meaningful debate and spur decisive action among policymakers and all those committed to justice and equality.

We are living in an era of profound change, when human rights achievements can no longer be taken for granted. As unprecedented challenges place hard-won gains at risk, the need for visibility, evidence, and partnership in the protection of those most often left behind has never been greater. We must defend the progress made in advancing human dignity and rights, and support all who tirelessly advocate for these essential values.

Our collective responsibility is to forge a future - a new era - that upholds the dignity and human rights of every person and ensures that duty bearers act to fulfil the rights of all. Together, let us reaffirm our commitment to building societies where equality is not only an aspiration, but a lived reality for Roma and Traveller communities in Scotland and across Europe.

Michael O'Flaherty

Council of Europe Commissioner for Human Rights

EXECUTIVE SUMMARY

This report[1] examines the extent to which Scottish Gypsy/Travellers ('SGTs') current living conditions and wider experiences of public service delivery are compliant with the provisions of international and domestic law and, where breaches do exist, how effective the applicable routes to remedy are.

Our research focuses on what law has to offer to Scottish Gypsy/Travellers in their capacity as rights holders and what needs to be done to ensure that duty bearers can be held accountable to give effect to the legal rights identified. Where gaps in current legal provision exist, this report has identified these and made recommendations on how such gaps could potentially be filled.

In doing so, our research compliments and builds upon ongoing work exploring the legacies of historic State-sanctioned discriminatory policies and practices, including those colloquially known as the 'Tinker Experiment', and their continuing impacts across all areas of social, economic and cultural life.

There is overlap and cross-application within and across the respective legal frameworks that underpin the rights that are relevant to the experiences of Scottish Gypsy/Travellers. For this reason, the report adopts a thematic approach, setting out findings on the compliance with international and domestic law under the following headings: **discrimination** (Section 3.2), **housing** (Section 3.3), **health** (Section 3.4), **education** (Section 3.5), and **hate crime** (Section 3.6).

Our key findings and recommendations are summarised below. A full consolidated list of the report's recommendations is set out at Section 4.2.

Discrimination

Throughout our research, we found evidence of discriminatory outcomes which Scottish Gypsy/Travellers face across all domains of life. The extent and prevalence of this discrimination points to and supports the conclusion that racism against SGTs is structural in nature. In other words, racist consequences are embedded in the social, economic, cultural and political forces which define and govern the relationships between SGTs as a minoritised ethnic group and members of the majority population.

As a recognised ethnic group, Scottish Gypsy/Travellers are protected under the Equality Act 2010 from racial discrimination. Nevertheless, there is evidence of a lack of clear awareness among some public authorities that Scottish Gypsy/Travellers are a protected group, and more generally, a lack of understanding of the communities' lived experience. This has an impact on how public authorities discharge their legal duties under the Equality Act across services that impact SGTs, including in relation to decision-making, the conduct of engagement with

[1] Produced by the Glasgow Open Justice Centre and Making Rights Real.

communities, and how policies are developed and justified. This contributes to the structural discrimination described above.

To illustrate this point, we have drawn attention to ongoing redevelopment works to improve local authority-owned Gypsy/Traveller caravan sites, funded as pilot projects by the Scottish Government's Gypsy/Traveller Accommodation Fund. While site upgrades are welcome and much needed, we are concerned that certain local authorities have failed to comply with their duties under the Equality Act 2010, and specifically the Public Sector Equality Duty, in relation to consultation with residents and the design and cultural suitability of new chalet accommodation. **We have therefore called on the Scottish Government to undertake an urgent, time-limited review of the rollout of the Scottish Gypsy/Traveller Accommodation Fund and associated pilot projects, with a specific focus on compliance with equalities legislation.**

Finally, while the enforcement framework under the Equality Act 2010 creates remedies for individuals to challenge unlawful discrimination across areas such as housing, education and service provision, there is in Scotland little evidence of Scottish Gypsy/Travellers using the legislation. In this regard, equality law is complex and requires legal representation. Having regard to the structural nature of discrimination facing SGTs, we consider there is a need for the Equality and Human Rights Commission ('EHRC'), being the regulator of the Equality Act 2010, to be more proactive in using their legal powers of inquiry and investigation in relation to the issues faced by SGTs. In this regard, **we have called on the EHRC to consider using their legal powers to investigate the issues we have identified in relation to local authority approaches to site redevelopment and housing allocation.**

Housing

Security of tenure is a fundamental element of the right to adequate housing. However, one of the key issues that emerged at the outset of our research concerns a significant lack of clarity regarding security of tenure, and specifically, the housing rights and protections available to Scottish Gypsy/Travellers living on local authority and private caravan sites.

We primarily focus our research on the position of tenants who live on a local authority Gypsy/Traveller Site and who rent their mobile home/caravan from the local authority. In order to understand what rights and protections tenants in this situation have, we considered what legal framework govern tenants' lease agreements with the local authority.

Under the Housing (Scotland) Act 2001, most social tenants hold a Scottish Secure Tenancy, which provides strong rights and protections, including safeguards against eviction. While the 2001 Act does not expressly exclude mobile homes/caravans from the scope of the Scottish Secure Tenancy regime, we believe that local authorities are taking a narrow view of what type of accommodation the 2001 Act applies to, thereby excluding tenants of local authority-owned mobile homes/caravans from key housing rights protections which are ordinarily available to social tenants.

We see no reason, as a matter of principle, why tenants in these circumstances should not be regarded as holders of a Scottish Secure Tenancy. The object of the Housing (Scotland) Act 2001, and the purpose of the erection of chalets on local authority sites (to meet the housing needs of Gypsy and Traveller Communities) support this interpretation. Moreover, the Scottish Housing Regulator (the regulator of social housing in Scotland) already monitors and regulates local authority Gypsy/Traveller sites. We therefore consider that recognising tenants in this situation as Scottish Secure Tenants would provide welcome clarity and security for residents regarding their housing status. **We therefore call on the Scottish Government to consult on amending the Housing (Scotland) Act 2001 to explicitly address the situation of tenants living on local authority Gypsy/Traveller sites.**

In the course of our research, we have observed a general belief held by public authorities that the Mobile Homes Act 1983 applies widely to tenants living on local authority Gypsy/Traveller sites. The 1983 Act applies to owner-occupiers of mobile homes/caravans who let a pitch on a caravan site, and provides important rights and protections relating to for example, written agreements, pitch fee up-lifting, and repair and maintenance of sites. Based on our interpretation of the legislation, we take the view that the 1983 Act does not apply to tenants who rent mobile homes/caravans from a local authority or private landlord. This means that some groups of Scottish Gypsy Traveller tenants, including those living on local authority Gypsy/Traveller sites that are currently the subject of Scottish Government-funded redevelopment works, are excluded from key rights and protections ordinarily available to owner-occupiers of mobile homes/caravans.

Of particular concern, we found that the nature and size of new chalet accommodation installed by a local authority as part of a pilot project funded by the Scottish Government's Accommodation Fund do not meet the legal definition of a caravan. As such, tenants in this situation will not be protected by mobile home/caravan legislation, providing further uncertainty about what rights and protections are available.

For these reasons, we consider that Scottish Gypsy/Traveller tenants renting mobile homes/caravans from local authority landlords are in a more vulnerable position as compared with social tenants living in settled accommodation. We consider there to be an arguable case that this difference in treatment may amount to unlawful discrimination and therefore breach domestic law incorporating the European Convention on Human Rights and the UN Convention on the Rights of the Child.

As regards standards of accommodation, we welcome investigations undertaken by the Scottish Housing Regulator at three local authority Gypsy/Traveller sites, which have identified breaches of the Scottish Housing Charter and Minimum Site Standards. We consider that the conditions described in the Regulator's findings, including heating failure, persistent damp, rodent infestation, sewage and drainage issues, and road safety hazards, are capable of engaging residents' right to private and family life under Article 8 of the European Convention on Human Rights.

It is important to note that, while the Scottish Housing Charter and the Minimum Site Standards set out meaningful expectations for the treatment of Scottish Gypsy/Traveller residents on local authority sites, these frameworks are not justiciable. In other words, unlike rights and protections under, for example, the Housing (Scotland) Act 2001, they do not give rise to direct legal remedies. This absence of enforceability creates an accountability gap which is particularly problematic where serious and prolonged failings persist.

Finally, in relation to 'unauthorised encampments', we found very little research or publicly available data on how often local councils or private landowners use the courts to remove Scottish Gypsy/Traveller families from land. This area has limited regulation and oversight. While there are no obvious court rules that must be followed when legal action is taken to recover possession of land from communities, we have seen evidence of courts granting short notice periods to residents. We consider that this practice, combined with the limited opportunity to seek legal advice, apply for legal aid, or raise relevant human rights arguments, poses a significant barrier to access to justice. **We have therefore called on the Scottish Government to undertake or commission research to better understand the prevalence and nature of eviction proceedings from unauthorised encampments, and where necessary, consult on the introduction of legislation to provide for a longer minimum notice period before legal action can be taken.**

Health

We have highlighted research that shows that Scottish Gypsy/Travellers experience significant health inequalities, with serious impacts on physical and mental wellbeing.

However, the lack of justiciability in respect of the right to health in Scotland makes it difficult to assess whether and to what extent this right is implemented and fully realised for SGTs, although the available evidence related to health outcomes does reveal many serious gaps in provision. It is nonetheless clear that the Scottish Government is taking steps towards the adoption of a human rights-based approach to health and related service provision which, if fully implemented with proper account taken of specific cultural needs, has the potential to be transformative for SGT's health outcomes.

However, good healthcare policy provision is not the same as a legally enforceable, justiciable route to the right to health as provided by international law. Unless and until the right to health is incorporated, implemented and made fully accessible to SGTs, there is little of substance beyond a series of good practice recommendations for healthcare providers which fall short of a legal compliance duty recognising their role as duty bearers. Full implementation would require integration of the right to health with other rights to non-discrimination, adequate housing and education, supported by direct enforcement for breaches of those rights through the Scottish courts and tribunals with available remedies.

We have therefore called upon the Scottish Government to take the necessary steps to incorporate the International Covenant on Economic Social and Cultural Rights through a compliance duty, subject to the current devolution constraints.

Education

Education statistics demonstrate that Scottish Gypsy/Traveller children face significant inequalities in education, including in relation to attainment, positive school-leaver destinations, attendance, and exclusion rates. They are also more likely to be identified in categories of Additional Support Needs (ASN) that carry stigma, such as "social, emotional and behavioural difficulties". Given these grossly unequal outcomes, it is evident that Scottish Gypsy/Traveller children's right to receive an education on equal terms with others is not being respected.

This is underpinned by a general perception that there is an engrained culture, based on racialised stereotyping, that children from Gypsy/Traveller backgrounds cannot or are unlikely to achieve and thrive in education in the same way as children from other ethnic groups. This creates a culture of low expectation, reflected in an acceptance by key education stakeholders that SGT children will be withdrawn from school-based education at some stage. We have seen evidence of this stigmatisation throughout our research.

We found that aspects of education law and Scottish Government guidance fail to take a child-centred, rights-based approach. This is not compatible with the UN Convention on the Rights of the Child, which requires education to be holistic and child-focused, in the best interests of the child, free from discrimination, and inclusive of children's voices in decisions that affect them. In practice, we saw failures to apply this approach, particularly when education authorities deal with children who have withdrawn from school. Combined with barriers around enrolment, ASN, and bullying, this creates a culture of substantive segregation, where a poorer education experience for Scottish Gypsy/Traveller children is accepted.

In light of the incorporation of the UNCRC into Scots Law, we consider that the approach taken to meeting the education rights of children and young people from Gypsy/Traveller backgrounds requires recalibration, in order to put them at the centre of policy making, the development of practice, and decision-making. **We have therefore called on the Scottish Government to undertake a review of existing education law, policy and practice relating to Scottish Gypsy/Traveller children. In particular, the Government should work in partnership with children and young people and organisations that represent their interests to understand the distinct barriers they face in education;**

the effectiveness of existing approaches to learning; and to co-develop guidance for education authorities around meeting the educational rights of Scottish Gypsy/Traveller children.

Hate Crime

In the course of our research, we came across anecdotal accounts of harassment perpetrated against SGT individuals and communities by members of the wider public and, in some instances, by duty bearers. Such behaviour is rooted in prejudicial attitudes related to the nomadic lifestyle and other cultural practices of SGTs and linked to wider discriminatory beliefs about SGT communities, many of which are embedded in and have been endorsed by the systemic historical practices exercised by Scotland's public institutions.

The lack of reliable, good quality disaggregated data and detailed empirical research into the nature and extent of hate crimes committed against SGTs has served as a barrier to understanding the nature and extent of related conduct and identification of the actions required to effectively respond to it. Recent developments, not least the Scottish Government's own acknowledgment of the institutional prejudice that has reinforced wider public attitudes towards SGT communities, has the potential to mark a sea change in this respect. However, such change will not happen without greater efforts at improved data gathering and analysis and a focused programme of public awareness-raising through education and other means. **We therefore call on the Scottish Government to fund targeted research into the nature and extent of hate crime against Scottish Gypsy/Travellers. At the same time, it is vital that Police Scotland and other duty bearers gather and collect reliable disaggregated data relating to the recording of racially aggravated hate crimes reported by or on behalf of SGTs.**

Although specific Scottish legislation (the Hate Crime and Public Order (Scotland) Act 2021) intended to provide greater protection for those who experience hate crime in Scotland, including on the grounds of race or ethnicity, is relatively new, hate crime has been recognised within Scotland's legal framework since 1986. Given the high number of anecdotal accounts of and third-party data relating to hate crime perpetrated against SGTs over many years, the lack of reported cases and successful prosecutions seems anomalous. This is due to a number of interrelated factors including a lack of faith in the criminal justice system due to long-standing distrust of the relevant authorities and/or poor relations between SGT communities and the police as well as the normalisation and acceptance of such conduct for those who are its recipients. Furthermore, existing anecdotal evidence suggests that, even where hate crime is reported, such reports are not always treated with the seriousness that they merit by the police and/or the Crown Office and Procurator Fiscal Service.

We therefore call on the Scottish Government to provide culturally appropriate and accessible guidance and information for rights holders on the nature of hate crime and the differences

between civil and criminal law in relation to prejudice, discrimination and harassment and support for reporting and pursuing legal action where necessary. Support should include free legal advice and representation for all those reporting hate crime.

Access to Justice

The scope and complexity of the issues examined in this report, above all the structural nature of the racial discrimination experienced by Scottish Gypsy/Travellers, cannot be remedied by law reform alone. We highlight the importance of addressing the wider access to justice issues which prevent Scottish Gypsy/Travellers from using legal mechanisms to resolve problems in housing, discrimination, education and beyond.

While access to justice goes beyond the mere existence and availability of legal remedies, we emphasise the need for a multi-sector approach to actioning the recommendations set out in this report. Where appropriate, we have recommended further research to understand the full extent of the issues—particularly where there is little quantitative or qualitative data about Gypsy/Traveller experiences—and we have stressed the importance of co-production with communities.

A central element of addressing access to justice is the availability of culturally competent advice and representation. **We therefore call upon the Scottish Government, in line with its obligations under human rights and equality law, to support the creation of a national network of legal advice for Scottish Gypsy/Traveller communities. This should include: (i) the development of public legal education materials and resources, including accessible guidance on rights and routes to remedy produced with communities; and (ii) the establishment of a national panel or network of solicitors and counsel, knowledgeable and familiar with Gypsy/Traveller communities, to provide early triage, advice and representation across the justiciable issues identified in this report. The Scottish Government should resource this network through sustainable funding.**

1.INTRODUCTION

1.1. Terminology

The travelling population in Scotland is comprised of a range of different communities including Scottish Gypsy Travellers (also known as Nacken), Gypsy/Travellers and Scottish Travellers as well as travelling showpeople, Irish travellers and Roma. All of these communities have distinct histories, cultures, and lifestyles.

Throughout this report, the term 'Scottish Gypsy/ Traveller', abbreviated as 'SGT', will be used as it corresponds with the self-identification of the communities upon whose experiences this report is based. Although we use this collective term, we acknowledge the variations that exist in terms of both the past and present experiences of Scotland's Gypsy Traveller communities.

1.2. Historical Discrimination

It is widely accepted and has been acknowledged by the Scottish Government that SGT communities in Scotland are 'one of the most marginalised groups of people in Scotland' and have long been subjected to discrimination.[2] This discrimination has been State-sanctioned through historical policies and practices, including those colloquially known as the "Tinker Experiment", which involved 'the forced housing of Gypsy/Traveller families in substandard accommodation at sites across Scotland and, in some instances, the forced removal of children from their families and subsequent adoption domestically and overseas'.[3]

The discrimination which SGTs continue to experience across a range of areas goes back further than these so called 'experiments'[4] – in fact, the actions taken by the State and associated institutions were based on the widely-held view that the nomadic lifestyle and associated cultural traditions of Scottish Gypsy/Travellers was 'problematic' and should, thus, be restricted by state means.[5] The policies themselves and the egregious impacts they have had, and continue to have, on Scottish/Gypsy Traveller communities in Scotland have been well-documented, including through the testimonies of affected community members.[6]

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[2] Scottish Government, 'Gypsy/Travellers' <https://www.gov.scot/policies/gypsy-travellers/> accessed 8 December 2025.

[3] Minister of Equalities, Historical Policies Impacting Gypsy/Traveller Communities: Scottish Government's Response (Scottish Government 2025).

[4] Shamus McPhee, 'The Persecution of Gypsy Travellers in Scotland – A Timeline' (Historic Environment Scotland, 2023) <https://blog.historicenvironment.scot/2023/06/persecution-of-gypsy-travellers-in-scotland/> accessed 8 December 2025.

[5] Ali Watson and others, Archival Research Conducted to Explore 20th Century Policies Affecting Gypsy/Traveller Communities in Scotland (Scottish Government 2025).

[6] Robert Fell, *Lived Experience Testimonies of Policies Affecting Nackens (Scottish Gypsy Travellers), Gypsy/Travellers and Scottish Travellers: Report to the Directorate for Equality, Inclusion & Human Rights*

In June 2025, the First Minister John Swinney formally apologised for the State's involvement in the Tinker Experiment, stating, 'It falls to this government to state without ambiguity that what happened to Gypsy Traveller communities was unacceptable'.[7]

The legacies of the Tinker Experiment and other historic discriminatory policies and practices are acutely felt by SGT community members today and are manifested in a range of outcomes affecting housing, health and education. Some of these outcomes are directly linked to the legal rights of individuals which continue to be breached and/or denied. This unacceptable situation is further compounded by an inability to access justice and appropriate remedies due to a lack of available legal advice and representation for community members. Many of these rights, as well as having domestic provision through, for example, the Equality Act 2010, and specific legislation related to the provision of services, are also provided for under international human rights law.

In its report to the Committee on the Elimination of Racial Discrimination (CERD) in July 2024,[8] Making Rights Real (MRR) noted certain areas of concern including failures in the right to accommodation; failure to prosecute hate crime against Gypsy Travellers; and evidence of other forms of discrimination against Gypsy Travellers. MRR's report, which contains compelling testimony of rights holders, has served as the inspiration for the current research which has been conducted in partnership with MRR and draws on that organisation's experience of working with Scottish Gypsy/Traveller communities in Scotland.

1.3. Aims and Objectives of this Research

By conducting a legal mapping, our main objective is to explore the extent to which SGT's current living conditions and wider experiences of public service delivery are compliant with the provisions of international and domestic law and, where breaches do exist, how effective the applicable routes to remedy are.

In achieving this objective, we pursued a number of related, subsidiary objectives:

- To determine the accessibility, adequacy, and cultural relevance of rights protections available to SGTs under Scots law, with particular regard to tenancy, access to public services and freedom of movement consistent with the right to be nomadic.
- To assess the structural and systemic barriers faced by SGTs in exercising their rights and seeking legal redress,

(Scottish Government 2025). <https://www.gov.scot/publications/lived-experience-testimonies-policies-affecting-nackens-scottish-gypsy-travellers-gypsy-travellers-scottish-travellers/pages/6/> accessed 8 December 2025.

[7] 'Swinney apologises to travellers for 'Tinker Experiment'' *BBC News* (Edinburgh, 25 June 2025) <https://www.bbc.co.uk/news/articles/c8j1003z8n2o> accessed 22 August 2025.

[8] Making Rights Real, 'Report to the Committee on the Elimination of Racial Discrimination (CERD) as part of the UK's examination at the 113th Session in August 2024' (2024) <https://makingrightsreal.org.uk/mrrs-report-to-the-committee-on-the-elimination-of-racial-discrimination-cerd/> accessed 30 July 2025.

identifying gaps in current domestic frameworks that hinder justiciability with negative impacts on community and individual trust in institutions and which present barriers to meaningful participation in public life.

- To recommend legal, administrative, and policy reforms necessary to bring Scotland into compliance with its obligations under international human rights law, ensuring culturally appropriate, inclusive, and enforceable protections for SGTs.
- To contribute to wider human rights discourse by improving professional knowledge, legal practice, and public understanding of the intersectional vulnerabilities experienced by the SGT community in Scotland.

1.4. Terms of Reference

The Scope of the Research

As outlined above, there exists a wealth of research, much of it resulting from the powerful testimony of individuals regarding their own lived experiences and that of their family members.[9] In our research we did not seek to replicate work exploring the legacies of the Tinker Experiment and their continuing impacts across all areas of social, economic and cultural life. Rather, our focus is on the future, in particular on the role of law in securing a better future for SGT communities.

The reasons for exploring the legal rights of SGTs are already well established. As evidence shows, many of those existing rights have been and continue to be breached, or are, because of systemic failures, inaccessible to rights holders.[10] The complexities inherent in the operation of a multi-level legal framework which combines international and domestic law, some of it of a devolved nature, incorporating directly justiciable compliance duties alongside softer positive duties,[11] make it difficult to pin down specifically what obligations exist and how resulting rights can be realised and effectively enforced. Our research therefore focuses specifically on what law has to offer to SGTs in their capacity as rights holders and what needs to be done to ensure that duty bearers can be held accountable to give effect to the legal rights identified. Where gaps in current legal provision exist, we have sought to identify these and to recommend how such gaps could potentially be filled.

As with any research project, constraints on time and other resources have meant that it has not been possible to cover every related area. We have therefore focused our attention on those areas which were explicitly

[9] Fell (n 6).

[10] Making Rights Real, 'Our Human Rights Matter (Reports 1 & 2)' (2023–2024) <https://makingrightsreal.org.uk/wp-content/uploads/2023/11/FINAL-DD-Report-Aug23.pdf> accessed 30 July 2025.; Making Rights Real, 'Report to the Committee on the Elimination of Racial Discrimination (CERD) Contribution' (2024) <https://makingrightsreal.org.uk/wp-content/uploads/2024/07/MRR-CERD-contribution-2024.pdf> accessed 30 July 2025.

[11] Such as the Fairer Scotland Duty and the Public Sector Equality Duty provided by the Equality Act 2010, ss 1 and 149. See further, section 3.2 below.

highlighted by Making Rights Real through its work with SGT communities as requiring investigation. All are closely linked to the international human rights framework and are areas for which the Scottish Government has direct responsibility. The main omissions relate to the rights of SGTs in respect of work and employment and to social security. These are extensive areas which would undoubtedly benefit from specific research.

Purpose and Uses

We hope this report will be of use to Gypsy/Traveller communities within Scotland. In writing it, our attention is focused on providing essential information which will be of use to individuals regarding the availability and content of their legal rights, routes to accessing those rights and the remedies available for breaches. As well as providing this important information, the report has a wider purpose in that we hope it will be used as an advocacy tool for SGT communities and those working with them in the quest for improvements in public service provision, improved availability of and access to legal services and, where appropriate, to legal redress. As a research team, working in partnership with Making Rights Real, we are committed to influence policy and to advocate for change on behalf of SGT communities using our research for this wider purpose.

1.5. Methodology

The research was conducted between November 2024 and December 2025. The main method used was desk-based research comprising an in-depth review of academic and grey literature and identification, analysis and synthesis of primary legal and policy sources incorporating international human rights law, UK equality law and Scottish legislation and case law regarding service provision in the devolved areas of housing, education, health and children’s rights. Although most of the areas under review relate to civil law and resulting remedies, Scottish criminal law sources relating to hate crime legislation were also included.

With the assistance of Making Rights Real, our references to SGT communities and culture were sense checked by community members. Our preliminary research findings were used to frame the literature review and any feedback received was synthesised with other evidence gathered in our research.

2. BACKGROUND AND CONTEXT

2.1. History of Gypsy Travellers' Rights in Scotland

At the time of the last Scottish Census in 2022 around 3,300 people in Scotland self-identified as Gypsy or Traveller, accounting for about 0.06% of the population.[12] This is likely to be an underrepresentation, with informed estimates placing the true figure at around 15,000 – 20,000.[13] Within the UK, there are approximately 77,000 people who identify with Gypsy and Traveller ethnic groups, in addition to 107,000 who identify as Roma.[14]

Scottish Gypsy/Travellers are a distinct ethnic minority group,[15] with clearly identifiable customs, languages and core beliefs, all of which constitute SGT culture,[16] which includes, but is not limited to, strong values placed upon independence, preference for self-employment and occupational flexibility, strict hygiene practices, and an emphasis on family and extended family links.[17]

The cultural identity of the SGT community is also inextricably attached to nomadism and is consistent with both the rights of minorities to their cultural identities, recognised under Article 27 of the International Convention on Civil and Political Rights,[18] and within the specific context of this report's key themes: discrimination; housing; health; education; and hate crime.

2.2. Culture and Nomadism

A fundamental feature of SGT culture, nomadism, is the freedom to move, without obstruction, within the territorial boundaries of the State. Moreover, and for that freedom to have any substantive content in order to protect the cultural identity of a minority group, it must undoubtedly include an obligation on the State to facilitate the exercise of that right. Furthermore, as with any other right, it does not need to be

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[12] Equality, Inclusion and Human Rights Directorate, *Improving the Lives of Scotland's Gypsy/Travellers 2: Action Plan 2024–2026* (Scottish Government 2024) 6.

[13] Cassie Barton and Yago Zayed, 'House of Commons Library Research Briefing CBP-10063' (2024) <CBP-10063.pdf> accessed 30 July 2025.

[14] Ibid, 9. 71,400 people (0.1% of the population) identified as Gypsy or Irish Traveller in the 2021 census for England and Wales. Around 103,100 people (0.2%) identified as Roma. In Northern Ireland, 2,600 people (0.1%) identified as Irish Traveller and around 1,500 identified (0.1%) as Roma.

[15] *McClellan v Gypsy Traveller Education Information Project* (Employment Tribunal, 23 June 2008).

[16] On the distinctiveness of cultures among different Gypsy Traveller communities, see Colin Clark and Margaret Greenfields, *Here to Stay: The Gypsies and Travellers of Britain* (University of Hertfordshire Press 2006); Jean-Pierre Liégeois, *Roma, Gypsies, Travellers* (Council of Europe 1994); Judith Okely, *The Traveller Gypsies* (CUP 1983); Katie Trumpener, 'The Time of the Gypsies: A "People without History" in the Narratives of the West' (1992) 18 Critical Inquiry 843.

[17] Sergei Shubin, 'Travelling as Being: Understanding Mobility Amongst Scottish Gypsy Travellers' (2011) 43 Environment and Planning A: Economy and Space 1930, 1931.

[18] See further Section 3.1 below.

exercised for it to be respected, protected, and fulfilled.

Notwithstanding that the majority of the SGT community are now settled 'as a consequence of institutional and social constraints',[19] nomadic freedom remains fundamental to the 'distinct ethnicity…and culture'[20] of SGTs, which extend beyond mere geographical roaming to incorporate an unwavering and essential 'commitment to an ideology of possible mobility and change'.[21]

As we make clear throughout this report, it is the freedom to be nomadic, essential to SGT cultural identity, which ultimately forms the core basis of the need within Scots law to protect SGT rights to housing, health and education, and to provide for access to and exercise of those and associated rights without discrimination on the grounds of race.

The risk of cultural erasure, and the violation of SGT's rights, has been further compounded by consistent attempts at assimilation, and the profound and extensive racial discrimination to which these communities continue to be subjected which has its roots in the violent history of oppression dating back to the 16th century[22] and which includes the Tinker Experiment of the mid-20th century, wherein the State forcibly relocated families, in efforts to integrate them into the settled majority population.[23]

Historical institutional hostility towards SGT communities has resulted in ongoing conflict between a disempowered minority and the State. As this report demonstrates, this conflict manifests in almost every aspect of contemporary life and at every level of local and national administration, serving to create digital, cultural, and societal exclusion for successive generations of SGTs. Furthermore, the lack of State recognition of nomadism has been central to the negative experiences of SGT communities, whose experiences can be summarised as follows:

> *'…mobility often characterises the experiences of the `unhoused' and `powerless' mobile Scottish Gypsy Travellers who have been disenfranchised by social formations and institutions. Many Scottish Gypsy Travellers share stories of liminality and in-betweenness, separation from important emotionally symbolic locations, forced movement, and social exclusion.'*[24]

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[19] Shubin (n 17) 1931.
[20] Ibid.
[21] Ibid. See also Clark and Greenfields (n 16)
[22] Shamus McPhee, 'The Persecution of Gypsy Travellers in Scotland – A Timeline' (Historic Environment Scotland, 2023) <https://blog.historicenvironment.scot/2023/06/persecution-of-gypsy-travellers-in-scotland/> accessed 8 December 2025.
[23] Watson (n 5).
[24] Shubin (n 17) 1932.

The Impact of the Denial of Nomadism on Accessing Rights

Figure 1 illustrates the impact on SGT communities' access to rights as a result of the denial of their nomadism, which has two clear consequences in law. First and foremost, it exposes the denial of certain rights and freedoms of SGTs on the basis that Scots law provision has been constructed for a settled population. Second, even where there are existing protections, such as the right not to be discriminated against on the grounds of race provided by the Equality Act 2010, a lack of awareness of the rights' applicability and a systemic failure to provide access to justice mean that those protections are not fully realised.

The right to enjoy a nomadic lifestyle which is enshrined in international law thus provides the backdrop to our consideration of the rights relating to non-discrimination, housing, health and education and their specific application to SGTs.

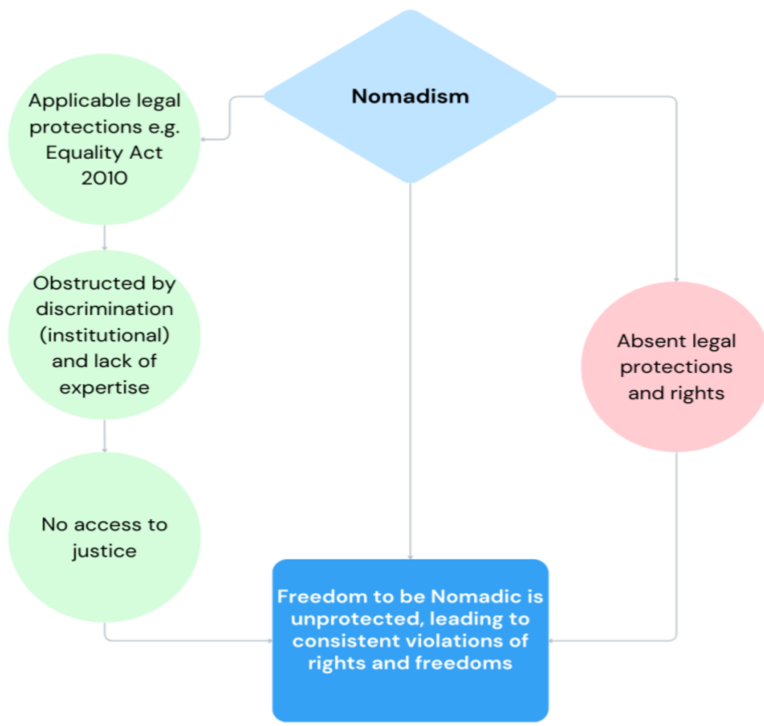

Figure 1 - Impact on Scottish Gypsy/Travellers' Access to Rights

3. RIGHTS AND ANALYSIS

In this section we consider the relevant international and national legal frameworks and their application to the lived experiences of Scottish Gypsy/Traveller communities uncovered in the course of our research.

Rather than a neat delineation between the rights themselves, it is recognised that there is overlap and cross-application within and across the respective frameworks. For example, rights to housing, health and education are all subject to the right not to be discriminated against on the grounds of race[25] provided by the Equality Act 2010 which applies specifically to the provision of public services[26] and education.[27] Further, the civil and political rights that form part of the international human rights framework, by way of the European Convention on Human Rights, are incorporated directly into domestic law by the Human Rights Act 1998. The resulting system of interrelated rights is complex and requires some disentanglement to make clear where legal liability applies, how and against whom rights can be exercised, and what remedies are available. Throughout the following analysis, we have tried to provide clear cross-referencing and to explain overlapping provision where applicable. This process also enables the identification of gaps in liability as well as barriers to accessing justice where they exist.

In seeking to ensure clarity, we have adopted the following structure. The first sub-section provides an overview of the international human rights framework. This serves as a backdrop to the sub-sections that follow which focus on the economic, social and cultural rights available in Scots law in respect of discrimination, housing, health and education and the key areas of Scottish criminal law which have application in this context.

Within each sub-section we consider the applicable international law standards, and whether the UK Government's (where applicable) and/or the Scottish Government's implementation measures and related policy and practices are consistent with those standards in respect of Scottish Gypsy/Travellers. We then set out the available complaints' mechanisms relevant to those rights. We conclude each sub-section by considering available remedies for rights breaches and identify any obstructions to their exercise.

3.1. The International Human Rights Framework

This subsection provides an outline of the most significant European and international human rights treaties that protect the rights of

[25] As well as age, disability, gender reassignment, pregnancy and maternity, religion or belief, sex, and sexual orientation. The protected characteristic of marriage and civil partnership is not specifically covered by these provisions – see Equality Act 2010, ss. 28 and 84.
[26] Equality Act 2010, Pt 3 Services and Public Functions and Pt 11, Ch. 1 Public Sector Equality Duty.
[27] Equality Act 2010, Pt 6 Education.

Scottish Gypsy/Travellers. We begin firstly with the Council of Europe and its various treaties, the most well-known being the European Convention on Human Rights; and then move on to consider treaties by the United Nations. We consider monitoring mechanisms for those bodies. We thereafter consider the extent to which the various instruments have been incorporated into domestic law in Scotland and the United Kingdom. Finally, we set out the basic principles for human rights-based approach (PANEL principles), which guides the approach to our thematic analysis.

Council of Europe Treaties and Standards

The Council of Europe is a pan-European organisation, which is made up of 46 member States, with the principal aim of promoting the rule of law, democracy, and human rights through its treaties and monitoring bodies.[28] It should be noted that the Council of Europe is a separate and distinct organisation from the European Union.[29] This means that the United Kingdom's membership of the Council of Europe, of which it is a founding member, is not directly affected by its decision to leave the EU ('Brexit').

The Council of Europe has drawn up more than 200 treaties, including monitoring-mechanisms, covering a variety of issues from all areas of life. Of these treaties, the following are the most relevant for the purposes of this report:

- the European Convention on Human Rights ('ECHR')
- the European Social Charter ('the ESC')
- the Framework Convention for the Protection of National Minorities ('the Framework Convention')

European Convention on Human Rights

The ECHR is the Council of Europe's preeminent treaty, which came into force on 3 September 1953, making it the first instrument to give effect to certain of the rights stated in the United Nations Universal Declaration of Human Rights.[30] Having played an instrumental role in drafting the treaty, the UK ratified (signed) the treaty in 1951.

The ECHR primarily, but not exclusively, protects civil and political rights, which are set out in a series of articles and protocols to the convention. By ratifying the ECHR, Member States agree to be legally bound to guarantee the rights set out in the ECHR to all people within their jurisdiction.[31] Many of the rights set out in the ECHR will be familiar; however, in the course of this report, we will consider the relevance of the following rights to the experiences of Scottish Gypsy/Travellers:

- Article 3: Prohibition of torture and inhuman or degrading treatment

[28] See Statute of the Council of Europe, ETS No. 001 (5 May 1949), preamble and art 3.
[29] 27 of the Council of Europe's Member States are, however, also members of the European Union.
[30] European Convention on Human Rights, as amended by Protocols Nos. 11, 14 and 15, ETS No. 005 (4 November 1950).
[31] ECHR, preamble and Art 1.

- Article 8: Right to respect for private and family life
- Article 14: Prohibition of discrimination
- Article 2 of Protocol No.1: Right to education

The European Court of Human Rights ('ECtHR') is an international court which rules on individual and State applications regarding possible violations of the rights set out in the ECHR.[32] Established in 1959, the ECtHR provides for a judicial form of monitoring to ensure compliance by Member States of their obligations under the ECHR.[33]

<u>The European Social Charter</u>

The ESC is a Council of Europe treaty which sets out a range of binding legal obligations relating to the enjoyment of certain core social rights. The Social Charter was adopted in 1961 (ETS No 035) and revised in 1996 (CETS No 163). It is often regarded as a 'sister' instrument to the ECHR: just as the ECHR protects fundamental civil and political rights, the ESC was established to safeguard fundamental social rights such as the right to work, the right to organise and take part in collective action, the right to just conditions of work, and the right of families and vulnerable persons to enjoy social protection.

The European Committee of Social Rights ('ECSR') is the expert supervisory body responsible for monitoring Member States' compliance with the ESC in its original or revised form. The Charter establishes a monitoring system based on periodic submissions of national reports, which is similar to the monitoring systems used within the framework of UN human rights treaties (see further below). Under this monitoring system, Member States submit an annual report to the ECSR on how it is giving effect to a specific sub-set of its obligations.[34]

The UK has signed and ratified the 1961 ESC; it has not, however, ratified the 1996 Revised ESC. Therefore, only the original ESC applies to the UK. The UK has also not ratified the Collective Complaints Protocol to the ESC, which allows, among other things, for NGOs who enjoy consultative status with the Council of Europe to bring complaints directly to the ECSR alleging that a 'collective' situation of State non-conformity with ESC rights exists.[35] The ECSR has repeatedly found the UK not to be in conformity with the ESC, identifying substantial defects in how

[32] Article 34 ECHR in particular sets out the 'right of individual petition', meaning any person, NGO, or group of individuals can apply to the ECtHR where it is alleged that one or more of the rights contained in the ECHR has been violated. Applications must, however, satisfy the criteria for admissibility – set out in Article 35 ECHR, including the requirement to exhaust all domestic remedies.

[33] ECHR, art 19. The ECtHR forms one component of the ECHR enforcement framework; the implementation (or 'execution') of judgments of the ECtHR is overseen by the Committee of Ministers of the Council of Europe under Article 46(2) ECHR.

[34] States currently report on a specific sub-set of obligations every year, with every ESC right covered across a four-year cycle.

[35] Robin R. Churchill and Urfan Khaliq, 'The Collective Complaints System of the European Social Charter: An Effective Mechanism for Ensuring Compliance with Economic and Social Rights?' (2004) 15 European Journal of International Law 417.

the fundamental social rights sets out in the Charter are implemented within national law and policy. Its findings testify to serious failings in the UK's record on social rights, which in some circumstances have persisted for decades.[36]

Many of the social rights set out in the ESC are of particular relevance to Scottish Gypsy/Travellers. For example, Article 16 ESC sets out an obligation on contracting parties to the treaty to promote the economic, legal and social protection of family life, including through the provision of family housing and by social benefits. In this context, the ECSR has considered the UK's compliance with this right in the context of housing provision for Gypsy/Traveller people in Scotland, including in its latest conclusions on the UK.[37] Indeed, several complaints have been brought to the ECSR through the Collective Complaints Protocol (which the UK has not ratified) by the European Roma Rights Centre concerning housing for communities with nomadic traditions, including Gypsy/Travellers, as well as European Roma. In one such decision, the ECSR found that Ireland was in breach of Article 16 ESC due to a shortfall in sufficient accommodation for Travellers, particularly halting sites, group housing and transient halting sites, which in turn had a serious effect on nomadism.[38]

<u>The Framework Convention for the Protection of National Minorities</u>

The Council of Europe's Framework Convention was adopted in 1994 and entered into force in 1998. Article 1 of the Framework Convention proclaims that:

> *'The protection of national minorities and of the rights and freedoms of persons belonging to those minorities forms an integral part of the international protection of human rights, and as such falls within the scope of international co-operation'*

The Framework Convention is of particular significance for two reasons: it is the first multilateral convention spelling out in detail minority rights and corresponding State obligations; and it has a monitoring system through which an extensive practice has evolved, making it possible to draw a number of conclusions concerning the meaning and content of minority protection.[39] With regards to the latter, monitoring of State compliance with the obligations set out in the Framework Convention is carried out by an expert body: the Advisory Committee on the Framework Convention ('the Advisory Committee').

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[36] Colm O'Cinneide, 'The European Social Charter and the UK: Why it Matters' (2018) 29 Kings Law Journal 275.

[37] European Committee of Social Rights, 'Conclusions XXII-4 in respect of the United Kingdom' (March 2023) <https://rm.coe.int/conclusions-xxii-4-2023-united-kingdom-en-2770-7116-4681-1/1680aedd3f> accessed 8 December 2025.

[38] *ERRC v Ireland* (1 December 2015) ECSR Complaint No 100/2013. In particular, the Committee stated, at para 57 of the decision, that "the implementation of Article 16 as regards nomadic groups implies that adequate stopping places be provided".

[39] Asbjørn Eide, 'The Council of Europe's Framework Convention for the Protection of National Minorities' in K Henrard and R Dunbar (eds), *Synergies in Minority Protection: European and International Law Perspectives* (CUP 2009) 119–154.

Neither the Framework Convention nor other human rights treaties which touch upon rights protections for minority groups[40] define the concept of a ‘national minority’. Notwithstanding, a degree of consensus has emerged, for example through the observations of treaty monitoring bodies,[41] that ‘minority’ in international law is limited to persons who belong to a group who share in a common culture, a religion, and/or a language. In this regard, former UN Special Rapporteur on Minority Issues Jules Deschenes defines the ‘minority’ as:

> *‘a group of citizens of a state, constituting a numerical minority and in a non-dominant position in that state, endowed with ethnic, religious or linguistic characteristics which differ from those of the majority of the population, having a sense of solidarity with one another, motivated, if only implicitly, by a collective will to survive and whose aim is to achieve equality with the majority in fact and in law’*[42]

The Framework Convention sets out obligations that are relevant to the experiences of Scottish Gypsy/Travellers discussed in this report, including to:

- Guarantee to persons belonging to national minorities the right of equality before the law;[43]
- Adopt, where necessary, adequate measures to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to the national minority and those belonging to the national majority;[44]
- Promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture and preserve elements of their identity, namely their religion, language, traditions;[45]
- Encourage a spirit of tolerance and intercultural dialogue;[46] and
- Take measures in the fields of education and research to foster knowledge of the culture, history, language and religion of their national

[40] Eg International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 27 (the right to identity)
[41] UN Human Rights Committee, ‘Article 27 of the International Covenant on Civil and Political Rights: General Comment 23’ in ‘Report of the Human Rights Committee, vol. 1 GAOR, 49th Session, Supplement No. 40 (A/49/40)’ 107–10 <www.ohchr.org/english/bodies/hrc/comments.htm> accessed 8 December 2025.
[42] Jules Deschênes, *Proposal concerning a definition of the term “minority”*, UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, 38th sess, UN Doc E/CN.4/Sub.2/1985/31 (1985) para 181. It has been argued that it is the sense of ‘solidarity’ and the ‘collective’, which makes a minority, as a group, different from a group of individuals formed for everyday purposes in rational terms – see Mohammad Shahabuddin, ‘Ethnicity in the Era of Liberalism: Human Rights, Minority Protection, and the Post–Cold War Paradigm Shifts’ in *Ethnicity and International Law: Histories, Politics and Practices* (Cambridge University Press 2016) 136–177.
[43] Framework Convention for the Protection of National Minorities, art 4(1).
[44] *Ibid*, art 4(2).
[45] *Ibid*, art 5(1).
[46] *Ibid*, art 6.

minorities and of the majority.[47]

Article 5 of the Framework Convention, in particular, requires States to refrain from undertaking policies and practices, and take steps to protect from any action, aimed at forced *assimilation* of people belonging to a national minority. This obligation is however 'without prejudice' to measures taken to advance the State's 'general integration policy'. This raises an important question about the difference between *assimilation* and *integration* which requires elaboration, as it is relevant to some of the discussion and recommendations set out in this report.

Assimilation is the process by which persons with a different culture and tradition are made to shed the essential aspects of that identity and to absorb the culture and tradition of the majority as their new identity.[48] In this respect, the 'Tinker Experiment', and in particular, the forced removal of Scottish Gypsy/Traveller children from their families and subsequent adoption domestically and overseas is a glaring example of an enforced assimilation practice perpetrated against a minority group. Assimilation can, however, also take more insidious forms, for example, by eliminating or creating barriers to the ability of minority groups to pursue a particular way of life. One such example is the introduction of the Caravan Sites and Control of Development Act 1960 (discussed at length under the heading of 'Housing' at 3.3) which reduced the number of caravan sites that Scottish Gypsy/Travellers could use; in turn negatively impacting upon their ability to practice nomadic traditions.[49]

While difficult to define, integration has been described as a 'dynamic, multi-actor process of mutual engagement', aimed at facilitating the effective participation by all members of a diverse society in the economic, political, social and cultural life, thereby fostering a shared and inclusive sense of belonging at national and local levels.[50] Whereas assimilation requires minority groups to effectively 'give up' their specific characteristics (whether language, religion, or culture and traditions), integration focuses on the preservation of essential aspects of identity and culture within a 'multicultural society'.

The increasing focus of minority rights protections under international law on integration has been the subject of extensive academic discussion. In the context of integration of migrants, Xanthaki has observed that the concept of integration is often used to dilute human rights and minority rights protections, highlighting examples of integration policies which 'gently' assimilate members of minority groups.[51] Some integrationist policies, it has been argued, promote a mono-cultural understanding of the

[47] *Ibid*, art 12 (1).
[48] Eide (n 39).
[49] See Watson (n 5).
[50] OSCE High Commissioner on National Minorities, *The Ljubljana Guidelines on Integration of Diverse Societies & Explanatory Note* (Organization for Security and Co-operation in Europe 2012).
[51] Alexandra Xanthaki, 'Against Integration, for Human Rights' (2016) 20 International Journal of Human Rights 815.

State, a homogenous unit, promoting a single identity.[52] For these reasons, some prefer to use the term *accommodation* rather than integration.[53]

The Advisory Committee to the Framework Convention, through its monitoring and thematic commentaries, has taken a position in favour of measures focused on integration, while emphasising the need to avoid enforced assimilation.[54]

For the purposes of this report, where we have made reference to integration, this should be understood as a voluntary process whereby measures are taken by duty bearers aimed at securing the full recognition of the identity and culture of Scottish Gypsy/Travellers and their full participation in all aspects of economic, political, social, and cultural life.[55] Such measures must be subject to constant scrutiny through systematic monitoring and evaluation and must always respect the right to self-identification.

The UK ratified the Framework Convention in 1998. In their latest concluding observations on the UK's compliance with their obligations under the Convention, the Advisory Committee made a number of findings of concern relating to the experiences of Gypsy/Travellers in the UK.[56] Among other things, the Committee concluded that antigypsyism remains pervasive across all aspects of UK society; while expressing concerns relating to the shortage of permanent and transit sites, effective access to education and racist bullying affecting Gypsy/Traveller children; and access to healthcare.

United Nations Treaties

The UK has signed and ratified a number of UN human right treaties. While not an exhaustive list, the following treaties are of particular relevance to discussions in and findings of this report:

- International Convention on the Elimination of All Forms of Racial Discrimination 1965 ('CERD') – monitored by the Committee on the Elimination of Racial Discrimination;

[52] Richard Race, *Multiculturalism and Education* (Continuum Publishers 2011) 19.
[53] John McGarry, Brendan O'Leary, and Richard Simeon's, 'Integration or Accommodation? The Enduring Debate in Conflict Regulation' in S Choudhry (ed), *Constitutional Design for Divided Societies: Integration or Accommodation* (OUP 2008) 41. According to McGarry et al, "accommodation promotes both the public and private maintenance of cultural difference', whereas with integrationist approaches the focus is on the development of 'a common public space'".
[54] See e.g. Council of Europe, Advisory Committee on the Framework Convention for the Protection of National Minorities, 'The Framework Convention: a key tool to managing diversity through minority rights' (2016) ACFC/56DOC (2016)001. Here, the Advisory Committee describes integration as a two-way process, which requires both the majority and the minorities to mutually adapt and change through an ongoing negotiation and accommodation process (p.18).
[55] This formulation is partly adapted from Hadden's concept of integration. See Tom Hadden, 'Integration and Separation: Legal and Political Choices in Implementing Minority Rights' in Nazila Ghanea and Alexandra Xanthaki (eds), Minorities, Peoples and Self-Determination (Brill 2005).
[56] Council of Europe, Advisory Committee on the Framework Convention for the Protection of National Minorities, 'Fifth Opinion on the UK' (2022) ACFC/OP/V (2022)003.

- International Covenant on Civil and Political Rights 1966 ('ICCPR') – monitored by the Human Rights Committee;
- International Covenant on Economic, Social and Cultural Rights 1966 ('ICESCR') – monitored by the International Committee for Economic, Social and Cultural Rights;
- Convention on the Elimination of All Forms of Discrimination against Women 1979 ('CEDAW') – monitored by the Committee for the Elimination of Discrimination against Women; and
- Convention on the Rights of the Child 1989 ('UNCRC') – monitored by the Committee on the Rights of the Child.
- Convention on the Rights of Persons with Disabilities 2006 ('CRPD') – monitored by the Committee on the Rights of Persons with Disabilities

The monitoring committees of each treaty referred to above are responsible for assessing State compliance with the rights and obligations set out in the treaties. This is done through a process of periodic monitoring: the State submits a report to the monitoring committee setting out the progress it has made towards implementing the rights and obligations in the relevant convention; NHRIs and civil society are afforded an opportunity to comment on the State report; and finally, the monitoring committee will publish their findings in the form of 'concluding observations'. For example, in their most recent concluding observations, the Committee on Economic, Social, and Cultural Rights called upon the UK to*:*

> *'Prevent and combat discrimination, racism, stereotypes and inequalities faced by […] Gypsies, Roma, and Travellers […] by implementing targeted awareness-raising campaigns and affirmative action measures in areas such as decent work, social security, adequate housing, healthcare, and education, to ensure that all persons fully enjoy Covenant rights without discrimination.'*[57]

In addition to treaty-body monitoring, the UK is examined in the UN Human Rights Council's Universal Periodic Review ('UPR') cycle.

Furthermore, monitoring committees also publish General Comments and Recommendations which deal with themes important to the relevant convention. For example, in their General Comment No.23 ('The Rights of Minorities'), the Human Rights Committee's express the view that Article 27 ICCPR - which protects the rights of minorities – is designed to protect people who belong to a group that share in common a culture, a religion and/or a language (see above discussion about the definition of a 'minority' in international law).[58]

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[57] UN Committee on Economic, Social and Cultural Rights, 'Concluding Observations on the Seventh Periodic Report of the United Kingdom of Great Britain and Northern Ireland' (12 March 2025) UN Doc E/C.12/GBR/CO/7.

[58] UN Human Rights Committee, 'General Comment No. 23: Article 27 (Rights of Minorities)' (8 April 1994) UN Doc CCPR/C/21/Rev.1/Add.5

Individuals can make complaints known as communications to the treaty-monitoring bodies set out above, where the contracting State recognises the competence of the relevant committee to receive such communications. The UK only recognises the competence of the Committee for the Elimination of Discrimination against Women and the Committee on the Rights of Persons with Disabilities to receive individual complaints. Notwithstanding, the use of the individual complaint mechanisms under both CEDAW and UNCRPD in the UK has been minimal.[59]

The domestic human rights framework

It is important, at the outset, to be clear as to the effect of the aforementioned human rights treaties in domestic law.

The UK has a dualist rather than a monist legal system, which means its obligations and rights flowing from international treaties do not automatically form part of domestic law. It is only when a treaty has been *incorporated* into domestic law, usually through an Act of Parliament, can an individual rely on the treaty in domestic legal proceedings. While treaties that have been ratified create a binding obligation on the UK to respect the rights and obligations set out in the treaty, a domestic court cannot give effect to them. In other words, incorporation has the effect of granting an individual or organisation the ability to enforce rights and obligations in an international treaty in a domestic court (for example, by raising legal proceedings).

The ECHR has been partially incorporated into UK law through the Human Rights Act 1998. Other Council of Europe treaties discussed above – the Framework Convention and the ESC - have not.

In addition, Scotland has partially incorporated the UNCRC into Scots law through the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024. Other UN human rights treaties referred to above, including notably CERD and ICESCR, have not been incorporated, meaning they cannot be enforced by individuals in domestic courts.

While beyond the scope of this report, it is worth highlighting that the focus of human rights discourse in the UK has, for a long time, been dominated by civil and political rights. Legal mechanisms for protecting rights, whether through the common law or the Human Rights Act, have generally been applied in such a way that restricts individuals' entitlement to economic and

[59] To date, the UN monitoring bodies have only handed down one decision on the merits in respect of the UK - UN Committee on the Elimination of Discrimination against Women, 'Communication No. 62/2013: Views adopted by the Committee at its sixty-third session on N.Q. and S.A. v the United Kingdom' (21 March 2016) UN Doc CEDAW/C/63/D/62/2013 – which concerned alleged violations of CEDAW during asylum proceedings. See also Jim Murdoch, 'Unfulfilled Expectations: The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women' (2010) 1 Eur Hum RTS L Rev 26.

social entitlements.[60] Unincorporated international human rights treaties which deal with economic, social, and cultural rights have had little purchase in domestic legal proceedings and in policy formation.[61] For this reason, O'Cinneide argues that in the UK 'social rights have been detached from the human rights/civil liberties mainstream'.[62]

In Scotland, the incorporation of the UNCRC into Scots law represents a radical shift in human rights approach: it strengthens effective access to justice for economic, social and cultural rights (at least for children), and enables duty-bearers, including the Scottish Government and Scottish public authorities, to be held to account for breaches of such rights.[63] It remains to be seen whether this will shift the dial towards greater recognition of socio-economic matters in domestic law, policy and practice. We, however, note with profound disappointment that the Scottish Government has decided not to progress the long-proposed Human Rights Bill, which would have achieved the incorporation of several human rights treaties relevant to the socio-economic issues experienced by Scottish Gypsy/Travellers discussed in this report.[64]

<u>The Human Rights Act 1998 and the devolution settlement</u>

The Human Rights Act 1998 ('HRA 1998'), which came into force in 2000, partially incorporates the predominantly civil and political rights set out in the ECHR (referred to in the Act as 'Convention rights'). This means that Scottish Gypsy/Travellers who allege that their rights have been violated can rely on rights under the ECHR to obtain a remedy in national courts, rather than having to go to the ECtHR in Strasbourg.

The HRA 1998 gives effect to the ECHR in the following ways:

- Under Section 6, all public bodies and other organisations which carry out public functions must respect Convention rights when exercising their duties. Domestic courts can review decisions taken by public authorities and decide whether they have acted compatibly with Convention rights.

[60] See e.g. *R (on the application of McDonald) v Royal Borough of Kensington and Chelsea* [2011] UKSC 33, [2011] 4 All ER 881. In this case, the UK Supreme Court considered a challenge under the Human Rights Act 1998 by a disabled person who argued that a local authority's decision to amend her care package by substituting her night time carer with provision of incontinence pads (in circumstances where she was not, in fact, incontinent) constituted a breach of her Article 8 ECHR rights (right to private life). In concluding that the local authority's decision did not breach the Respondent's Article 8 rights, the majority had particular regard to the cost-saving that the decision to reduce the care package would have (at para 19).

[61] See e.g. *R (on the application of SC, CB and 8 children) (Appellants) v Secretary of State for Work and Pensions and others (Respondents)* [2021] UKSC 26, a case which concerned a challenge to the 'two child limit', a provision of primary legislation which restricts payment of amounts of subsistence benefit for children to the first two children in a family, where the respondents had sought to rely on, among other things, the UNCRC.

[62] O'Cinneide (n 36)

[63] Nicole Busby, 'Advancing Human Rights Law in Scotland' (2024) European Human Rights Law Review 69.

[64] Nicole Busby, 'Scotland's Human Rights Bill: A promise unfulfilled' (*University of Glasgow*, 9 September 2024) <https://www.gla.ac.uk/research/az/publicpolicy/news/headline_1108892_en.html> accessed 22 August 2025

- Legislation should be compatible with Convention rights. Under Section 4, domestic courts can declare an Act of Parliament to be incompatible with Convention rights. This puts considerable pressure on the UK Parliament to amend or repeal it, although the sovereignty of the UK Parliament means that it can pass laws which are incompatible. Under Section 19, the Minister in charge of a Bill in either House of the UK Parliament is required to make a statement that the provisions of the Bill are compatible with Convention rights.

When reviewing cases under the Human Rights Act, domestic courts are required to:

- Read and give effect to legislation in a way which is compatible with Convention rights. Under Section 3, a national court must interpret legislation as being compatible with human rights wherever possible, so as to avoid a breach of Convention rights. This provision is sometimes referred to as the 'interpretive obligation'.
- "Take into account" relevant decisions of the ECtHR when deciding a case involving a Convention right (Section 2).

In the course of this report, we refer to several cases where Gypsy/Travellers have relied upon the HRA 1998 in domestic legal proceedings to argue that their rights under the ECHR have been breached.[65]

In addition, it is necessary to draw attention to the relationship between the HRA 1998 and the devolution settlement.

It is often said that the HRA 1998 is hardwired into Scotland's devolution settlement.[66] This is because the powers of both the Scottish Parliament and the Scottish Government under the Scotland Act 1998 are limited by the requirement to act compatibly with ECHR obligations. The Scottish Parliament cannot legislate in a way that is incompatible with the ECHR and legislation must be read as far as is possible to ensure compliance with the ECHR.[67] Similarly, the Scottish Government[68] and Scottish public authorities[69] must act compatibly with the ECHR.

Together these provisions result in a multi-institutional constitutional framework for human rights protection so that the Scottish Parliament, the executive and the judiciary must each act as a guarantor of human rights. Devolution thus provides a minimum level of human rights protection for the civil and political rights provided for by the HRA 1998.[70]

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[65] See e.g. *R (Smith) v Secretary of State for the Home Department* [2024] EWHC 1137 (Admin)
[66] Busby (n 63).
[67] Scotland Act 1998, s 101.
[68] Scotland Act 1998, s 57.
[69] Human Rights Act 1998, s 6.
[70] Busby (n 63).

The UNCRC (Incorporation) (Scotland) Act 2024

The UNCRC (Incorporation) (Scotland) Act 2024 ('UNCRC Act 2024') partially incorporates the rights and obligations set out in the UNCRC (referred to in the Act as 'UNCRC Requirements') into Scots law. The structure of the Act is similar in many ways to the HRA 1998, with some important differences set out further below:

- Under Section 6, public authorities are under a duty not to act incompatibly with the UNCRC requirements. Where a child (or an adult acting on their behalf) believes that a public authority has breached UNCRC Requirements, the Act allows the child to either bring proceedings against the public authority or rely on UNCRC requirements in legal proceedings.[71]
- Part 3 of the Act places duties on public authorities (including the Scottish Government) to report on their compliance with, and efforts to go beyond, the UNCRC requirements.
- The Act requires that legislation originating from the Scottish Parliament be read wherever possible in a way that is compatible with the UNCRC requirements;[72] and
- Where a compatible reading is not possible, it allows the courts to either (depending on when the incompatible legislation was enacted) strike the legislation down[73] or make a declaration of their incompatibility.[74]

At points during this report, we analyse the experiences of Scottish Gypsy/Traveller children against the rights and obligations set out in the UNCRC, and consider whether current law, policy or practice is compatible with the UNCRC – specifically in the context of housing and education. In addressing the question of whether any of these issues give rise to a remedy under the UNCRC Act 2024, it is necessary to consider the scope of duties that the Act places on the Scottish Government and public authorities.

Section 6 makes it unlawful for a public authority to act, or fail to act, in such a way which is incompatible with UNCRC requirements. Importantly, Section 6 only applies in relation to a public authority exercising 'relevant functions'. Broadly, these are either common law or statutory functions which are devolved. Furthermore, functions which are conferred by the following statutory instruments are excluded from the compatibility duty set out in Section 6:

- Acts of the UK Parliament;
- Statutory instruments made (including by the Scottish Ministers) by virtue of powers conferred by Acts of the UK Parliament; and
- Those provisions of Scottish statutory instruments made partly under a power conferred by an Act of the Scottish

[71] UNCRC (Incorporation) (Scotland) Act 2024, s 7.
[72] Ibid, s 24.
[73] Ibid, s 25.
[74] Ibid, s 26.

> Parliament and partly under a power conferred by an Act of the UK Parliament which are made wholly or partly by virtue of the power conferred the Act of the UK Parliament (or subsequently inserted by an Act of the UK Parliament or by virtue of a power conferred by such an Act)

Put simply, the compatibility duty only applies where a public authority exercises powers under an Act of the Scottish Parliament, but does not apply to provisions contained in pre-devolution UK statutes, even where those provisions have been inserted or amended by an Act of the Scottish Parliament. This poses a particular problem in areas of law where public authority powers and duties are fragmented across Acts of the Scottish Parliament and pre-devolution enactments. This is none more so than in education law, which is the focus of section 3.5 of this report.

For example, the compatibility duty would apply to an education authority discharging their duty to meet the needs of children and young people assessed to have additional support needs.[75] This is because the legislative framework for additional support needs is set out in an Act of the Scottish Parliament – the Education (Additional Support for Learning) (Scotland) Act 2004. Conversely, the complex legislative framework governing how an education authority is to use its powers to exclude a child falls outside the scope of the compatibility duty.[76] This means that a child would not be able to challenge an exclusion on the grounds that the education authority has breached the UNCRC.

We note that civil society has repeatedly called upon the Scottish Government to explore ways in which provisions in key UK Acts can be brought within the scope of the UNCRC Act 2024; and to avoid so far as possible introducing amendments to UK Acts.[77] In spite of these calls, we are disappointed that the recently enacted Education (Scotland) Act 2025 does not re-enact key duties and powers in the Education (Scotland) Act 1980 to bring them within the scope of the UNCRC Act 2024.

Human Rights Based Approach (PANEL principles)

If fully implemented and adequately resourced, a Human Rights Based Approach (HRBA), which is the approach applied by national Human Rights Institutions in their work,[78] has the potential to inform and engender policy in a way which is responsive to individual and group needs across all relevant areas in an integrated and consistent

[75] Education (Additional Support for Learning) (Scotland) Act 2004, s 4.
[76] Schools General (Scotland) Regulations 1975, SI 1975/113, as amended by the Schools General (Scotland) Amendment (No. 2) Regulations 1982, SI 1982/1735.
[77] See e.g. Together, 'Letter to the Cabinet Secretary for Social Justice' (27 October 2023) <https://togetherscotland.org.uk/media/3520/letter_cabinetsecretary_27-10-23_final_members.pdf> accessed 22 August 2025.
[78] European Network of National Human Rights Institutions (ENNHRIs), 'Human Rights-Based Approach' <https://ennhri.org/about-nhris/human-rights-based-approach/> accessed 8 December 2025.

manner.[79] A HRBA uses international human rights standards to provide a conceptual framework aimed at promoting and protecting human rights. By putting human rights and corresponding State obligations at the heart of policy it can provide a means of empowering rights holders to participate in decision-making processes and of holding duty-bearers to account to ensure that they honour their obligations to respect, protect, promote, and fulfil human rights. This approach has been successfully advocated for by the Scottish Human Rights Commission[80] over many years so that it is now embedded in certain aspects of Scottish policy formulation and delivery, although its use is by no means consistently applied, leaving much room for improvement.

The HRBA finds expression through the PANEL principles which provide a useful means of assessing progress and collecting comparable data within and across different policy areas. The PANEL principles are:

- **Participation** which requires that people should be involved in decisions that affect their rights. This is consistent with Article 8 EHRC which requires the exercise of personal autonomy.
- **Accountability** which requires that governments put in place arrangements to monitor and assess how people’s rights are affected on an ongoing basis as well as ensuring the availability and accessibility of effective remedies when needed. This is consistent with the provision of section 6 of the HRA 1998 which places a legal duty on public authorities and others delivering public functions to respect, protect and fulfil human rights.
- **Non-discrimination** which requires compliance with the prohibition of discrimination (subject to permitted justifications) at all times. This is expressed in Article 14 ECHR and by virtue of the Equality Act 2010.[81] Article 14 encompasses discrimination beyond the nine PCs provided for by the Equality Act 2010 (see Section 3.2 below), and recognises discrimination based on combined or multiple factors requiring action to combat intersectional discrimination arising from breaches of two or more Convention rights.
- **Empowerment** which requires governments to take the necessary steps to ensure that everyone is aware of and understands their rights and that individuals are fully supported to participate in the development of policy, procedures and practices which affect their lives.

[79] Nicole Busby and Catriona Cannon, ‘Leading positive change? A human rights-based approach to positive equality duties’ (2025) 5 European Human Rights Law Review 548.
[80] Scottish Human Rights Commission, ‘Human Rights Based Approach’ <https://www.scottishhumanrights.com/projects-and-programmes/human-rights-based-approach/> accessed 8 December 2025.
[81] An Act of the UK Parliament which applies to Great Britain, equal opportunities being a reserved matter subject to certain limited exceptions, see Scotland Act 1998, Sch 5 L2, as amended by Scotland Act 2016, s 37.

- **Legality** which requires that all Government policy is grounded in the legal rights provided under domestic and international laws.

The adoption of an integrated HRBA in the current context would enable compliance with international human rights standards across all areas affecting the lives of SGTs, thus bringing coherence and cohesion to the law and policy framework and aiding access to justice for all SGTs.

3.2. Discrimination

In the course of our research, we became aware of compelling testimony regarding the prevalence of racialised discrimination, prejudice and stereotyping based on Scottish Gypsy/Traveller identity. SGTs experience racism in virtually every aspect of daily life: in the conduct of public officials, in the delivery of public and commercial services, in employment; to hate crime and online abuse and harassment. These experiences are reflected in the human rights monitoring reports produced by residents of Double Dykes with support from Making Rights Real.[82] They are also consistent with the findings of international treaty-monitoring bodies.[83]

While some of this may be explained by prejudice harboured by individuals or groups, their prevalence, we argue, points to and supports the conclusion that racism against Scottish Gypsy/Travellers is *structural* in nature. In other words, racist consequences are embedded in the social, economic, cultural and political forces which define and govern the relationships between Scottish Gypsy/Travellers as a minority group and members of the majority population.[84] Only this, we feel, can explain the racialised inequalities in outcomes in health, education, standards of living, employment, facing Scottish Gypsy/Travellers.[85]

In this section we consider the effectiveness of legal responses to combat racialised discrimination against Scottish Gypsy/Travellers. In doing so, we will take an

[82] See e.g. Making Rights Real, ‘Second Human Rights Monitoring Report by Residents of Double Dykes Traveller Site’ (2024) <https://makingrightsreal.org.uk/wp-content/uploads/2025/01/FINAL-DD-REport-Dec24.pdf> accessed 22 August 2025. Among other things, the report reveals that 100% of residents have experienced or seen others experience racism, hate speech, or any other form of discrimination because of disability, sexual orientation, transgender identity, religious beliefs, or other characteristics (p. 13)

[83] See e.g. Council of Europe, Advisory Committee on the Framework Convention for the Protection of National Minorities, ‘Fifth Opinion on the UK’ (2022) ACFC/OP/V (2022)003, 4.

[84] Shreya Atrey, ‘Structural Racism and Race Discrimination’ (2021) 74 Current Legal Problems 1. In this context, see Amnesty International, ‘Caught in the Headlines: Scottish Media Coverage of Scottish Gypsy Travellers’ (2011) <https://www.amnesty.org.uk/files/amnesty_international_caught_in_the_headlines_2012.pdf> accessed 22 August 2025. Based on an empirical analysis of Scottish print media coverage over a four-month period (February to May 2011), the report revealed that Scottish Gypsy/Travellers were the subject of near-daily coverage, with 190 articles published over the 120-day monitoring window—despite the community representing less than 0.5% of the national population. Of those articles, 48% were overtly negative, with only 6% including any representation of Scottish Gypsy/Traveller voices.

[85] See e.g. Equality and Human Rights Commission, *Equality and Human Rights Monitor: Is Scotland Fairer?* (November 2023) <https://www.equalityhumanrights.com/our-work/equality-and-human-rights-monitor/equality-and-human-rights-monitor-2023-scotland-fairer> accessed 30 July 2025.

intersectional lens, noting that racism is defined by more than just race but the multiple forms or inequality that compound disadvantage, particularly with regards to class, gender, disability, and age.[86]

Discrimination: the domestic legal framework

In Scotland, protection from discrimination arises under two key legal frameworks:

- The Equality Act 2010, which prohibits discrimination on the basis of nine protected characteristics (including race and disability), but only applies in specified contexts (e.g. provision of services, public functions, housing, etc.);
- The HRA 1998, which gives effect to the ECHR (see section 3.1 above) and, in particular, Article 14, which prohibits discrimination in the enjoyment of Convention rights.

In addition, the UNCRC Act 2024, which incorporates the UNCRC into Scots law, also prohibits discrimination in the enjoyment of any of the rights under the Convention (Article 2 UNCRC).

For the purposes of this section, we will focus on the Equality Act 2010. In other sections of this report, we expressly consider the relevance of protections against discrimination contained in international human rights instruments, specifically the UNCRC and ECHR, in the context of issues facing the community, particularly in relation to security of tenure in housing (see section 3.3 below).

<u>The Equality Act 2010</u>

The Equality Act 2010 (‘EqA 2010’) is the principal legislative instrument protecting individuals and groups from discrimination in the UK. It consolidated previous equality legislation, including the Race Relations Act 1976 (‘RRA 1976’). While several cases discussed below were brought under the RRA 1976, their principles remain applicable to claims brought under the EqA 2010.

The EqA 2010 prohibits conduct and creates duties in relation to nine protected characteristics, including age, disability, sex, and race. In particular, the Act prohibits direct[87] and indirect discrimination [88], and harassment[89] and victimisation[90]. It also prohibits discrimination in relation to something arising from a person’s disability[91], and creates a duty to make reasonable adjustments for disabled people[92]. The Act applies across a variety of scenarios,

[86] See e.g. Kimberlé Williams Crenshaw, ‘Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics’ (1989) University of Chicago Legal Forum 139,149; Floya Anthias and Nira Yuval-Davis, *Racialized Boundaries: Race, Nation, Gender, Colour and Class and the Anti-Racist Struggle* (Routledge 1992) viii.
[87] EqA 2010, s13.
[88] EqA 2010, ss19 and 19A.
[89] EqA 2010, s 27.
[90] Ibid.
[91] EqA 2010, s 15.
[92] EqA 2010, ss 20 and 21.

including in relation to services and public functions[93], in employment[94], housing[95], and education[96]. In this respect, the provisions of the Act are relevant to discussion of issues in relation to housing and education explored in later sections of this report.

For the purposes of this section, we will take a particular focus on 'race', though it is recognised that some discrimination experienced by Scottish Gypsy/Travellers may also intersect with other protected characteristics, such as disability or sex. However, the scope for taking an intersectional approach to claims brought under the EqA 2010 is limited, since the framework is predicated on a single axis approach to discrimination claims.[97]

<u>The protected characteristic of 'race' and Scottish Gypsy/Travellers</u>

The EqA 2010 defines 'race' to include discrimination based on colour, nationality, and ethnic or national origins.[98] Race also covers ethnic and racial groups, meaning a group of people who all share the same protected characteristic of race.

The criteria for determining whether a group constitutes an ethnic group are set out in the early case of *Mandla (Sewa Singh) v Dowell Lee*.[99] In that case, the House of Lords held that an ethnic group for the purposes of the RRA 1976 had to regard itself, and be regarded by others, as a distinct community by virtue of certain characteristics, including the following two 'essential' factors:

1. A long, shared history, of which the group is conscious as distinguishing it from other groups, and the memory of which it keeps alive.
2. A cultural tradition of its own, including family and social customs and manners, often but not necessarily associated with religious observance.

In *CRE v Dutton*[100] the Court of Appeal in England and Wales held that Romani Gypsies were a minority with a long, shared history, a common geographical origin and a cultural tradition of their own and were hence an ethnic group for the purposes of the RRA 1976.

Scottish Gypsy/Travellers were first recognised by the courts as a separate ethnic group in *McClellan v Gypsy Traveller Education Information Project,* an unreported Scottish employment tribunal case in 2008.[101] The Scottish Government through its reporting duties under the Public Sector

[93] EqA 2010, pt 3.
[94] EqA 2010, pt 5.
[95] EqA 2010, pt 4.
[96] EqA 2010, pt 6.
[97] Rand Shahin, 'Intersectionality: A Blind spot Missed in the British Equality Framework?' (2020) 6 LSE Law Review 32. Section 14 of the EqA2010 contains a provision to cover direct discrimination on up to two aggregate grounds, but this section has never been brought into effect.
[98] EqA 2010, s 9.
[99] [1983] 2 AC 548 (HL).
[100] [1989] 2 WLR 17 (CA).
[101] *McClellan* (n15).

Equality Duty has recognised Scottish Gypsy/Travellers as a distinct racial group.[102]

The Public Sector Equality Duty

The Public Sector Equality Duty ('PSED') is set out in Section 149 of the EqA 2010. Sometimes referred to as the 'general equality duty', it requires public authorities, when exercising their functions to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct;
- Advance equality of opportunity between people who share a relevant protected characteristic and those who do not; and
- Foster good relations between people who share a protected characteristic and those who do not.

According to guidance published by the Equality and Human Rights Commission ('EHRC'), the purpose of the general equality duty is to:

> *'…ensure that public authorities and those carrying out a public function consider how they can positively contribute to a more equal society through advancing equality and good relations in their day-to-day business, to:*
>
> - *take effective action on equality*
> - *make the right decisions, first time around*
> - *develop better policies and practices, based on evidence*
> - *be more transparent, accessible and accountable*
> - *deliver improved outcomes for all.'*[103]

The general equality duty covers all public authorities named or described (listed) in Schedule 19 of the EqA 2010. This includes, among others, the Scottish Government, local authorities, education authorities, Police Scotland, and NHS Health Boards. It covers public authorities when carrying out their public functions as service providers, as policy makers and as employers and also covers services and functions which are contracted out. It also applies in relation to the treatment of individual cases.[104]

In addition to the general equality duty, public authorities in Scotland are also subject to specific statutory duties, designed to support better compliance and ensure transparency in decision-making. These duties are set out in the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 and apply to all Scottish public bodies listed in Schedule 19 of the EqA 2010, including local authorities.

[102] Scottish Government, *Equality Outcomes and Mainstreaming Report* (2023) <https://www.gov.scot/publications/equality-outcomes-mainstreaming-report-2023/documents/> accessed 8 December 2025.
[103] Equality and Human Rights Commission, 'Essential Guide to the Public Sector Equality Duty: A Guide for Public Authorities in Scotland' (July 2016) <https://www.equalityhumanrights.com/sites/default/files/essential-guide-public-sector-equality-duty-scotland.pdf> accessed 8 December 2025.
[104] *Pieretti v Enfield LBC* [2010] EWCA Civ 1104.

It is also important to stress that the PSED is an ongoing duty, meaning that public authorities must continue to monitor or review the impact of a policy or decision even after it has been adopted.

<u>Judicial interpretation of the Public Sector Equality Duty</u>

In essence, the PSED requires public authorities to take a proactive approach in embedding equality considerations into everyday decision-making and policy formation. In practice, what this means is that public authorities should monitor how policies and decisions impact Scottish Gypsy/Travellers. Where adverse impacts are identified, and where no legitimate justification can be relied upon, public authorities should change the policy or reverse the decision. A key part of the duty is the requirement to assess impact of new or proposed changes to policy, and to consult properly with affected communities. The bulk of the case law on the PSED in the UK has focused on these two central aspects.

In the key case of *R (Bracking) v Secretary of State for Work and Pensions*[105] the Court of Appeal provided a summary of what is required of public authorities in order to fulfil their obligations under the PSED:

- The public authority decision maker must be aware of the duty to have 'due regard' to the relevant matters;
- The duty must be fulfilled before and at the time when a particular policy is being considered;
- The duty must be 'exercised in substance, with rigour, and with an open mind'. It is not a question of 'ticking boxes'; while there is no duty to make express reference to the regard paid to the relevant duty, reference to it and to the relevant criteria reduces the scope for argument;
- The duty is non-delegable; and
- Is a continuing one.
- It is good practice for a decision maker to keep records demonstrating consideration of the duty.[106]

The decision of the Court of Session in *B v Scottish Borders Council* [107] provides guidance on how the Scottish courts approach alleged failures to comply with the PSED, particularly where the rights of marginalised or disabled individuals are affected by a public authority's policy decisions.

The case concerned the Council's decision to close a specialist day centre for adults with disabilities, a service relied upon by the petitioner's adult child. The petitioner argued that the Council had failed to comply with its duties under s.149, including the duties to advance equality of opportunity and to foster good relations. Critically, the Council had not conducted a meaningful Equality Impact Assessment (EqIA) before deciding to

[105] [2013] EWCA Civ 1345, [2014] EqLR 60.
[106] Ibid [25].
[107] [2023] CSOH 39.

close the centre and had failed to consult service users and their families adequately. The Council contended that an EqIA was carried out at a later stage, and that its decision-making had incorporated equality considerations.

Lady Carmichael held that the Council had acted unlawfully, concluding that the decision to close the centre was taken in breach of the PSED and should be reduced. Her judgment provides a framework for assessing what "due regard" requires under the PSED, especially in the context of local authority service provision. She found that:

- No adequate EqIA was conducted prior to the decision being made. Although a document titled "EqIA" was eventually produced, it lacked evidence-based assessments of how the closure would impact persons sharing protected characteristics, particularly disabled persons, and offered no meaningful alternatives.
- The Council had failed to consult service users and families in any meaningful way, and the only meeting held lacked the basic qualities of a lawful consultation: it was convened at short notice, did not clearly explain the proposed closure, and took place after the proposals were already well-developed.
- The Council's reference to the EqIA in its internal documentation was misleading and gave the false impression that proper consideration of equality impacts had been made.
- Crucially, she affirmed that the PSED is not merely procedural or symbolic. Rather, it is 'a continuing duty' that must be exercised 'in substance, with rigour, and with an open mind' (applying *R (Bracking)*[108]).
- The Court also reiterated that a public authority must have due regard not only to the direct impacts on existing users, but also to the broader impact on persons sharing the same protected characteristic, even if they were not consulted or individually identified in the decision-making process.

The PSED has been relied upon in cases involving Gypsy/Travellers, for example, in the context of planning law.

In *Moore and Coates v Secretary of State for Communities and Local Government*[109] the claimants, who were Romani Gypsies, challenged the Secretary of State's practice of *recovering* all planning and enforcement notice appeals involving Traveller sites in the Green Belt for his determination. In simple terms, the practice of 'recovering' an appeal means that the Secretary of State, and not a planning inspector, will make the final determination on a planning appeal. The practice, it was argued, was to ensure that the policy protection for the Green Belt laid down in Planning policy for traveller sites (PPTS) was properly applied. The High Court, in accepting

[108] (n 106)
[109] [2015] EWHC 44 (Admin).

that the claimants formed a racial group for the purposes of section 9 of the EqA 2010, held that the Secretary of State's conduct was indirectly discriminatory (in breach of section 19 of the EqA 2010). This was because the policy or practice to recover all appeals relating to travellers' pitches put ethnic gypsies and travellers at a disadvantage, namely that their appeals would take far longer to determine.

In relation to the PSED, the High Court held that on the evidence the Secretary of State had failed to demonstrate that he had any due regard to the general duties when embarking on the policy and practice. In this regard, Gilbert J concluded:

> *'The fact is that this in truth [is] not a case whether the regard the Secretary of State and his Ministers had was 'due regard.' The fact is that, on the evidence filed by the SSCLG, they had no regard at all. As the authorities cited above make clear, evidence is required that due regard was actually had […]The Court of Appeal could not have been plainer in the several authorities recited earlier that the [PSED] requires actual consideration, and that it expects evidence of a structured attempt to focus upon the details of equality issues. That applies as much to Ministerial consideration and decisions as it does to those of other public bodies …*
>
> *I am therefore in no doubt that there has been a failure to comply with the PSED. It is not a case of the SSCLG and his Ministers addressing it but falling short; it is one of not addressing it [at] all'*[110]

Discussion

<u>Lack of awareness of Scottish Gypsy/Travellers as a protected racial group</u>

It is important to reiterate that Gypsy and Traveller people in the UK are not a single, homogenous group. The term encompasses a range of communities with different histories, cultures, and beliefs, including Romany Gypsies, Welsh Gypsies, Scottish Gypsy Travellers, and Irish Travellers, among others.

Nevertheless, these communities have consistently been recognised in law as protected racial and ethnic groups, with a shared history and cultural traditions, for the purposes of both the EqA 2010 and the HRA 1998.[111]

Despite this, we encountered examples in our research which suggest that public authorities in Scotland continue to lack an understanding that Scottish Gypsy/Travellers are protected as a racial and ethnic group under human rights and equality law. Whether this stems from ignorance, poor training, or something more systemic is difficult to determine. Regardless of the cause, the consequences, particularly in relation to how

[110] Ibid [134], [135].
[111] See e.g. *R (Smith)* (n 64).

public authorities engage with Scottish Gypsy/Travellers, is significant.

For example, the Scottish Housing Regulator (SHR) recently found breaches of the Scottish Social Housing Charter at three local authority sites: Tarvit Mill (Fife Council),[112] and Double Dykes and Bobbin Mill (Perth and Kinross Council).[113] The Regulator has provided us with copies of the decision letters issued to the communities at Double Dykes and Bobbin Mill.

In relation to the ongoing redevelopment of the Double Dykes Site, we note that the Regulator raised concerns regarding the adequacy of the local authority's Equality Impact Assessment (EqIA). Specifically, the EqIA disproportionately focused on physical disability, failed to identify Scottish Gypsy/Travellers as a distinct ethnic group, and did not meaningfully address the full potential discriminatory impact of plans to redevelop the Site. This failure of recognition is not only inconsistent with the Scottish Government's own approach to EqIAs involving Scottish Gypsy Travellers but also undermines the local authority's legal duties under the PSED.

In our view, the failure to recognise Scottish Gypsy/Travellers as a racial or ethnic group reflects a wider lack of institutional understanding of the legal status and lived experience of the community. This has an impact on how decisions are made, how engagement with the community is conducted, and how policies are developed and justified, arguably contributing to the structural discrimination we outlined earlier in this section.

We believe this gap in understanding partly stems from the lack of awareness of *McLennan v GTS*[114], which to our knowledge, is the only case in Scotland recognising Scottish Gypsy/Travellers as a distinct racial group under the EqA 2010. As this is an unreported decision, and therefore not publicly available, it is perhaps unsurprising that it is not widely known or referenced in local authority practice. It also arguably highlights the inadequacy of a case-by-case judicial approach to recognition of protected groups.

At the same time, we recognise the challenges in formulating a statutory definition of "Gypsies and Travellers" that respects the diversity within and between communities. In this regard, we note that the Scottish Government recently consulted on a working definition for the purposes of section 16B of the Town and Country Planning (Scotland) Act 1997. The Scottish Government's proposed draft definition included people of nomadic tradition, including those who have ceased to travel due to health, age or

[112] For an outline of the breaches identified by the SHR, see Scottish Housing Regulator, 'Updated Engagement Plan for Fife Council' <https://www.housingregulator.gov.scot/landlord-performance/landlords/fife-council/engagement-plan-from-1-november-2024-to-31-march-2025/> accessed 8 December 2025.

[113] For an outline of the breaches identified by the SHR, see Scottish Housing Regulator, 'Updated Engagement Plan for Perth & Kinross Council' <https://www.housingregulator.gov.scot/landlord-performance/landlords/perth-kinross-council/engagement-plan-from-21-march-2025-to-31-march-2026/> accessed 8 December 2025.

[114] (n 15)

educational needs, and members of travelling showpeople or circus communities.[115]

The consultation responses overwhelmingly stressed the importance of distinguishing between different travelling groups. In particular, respondents both from within and outside communities, urged the Government to clarify that ethnic Gypsy/Travellers are distinct from other groups such as showpeople and new age travellers.[116] MECOPP's submission put this clearly:

> *'Scottish Gypsy/Travellers, Romany Gypsies and Irish Travellers are recognised under the Equality Act (2010) as distinct ethnic groups and as such have legal standing by virtue of their protected characteristic status. Show people, Circus people and New Age Travellers do not. We believe that the inclusion of these communities within the proposed definition has the potential to cause confusion for local authorities, particularly in relation to whom they have a responsibility to discharge such duties to under the PSED and the (Specific Duties) (Scotland) Regulations 2010.'*[117]

To date, however, no regulations have been introduced under the 1997 Act to implement any proposed definition of "Gypsies and Travellers" for the purposes of planning legislation.

Ultimately, we consider that the lack of clear understanding and consistency around who is protected under the EqA 2010 creates a barrier in practice to public authorities discharging their duties toward Gypsy/Travellers in Scotland. It is for the Scottish Government to decide whether this can be remedied through a statutory definition, guidance, mandatory training, or a combination of all three.

<u>Compliance with Equality Act 2010 in relation to redevelopment works at Local Authority Gypsy and Traveller Sites</u>

Fife Council and Perth and Kinross Council have received investment from the Scottish Government's Gypsy/Traveller Accommodation Fund to undertake redevelopment work at the Tarvit Mill and

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115 Scottish Government, *Local Development Plan Evidence Report – Defining Gypsies and Travellers: Analysis of Responses to Consultation* (2023) <https://www.gov.scot/binaries/content/documents/govscot/publications/consultation-analysis/2023/03/local-development-plan-evidence-report-defining-gypsies-travellers-analysis-responses-consultation/documents/local-development-plan-evidence-report-defining-gypsies-travellers-analysis-responses-consultation/local-development-plan-evidence-report-defining-gypsies-travellers-analysis-responses-consultation/govscot%3Adocument/local-development-plan-evidence-report-defining-gypsies-travellers-analysis-responses-consultation.pdf> accessed 30 July 2025.

116 Ibid 3.

117 MECOPP Gypsy/Traveller Support Service, 'Submission to Scottish Government Consultation on Defining Gypsies and Travellers' <https://consult.gov.scot/planning-architecture/local-development-plan-evidence-report/consultation/view_respondent?uuId=554764932> accessed 30 July 2025. See however the recent decision of *Glasgow City Council v Stringfellow* [2026] CSOH 19, where the Court of Session held that the defenders as travelling showpeople share the protected characteristic of 'race' for the purposes of s 9 of the Equality Act 2010.

Double Dykes sites respectively.[118] We note that other pilot Gypsy/Traveller Accommodation Fund 'demonstration projects' are being progressed in Aberdeen City, Clackmannanshire, Fife, Highland, Perth and Kinross, and South Lanarkshire. The full picture of implementation across Scotland is not yet known.[119]

Whilst welcoming the financial investment in making some much-needed upgrades to the accommodation provided by local authorities, we have some concerns about whether local authorities are complying with their duties under the EqA 2010, and in particularly, the Public Sector Equality Duty (PSED). For example, we note from the Scottish Housing Regulator's letter to residents at the Double Dykes site, that the local authority did not complete its Equality Impact Assessment (EqIA) until April 2023, following earlier stages of planning and consultation that took place during 2022 and early 2023. This sequencing raises questions about whether equality considerations were built into decision-making at the formative stages, as required by law. Under the standards set out in *Bracking*, equality must be considered "at the time" policies are being developed—not retrospectively.

Based on the narrative provided by the Scottish Housing Regulator, the substance of the EqIA itself also appears inadequate. The assessment placed disproportionate focus on physical disability and failed to identify Scottish Gypsy/Travellers as a distinct ethnic group. This raises questions as to whether the local authority tailored its assessment to the particular vulnerabilities, cultural practices, or housing preferences of the community.

It is important to emphasise that the PSED is a continuing duty, meaning public authorities must remain alive to equality impacts throughout the life of a policy or project, and not just at the outset. This means that local authorities should continue to consider the suitability of new accommodation by ensuring that it meets with the specific needs of residents, including whether the new units meet cultural expectations, family needs, and the physical requirements of disabled residents or children.

Beyond the PSED, it will also be important to ensure that the design and implementation of new chalet accommodation does not constitute indirect discrimination, prohibited under section 19 of the EqA 2010. Indirect discrimination arises where a provision, criterion, or practice (PCP) that appears neutral puts individuals sharing a protected characteristic—such as race—at a particular disadvantage when compared with others, unless that PCP can be justified as a proportionate means of achieving a legitimate aim.

Here, the design of replacement chalets could constitute a PCP if it fails to accommodate cultural norms and practices common among Scottish Gypsy Travellers so that members of that ethnic group are not

[118] Improving the Lives of Scotland's Gypsy/Travellers 2 Action Plan 2024-2026 (n 12).
[119] Ibid.

disproportionately disadvantaged. Importantly, a finding of indirect discrimination does not require proof of intent. It is sufficient to demonstrate that a practice, policy or decision has a disproportionately negative impact on a protected group.

The Scottish Government itself has recognised that the accommodation needs of Gypsy/Travellers differ from those of the settled population.[120] Any redevelopment scheme that fails to reflect these differences, and which imposes standardised models of housing without cultural adaptation, risks unlawfully discriminating against a protected group.

In short, while there is no doubt that investment to improve site conditions is welcome and overdue, there are important legal considerations which must be taken account of in the means by which that investment is delivered. Of primary concern are the requirements to ensure cultural awareness, to undertake meaningful consultation with the community, and to ensure overall compliance with the legal duties owed under the EqA 2010 to prevent discrimination and advance equality. Failure to deliver against these requirements would risk reproducing the wider structural racism discussed at the outset of this section. It is also extremely important to ensure that the approach adopted does not constitute a form of assimilatory practice (discussed at section 3.1 above)

Tackling structural discrimination: the role of the Equality and Human Rights Commission

Whilst individual residents could raise any alleged breaches of the EqA 2010 before the courts, wider patterns of systemic and structural discrimination arising from any potential failure by a local authority to discharge its duties under the EqA 2010 in the context of redevelopment projects at local authority-managed Gypsy Traveller Sites, funded by the Scottish Government's Accommodation Fund, could be investigated by the Equality and Human Rights Commission (EHRC). As the regulator of the EqA 2010, the EHRC can exercise its statutory powers to investigate whether local authorities in Scotland are meeting their obligations under the EqA 2010, particularly in relation to the PSED.

The EHRC, it should be noted, has a range of legal enforcement powers under the Equality Act 2006 that are specifically designed to tackle systemic and institutional failures. For example:

- The EHRC has the power to assess the extent to which, or the manner in which, a public body has complied with its duties under the PSED. In this respect, the EHRC may serve a 'compliance notice' on the body requiring it to comply with the duty, and

[120] See e.g. Scottish Government, *Interim Gypsy/Traveller Site Design Guide* (2021) <https://www.gov.scot/publications/interim-gypsy-traveller-site-design-guide/> accessed 30 July 2025.

the steps it has taken, or is taking, to comply.[121]

- Where a body fails to comply with a compliance notice, the EHRC can apply to the Court of Session for an enforcement order (in relation to PSED breaches), or to the sheriff court in respect of breaches of the specific equality duties in Scotland.[122]
- The EHRC has the power to conduct a general inquiry into any matter relevant to its functions under sections 8 and 9 of the Equality Act 2006, including the promotion of equality, diversity, and human rights.[123] Where an inquiry uncovers concerns about unlawful conduct, the EHRC may initiate a formal investigation under section 20.
- Following an investigation, the EHRC can issue an unlawful act notice if it finds that a person or body has committed an unlawful act.[124]
- Section 30 also allows the EHRC to institute or intervene in legal proceedings, including judicial review, where the matter relates to its statutory functions.

The EHRC has used its powers to investigate allegations of systemic racism against Gypsy/Travellers in the UK. For example, in 2022, the EHRC launched an investigation into Pontins Holiday Parks, following whistleblower evidence that Irish Travellers and other members of the Gypsy and Traveller communities were being discriminated against.[125]

The EHRC's investigation concluded that Pontins had committed 11 unlawful acts of race discrimination, including breaches of provisions of the EqA 2010 prohibiting direct discrimination in relation to the provision of services[126]. In this respect, Pontins was found to have operated a so-called "Undesirable Guest List", in which staff were instructed to refuse or terminate bookings from individuals perceived to be Irish Travellers based on surnames, accents, or residential addresses. The EHRC found that these practices amounted to direct discrimination on the basis of race.

The EHRC's findings illustrates how entrenched and systemic racism can operate within a service provider, resulting in widespread and unlawful exclusion of Gypsy and Traveller communities.

[121] Equality Act 2006, ss 31 and 32.
[122] Ibid, s 32 (8) and (9).
[123] Ibid, s 16.
[124] Ibid, s 21(2).
[125] Equality and Human Rights Commission, 'Report: Investigation into Pontins Holiday Parks' (2024) <https://www.equalityhumanrights.com/our-work/inquiries-and-investigations/investigation-pontins/report-investigation-pontins-holiday> accessed 30 July 2025.
[126] EqA 2010, ss 13 and 29.

Conclusions and Recommendations

In this section we have highlighted the duties arising under the EqA which must be discharged by local authorities in designing their approaches to redevelopment, particularly in relation to design and cultural suitability of new chalet accommodation. Failure to discharge such duties could amount to indirect race discrimination and, in substance, reproduce assimilatory approaches that disregard cultural traditions of Scottish Gypsy Travellers.

Given the Scottish Government's funding role and the breadth of "demonstration projects", any potential breaches should not be left to piecemeal challenge. A system-level, risk-led response is required to ensure that public bodies meet their legal obligations and that all redevelopment programmes embed lawful, culturally appropriate design and decision-making from the outset.

Recommendation 1: The Scottish Government should undertake an urgent, time-limited review of the rollout of the Scottish Gypsy/Traveller Accommodation Fund and associated pilot projects, with a specific focus on compliance with the PSED and the Scottish specific equality duties. The review should include independent input from communities, publish findings and required corrective actions, and make continued funding contingent on demonstrable compliance.

Recommendation 2: We call on the Equality and Human Rights Commission to consider initiating an inquiry or investigation into how Scottish local authorities are meeting their obligations under the Equality Act 2010, and specifically the PSED, to Gypsy and Traveller communities in relation to site redevelopment and housing allocation.

3.3. Housing

Housing is fundamental to many aspects of our existence and its enjoyment is related to a number of other human rights relating to, among other things, health and education.[127]

In the context of Scottish Gypsy/Travellers, or at the very least for whom the tenets and freedom of nomadism are fundamental, the nature of housing and accommodation are arguably more substantive than for either the majority settled population, and indeed, other minority groups. This is because the freedom to be nomadic necessarily incorporates a relationship with one's home that allows for movement.

Bricks and mortar housing for many Gypsy and Traveller Communities means 'not simply a loss of freedom in the 'settled world' and its values but being out of sync with the lifestyles of previous generations.[128] Moving into a house, even as a temporary measure, has been understood as a 'shameful "culture shock"' and a separation from the 'spirit of the travel'.[129]

The right to adequate housing (Article 11, ICESCR)

The home constitutes a primary component in the construction of one's social identity, which is no less so than for minority and vulnerable groups than of the majority. In this respect, the right to housing is protected in various forms through a right to adequate standard of living, which is reflected in a number of international human rights instruments, including CEDAW,[130] UNCRC,[131] and ICESCR[132].

In their General Comment on Article 11 ICESCR,[133] which broadly sets out a right to an adequate standard of living, the Committee on Economic, Social and Cultural Rights set out seven tenets for the realisation of the right to housing:

1. Legal Security of Tenure

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[127] A critical cultural distinction between Scottish Gypsy Travellers and other minority groups is that the mode of housing, the construction itself, is a critical and indelible feature of cultural identity. Therefore, it is important to note that international rights provisions protecting the right to housing have to be read and understood alongside the rights which Gypsy and Traveller Communities also have under Article 27 of the ICCPR (Rights of Minorities).

[128] Martin P. Levinson and Andrew C. Sparkes, 'Gypsy Identity and Orientations to Space' (2004) 33 Journal of Contemporary Ethnography 704, 712.

[129] Colin Clark and Margaret Greenfields, *Here to Stay: The Gypsies and Travellers of Britain* (University of Hertfordshire Press 2006).

[130] Convention on Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September) 1249 UNTS 13 (CEDAW) art 14.

[131] Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (UNCRC) art 27.

[132] International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR) art 11. Two General Comments—one, a basal description of the right to housing, the other, an examination of the specific matter of forced evictions—have been instrumental in defining the scope and content of the right.

[133] UN Committee on Economic, Social and Cultural Rights, 'General Comment No. 4: The Right to Adequate Housing (Art. 11(1) of the Covenant)' (13 December 1991) UN Doc E/1992/23.

2. Availability of Services, material, facilities, and infrastructure;
3. Affordability;
4. Habitability;
5. Accessibility;
6. Location; and
7. Cultural Adequacy

While ICESCR has not been incorporated into Scots Law, meaning its provisions, including Article 11, are not directly enforceable in domestic courts in the same way as the ECHR (see section 3.1 above), the basic tents of the rights to adequate housing are reflected in domestic housing law, for example, through the various housing enactments.

A more child-centred right to adequate standard of living is contained in Article 27 UNCRC. Like its counterpart under Article 11 ICESCR, Article 27 sets out a right to adequate standard of living that captures a broad range of elements, including housing and child support. However, and unlike its counterpart, the phraseology of Article 27 suggests strongly that 'adequacy' will be defined by reference to the child's 'physical, mental, spiritual, moral, and social development'; thus, under Article 27, the right to an adequate standard of living is distinctively instrumental as a means of contributing to the development of the child.[134]

In its work, the UN Committee on the Rights of the Child has repeatedly emphasised the need for Government strategies to be targeted at addressing the poor standard of living of Gypsy/Traveller children in the UK.[135]

The ECHR and the right to adequate housing

The ECHR does not contain an explicit right to adequate housing. However, the ECtHR has protected housing-related rights through a broad and dynamic interpretation of Article 8 ECHR (the right to respect for private and family life). This 'evolutive' approach draws upon international human rights standards, including ICESCR, and is particularly evident in housing cases involving marginalised groups.

For example, in *Connors v United Kingdom*,[136] the applicant, a Gypsy argued that the powers of eviction of local authorities amounted to an unlawful interference with, among other things, his Article 8 right to private and family life. In finding a violation of Article 8 on the basis of the State's eviction procedures, the ECtHR observed that the vulnerable position of Gypsies as a minority

[134] Aoife Nolan, 'The Right to a Standard of Living Adequate for the Child's Development' in John Tobin (ed), The UN Convention on the Rights of the Child: A Commentary (Oxford Commentaries on International Law, OUP 2019; online edn, Oxford Law Pro).
[135] See UN Committee on the Rights of the Child, 'Concluding observations on the combined sixth and seventh periodic reports of the United Kingdom of Great Britain and Northern Ireland' (22 June 2023) UN Doc CRC/C/GBR/CO/6-7 para 46; UN Committee on the Rights of the Child, 'Concluding Observations: United Kingdom of Great Britain and Northern Ireland' (20 October 2008) UN Doc CRC/C/GBR/CO/4 para 64.
[136] *Connors v UK* (2004) 38 EHRR 32.

means that some special consideration should be given to their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases. To this extent, there is thus a positive obligation imposed on the Member States by virtue of Article 8 to facilitate the Gypsy way of life.[137]

Available data on the accommodation profile of Gypsy/Travellers in Scotland

Gypsy and Traveller communities in Scotland generally live in one of four types of accommodation: (1) permanent or transit sites owned and managed by a local authority or Registered Social Landlord (RSL); (2) privately owned sites; (3) unauthorised encampments; and (4) settled accommodation, sometimes referred to as 'bricks and mortar' housing.

According to the Scottish Government's Evidence Review of Accommodation Needs[138] there are a total of 29 public Gypsy/Traveller sites across Scotland, providing 397 active pitches. In addition, there are 25 active private sites offering 216 pitches.[139]

The majority of the Gypsy/Traveller population in Scotland reside in settled accommodation. According to the 2011 Scottish Census, 85% of Gypsy/Travellers in Scotland live in some form of conventional housing.[140] Disaggregated data on accommodation type based on ethnic groups is expected with the publication of further analysis from the 2022 Scottish Census.

There is a substantial body of literature on the experiences of Gypsy/Traveller communities living on local authority or RSL sites. There is also a reasonable amount of quantitative evidence available, much of which is provided by the Scottish Housing Regulator.[141] This is because local authorities and RSLs are required to submit annual returns on their performance under the Scottish Social Housing Charter, which includes data such as the average weekly rent charged per pitch.

There is, however, more limited quantitative and qualitative evidence regarding the experiences of Gypsy/Travellers living on privately owned sites. The available quantitative data on the number of sites and pitches originates from a

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[137] Ibid [84].

[138] Scottish Government, *Evidence Review: Accommodation Needs of Gypsy/Travellers in Scotland* (October 2020) <https://www.gov.scot/publications/evidence-review-accommodation-needs-gypsy-travellers-scotland/> accessed 25 August 2025.

[139] It is noted that the data from this evidence review is based on a study undertaken in 2018 which collected data on Gypsy and Traveller Sites in Scotland: see Craigforth Consultancy & Research and Engage Scotland, *Gypsy/Traveller Sites in Scotland: A report for the Scottish Government* (2018).

[140] Scottish Government, *Gypsy/Travellers in Scotland – A Comprehensive Analysis of the 2011 Census* (2015) <www.gov.scot/publications/gypsy-travellers-scotland-comprehensive-analysis-2011-census/> accessed 30 July 2025.

[141] See e.g. Scottish Housing Regulator, 'Tenant & Gypsy/Traveller Participation in Scottish Social Housing: A Thematic Review' (2024).

Scottish Government-commissioned study,[142] which is in turn based on local authority data returns, triangulated with information on sites with planning approval published through e-planning. It remains unclear what these data returns specifically represent, whether they are connected to the licensing of private pitches under the Caravan Sites and Control of Development Act 1960.

With respect to unauthorised pitches, the same study identifies 406 distinct locations across Scotland that have been used for unauthorised Gypsy/Traveller encampments over the past three years. Once again, this data is based on local authority returns. The study acknowledges the limitations of this data, noting that it relies heavily on reports of encampments from council officers, other agencies, and local communities. As such, it is difficult to assess the extent to which this data provides a comprehensive account of unauthorised encampment activity.

While there is evidence available to extrapolate findings about the experiences of Gypsy and Traveller communities living on both private and public sites, whether permanent or temporary, as well as data on the number of pitches (though not necessarily on the number of families residing on those pitches), there is very limited information regarding the experiences of communities living in settled accommodation.

An initial analysis of the evidence highlights the need for more accurate, up-to-date, and published data on the accommodation profile of the Gypsy and Traveller population. While the 2022 Scottish Census provides headline data, it has not yet been fully analysed to present a comprehensive picture of the types of accommodation Gypsy and Traveller communities live in, where these sites are located, and who owns and manages them. The data provided by the Scottish Housing Regulator is helpful but limited to sites owned and managed by local authorities or RSLs. Questions remain about the robustness of data on private sites and unauthorised encampments, as highlighted by the Craigforth and Enable (2018) study, particularly concerning the nature and reliability of local authority ‘data returns’ and what these represent. Furthermore, given that the majority of the Gypsy and Traveller population live in settled accommodation, the lack of evidence on their experiences represents a significant data gap.

It is noteworthy that the literature references the Twice-Yearly Counts of Gypsy/Travellers, which were conducted up until July 2009.[143] It is unclear why this data collection was discontinued.

This situation can be contrasted with the availability of data published by the Department for Levelling Up, Housing and

[142] Craigforth Consultancy & Research and Engage Scotland, *Gypsy/Traveller Sites in Scotland: A Report for the Scottish Government* (2018).

[143] Scottish Government, ‘Gypsies/Travellers in Scotland: The Twice-Yearly Count No. 16’ (July 2009). At that time there were just over 2,000 people living on Local Authority/Registered Social Landlord sites, private sites and unauthorised encampments in Scotland.

Communities in England, which releases twice-yearly statistics on the count of Traveller caravans.[144] Similar data is also published by the Welsh Government.[145] According to the most recent data for England, as of January 2024, there were 26,632 Gypsy and Traveller caravans in England, reflecting an increase of 1,670 (seven percent) compared to January 2023. This growth was largely driven by an increase in the number of caravans on privately-owned sites with permanent planning permission, leading to an overall rise in authorised caravans despite a decline in socially rented caravans. Overall, the January 2024 count revealed that 86 percent of Gypsy and Traveller caravans in England were stationed on authorised land, with 14 percent on unauthorised land.

The potential of this data is clear, offering insights for policy development, planning, and resource allocation to better address the accommodation needs of Gypsy and Traveller communities at both local and national levels. It enables trend analysis, provides detailed information on the number and location of sites, and allows for some exploration of the factors driving changes.

Security of Tenure

One of the key issues that has emerged from our research concerns a lack of clarity regarding security of tenure, and specifically, what rights and protections residents have in relation to failures by public or private landlords. To reiterate, under Article 11 of the ICESCSR, the provision of housing is not considered adequate where occupants do not have a degree of tenured security, which guarantees legal protection against arbitrary interference, most often pursued as forced eviction, and harassment.

In this section, we consider the housing status of Scottish Gypsy/Traveller Communities who live in mobile homes on public sites, which are owned and/or managed by a local authority or Registered Social Landlord (RSL). There are a total of 29 public Gypsy and Traveller sites across Scotland, providing 397 active pitches (Scottish Government, 2020).

Typically, residents in social housing in Scotland provided for and managed by a local authority or RSL will have a Scottish Secure Tenancy under the Housing (Scotland) Act 2001. This legislation provides a statutory framework for establishing minimum rights for tenants, including security of tenure, rights of

144 Department for Levelling Up, Housing & Communities, ‘Official Statistics: Count of Traveller Caravans, January 2024: England’ (June 2024) <https://www.gov.uk/government/statistics/traveller-caravan-count-january-2024/count-of-traveller-caravans-january-2024-england--2> accessed 15 July 2025.

145 Welsh Government/Llywodraeth Cymru, ‘Gypsy and Traveller caravan count: January 2025 (official statistics in development)’ (April 2025) <https://www.gov.wales/gypsy-and-traveller-caravan-count-january-2025-official-statistics-development-html#:~:text=At%20the%20time%20of%20the,were%20on%20privately%20funded%20sites.> accessed 15 July 2025. It is noted that the Welsh Government have paused updates to this series to review the caravan count data collection process over 2025.

succession, and duties in respect of repairs and maintenance.

The legal position of Scottish Gypsy/Traveller Communities living on public sites, however, is far less clear, at least in so far as what legal framework governs agreements between residents and social landlords. There is no shared understanding between local authorities in Scotland on the housing status of residents living on public sites. Based on our review of the literature, including Scottish Government and local authority policy documents, we take the view that this stems from two interrelated issues:

1. A restrictive interpretation of the Housing (Scotland) Act 2001 which excludes Scottish Gypsy/Travellers living in chalet-style accommodation on public sites from the scope of the Scottish Secure Tenancy framework.
2. A widely adopted, but arguably incorrect, position that Scottish Gypsy/Travellers in the above situation fall within the scope of the Mobile Homes Act 1983, and therefore benefit from the security of tenure and protections afforded by the legal framework governing mobile homes/caravans.

An analysis of the literature suggests that residents on public sites typically have some form of written agreement with their local authority landlord. Confusingly, the terms "pitch agreement", "occupancy agreement", and "tenancy agreement" are used interchangeably by the Scottish Government, local authorities, and advice agencies. There does not appear to be any prescribed form for such agreements. In this respect, we note that several responses to the Scottish Government's A New Deal for Tenants Consultation called for standardising pitch agreements and aligning them with the Scottish Secure Tenancy model agreement.[146] This approach was seen as a means of ensuring equality in security and protections for Gypsy and Traveller site residents, similar to the rights afforded to tenants under the Scottish Secure Tenancy model agreement.

We believe that the absence of a standardised approach and consistent understanding of the legal status of Scottish Gypsy/Travellers living on public sites constitutes a significant barrier to access to justice. In particular, the lack of clarity around security of tenure and the rights and protections available to residents undermines their ability to understand and assert their housing rights. This legal uncertainty in turn creates challenges for those seeking to advise or support residents in respect of failures on the part of local authority landlords.

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[146] Scottish Government, *A New Deal for Tenants: Consultation Analysis Report* (August 2022) <https://www.gov.scot/publications/new-deal-tenants-analysis-report-responses-consultation-exercise/documents/> accessed 30 July 2025.

Taking this into account, in the following sections we will consider the following questions:

1. Do tenants living on public Gypsy and Traveller Sites fall within the scope of the Housing (Scotland) Act 2001, and therefore to be regarded as holders of a Scottish Secure Tenancy and the rights and protections afforded under that agreement.
2. Do tenants living on public Gypsy and Traveller Sites fall within the scope of the Mobile Homes Act 1983 and associated caravan/mobile homes legislation?
3. Does any difference in treatment between tenants living on public Gypsy and Traveller Sites and social tenants living in 'bricks and mortar' accommodation constitute unlawful discrimination for the purposes of human rights and/or equality law?

Local Authority Gypsy/Traveller Sites and the Housing (Scotland) Act 2001

<u>The scope of the Housing (Scotland) Act 2001</u>

The 2001 Act defines 'secure tenancy' as a 'house' that is 'let as a separate dwelling' by a 'local authority landlord or registered social landlord'.[147] A house is defined in the Act as follows:

> *'"house" includes—(a) any part of a building, being a part which is occupied or intended to be occupied* ***as a separate dwelling****, and in particular includes a flat, and (b) any yard, garden, outhouses and pertinents belonging to the house or usually enjoyed with it'*[148] *[emphasis added]*

The 2001 Act does not define a 'separate dwelling'. Notwithstanding, the phrase 'let as separate dwelling' is used in various Scottish and English housing enactments and has been the subject of judicial interpretation in cases arising in England and Wales.

In *Uratemp Ventures Ltd v Collins*[149] the House of Lords was concerned with the question of whether a hotel room without cooking facilities could be a "dwelling" for the purposes of Section 1(1) of the Housing Act 1988. By way of background, Section 1(1) provides that a tenancy in England under which a dwelling-house is 'let as a separate dwelling' is an assured tenancy. The respondent in *Uratemp* was an occupant of a hotel room, who had appealed against a decision to allow the hotel owner's appeal against the dismissal of a claim to recover possession of a room occupied by him as a long-term resident. The occupant challenged the Court of Appeal's finding that in the absence of cooking facilities, the room did not constitute a 'dwelling' for the purposes of Section 1, and consequently, that he was not an assured tenant.

[147] Housing (Scotland) Act 2001, s 11(1).
[148] Ibid, s 111
[149] [2001] UKHL 43, [2002] 1 AC 301.

The House of Lords allowed the appeal. In his leading judgment, Lord Millett held that the approach to be followed in determining whether accommodation could be regarded as a dwelling is as follows. First, it is important to identify the subject matter of the tenancy agreement. If the accommodation is one which the tenant has exclusive possession of with no element of sharing, the only question that arises is whether it is the tenant's home. If so, then the accommodation is the tenant's 'dwelling'. The presence or absence of cooking facilities in the part of the premises of which the tenant has exclusive occupation is not relevant.

In his concurring judgment, Lord Bingham stated as follows:

> *'Save that a dwellinghouse may be a house or part of a house (1988 Act, s 45 (1)), no statutory guidance is given on the meaning of this now rather old fashioned expression. But the concept is clear enough:* ***it describes a place where someone dwells, lives or resides****. In deciding in any given case whether the subject matter of a letting falls within that description* ***it is proper to have regard to the object of the legislation****, directed as it is to giving a measure of security to those who make their homes in rented accommodation at the lower end of the housing market….' [emphasis added]*

Therefore, whether accommodation is to be regarded as a separate dwelling will always be a question of fact and degree, focusing on whether the accommodation is the tenant's home, and having regard to the nature of the tenancy agreement and the purpose of the legislation in question.

The question of whether a house is a 'separate dwelling' has also arisen in the context of structures or objects which have been erected on land.

In *Elitestone Ltd v Morris*,[150] the House of Lords held that it is only if an object is part of the land that it can be a dwelling-house for the purposes of Section 1 of the Housing Act 1988. Whether an object has become part of the land depends on the degree and purpose of its annexation to the land. The respondent in the case lived in a bungalow which rested on concrete pillars which were themselves attached to the land. The bungalow itself was neither attached to the pillars nor to the land but was connected to mains services, including water and electricity. The House of Lords held that a house constructed in such a way as to be removable, whether as a unit or in sections, may remain a chattel (a physical object), even though connected to mains services. If, however, it is built in such a way that it is not removable save by demolition, it must have been intended to become part of the land. On the facts, the bungalow was a dwelling-house because it could only be removed by demolition.

In applying the 'degree and purpose' test, Lord Lloyd concluded that:

> *'[…] I do not doubt that when Mr. Morris's bungalow was built, and as*

[150] [1997] UKHL 15, [1997] 1 WLR 687.

> *each of the timber frame walls were placed in position, they all became part of the structure, which was itself part and parcel of the land. The object of bringing the individual bits of wood onto the site seems to be so clear that the absence of any attachment to the soil (save by gravity) becomes an irrelevance.'*[151]

In a more recent case,[152] the English Court of Appeal considered whether a chalet which tenants had constructed on a plot which they leased on a naturist resort had become part of the land, and therefore a 'separate dwelling' for the purposes of Section 1 of the Housing Act 1988. The first instance judge, in dismissing the claimant freehold owner's claim for possession, had held that the tenancy had been one under which a dwelling-house was let as a separate dwelling, and so gave the defendants an assured tenancy. In reaching her decision, and applying the test in *Elitestone*, the first instance judge found that the chalet was immovable save by destruction. She relied on expert evidence which demonstrated that it would have been impossible to move a building of the size of the chalet in either one or two pieces. It could only be moved 'by being taken back to its constituent parts'. The chalet had measured 37 x 40ft and fell outside the dimensions of a mobile home. As to the purpose of the annexation, the first instance judge held that the chalet had been placed on the land to enable its occupiers to better enjoy the amenities offered by the plot and the resort. The Court of Appeal dismissed the claimant's appeal and held that, among other things, the judge had been correct to conclude on the evidence that the chalet, when constructed, had been part of the land.

<u>Discussion</u>

In summary, the Housing (Scotland) Act 2001 does not expressly exclude mobile homes, caravans, or chalets from the Scottish Secure Tenancy scheme. Rather, the question of whether or not residents living on local authority Gypsy and Traveller Sites are holders of a Scottish Secure Tenancy, and therefore fall within the scope of the Housing (Scotland) Act 2001, will largely turn on whether their accommodation are to be regarded as 'separate dwellings' within the meaning of section 111 of the Act.

The aforementioned case law, while arising from issues under English housing enactments, might offer some guidance on the correct interpretation to be applied. In particular, the following factors, drawing in part from the principles set out in the aforementioned cases, are likely to be of relevance.

1. Do residents occupy their caravan/mobile home/chalet as their home for at least a large majority of the year, other than periods when they are travelling (*Uratemp* at para 58).
2. Do the terms of any written agreement grant the person named in the contract and members of their household the

[151] Ibid [693].
[152] *Spielplatz Ltd v Pearson* [2015] EWCA Civ 804.

exclusive right to live in the chalet (*Uratemp* at para 58).

3. In determining whether a caravan/mobile home/chalets forms part of the land, rather than moveable objects, regard will be had to the degree of the annexation, and in this respect, whether it is possible to move the chalets without their destruction (*Elitestone* at 693).
4. Relatedly, regard must be had to the purpose of the annexation of the chalet to the land (*Elitestone* at 693).
5. The object of the Housing (Scotland) Act 2001, which, among other things, provides for security of tenure, key rights and protections for tenants who rent from a local authority landlord or RSL.

While mobile homes and similar structures are not excluded from the scope of the Scottish Secure Tenancy regime, the absence of any express reference to such accommodation, or of formal guidance addressing the legal status of Scottish Gypsy/Traveller residents on local authority sites, is likely to result in inconsistent interpretation across local authorities. In practice, approaches may vary depending on the characteristics of the accommodation on each site.

This inconsistency poses a significant issue. It risks creating disparities in legal protection based not on principle, but on differing local authority interpretations of what constitutes a 'separate dwelling' under the Act.

Even where written agreements reflect the Scottish Government's Model Tenancy Agreement for Scottish Secure Tenancies, we consider that clarity as to the statutory regime underpinning those agreements is key. Such clarity would allow for a consistent understanding of security of tenure, the rights and protections available, therefore placing tenants on local authority Gypsy and Traveller sites on an equal footing with social tenants living in 'bricks and mortar' accommodation. It would also make clear that the rights afforded cannot be varied at the discretion of the local authority landlord. As discussed further below, it may be arguable that current differential treatment in respect of security of tenure constitutes unlawful discrimination.

Taking a step back, we see no reason, as a matter of principle, why tenants in these circumstances should not be regarded as Scottish Secure Tenants. The object of the Housing (Scotland) Act 2001, and the purpose of the erection of chalets or other accommodation on local authority sites (to meet the housing needs of Gypsy and Traveller Communities) support this interpretation. Moreover, the Scottish Housing Regulator already monitors and regulates these sites. This approach would, we believe, provide welcome clarity and security for residents regarding their housing status.

Local Authority Gypsy/Traveller Sites and Mobile Home/Caravan Legislation

As a preliminary point, the legislative framework governing mobile homes and caravans in Scotland is complex. The principal statutes are:

- Caravan Sites and Control of Development Act 1960
- Caravan Sites Act 1968
- Mobile Homes Act 1983

While enacted by the UK Parliament, many provisions within these pieces of legislation apply across both Scotland and England and Wales. However, a number of amendments relevant only to Scotland have been made by the Scottish Parliament, most notably through the Housing (Scotland) Act 2006. In addition, provisions contained in the recently enacted Housing (Scotland) Act 2025, once brought into force, will introduce further amendments.

The resulting scheme is fragmented and requires detailed cross-referencing between provisions. Some apply only in Scotland, while others retain a UK-wide scope. This complexity has made it challenging, even for legal academics involved in this research, to determine with certainty whether Scottish Gypsy/Traveller tenants living on public sites fall within the statutory scheme at all, and if so, which parts apply and what rights and protections they are afforded as a result.

What is a 'mobile home' or 'caravan'?

Before considering the varying degrees of rights and protections afforded by the mobile homes/caravan enactments, it is necessary to consider whether the accommodation on public Gypsy and Traveller sites are mobile homes/caravans so as to bring residents within the scope of the legislative scheme.

Perhaps confusingly, the legislative scheme uses the terms 'mobile homes' and 'caravan' interchangeably. However, the two terms have the same meaning, which can be found in Part 1 of the Caravan Sites and Control and Development Act 1960, where a 'caravan' is defined as:

> *'any structure designed or adapted for human habitation which is capable of being moved by road from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer), and any motor vehicle so designed or adapted.'*[153]

A large two-unit caravan can fall within the definition of a "caravan" if it is a) composed of no more than two sections; b) can be transported by road when fully assembled; and c) is less than 20 meters in length, 6.8 meters in width and 3.05 meters in height.[154]

Case law from England and Wales gives some guidance on how this definition might be applied to chalet-style accommodation, which typically has multiple rooms.

In *Brightlingsea Haven Ltd v Morris* ,[155] it was held that a lodge was a caravan because it was composed of two sections and could be transported when assembled. Additional elements such as a veranda were not necessarily sections. The measurements

[153] Caravan Sites and Control of Development Act 1960 [as amended by s 13 of Caravan Sites Act 1968], s 29(1). Section 5 of the Mobile Home Act 1983 states that a "mobile home" has the same meaning as "caravan" in the 1960 Act.
[154] Caravan Sites Act 1968 (Amendment of Definition of Caravan) Order 2019, SSI 2019/295, s 13.
[155] *Brightlingsea Haven Ltd v Morris* [2008] EWHC 1928 (QB).

were taken from wall to wall and did not include the roof and the eaves. Conversely, in *Carter v Secretary of State for the Environment,*[156] it was held that a park home which consisted of four prefabricated sections and could only be moved after being dismantled was not a caravan.

In a recent Scottish case, the Court of Session in *Glasgow City Council v. Stringfellow*[157] considered the applicability of mobile homes/caravan legislation to a lease permitting the defenders, who were travelling showpeople, to station residential caravans on a local authority-owned site. The case arose from an application by the local authority for a declaration that the first defender, the leaseholder, had no right to occupy the site. The local authority argued that the first defender's chalet did not meet the statutory definition of a caravan because it was not capable of being moved, noting that it was manufactured in two pieces and bolted together on site. In finding that the defender's chalet did fall within the statutory definition of a caravan, the court observed that 'whilst many mobile homes like chalets of this nature may not be easily moved, they are clearly capable of being so moved'.[158]

The key determining factor in all these cases appears to be mobility; in other words, the structure is capable of being transported by a trailer or one single lorry. Whether it would be lawful to transport such a large unit on the road is not relevant.[159] Therefore, whether or not a particular home on a public site would meet the definition of a caravan/mobile home, particularly the criteria relating to 'mobility' and the size and dimension restriction is a question of fact and degree.

In the course of our research, we have reviewed publicly available planning documentation relating to redevelopment works at the Double Dykes Site by Perth and Kinross Council, which involve the replacement of 20 chalet-style homes[160] The planning application was approved on 14 May 2024. We note that the local authority successfully bid for £3,906,000 from the Scottish Government's Gypsy/Traveller Accommodation Fund to help fund the redevelopment.[161]

We note that the replacement chalets, as described in approved planning documents, measure 13.7m x 7.6m and have an elevation of 5.5m from the ground to the highest point of the roof. On the face of it, these measurements are larger than the dimension restrictions set out in mobile home/caravan legislation (see above). We

[156] *Carter v Secretary of State for the Environment* [1994] 1 WLR 1212 (CA).
[157] [2026] CSOH 19
[158] Ibid at [34].
[159] Ibid 1215.
[160] Perth and Kinross Council, 'Planning application 24/00467/FLL: Erection of 20 replacement chalets, formation of parking areas, landscaping, and associated works' (2025).
[161] Perth and Kinross Council, 'Important Milestone for Double Dykes Improvement Project as First New Chalets Arrive' (2024) <https://www.pkc.gov.uk/article/24495/Important-milestone-for-Double-Dykes-improvement-project-as-first-new-chalets-arrive> accessed16 July 2025.

also note that this is inconsistent with the Interim Site Design Guide for Gypsy/Traveller Sites in Scotland provided by Local Authorities and Registered Social Landlords (Scottish Government, 2021, p.19), which states that residential mobile homes purchased by local authorities should not be larger than the maximum size of a caravan permitted by mobile homes/caravan legislation.[162]

While the size dimensions of a chalet may seem, on the face of it, to be a technical matter, from a legal perspective they are significant. This is because tenants in chalets which exceed the maximum size dimensions for caravan/mobile home fall outside the legislative scheme, and therefore will not benefit from the security of tenure, rights and protections afforded under any of the varying enactments referred to above, and discussed further below.

As discussed earlier, there is also no clear consensus as to whether residents living on public sites provided by local authorities or RSLs fall within the scope of the Housing (Scotland) Act 2001 and the Scottish Secure Tenancy regime. As a result, it remains unclear which statutory framework, if any, governs the agreements entered into between tenants and local authority landlords.

In all likelihood, residents who fall outside the scope of both mobile home/caravan legislation and the Housing (Scotland) Act 2001 would have to rely on the terms of their agreements. This lack of statutory footing raises concerns around legal certainty, and consistency of protection between groups of Gypsy and Traveller Communities and those living in settled accommodation.

<u>Rights and protections provided by the Caravan Sites Act 1968</u>

Tenants living in caravan/mobile homes or chalet-style accommodation which fall within the minimum size requirements will fall within the scope of the Caravan Sites Act 1968,[163] which provides minimum protection from eviction and harassment for all mobile home/caravan occupiers.

Tenants can avail themselves of these protections regardless of whether the site is provided by a local authority or private landlord. Importantly, both tenants who rent a pitch and station their own mobile home/caravan on the pitch (commonly referred to as 'owner-occupiers') and tenants who rent a mobile home/caravan are covered by the 1968 Act. This is clear from the language of Section 1 of the Act:

> *'This Part of this Act applies in relation to any licence or contract […] under which a person is **entitled to station a caravan** on a protected site […] and occupy it as his residence, or to **occupy as his residence a caravan stationed on any such site** […]' [emphasis added]*

Section 1 distinguishes between two categories of mobile home/caravan occupiers:

[162] Caravan Sites Act 1968, s 13.
[163] The 1968 Act was extended to Scotland by the Mobile Homes Act 1975, s 8.

(i) those entitled to station a caravan on a protected site, and (ii) those who occupy a caravan already stationed on a protected site. In other words, the legislation covers both owner-occupiers with pitch agreements and renters of caravans already present on site. For the latter group, the Act refers to agreements between the occupier and site owner as 'residential contracts'.

A "protected site" is defined in the 1968 Act as land in respect of which a site licence is required by virtue of the Caravan Sites and Control of Development Act 1960.[164] While caravan sites owned by local authorities are exempt from the requirement to obtain a site licence they are nevertheless regarded as protected sites by virtue of the 1968 Act.

Based on our reading of the legislation, we believe a large number of Scottish Gypsy/Treaveller tenants living on mobile home/caravan sites in Scotland, whether provided for by a public or private landlord, will derive security of tenure from the Caravan Sites Act 1968.

However, and importantly, the rights and protection afforded by the 1968 Act is limited to protection from eviction and harassment. Among other things, the occupier or the site owner must give at least four weeks' notice to terminate any agreement.[165] However, the Act does not specify what form the notice must be given. In addition, the Act makes it a criminal offence to evict any mobile home occupier without a court order; and to subject a occupier to harassment, defined as conduct which interferes with the 'peace or comfort' of the occupier, or by 'persistently' withdrawing or withholding services or facilities.[166] Section 4 of the Act allows for a court to suspend the enforcement of an eviction order for periods of up to 12 months at a time. [167]

Of course, these are minimum protections, and any agreement between a tenant and a landlord can provide more generous rights and protections. There is, however, no legal obligation, at least under the Caravan Sites Act 1968, to do so.

<u>Rights and protections provided by the Mobile Homes Act 1983</u>

Partly as a response to the limited protections in the Caravan Sites Act 1968, the UK Parliament passed the Mobile Homes Act 1983 (MHA 1983), which among other things grants mobile home/caravan occupiers a right to a written statement and sets out what this should contain.

Section 2 of the MHA 1983 further provides that the terms set out in Part 1 of Schedule 1 of the Act are to be implied into all written agreements and will take effect regardless of any express terms in the written statement. These implied terms establish minimum rights that occupiers can expect, including:

- Agreements may only be terminated on a date set by the court, which must be

[164] Caravan Sites Act 1968 [as amended by the Housing (Scotland) Act 2006], s 1(2).
[165] Caravan Sites Act 1968, s 13
[166] Ibid s 3.
[167] Caravan Sites Act 1968 [as amended by the Housing (Scotland) Act 2006 s 171], s 4.

satisfied that specific conditions are met.[168]

- Right to undisturbed possession of the mobile home during the continuance of the agreement.[169]
- The pitch fee can only be reviewed with 28 days' written notice.[170]
- Obligations on the owner to repair and maintain the site and to engage in consultation with occupiers.[171]

These are important minimum rights that cannot be waived, although express terms in a written agreement may improve on them.

Finally, under Section 5 of the MHA 1983, the Sheriff Court has jurisdiction over any disputes arising under its provisions.[172] In theory, this allows failures by a local authority or RSL, such as failing to keep the site in good repair (including water and electricity supply, other services, access ways, and key consultation rights), to be challenged in the Sheriff Court. However, it is notable that there have only been two reported cases in Scotland, both of which concerned Traveller Showpeople and involved issues of eviction and possession.[173]

Does the Mobile Homes Act 1983 apply to tenants living on Gypsy and Traveller Sites provided by local authority landlords?

In the course of our research, we have observed a general belief held by public authorities that the MHA 1983, and the reasonably generous terms provided for in the implied terms in Schedule 1 of the Act, apply to tenants living on Gypsy and Traveller Sites provided by local authorities and RSLs.

For example, in their Evidence Review of the Accommodation Needs of Gypsy and Traveller Communities, the Scottish Government state that the majority of the implied terms apply to agreements entered into by site residents on sites provided by local authority landlords (Scottish Government, 2020, p.12). Similarly, in the Equality Impact Assessment accompanying the Housing (Scotland) Act 2025, which makes amendments to the basis of uprating for pitch fees under the MHA 1983,[174] the Scottish Government state that: 'Public sector Gypsy/Traveller sites are also bound by the controls on pitch fee increases in the Mobile Homes Act 1983'.[175] At the local level, we have seen evidence to suggest that at least some local authorities hold the view that the

168 Mobile Homes Act 1983, Sch 1, Pt 1, Paras 5 and 6.
169 Ibid para 11.
170 Ibid paras 16, 17, 18 and 19.
171 Ibid para 25.
172 In future, the First-tier Tribunal for Scotland will have jurisdiction to hear disputes brought under the MHA 1983, Housing (Scotland) Act 2025, s 60
173 *Glasgow City Council v Stringfellow* [2026] CSOH 19 and *West Lothian DC v Morrison* 1987 SLT 361.
174 s 61
175 Scottish Government, *Mobile homes - pitch fee up-rating: equality impact assessment* (published 21 June 2024) <https://www.gov.scot/publications/mobile-homes-pitch-fee-up-rating-equality-impact-assessment-results/> accessed 9 March 2026

MHA 1983 governs agreements between tenants and local authority landlords.

In our view, whether or not the MHA 1983 does apply in the circumstances will depend on the nature of the agreement between the tenant and the local authority, and specifically, whether the agreement is to rent a pitch and station a caravan on the pitch.

In this regard, the scope and application of the MHA 1983 differs from the Caravan Sites Act 1968, discussed above. Section 1(1) of the MHA 1983 states that the Act applies to any agreement under which a person is entitled:

> *'(a)to station a mobile home on land forming part of a protected site; and (b)to occupy the mobile home as the person's only or main residence.'*

While the language here is similar to that used in the Caravan Sites Act 1968, it is notable that the definition does not include occupiers who 'occupy as his residence a caravan stationed on any such site'. The scope of application is therefore narrower, in so far as it only concerns owners of a caravan who are permitted to station their caravan on a site by virtue of a pitch rental agreement (i.e. owner-occupiers).

To illustrate, in the recent case of *Glasgow City Council v Stringfellow* the Court of Session held that the protections set out in the MHA 1983 applied to the lease agreement between the local authority and the first defender. The court observed that it was 'plain' that the lease was for 'a let of ground to be used as a site for the parking of caravans'.[176]

While the MHA 1983 Act does not use the term 'owner-occupier' when discussing the scope of application, it is clear from Parliamentary debates leading to the passage of the legislation that this was the intended scope of the Act. For example, during the second reading of the Mobile Homes Bill (as it was known then), Donald Dewar MP discussed the effect of the Bill in Scotland:

> *'The Bill is important for Scotland. The Government are to be congratulated on placing in the Library a document from the housing research unit, which refers to a detailed survey on mobile homes carried out in Scotland last summer. […] The 3,810 mobile homes are on 140 licensed sites. A total of 58 per cent of mobile homes are owner-occupied. Those people will fall within the ambit of the Bill.*
>
> *A further 792 caravans—21 per cent—are rented. Of the remaining 810–21 percent—the tenure is unknown. The survey had to work with a fairly broad brush. The housing research unit's best estimate of the number of caravans in Scotland that will be covered by the Bill is 2,800. That is considerably lower than I thought was likely when I first turned my attention to this subject. People in this category do not at present have the statutory safeguards with which we have*

[176] *Glasgow City Council v Stringfellow* [2026] CSOH 19 at [32]

> *become very familiar under the Rent Acts and the Tenants' Rights, Etc. (Scotland) Act 1980. […] It is important to consider ways of strengthening the protection for owner-occupiers of mobile homes….'*[177]

Further complexity arises from the fact that the current formulation of section 1 of the MHA 1983, as it applies in Scotland, was amended by the Housing (Scotland) Act 2006,[178] which is an enactment of the Scottish Parliament.

The need for amendment of the MHA 1983 is described in the Scottish Government's policy memorandum accompanying the Housing (Scotland) Act 2006.[179] In brief, a report from the Park Homes Working Party led to the enactment of legislation in England and Wales which amended the mobile homes legislation, and inadvertently affected the way that the legislation operated in Scotland. However, while changes were made to the MHA 1983 as it operates and applies to Scotland, the definition of who the act applies to remains unchanged.

In written evidence submitted to the Communities Committee of the Scottish Parliament, Shelter Scotland highlighted the disparity between protection between those who rent mobile homes, and those who own a mobile home and let a stance:

> *'The [Housing (Scotland) Bill], like the most recent legislation in 1983, relates narrowly to those who own a mobile home and let a stance, and not to those who live in a mobile home that is rented. […] Security of tenure for households to rent mobile homes falls far short of that for those in bricks and mortar homes, and is covered by legislation dating back to 1975. That, coupled with the low level of knowledge among residents of their legal rights, puts households in a very weak bargaining position. For this reason, a policy focus is required which would finally provide legal protection for the thousands of households in Scotland renting a mobile home as their primary residence.'*[180]

Applying principles of statutory interpretation, it appears to be the case that the Mobile Homes Act 1983 is concerned with providing additional statutory protections to those occupiers who own their mobile home and rent a pitch from an owner of a protected site. It follows that renters of mobile homes are excluded from the definition, and therefore

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[177] Mobile Homes Bill Lords HC Bill (2024-25) [92]

[178] Housing Scotland Act, s 167.

[179] At p 28, <https://webarchive.nrscotland.gov.uk/20240327012552/https://archive2021.parliament.scot/parliamentarybusiness/Bills/25333.aspx> accessed 9 March 2026

[180] Communities Committee, 7th Report, 2005 (Session 2), Stage 1 Report on Housing (Scotland) Bill (SP Paper 387) <https://webarchive.nrscotland.gov.uk/20170811234121/http://archive.scottish.parliament.uk//business/committees/communities/reports-05/cor05-07-vol1-01.htm> accessed 9 March 2026

important statutory protections relating to, among other things, the provision of a written agreement, pitch fee uplifting, and repair and maintenance of sites.

We understand that tenants of Gypsy and Traveller Sites provided by Perth and Kinross Council and Fife Council reside in local authority-owned chalet accommodation, and pay rent and council tax to the local authority.[181] If this is the position, then we believe that these tenants would fall outside the scope of the MHA 1983, and the rights and protections set out in the implied terms in Schedule 1 of the Act.

It may be the case that tenants living on other sites provided by different local authority landlords may fall within the scope of the MHA 1983 (because, for example, they own their mobile homes/caravans and rent a pitch from the local authority). Notwithstanding, we are concerned that the statements made by the Scottish Government to the effect that *all* tenants living on public sites fall within the scope of the MHA 1983 is incorrect as a matter of fact and law (in so far as renters of mobile homes on public sites are concerned). We believe this has in some way contributed to a misconception among local authorities and advisors that tenants in these circumstances have more rights and protections under mobile homes/caravan legislation than they actually do.

Does any difference in treatment constitute unlawful discrimination?

As we have set out above, Scottish Gypsy Traveller tenants who rent their homes from a local authority are excluded from the scope of the Mobile Homes Act 1983, which applies only to owner-occupiers with pitch agreements. If residents are also excluded from the statutory scheme for Scottish Secure Tenancies under the Housing (Scotland) Act 2001, then the result is that tenants in these circumstances, many of whom have longstanding ties to the land, must rely on the terms of their tenancy agreements with the local authority. There is no legal obligation for these agreements to reflect the rights and protections contained in Part 2 of the Housing (Scotland) Act 2001 or the implied terms set out in Schedule 1 of the Mobile Homes Act 1983.

In this respect, we believe that Scottish Gypsy Traveller tenants who rent their homes from a local authority are in a more vulnerable position as regards security of tenure compared with ‘social tenants’ who are in settled accommodation provided for by a local authority or RSL, who generally hold Scottish Secure Tenancies and fall within the scope of the Housing (Scotland) Act 2001.

In this context, serious questions arise about the compatibility of this position with Article 8 (right to private and family life), either read alone or in conjunction with Article 14 (prohibition of discrimination) of the European

[181] Perth and Kinross Council, ‘Environmental health - Gypsy / Traveller community’ (November 2025) <https://www.pkc.gov.uk/article/23231/Environmental-health-Gypsy-Traveller-community> accessed 16 July 2025.

Convention on Human Rights (ECHR). It should be noted that Article 14 is not a free-standing right but must be engaged in conjunction with another Convention right.

A recent case from the High Court of England and Wales concerning the interpretation of Mobile Homes Act 1983 demonstrates how the Human Rights Act and Article 8 could be engaged in these circumstances.

In *Dean, Haggart and Harding v Mitchell and Secretary of State for Levelling-Up, Housing and Communities,* [182] the High Court was concerned with the question of whether a person residing in a mobile home, who had commenced occupation at a time before planning permission had been granted for the use of the land as a caravan site, was entitled to enjoy the security of tenure provisions in the MHA 1983. Thus, the case turned on the interpretation of Section 1 of the MHA 1983.

The case arose from a possession claim in which the claimants (a private caravan site owner) sought to evict Mr Mitchell from living in a caravan on their land. They successfully obtained a declaration from the Upper Tribunal that Mr Mitchell could not benefit from the security of tenure provided by the MHA 1983 because, in accordance with established case law and as a matter of statutory interpretation, caravans on a site that did not have planning permission at the inception of the occupation agreement fall outside the scope of the MHA 1983. The claimants then commenced possession proceedings against Mr Mitchell and he counterclaimed, seeking a declaration that: the MHA 1983 should be interpreted to apply to a licence to occupy land when the land on which a mobile home is stationed was not a protected site when the agreement for occupation was made but became a protected site at a later date of the occupation; or, in the alternative, that Section 1 of the MHA 1983 should be declared incompatible with his rights under Article 8 ECHR.

The High Court found that the severity of the effects on a person in Mr Mitchell's position of not receiving the benefit of the implied terms, must outweigh and therefore render disproportionate any implicit support which the terms of the MHA might provide for an objective. The court therefore made a declaration of incompatibility under Section 4 of the Human Rights Act 1998 that the terms of the Mobile Homes Act 1983, in excluding from the scope of the Act persons whose occupation agreements pre-dated the grant of planning permission, but where planning permission had in fact since been obtained, breached Article 8 ECHR.[183]

While the case concerns the exclusion of a particular group of mobile home occupiers from the Mobile Homes Act 1983 (i.e. those who had commenced occupation at a time before planning permission had been

[182] [2023] EWHC 1479 (KB), [2023] HLR 44.
[183] See also Ministry of Justice, *Responding to Human Rights Judgments: Report to the Joint Committee on Human Rights on the Government's Response to Human Rights Judgments 2022–2023* (November 2023) CP 958.

granted for the use of the land for as a caravan site), it is possible to draw a comparison with the position of renters of mobile homes, who are also excluded from benefiting from the implied terms in the MHA 1983.

It is important too to note that the court in *Dean, Haggart and Harding* referred to the European Court of Human Rights decision in *Connors*.[184] Among other things, that case is authority for the point that where the issue in question concerns procedural protections for a particular category of marginalised people (Gypsy Travellers), the margin of appreciation (leeway or discretion) afforded to Member States is narrow. This can be contrasted with the Court's earlier decision in *Chapman* which also concerned Gypsy Travellers, but the issue in question there was matters of general planning or economic policy, where the Court held that Member States have a wide margin of appreciation.[185]

The question of whether or not the design of mobile home/caravan legislation breaches the Article 8 ECHR rights of Gypsy and Traveller renters of mobile homes is one that falls outside the scope of this report. We nevertheless draw attention to the possibility that Article 8 ECHR is engaged in this situation, and any exclusion would need to be justified by the State.

We are concerned that the exclusion of mobile home/caravan renters from the implied terms in the MHA 1983 may place Gypsy and Traveller groups at a significant disadvantage as compared with tenants in settled accommodation. In this regard, it is possible that Article 14 ECHR is also engaged, when read in conjunction with Article 8 ECHR.

Article 14 ECHR expressly prohibits discrimination based on "race," among other protected characteristics, and domestic courts have considered several cases brought by Gypsy and Traveller groups relying on Article 14 ECHR.[186] The challenge in Article 14 cases, however, lies not in establishing the applicability of Article 14 *per se*, but in demonstrating that the impugned measure (in this case, the exclusion from statutory housing protections) is discriminatory on racial grounds. As is well established, a measure that adversely affects a particular group is not necessarily unlawful; differential impact must be shown to be unjustified or disproportionate.

The 2024 High Court decision in *R (Smith) v Secretary of State for the Home Department* provides a illustration of how discrimination can arise in this context.[187] In that case, the extension of the "no-return" period for trespass offences under the Criminal Justice and Public Order Act 1994 was found to breach Articles 8 and 14

[184] *Connors* (n 133) [100] – [103].
[185] *Chapman v UK* (2001) 33 EHRR 18 [82].
[186] See among others *Clarke v Secretary of State for Transport, Local Government and the Regions and Tunbridge Wells BC* [2001] EWHC 800 (Admin); and *R (Wilson) v First Secretary of State and Wychavon DC* [2007] EWCA Civ 52.
[187] [2024] EWHC 1137 (Admin).

because it had a disproportionate impact on Romani Gypsy and Irish Traveller communities, who rely heavily on transit caravan pitches. The court accepted that the policy created a heightened burden for these groups, and that their position as a distinct racial and social group had to be factored into the proportionality analysis.

Applied here, the key question is whether the statutory exclusion of mobile home renters from key tenancy protections imposes a disproportionate burden on Gypsy and Traveller communities.

In this sense, the claim is not one of direct racial discrimination, since the statutory exclusions are neutral on their face, but rather of indirect discrimination, where a neutral measure has a disparate impact on a protected group. The legal test under Article 14 does not require discriminatory intent; it is enough that the measure places a particular group at a comparative disadvantage without adequate justification.

In this regard, demographic or qualitative evidence may demonstrate that Gypsy and Traveller communities are disproportionately affected by any exclusion, in which case the burden shifts to the state to justify that difference in treatment. For example, in *DH v Czech Republic*, a case concerning a practice of placing Roma children in 'special schools', the European Court of Human Rights stated that when assessing the impact of a measure or practice on an individual or group, "statistics which appear on critical examination to be reliable and significant" can be used as evidence to establish that a measure or practice is discriminatory.[188]

It is important to note that Article 14 ECHR also encompasses discrimination on grounds of "other status", and in this sense the list of possible grounds of discrimination under Article 14 ECHR is non-exhaustive (as compared with the nine protected characteristics under the Equality Act 2010).[189] Therefore, for the present purposes, it may be argued that the relevant status is that of being a mobile home renter on a local authority site. This would allow for a broader comparison with other social housing tenants, who enjoy stronger rights under the Scottish Secure Tenancy regime. If mobile home renters are materially disadvantaged, in terms of security of tenure, enforceability of housing standards, or participation in consultation processes, then the question becomes whether that disadvantage is objectively and reasonably justified. The more significant the disadvantage, and the more vulnerable the affected group, the more demanding the court will be in scrutinising the justifications offered by the State.

For completeness, we draw attention again to the Court of Session's recent judgment in *Glasgow City Council v Stringfellow*.[190] In that case, the first defender

[188] (2008) 47 EHRR 3, para 188.
[189] For example, in *Clift v The United Kingdom* [2010] EHRR 1106, the European Court of Human Rights held that a person's status as a particular class of prisoner could be a ground of discrimination under Article 14 ECHR.
[190] [2026] CSOH 19.

had sought to argue that the lease agreement with the local authority was one to which the Housing (Scotland) Act 2001 applied; put simply, it was a Scottish Secure Tenancy. The court rejected this argument, observing that the lease was of land to station caravans, and not of a house within the meaning of section 11 of the 2001 Act.[191]

The court also rejected the first defender's alternative argument, based on Article 8 ECHR read in conjunction with Article 14 ECHR, that the exclusion of leases of land on which caravans are situated from Scottish Secure Tenancy regime amounts to 'a difference of treatment between those local authority tenants who reside in houses and those who, by reason of their family and cultural origins, wish to live in travelling showpeople communities',[192] for which there could be no objective or reasonable justification. The court observed that any difference in treatment was not attributable to the defender's status as a member of an ethnic group, but rather because he did not lease a house. He was therefore in a materially different position to holders of Scottish Secure Tenancies who rent a house from a local authority landlord.[193] In reaching this conclusion, the court had regard to the fact that the MHA 1983 applied to the lease agreement, observing that:

> *'When Parliament enacted the [Housing (Scotland) Act 2001] it must have done so in the knowledge that the [Mobile Homes Act 1983] existed (along with the 1960 and 1968 Acts) and that those with agreements to station mobile homes on protected sites already had the protections provided by the mobile homes statutory scheme.'*[194]

As we have set out at length in this Section, Scottish Gypsy Travellers who rent chalets from a local authority landlord are not entitled to the extensive protections provided by the MHA 1983. In these circumstances, and having regard to the human rights principles outlined above, we take the view that the *Stringfellow* case supports an interpretation of the Housing (Scotland) Act 2001 that recognises Scottish Gypsy/Traveller tenants of local authority-owned chalets as holders of a Scottish Secure Tenancy, with the associated rights and protections that this security of tenure entails.

The position of Gypsy/Traveller Communities living on private sites

This section has primarily focused on the security of tenure of Scottish Gypsy/Travellers living on Sites provided by local authority landlords. However, much of the analysis above relating to the applicability of mobile homes/caravan legislation is also relevant to Scottish Gypsy/Traveller tenants on private sites.

[191] Ibid, at [64]
[192] Ibid, at [70]
[193] Ibid, at [79] and [80]
[194] Ibid, at [78]

For example, tenants who lease a pitch on a private site and station their own mobile home/caravan on the pitch will benefit from the implied terms in the Mobile Homes Act 1983.

Scottish Gypsy/Traveller tenants who rent a mobile home/caravan from a provider on a private site will not, and will have to rely on the terms of their agreement with the provider (if they have one), and will only benefit from the minimum rights and protections set out in the Caravan Sites Act 1968. Tenants in this situation are at a significantly weaker position as regards security of tenure and statutory rights and protections as compared with holders of a private residential tenancy in 'settled accommodation', who among other things, benefit from security of tenure, and enforceable rights in relation to repair, maintenance, rent increase, and wrongful termination.[195]

While the purpose of Article 8 ECHR is primarily to protect individuals against arbitrary interference by public authorities, it is important to emphasise that Article 8 ECHR can also be engaged in disputes between private parties (for example, in the *Dean, Haggart and Harding* case discussed above). In this sense, Article 8 ECHR also encompasses a positive obligation on the State to protect the Article 8 rights of individuals, for example, through legislative measures.[196] It therefore could be argued that the Article 8 ECHR rights of private Gypsy and Traveller mobile home/caravan renters are engaged by weak statutory protections for their housing rights.

Security of Tenure: Conclusions and Recommendations

The diagram set out in the appendix to this report illustrates the complexity that is involved in determining the housing status of Scottish Gypsy/Traveller communities living on mobile home/caravan sites in Scotland, security of tenure is a fundamental element of the right to adequate housing, as reflected in Article 11 ICESCR. However, our analysis demonstrates that some groups of Gypsy and Traveller communities living on both public and private sites fall outside the scope of the statutory frameworks governing security of tenure, namely, mobile homes and caravan legislation, and the Housing (Scotland) Act 2001. As a result, these groups are treated differently from social and private tenants living in settled accommodation.

We consider there to be an arguable case that this differential treatment constitutes unlawful discrimination within the meaning of Article 8, read in conjunction with Article 14 of the ECHR. It also appears inconsistent with Article 2 (non-discrimination) of UNCRC and Article 27, which affirms the right of every child to an adequate standard of living.

According to the 2011 Census, 14 per cent of Gypsy/Traveller households in Scotland lived in a 'caravan or other mobile or temporary structure', compared to less than

[195] Housing (Scotland) Act 2006; Private Housing (Tenancies) (Scotland) Act 2016 etc.
[196] *Moreno Gómez v Spain* (2005) 41 EHRR 40, para 55.

one per cent of all households. While the data is not disaggregated, it is likely that Gypsy and Traveller communities are disproportionately impacted by the issues identified above.

For those living on local authority or RSL sites, we consider there is a compelling case to bring them within the scope of the Housing (Scotland) Act 2001. Even if the Mobile Homes Act 1983 applies, the rights it provides are weaker than those afforded to tenants in settled housing under a Scottish Secure Tenancy. There is, therefore, a strong argument for aligning the rights of both groups. In particular, certain rights implied into agreements under the 1983 Act, such as rights to assign agreements or gift homes to family members, do not apply to renters on local authority sites. This gap in protection is particularly significant given the cultural importance of such rights within Gypsy and Traveller communities.

Recommendation 3: The Scottish Government should consult on amending the Housing (Scotland) Act 2001 to explicitly address the situation of Gypsy and Traveller tenants living on local authority or RSL sites.

Moreover, the 1983 Act does not include any implied terms relating to access to essential services such as education or healthcare. The rural and often isolated location of many sites, and the resulting barriers to accessing key services, have been consistently highlighted in consultation responses and policy evidence as a significant concern.

For those living on private sites, we consider there is a strong case for aligning their rights with those of private renters. While under Section 2B of the Mobile Homes Act 1983, the Scottish Government has the power to amend the implied terms in written agreements, as it has done in relation to pitch fee uprating through the Housing (Scotland) Bill, it is unclear whether it is within the legislative competence of the Scottish Parliament to amend the scope of the 1983 Act. It may be the case that this can only be achieved through an act of the UK Parliament.

Recommendation 4: The Scottish Government should liaise with the UK Government on whether there is a need to amend the Mobile Homes Act 1983 to ensure that private renters on Gypsy and Traveller sites enjoy the same rights and protections available to private renters in settled accommodation.

Standards of Accommodation and Remedies

This section discusses the systemic issues concerning the quality and adequacy of accommodation on Gypsy and Traveller sites in Scotland, particularly those managed by local authorities. Drawing on recent regulatory findings, the analysis raises questions about the Scottish Government and public authorities' compliance with their obligations under both the European Convention on

Human Rights (ECHR) and the UN Convention on the Rights of the Child (UNCRC) and underscores the need for stronger accountability mechanisms.

The Scottish Housing Regulator and the status of the Scottish Housing Charter

Recent investigations by the Scottish Housing Regulator into three local authority-managed sites - Tarvit Mill (Fife Council), and Bobbin Mill and Double Dykes (Perth and Kinross Council) - have revealed serious and persistent failings relating to standards of accommodation.[197] These investigations, prompted by complaints from residents, identified widespread breaches of the Scottish Social Housing Charter, including Outcomes 1 (Equalities) and 16 (Gypsy/Travellers),[198] particularly with respect to consultation and engagement with residents regarding ongoing redevelopment works at the Double Dykes and Tarvit Mill Sites. This is addressed above under the heading of 'Racial Discrimination'.

Broadly, the findings made by the Regulator concern issues raised by residents with respect to quality of accommodation; repairs and maintenance responses; site safety; and engagement with residents. Specific findings are made with regards to the Scottish Government's Minimum Site Standards, identifying issues relating to the quality of chalets (heating, damp and mould), site infrastructure (roads safety, drainage and sewage), and communication with residents.[199]

We are concerned that these investigations only took place following sustained advocacy from residents and Making Rights Real. This reactive model to monitoring places the burden of accountability on communities, who already face structural and systemic disadvantage, and have to navigate a complex regulatory process in circumstances where their tenure status and rights are unclear (as discussed in the section above).

Article 8 ECHR in domestic housing cases

A failure by a public authority, including a local authority, to provide a person with suitable accommodation may engage Article 8 ECHR (right to private and family life). Under Section 6 of the Human Rights Act 1998, it is unlawful for a public authority to act in a way that is incompatible with 'Convention Rights', meaning those rights contained in the ECHR which have been incorporated into domestic law.

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[197] Making Rights Real, 'Serious Failings by Fife Council at Gypsy Traveller Site' (12 November 2024) <https://makingrightsreal.org.uk/serious-failings-by-fife-council-at-gypsy-traveller-site/> accessed 30 July 2025; Making Rights Real, 'Regulator Finds "Serious Failings" at Perth and Kinross Council Gypsy Traveller Sites' (7 April 2025) <https://makingrightsreal.org.uk/regulator-finds-serious-failings-at-perth-and-kinross-council-gypsy-traveller-sites/> accessed 30 July 2025.

[198] Scottish Housing Regulator, 'Fife Council - Engagement plan from 1 April 2025 to 31 March 2026' (31 March 2025) <https://www.housingregulator.gov.scot/landlord-performance/landlords/fife-council/engagement-plan-from-1-april-2025-to-31-march-2026/> accessed 30 July 2025; Scottish Housing Regulator, 'Perth and Kinross Council - Engagement plan from 21 March 2025 to 31 March 2026' (21 March 2025) <https://www.housingregulator.gov.scot/landlord-performance/landlords/perth-kinross-council/engagement-plan-from-21-march-2025-to-31-march-2026/> accessed 30 July 2025.

[199] Ibid.

The right to private life under Article 8 covers one important dimension of human dignity, namely 'the physical and psychological integrity of a person', that is relevant to housing cases where substandard accommodation has an impact on the physical and mental health of a resident.[200] Article 8 also gives rise to positive obligations, requiring the State to take action to ensure that private or family life is respected, particularly in cases involving vulnerable individuals. [201]

While domestic courts have acknowledged that Article 8 ECHR can give rise to positive obligations to provide suitable accommodation in some circumstances, the general position, at least with regards to private life, is that a failure to provide welfare support (e.g. housing) is unlikely to breach Article 8 ECHR unless the particular circumstances are sufficiently severe to engage Article 3 ECHR (prohibition of inhuman and degrading treatment).[202] Article 8, however, may be more readily engaged where a family unit is involved, particularly where the welfare of children is at stake and ongoing family life is disrupted. [203]

A review of the domestic housing case law where Article 8 has featured in arguments also suggests that a degree of culpability on the part of the public authority is also required to be satisfied before a breach of Article 8 is established.[204]

We consider that the conditions described in the Regulator's findings in relation to the three local authority-sites, including heating failure, persistent damp, rodent infestation, sewage and drainage issues, and road safety hazards, are capable of engaging residents' right to private life under Article 8 ECHR, having regard to the impact that conditions have had on their physical and psychological integrity. We also consider that the right to family life, also under Article 8 ECHR could be engaged, in so far as the conditions on these sites have impacted the ability of families to live together with dignity.

While it is not the purpose of this report to assess whether any breach of Article 8 has occurred, we note from the Regulator's findings, particularly with respect to the Double Dykes and Bobbin Mill Sites, that the Local Authority has been aware of the issues for some time and has failed to take meaningful steps to resolve them. Having regard to the breaches of the Scottish Social Housing Charter, we consider that this may support the element of 'culpability' on the part of the local authority to establish a breach of Article 8 ECHR.

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[200] *Pretty v United Kingdom* (2002) 35 EHRR 1, para 61.
[201] *Marzari v Italy* (1999) 28 EHRR CD 175.
[202] *Anufrijeva v Southwark LBC* [2003] EWCA Civ 1406 [12], [43].
[203] See e.g. *R (McDonagh) v Enfield LBC* [2018] EWHC 1287 (Admin).
[204] See e.g. *R (Idolo) v Bromley LBC* [2020] EWHC 860 (Admin).

The rights of Gypsy and Traveller children

While the findings of the Regulator with respect to the standard of accommodation and general site-wide issues apply equally to children who live on the site,[205] it is recognised that the issues are likely to impact children differently.

By way of example, the issues relating to damp and mould and lack of appropriate heating will have a negative impact on the health and well-being of children who are still developing, and impact other rights such as the right to education. Similarly, as a vulnerable group, the issue of road and overall site safety and generally lack of identified areas or play parks for children are likely to harm the wellbeing of children.

While several of the rights contained in the UNCRC mirror the ECHR, the UNCRC affords stronger protection for economic, social, and cultural rights.

Section 6 of the UNCRC (Incorporation)(Scotland) Act 2024 makes it unlawful for a public authority to act, or fail to act, in such a way which is incompatible with UNCRC requirements. Importantly, Section 6 only applies in relation to public authority exercising ‘relevant functions’. Broadly, these are either common law or statutory functions which are devolved.

In the circumstances, we consider that the Local Authority’s failure to take adequate steps to remedy the identified issues with regards to the standard of chalet, mould and dampness, and the site standards are capable of engaging, and indeed breaching, Article 24 (right to health) and Article 27 (adequate standard of living) of the UNCRC, read in conjunction with the overarching rights in relation to the best interest of the child (Article 3) and right to survival and development (Article 6).

Accountability and Remedies

In light of the systemic issues identified in relation to site conditions on local authority-managed sites, the work of the Scottish Housing Regulator, through investigations at individual sites and thematic inquiries focusing on the experiences of Gypsy and Traveller Communities who live on sites provided by social landlords, [206] is to be welcomed. We also understand that the Regulator has exercised their regulatory powers under Section 55 of the Housing (Scotland) Act 2010 (performance improvement plans) and in this regard, are engaging with Perth and Kinross Council and Fife Council on how they will remedy the identified issues. We believe, however, that the Regulator has not exercised any

[205] Making Rights Real, ‘Our Human Rights Matter (Reports 1 & 2)’ (2023–2024) <https://makingrightsreal.org.uk/wp-content/uploads/2023/11/FINAL-DD-Report-Aug23.pdf> accessed 30 July 2025.

[206] Scottish Housing Regulator, ‘Tenant & Gypsy/Traveller Participation in Scottish Social Housing: A Thematic Review’ (2024) <https://www.housingregulator.gov.scot/landlord-performance/national-reports/thematic-work/tenant-gypsytraveller-participation-in-scottish-social-housing-a-thematic-review/> accessed 30 July 2025.

enforcement powers available to them under Section 56 of the 2010 Act.

The underlying legislative framework governing the Scottish Housing Regulator's powers does not grant any powers to provide individual redress to residents following any findings of the breach of the Scottish Housing Charter, either through compensation for loss, damage, or distress; or through an apology. This can be contrasted with the powers of the Housing Ombudsman Service in England under the Housing Act 1996.

It is important to note that, while the Scottish Housing Charter and the Minimum Site Standards set out meaningful expectations for the treatment of Gypsy and Traveller residents on local authority-managed sites, these frameworks are not justiciable. In other words, unlike rights and protections under, for example, the Housing (Scotland) Act 2001, they do not give rise to direct legal remedies. This absence of enforceability creates an accountability gap which is particularly problematic where serious and prolonged failings persist.

In theory, it is possible for individual residents to raise a private law claim for damages in respect of patrimonial loss (i.e. financial or monetary loss), and non-patrimonial loss (injury to feeling or mental distress, otherwise known as solatium), flowing from a breach of written agreement with landlord. With regards to the latter, in *Colston v Marshall*,[207] which concerned an action of damages for breach of contract brought by caravan owners against the owner of a caravan park, the pursuers argued that the site owner had failed to provide a "residential caravan site of the highest amenity". On appeal, the Sheriff Principal held that it would be competent to award damages in name of solatium if it found that a standard of amenity falling short of that agreed caused upset, disappointment, hurt feelings, inconvenience, annoyance or frustration.

It is also possible that issues such as dampness and mould, rodent infestation, and drainage and sewage, could give rise to a claim under the law of nuisance in Scotland. In this regard, Section 92 of the Environmental Protection Act 1990 grants any person aggrieved by a 'statutory nuisance' a right to apply to the Sheriff Court for an order to abate the nuisance. A 'statutory nuisance' includes "any premises in such a state as to be prejudicial to health or a nuisance".[208] There are relatively few cases interpreting the 1990 Act in Scotland. In *Robb v Dundee City Council*,[209] the Inner House of Court of Session held that the presence of dampness in a local authority tenant's flat did constitute a 'nuisance' for the purposes of the 1990 Act. However, the court held that the local authority landlord was not 'the person responsible' under the statutory test.

While these private law remedies exist in theory, whether they are available in practice is a different question. We are mindful of the barriers communities face in

[207] 1993 SLT (Sh Ct) 40.
[208] Environmental Protection Act 1990, s 82.
[209] 2002 SC 301 (IH).

accessing legal advice and representation in relation to long-standing housing issues. In our view, these barriers are partly attributable to a lack of clarity around housing status and legal protections, and to the rural location of many sites.

We have already identified that issues affecting accommodation standards may engage rights under Article 8 ECHR and the UNCRC. In our view, this reinforces the positive obligations on public authorities—not only local authorities, but also regulatory bodies like the Scottish Housing Regulator—to proactively address living conditions on Gypsy and Traveller sites and to provide effective mechanisms of redress. These obligations apply to those living on both public *and* private sites.[210]

Given the repeated failures identified across multiple local authority-managed sites, we consider there is a strong case for more routine and proactive inspection and monitoring by the Scottish Housing Regulator.

We also note that while inspection and monitoring systems exist for local authority-run Gypsy and Traveller sites, the regulatory picture for private sites is less clear. Private site operators must hold a licence under Section 1 of the Caravan Sites and Control of Development Act 1960. Local authorities may attach such conditions to these licences as they consider 'necessary or desirable'. Under Section 5(6), the Scottish Government has issued Model Standards for Residential Mobile Home Site Licences, which cover matters such as amenity, infrastructure, and the general maintenance of facilities. The licence holder must ensure the site and all facilities are maintained 'in a good order and condition, and function as intended'.

In circumstances where residents rent private chalets, legal protections around repair and maintenance will generally be governed by the terms of their agreement, if such an agreement exists. Otherwise, they may need to rely on private law remedies such as breach of contract or nuisance, as discussed above.

The regulatory framework for licensing private sites was updated through Part 5 of the Housing (Scotland) Act 2014, which inserted a new Part 1A into the 1960 Act. This legislative scheme gives local authorities broad enforcement powers where site conditions are not met, including the ability to issue improvement notices or revoke site licences. It also introduced several criminal offences for breaches of licence conditions.

While the framework appears robust, arguably more so than the system for public sites, there is currently no data available on how local authorities have exercised their powers of enforcement under Part 1A of the 1960 Act. This reflects a broader lack of robust qualitative and quantitative data on the experiences of Gypsy and Traveller communities living on private sites.

[210] In relation to private sites, see e.g. *Dean v Mitchell* [2023] EWHC 1479 (KB).

Recommendation 5: The Scottish Government should undertake or commission research to assess how local authorities have used their enforcement powers under Part 1A of the Caravan Sites and Control of Development Act 1960 and to examine conditions on private Gypsy and Traveller sites across Scotland more generally.

Unauthorised encampments

As highlighted above, there is currently no robust data on the extent of unauthorised encampment activity in Scotland. We use the term ‘unauthorised encampments’ to refer to sites for which no planning permission or site license has been obtained from the local authority. In particular, there is no available research or publicly accessible data on the frequency with which local authorities or private landowners make use of court processes to remove Gypsy/Traveller families from land.

This remains an area of limited regulation and/or oversight. We note the Scottish Government has published guidance for local authorities on managing unauthorised encampments.[211]

Where encampments are located on public land, the guidance states that any decision on enforcement action should be preceded by an initial assessment of the needs of those living on the site, including health, housing, education, and welfare needs.[212] Where encampments are located on private land, the guidance recommends an initial visit to the site by the Gypsy/Traveller Liaison Officer (GTLO) or another designated officer of the local authority. Following this visit, the local authority is expected to, among other things: (a) identify the support needs of those on site and notify relevant agencies; and (b) provide appropriate advice to the landowner, including outlining legal options and raising awareness of Gypsy/Traveller culture.[213]

For completeness, we note that the Scottish Government guidance refers to the existence of guidance published by the Crown Office and Procurator Fiscal Service (COPFS) which outlines a presumption against prosecuting Gypsy/Travellers for trespass as defined in section 3 of the Trespass (Scotland) Act 1865, where the sole issue in relation to an unauthorised site is unlawful encampment by Gypsy/Travellers. We have not been able to obtain a copy of COPFS’ guidance.

We are concerned that the Scottish Government’s guidance does not reflect current practice, particularly the need to make an assessment of site residents’ welfare needs prior to raising legal proceedings to recover possession of land. This is particularly the case where encampments are

[211] Scottish Government, *Guidance for Local Authorities on Managing Unauthorised Camping by Gypsy/Travellers in Scotland* (2017).
[212] Ibid 9.
[213] Ibid 10.

on private land, where there is no obligation on a landowner to notify local authority officers prior to commencing legal action against Scottish Gypsy/Travellers.

It is important to emphasise that, even where eviction from unauthorised land is pursued, human rights protections are engaged, including Article 8 ECHR (right to private and family life), and where children are affected, the UNCRC. In particular, established principles and case-law require decision makers, including courts, to consider the best interests of the child (reflected in Article 3 UNCRC) when making decisions that affect them, including their welfare needs.[214]

A failure to undertake an assessment of the welfare needs of vulnerable people, including children, prior to raising legal proceedings to recover possession may be grounds to defend eviction proceedings. For example, in *Waverley BC v Gray*,[215] the High Court of England and Wales considered an application by the council for an injunction in circumstances where a number of Gypsies and Irish Travellers had set up a caravan site on land without planning permission. The High Court refused to grant the injunction largely because of the failure of the claimant council to take into account the defendants' serious welfare needs, which became known to it during the course of the injunction proceedings. In reaching its conclusion, the court observed that:

> *'[…] there has been a failure to consider the healthcare and educational needs of the children on the site and to factor these into an updated assessment seeking to test the proportionality of continuing to pursue injunctive relief. The words 'best interests of the children' do not feature in any of the witness statements (other than the first witness statement) or any other of the claimants' documents. Their interests do not appear to have been in contemplation of the claimants as proceedings progressed.'*

We note the absence of any clear procedural rules that must be followed when proceedings are raised to recover possession of land from Scottish Gypsy/Traveller communities. In the course of our research, we identified two articles published by prominent Scottish law firms which set out what appear to be differing processes for removing Scottish Gypsy/Travellers from private land.

In one article, private landowners are advised to instruct Sheriff Officers to serve site residents with a 24 hour removal notice prior to initiating proceedings for recovery.[216] The next step, according to the author, is to seek a removal order from the Sheriff Court, whereupon the 'court will give the travellers the opportunity to defend the action. Normally that's 48 hours'. The author states that 'courts

[214] See e.g. Children (Scotland) Act 1995, s 18.
[215] [2023] EWHC 2161 (KB).
[216] Matt Farrell, 'Removing Travellers Who Set Up Camp on Your Land Without Permission' (Brodies LLP, 2019) <https://brodies.com/insights/alternative-dispute-resolution/removing-travellers-who-set-up-camp-on-your-land-without-permission/> accessed 30 July 2025.

are generally sympathetic to landowners in these cases'. Another article describes the process as 'reassuringly quick', which can be completed in 3-4 days.[217] The author concludes by stating that the process is 'a fairly well trodden path and, unlike many court processes, it can be undertaken quickly and painlessly'.

These articles display, at best, an ignorance of the nomadic traditions and practices of Gypsy and Traveller Communities; and at worst, an attitude that borders on racial prejudice toward a community already facing entrenched discrimination. We consider that the tone of these publications reinforces damaging stereotypes and fails to acknowledge the rights and dignity of Gypsy and Traveller Communities. We note that neither article makes any reference to the Scottish Government's guidance on unauthorised encampments, including the recommendation that local authority officers visit the site and assess residents' welfare needs prior to any enforcement action being taken.

In any case, the lack of appropriate and culturally adequate residential and transit accommodation in the UK is well documented in the literature, which is often at the root of the stigma and discrimination. Indeed, transit and stopping places have been recognised as significant in allowing Gypsy/Travellers to maintain the emotional affiliations of travelling, such as movement motivated by attendance at weddings, births, funerals and religious festivals (Shubin & Swanson, 2010).

We consider that the practice of short notice periods afforded to residents to defend eviction actions, combined with the limited opportunity to seek legal advice, apply for legal aid, or raise relevant human rights arguments, poses a significant barrier to access to justice.

Recommendation 6: The Civil Justice Council should review the relevant procedural rules governing eviction from land, particularly in cases involving Gypsy/Traveller communities.

Recommendation 7: The Scottish Government should commission research to better understand the prevalence and nature of such eviction proceedings, and where necessary, consult on the introduction of legislation to provide for a longer minimum notice period before legal action can be taken.

[217] Michael Ramsay, 'Evicting Travelling People from Land' (Morton Fraser Macroberts, 2015) <https://www.mfmac.com/insights/planning-and-environment/evicting-travelling-people-from-land/> accessed 30 July 2025.

3.4 Health

Context

Our review of the literature relating to the health needs of SGTs and healthcare provision in Scotland revealed many gaps. These were further confirmed by the findings from existing research which identify a range of barriers to accessing healthcare services experienced by Gypsy Traveller and Roma communities within and beyond Scotland, including difficulties registering with GPs and dentists, often due to problems related to proof of address, and a lack of culturally appropriate healthcare services which can have negative knock-on effects on the health and wellbeing of community members. There is a particular need for good quality and culturally sensitive support services in specific areas such as menopause and mental health. Potential solutions to overcoming current barriers are varied and will depend on the particular needs of specific communities but might include the use of portable GP registration cards[218] and mobile or outreach health care services.

This section considers the barriers to healthcare for SGTs within the context of the right to heath provided by international law and its implementation at domestic level through the laws and policies provided by the current Scottish framework. As this analysis reveals, although the framework rightly recognises and endorses the importance of a human rights-based approach to health, there are still some significant gaps in practice that continue to have negative impacts on the health outcomes of SGTs. Furthermore, as with all of the rights considered in this report, real transformation requires commitment on the part of policymakers to a holistic approach to the right to health for SGTs that incorporates and integrates their rights to non-discrimination, housing and education and which enables the realisation and enforcement of such rights in practice.

The Right to Health in International Law

The right to health is enshrined in international human rights law. Article 12 ICESCR recognises the right of everyone to enjoy the highest attainable standard of physical and mental health and Article 11 of the European Social Charter (ESC) recognises the right to protection of health, while Article 13 ESC enshrines the right to social and medical assistance.[219] Under

[218] GP Registration cards (known as blue cards) are already available to individuals in Scotland for use in registering for and accessing GP practices. The cards are intended to overcome difficulties experienced by those who do not have a fixed address and/or standard forms of ID who should still be able to register and/or receive treatment at a GP practice in Scotland in compliance with the right to health. For information about the Access to Healthcare – GP Registration cards see: Health Literacy Place, ‘Access to Healthcare’ <https://www.healthliteracyplace.org.uk/toolkit/access-to-healthcare/> accessed 30 July 2025.

[219] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 6; International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195 (ICERD) art 5(e)(iv); International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered

Article 2(2) ICESCR, the right to health must be ensured without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The human right to health is not a right to be healthy in and of itself, but rather to enjoy the highest attainable level of mental and physical health. At its heart is 'the right to control one's health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation'.[220]

Although the UK ratified ICESCR in 1976 and so is bound by its provisions, it has not yet incorporated the Covenant into UK domestic law which means that the right to health is not enforceable in domestic courts. The Scottish Government has well-developed plans to incorporate ICESCR, along with ICERD, CEDAW and the UNCRPD (which also contain health-related provisions) into Scots law, although there is no draft legislation in place at the time of writing.[221]

At the regional level, the UK is a member of the Council of Europe and has ratified the European Convention on Human Rights (ECHR) which deals primarily with civil and political rights, and which is incorporated into domestic law by the Human Rights Act 1998. The UK has signed but not yet ratified the revised version of the European Social Charter (ESC), which provides a right to protection of health.[222]

Although the ECHR does not contain any specific provision for the right to health, in interpreting the Convention, the European Court of Human Rights (ECtHR) has dealt with a wide range of issues related to health.[223] For example, the ECtHR has ruled that the lack or the denial of access to healthcare may constitute a breach of the right to life[224] and the prohibition of torture,

into force 3 January 1976) 993 UNTS 3 (ICESCR) art 12; Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW) arts 11(1)(f), 12, 14(2)(b); Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC) art 24; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85 (CAT) arts 3, 14; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (adopted 18 December 1990, entered into force 1 July 2003) 2220 UNTS 3 (CMW) arts 28, 43(e), 45(c); Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3 (CRPD) art 25.

[220] UN Committee on Economic, Social and Cultural Rights, 'General Comment 14: The Right to the Highest Attainable Standard of Health, 22nd session' (2000) UN Doc E/C.12/2000/4 para 12.

[221] See Scottish Government, 'Human Rights Policy' <https://www.gov.scot/policies/human-rights/> accessed 8 December 2025.

[222] See Revised European Social Charter (adopted 3 May 1996, entered into force 1 July 1999) ETS No 163 art 11. The UK has not signed the additional protocol providing for a collective complaints procedure to the ESC. See Council of Europe, 'European Social Charter: United Kingdom' <https://www.coe.int/en/web/european-social-charter/united-kingdom> accessed 30 July 2025.

[223] See Council of Europe, 'Human Rights and Health' <https://www.coe.int/en/web/impact-convention-human-rights/human-rights-and-health> accessed 30 July 2025.

[224] ECHR art 2.

inhuman or degrading treatment[225] in a range of cases.[226] The relevant provisions of the ECHR are incorporated into UK law by the Human Rights Act 1998[227] and can thus be relied upon before UK courts.

The Right to Health in Scotland: A Devolved Policy Matter

Health is a devolved function and so it falls to the Scottish Parliament, acting within the limits of devolution, to make laws that provide for the right to health. Although some existing laws predate the establishment of the Scottish Parliament in 1997, the current legal framework provides the basis for healthcare provision which should align with State obligations under international law.

The National Health Service (Scotland) Act 1978 establishes a framework for the organisation and management of health services in Scotland. It sets the standards for healthcare provision including the administrative responsibilities of health boards. Public Health Scotland (PHS), the national body for improving and protecting health and wellbeing in Scotland, was created under the Act[228] which places a duty on PHS to promote the improvement of the physical and mental health of the people of Scotland and engage in activities likely to assist in discharging that duty.

The Public Health (Scotland) Act 2008 provides for the protection of public health in Scotland, including from infectious diseases and contamination or other hazards which are a danger to human health. The Act places duties on health boards, local authorities, registered medical practitioners including GPs, directors of diagnostic laboratories, and occupiers or owners of premises in relation to the control of infectious diseases. The Act also addresses statutory nuisances, which are prejudicial to health or constitute a nuisance to the public,[229] including the state of premises, fumes or gases emitted from premises; water covering land or land covered with water. As these examples demonstrate, the right to health is closely related to the right to housing. The Act enables the Scottish Ministers to implement obligations which arise under the International Health Regulations 2005.[230]

The Mental Health (Care and Treatment) (Scotland) Act 2003 is the

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[225] Ibid art 3.
[226] See *Osman v UK* (1998) 29 EHRR 245.
[227] ECHR arts 2, 3, 5, 8.
[228] National Health Service (Scotland) Act 1978, s 2.
[229] See Scottish Government, *Nuisance Provisions of the Public Health Etc (Scotland) Act 2008: Guidance* (2009) <https://www.gov.scot/publications/guidance-accompany-statutory-nuisance-provisions-public-health-etc-scotland-act/pages/5/> accessed 30 July 2025.
[230] A legally binding international instrument adopted by the World Health Assembly to “prevent, protect against, control and provide a public health response to the international spread of disease in ways that are commensurate with and restricted to public health risks, and which avoid unnecessary interference with international trade and traffic” see UK Government, ‘International Health Regulations 2005: UK National Focal Point Communications Protocol’ <https://www.gov.uk/government/publications/international-health-regulations-2005-uk-national-focal-point-communications-protocol/international-health-regulations-2005-uk-national-focal-point-communications-protocol> accessed 30 July 2025.

primary legislation in Scotland governing the care, treatment, and detention of individuals with mental health conditions. The Act covers all forms of mental illness, personality disorder, and learning disability. It provides arrangements for the detention, care and treatment of people with a mental illness or related condition, including acquired brain injury. The Act sets out when specified powers can be used, any restrictions that apply and the arrangements for ensuring safeguarding of those affected.

The Patient Rights (Scotland) Act 2011 aims to improve peoples' experiences of using health services, and to enable individuals to become more involved in their health and decisions about their health care and details what patients in Scotland have a right to expect of their health services. It sets out a set of healthcare principles covering all NHS services that must be upheld by all of those who provide such services including private contractors. The principles provide for: patient focus; quality care and treatment; patient participation; communication; patient feedback; the best use of resources. The Act's implementation is through the NHS Scotland Quality Strategy,[231] launched in 2010, which sets out the ambition for a person-centred NHS, with mutually beneficial partnerships between patients, their families and those delivering health care services. Under the Act Scottish Ministers must publish a Charter of Patient Rights and Responsibilities[232] which sets out the existing rights and responsibilities of people who use NHS services and receive NHS care in Scotland.

The United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 incorporates the UN Convention on the Rights of the Child (CRC) into Scots law, subject to current devolution restrictions. Article 24 of the CRC provides a right for children to enjoy 'the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health'. The CRC builds on this provision to include a range of protections relating to children's health.[233]

The AAAQ Framework

In discharging its duty to provide the right to health more generally as a devolved policy matter, the Scottish Government has tasked Public Health Scotland to provide healthcare services and systems in line with the AAAQ Framework as developed and applied by the CESCR which provides that such services should be available, accessible, acceptable

[231] Scottish Government, *The Healthcare Quality Strategy for NHS Scotland* (2010).
[232] Scottish Government, *Charter of Patient Rights and Responsibilities (Revised June 2022)* <https://www.gov.scot/publications/charter-patient-rights-responsibilities-revised-june-2022/> accessed 30 July 2025.
[233] Scottish Government, 'UNCRC (Incorporation) (Scotland) Act 2024, Part 2: Statutory Guidance' (22 February 2024) <https://www.gov.scot/publications/statutory-guidance-part-2-uncrc-incorporation-scotland-act-2024/pages/3/> accessed 30 July 2025.

and of high quality.[234] The Framework provides a comprehensive way to assess and ensure that health services are delivered effectively and equitably.

The requirement of **availability** means that there must be enough healthcare facilities, goods, and services to provide for the needs of users. What constitutes a sufficient quantity may vary depending on factors including the economic status of the state, the underlying determinants of health, and the number of trained professionals.

For healthcare service to be **accessible** they should be provided on a non-discriminatory basis. All related facilities, goods and services must be accessible in both physical and economic terms, and the means of access must be safe and appropriate for users. Care needs to be given to ensure accessibility for those in situations of social vulnerability, including ethnic minorities, older people, young people and children, and persons with disabilities and chronic or terminal illnesses. Access to information is paramount as it is only if individuals are able to understand information concerning their health and healthcare that they will be able to participate in related decision-making.

For services to be **acceptable**, healthcare providers must be respectful of culture, particularly where it relates to ethnic minorities such as SGT communities. The ways in which facilities are provided, and how medical practitioners work must be gender-sensitive and aligned with the specific requirements of different stages in the life cycle. Confidentiality relating to medical information must be maintained at all times.

In ensuring the **quality** of goods, facilities and services related to the right to health, appropriate hospital and care equipment, adequate sanitation, and adequate medical provisions must be scientifically and ethically approved and provided in line with the standards required by the World Health Organisation.

In addition to the AAAQ Framework, the delivery of healthcare in Scotland is guided by the PANEL principles[235] which underpin the human rights-based approach to service provision by focusing on Participation, Accountability, Non-discrimination, Empowerment, and Legality.[236] All healthcare providers must act in compliance with the

[234] See the AAAQ framework which aims to implement the framework developed by the CESCR here: Public Health Scotland, ‘The AAAQ Framework: Overview – The Right to Health – Equity and Justice – Social and Economic Impacts on Health – Population Health’ (2024) <https://publichealthscotland.scot/population-health/social-and-economic-impacts-on-health/equity-and-justice/the-right-to-health/overview/> accessed 30 July 2025; UN ESC General Comment 14 (n 205) para 12.

[235] ENNHRI (n 79).

[236] Public Health Scotland, ‘A Human Rights-Based Approach to Health’ (last updated 2024) <https://publichealthscotland.scot/population-health/social-and-economic-impacts-on-health/equity-and-justice/the-right-to-health/a-human-rights-based-approach/#:~:text=Taking%20a%20human%20rights%2Dbased,with%20human%20rights%20legal%20standards> accessed 8 December 2025.

Equality Act 2010,[237] (see Section 3.2 above) and the formulation and implementation of policy and practice must be in accordance with the Public Sector Equality Duty,[238] and the Fairer Scotland Duty[239] which places a duty on named public bodies to actively consider how they can reduce inequalities of outcome caused by socio-economic disadvantage when making strategic decisions.

The right to health is inclusive of all public service provision, not just the health service in Scotland. This holistic approach recognises that, to be fully enjoyed, the right must be recognised and engaged in all related services and activities, including housing and education, that have an impact on health outcomes and enable us to lead healthy lives. In international law these broader factors are referred to as the underlying determinants of health[240] and they include access to safe and portable water, adequate sanitation, sufficient food and nutrition, suitable housing, healthy occupational and environmental conditions, and access to health-related education and information. The CESCR has emphasised that the right to health extends beyond healthcare services to encompass these underlying conditions.

Scottish health policy often refers to what are termed the 'social determinants of health' which include inequalities in income, wealth and power, the availability of work, education, and good quality housing.[241] These social determinants and their impacts on health should always be considered with a view to overcoming them in the provision of healthcare services for individuals, groups and communities.

The right to health brings with it certain entitlements relating to what people can expect from the State in the realisation of their right to health. Such entitlements should enable access to a system of health protection providing equality of opportunity for everyone to enjoy the highest attainable level of health.[242] Inherent in such a system will be the right to prevention, treatment and control of diseases; access to essential medicines; maternal, child and reproductive health; equal and timely access to basic health services; the provision of health-related education and information; participation of the population in

[237] The provision of services and public functions are specifically covered by Part 3.
[238] EqA 2010, s 149 and the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012, SSI 2012/162.
[239] The socio-economic duty provided by EqA 2010, s 1 implemented in Scotland by the Equality Act 2010 (Commencement No. 13) (Scotland) Order 2017, SSI 2017/403 (C. 30) which came into force on 1 April 2018.
[240] UN Committee on Economic, Social and Cultural Rights, 'General Comment No. 14 (2000), The Right to the Highest Attainable Standard of Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights)' (11 August 2000) UN Doc E/C.12/2000/4 <https://digitallibrary.un.org/record/425041?ln=en&v=pdf> accessed 8 December 2025.
[241] Public Health Scotland, 'Scotland's Public Health Challenges' (2024) <https://publichealthscotland.scot/about-us/what-we-do-and-how-we-work/scotland-s-public-health-challenges/#:~:text=Inequalities%20in%20income%2C%20wealth%20and,poorest%20areas%20has%20actually%20decreased> accessed 8 December 2025.
[242] UN ESC General Comment 14 (n 205) para 8.

health-related decision-making at the national and community levels.[243]

As well as obligating States to undertake certain positive actions, the right to health incorporates freedoms from state and other restrictions[244] including the right to control one's health and body, for example, sexual and reproductive rights, and to be free from interference, for example, freedom from torture and non-consensual medical treatment and experimentation. These freedoms are important in the exercise of everyone's right to health, but they have particular relevance for disabled people.[245]

Realisation of the Right to Health for SGTs

Recognition of the right to health as an aspiration or goal does not mean that it is currently accessible and enforceable for all. Many populations, communities and individuals in Scotland experience barriers to accessing and using healthcare services which result in inequalities in outcomes compared to the wider public.[246] Scottish Gypsy Travellers are one such group with lived experience testimonies and measurable health outcomes evidencing high levels of inequality resulting in profound impacts on the physical and mental health and wellbeing of individuals.[247] In August 2024, the UN Committee on the Elimination of Racial Discrimination raised concerns 'about the adverse impact of structural inequalities in social determinants of health and in access to affordable and quality health care of persons belonging to ethnic minorities' in the UK, including in respect of Gypsies, Roma and Travellers.[248]

It is beyond the scope of this report to assess and evaluate how effective each specific domestic Act and/or provision is in delivering the right to health for SGTs. However, there is a range of available evidence, some of it produced and published by the Scottish Government itself, which provides useful insights into SGT communities' access to and use of healthcare services. This evidence highlights gaps in

[243] UN ESC general comment 14 (n 205).
[244] World Health Organisation, 'Human Rights' (2023) <https://www.who.int/news-room/fact-sheets/detail/human-rights-and-health#:~:text=Health%20and%20human%20rights,health%20services%20without%20any%20discrimination> accessed 8 December 2025.
[245] See e.g. the right to live independently enshrined in Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3 (UNCRPD) art 19; World Health Organisation, 'Global Report on Health Equity for Persons with Disabilities' (2022) <https://www.who.int/publications/i/item/9789240063600> accessed 8 December 2025.
[246] David Finch, Heather Wilson and Jo Bibby, 'Leave No One Behind: The State of Health and Health Inequalities in Scotland' (2023) <https://www.health.org.uk/reports-and-analysis/reports/leave-no-one-behind> accessed 8 December 2025.
[247] See Scottish Government (n 141) which reported (at 20) that, compared to the population as a whole, SGTs were more likely to report a long-term health problem or disability and were more likely to report bad or very bad general health. <https://www.gov.scot/publications/gypsy-travellers-scotland-comprehensive-analysis-2011-census/documents/> accessed 8 December 2025.
[248] UN Committee on the Elimination of Racial Discrimination, 'Concluding Observations: United Kingdom' (2024) UN Doc CERD/C/GBR/CO/24-26, para 43.

current provision which link directly to the health inequalities currently experienced by SGTs in comparison with the wider Scottish population. In the next section some of that evidence will be considered.

Evidence from Beyond Scotland

In 2018 researchers at the University of Dundee carried out a systematic literature review of 99 studies conducted between 2000 and 2015 which looked at Gypsy, Roma and Travellers' access to and engagement with healthcare services[249] across 32 countries, including the UK. This research found that barriers to health service usage were related to the organisation of health systems, discrimination, culture and language, health literacy, service-user attributes and economic barriers. The key conclusion was that Gypsy, Roma and Traveller populations across Europe struggle to exercise their right to healthcare on account of multiple barriers and because of other determinants of disadvantage such as low literacy levels and experiences of discrimination. Although it uncovered some promising strategies to overcome barriers, the evidence connecting such interventions to improvements in health outcomes was weak and the authors called for rigorous evaluations of interventions to improve access to and engagement with health services for Gypsy, Roma and Traveller people.

A review of health inequalities experienced by Gypsy, Roma and Traveller communities across the UK conducted in 2022[250] found that 'Romany Gypsy, Roma and Irish Traveller communities are known to face some of the starkest inequalities in healthcare access and outcomes amongst the UK population, including when compared with other minority ethnic groups'.[251] The review noted the vast differences between the health outcomes of the members of these communities and the wider population including: a life expectancy for Romany and Traveller people of between 10 and 15 years less than the general population;[252] Romany and Traveller people experience significantly higher prevalence of long-term illness, health problems or disabilities, which limit their daily activities or work;[253] and that the health of a Romany or Traveller person in their 60s is comparable to an average White British person in their 80s.[254]

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249 Alison McFadden and others, 'Gypsy, Roma and Traveller Access to and Engagement with Health Services: A Systematic Review' (2018) 28 European Journal of Public Health 74.

250 Friends, Families and Travellers, 'Briefing: Health inequalities experienced by Gypsy, Roma and Traveller communities' (2022) <https://www.gypsy-traveller.org/wp-content/uploads/2022/11/Briefing_Health-inequalities-experienced-by-Gypsies-and-Travellers-in-England.pdf> accessed 8 December 2025.

251 Ibid 2.

252 Equality and Human Rights Commission, 'Gypsies and Travellers: Simple Solutions for Living Together' (2009) <https://www.equalityhumanrights.com/sites/default/files/2021/gypsies_and_travellers_0.pdf> accessed 30 July 2025.

253 Ibid.

254 'Study Reveals Huge Ethnic Minority Health Inequalities' *University of Manchester News* (Manchester, 29 January 2021) <https://www.manchester.ac.uk/about/news/study-reveals-huge-ethnic-minority-health-inequalities/> accessed 22 August 2025.

In seeking to explain these differences, the review highlighted a number of contributory factors including the chronic exclusion of such communities across the wider determinants of health so that they are more likely to experience deprivation, difficulty accessing adequate accommodation, inequalities in education, and barriers to employment, all of which are likely to have grave consequences for health outcomes.[255] Additional factors related directly to exclusion from healthcare and healthcare systems. Digital exclusion left many unable to access health-related information and experiences of discrimination, including wrongful GP registration refusal,[256] resulted in a lack of trust in services generally. Inequalities in access to healthcare waiting lists and to mental health services were reported. Furthermore, the lack of accessible healthcare services for such communities means that their experiences and outcomes are not included in official statistics and they are, therefore, invisible within datasets used to determine needs and set priorities at population-level. If these factors are considered against the AAAQ Framework developed and applied by the CESCR which provides that healthcare and related services should be available, accessible, acceptable and of high quality,[257] it is difficult to see how the right to health is being adequately provided for in the case of Romany and Traveller communities in the UK.

Scottish Gypsy/Travellers in Focus

Turning to the evidence relating to the experiences of Gypsy Travellers in Scotland specifically, the Scottish Government's own analysis of the 2011 census reflects many of the health inequalities reported in the UK-wide data. For example, SGTs were more likely than members of the general population to have one or more long-term health conditions with only 69% of SGTs reporting 'good' or 'very good' health compared to 82% of the general population.[258] These findings correspond with those from a number of studies which have found that Gypsy/Travellers have higher mortality rates, morbidity and co-morbidity rates and lower levels of childhood immunisation compared with the general population.[259] Research conducted by the Edinburgh Access Practice in 2012 found that SGTs had higher than average levels of obesity, hypertension, risk factors for diabetes, heavy alcohol use and/or smoking and risk of cardiovascular disease

[255] Friends, Families Travellers (n 235) 3.
[256] Exclusion from GP registration was cited as a key issue faced by the SGT communities who provided feedback on the current research.
[257] See UN ESC General Comment 14 (n 205) para 12.
[258] Scottish Government (n 141).
[259] Scottish Parliament, '3rd Report, 2012 (Session 4): Gypsy/Travellers and Care' (2012) <https://archive2021.parliament.scot/parliamentarybusiness/currentcommittees/54885.aspx> accessed 30 July 2025; Equality and Human Rights Commission, 'Gypsies and Travellers: Simple Solutions for Living Together' (2009) <https://www.equalityhumanrights.com/sites/default/files/2021/gypsies_and_travellers_0.pdf> accessed 30 July 2025.

when compared with the general population.[260]

Public Health Scotland recognise SGTs as 'an inclusion health group',[261] a term used to describe people who are 'socially excluded, typically experience multiple overlapping risk factors for poor health (such as poverty, violence and complex trauma), experience stigma and discrimination, and who are not consistently accounted for in electronic records (such as healthcare databases)'.[262] Those who belong to inclusion health groups often experience barriers and difficulties when accessing NHS services so that specific actions are necessary to improve access to services and improve health outcomes. A starting point for identifying such actions is to conduct equality and health inequality impact assessments.[263] In its own guidance for 'decision-makers and people working in health and care services' Public Health Scotland identifies that 'In Scotland, people in Gypsy/Traveller communities are dying at least a decade earlier than the rest of the population' and outlines a number of practical steps that should be taken to improve the physical and mental health outcomes for SGTs.[264]

Regarding the provision of culturally sensitive services and the need for targeted educational programmes, Public Health Scotland's own research on Gypsy Travellers' perceptions of vaccine information resources[265] is particularly instructive. This research, conducted by community health workers for the Minority Ethnic Carers of People Project (MECOPP), was triggered by the COVID pandemic which bought to light some significant issues relating to public health messaging for SGTs. Qualitative research conducted with members of SGT communities highlighted the lack of accessible information about the benefits of vaccination (which often fuelled existing fears); institutional mistrust of official sources of information stemming at least in part from 'historical trauma and previous encounters with officials that have led to breakdowns in trust'; reliance on non-authoritative sources of information/ misinformation including from

[260] The Scottish Parliament (n 244).
[261] Public Health Scotland, 'Improving Access for Gypsy/Travellers to the NHS and Health and Social Care in Scotland: Considerations for Carrying Out an Equality and Health Inequality Impact Assessment' (2023) <https://publichealthscotland.scot/publications/improving-access-for-gypsytravellers-to-the-nhs-and-health-and-social-care-in-scotland/improving-access-for-gypsytravellers-to-the-nhs-and-health-and-social-care-in-scotland/> accessed 30 July 2025.
[262] UK Government, 'Inclusion Health: Applying All Our Health' (2021) <www.gov.uk/government/publications/inclusion-health-applying-all-our-health/inclusion-health-applying-all-our-health> accessed 30 July 2025.
[263] Public Health Scotland (n 246).
[264] Public Health Scotland, 'How You Can Improve the Health of Gypsy/Travellers in Scotland' (2023) <https://www.communitypharmacy.scot.nhs.uk/nhs-highland/wp-content/uploads/sites/12/how-you-can-improve-the-health-of-gypsy-travellers-in-scotland-apr23-english.pdf> accessed 30 July 2025.
[265] Public Health Scotland, 'What Do Gypsy/Travellers Think About Vaccine Information Resources and How Can They Be Improved to Reflect Cultural Realities?' (2024) <https://publichealthscotland.scot/publications/what-do-gypsytravellers-think-of-vaccine-information-resources-and-how-can-they-be-improved-to-reflect-cultural-realities/> accessed 30 July 2025.

family, friends and social media; and barriers to accessing information due to digital exclusion and illiteracy (including digital illiteracy). When asked what they wanted in this context, SGT community members' requests were simple: accessible, jargon-free information about vaccines, including their ingredients, which was available in alternative formats. This request would appear to be in line with the AAAQ Framework's requirements of availability, accessibility and acceptability.[266]

In its current action plan for improving the lives of Scotland's Gypsy/Travellers[267] the Scottish Government acknowledges the need for more culturally sensitive health provision, better access to mental health services and more information and support for accessing health services including to overcome existing barriers to GP registration.[268] The Government sets out its aspirations relating to a range of areas. Some of these are specific, such as embedding learning from the MECOPP Community Health Worker service in mainstream health services,[269] and improving access to suicide prevention and self-harm training for staff working directly with Gypsy/Traveller communities.

Other aspirations are more general, for example, the need to engage with SGT communities to improve knowledge and understanding of their health and social care needs and inequalities experienced which will inform and influence future service planning and design.[270] Further related aims include actions on social security and poverty,[271] empowerment, racism and discrimination.[272]

Conclusion and Recommendations

The lack of justiciability in respect of the right to health in Scotland makes it difficult to assess whether and to what extent this right is implemented and fully realised for SGTS, although the available evidence related to health outcomes does reveal many serious gaps in provision. It is nonetheless clear that the Scottish Government is taking steps towards the adoption of a human rights-based approach to health and related service provision which, if fully implemented with proper account taken of specific cultural needs, has the potential to be transformative for SGT's health outcomes. However, good healthcare policy provision is not the same as a legally enforceable, justiciable route to the right to health as provided by international law. We conclude that, unless and until the right to health is incorporated, implemented and made fully accessible to SGTs, there is little of substance beyond a series of good

[266] Public Health Scotland, 'The AAAQ Framework: Overview – The Right to Health – Equity and Justice – Social and Economic Impacts on Health – Population Health' (2024) <https://publichealthscotland.scot/population-health/social-and-economic-impacts-on-health/equity-and-justice/the-right-to-health/overview/> accessed 30 July 2025.
[267] Improving the Lives of Scotland's Gypsy/Travellers 2 Action Plan 2024-2026 (n 12).
[268] Ibid, 4.
[269] Ibid, Objective 13.
[270] Ibid, Objectives 14 and 15.
[271] Ibid, Objective 19.
[272] Ibid, Objectives 23-27.

practice recommendations for healthcare providers which fall short of a legal compliance duty recognising their role as duty bearers. Full implementation would require integration of the right to health with other rights to non-discrimination, adequate housing and education, supported by direct enforcement for breaches of those rights through the Scottish courts and tribunals with available remedies.

Recommendation 8: The Scottish Government should take the necessary steps to incorporate the International Covenant on Economic Social and Cultural Rights through a compliance duty, subject to the current devolution constraints. In addition we recommend that the Scottish Government fully implements a human rights-based approach to public service delivery by way an integrated set of improved, strengthened and enforceable positive duties which align the existing public sector duties contained in the Equality Act 2010 (PSED and FSD) with a range of human rights duties intended to give legal effect at the point of service delivery to the right to health contained within Article 2 ICESCR and in line with the provisions of CEDAW, ICERD and the UNCRPD.

3.5 Education

Context

In approaching our analysis of current law, policy and practice relevant to the education of Scottish Gypsy/Traveller children, we are mindful of the historical role that law, primarily through legislation ostensibly to facilitate and promote the education needs of children, has played in enabling harmful State intervention in the lives of SGT families. To take but one example, the Children Act 1908 required children of SGT families to attend school for 'not less than 200 attendances'; failure to do so would result in the child's removal to an industrial school. As highlighted by the independent archival research report, such laws, policies and practices contributed to the forced assimilation of Gypsy/Travellers into the 'settled' population.[273]

While our focus here is on present-day legislation and practice, we remain alive to the possibility that these historical legacies may continue to influence the attitudes and decisions of education stakeholders today, given the entrenched nature of systemic discrimination faced by Scottish Gypsy/Travellers.

The Right to Education

Education is widely accepted as a *right*; and one that receives recognition and protection in a number of international and regional treaties. Education, among other things, plays a key role in political participation, as a condition for accessing quality jobs in the labour market, as an asset to overcome poverty, and a determinant factor for nutrition, physical and environmental health.[274] For this reason, the right to education 'epitomises the indivisibility and interdependence of all human rights' [275] and has been described as a multiplier right, given its role in enabling the enjoyment of so many other rights.[276]

<u>The UNCRC and the right to education</u>

Article 28 UNCRC guarantees education as a legal right for every child on the basis of equal opportunity.[277] The provision is modelled on Article 13 ICESCR, and in this regard, both treaties require that States:

- make primary education compulsory for all;[278] and
- develop different forms of secondary education (e.g. general and vocational

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[273] Watson (n 5).
[274] Christian Courtis and John Tobin, 'The Right to Education' in John Tobin (ed), *The UN Convention on the Rights of the Child: A Commentary* (Oxford Commentaries on International Law, OUP 2019; online edn, Oxford Law Pro) 1058 <https://doi.org/10.1093/law/9780198262657.003.0029> accessed 8 December 2025.
[275] UN Committee on Economic Social Cultural Rights, 'General Comment No 11: Plans of Action for Primary Education' (10 May 1999) UN Doc E/C.12/1999/4.
[276] Courtis and Tobin (n 259) 1058.
[277] In should be noted that in addition to Article 28 and 29, discussed further below, there are specific mentions of education in other provisions of the UNCRC, notably in relation to the education of children with disabilities (Article 23) and provision of health education (Article 24). Indeed, virtually every right contained in the UNCRC in some way either directly or indirectly relevant to and/or dependant upon a child's education and development.
[278] UNCRC, art 28 (1)(a).

education) and make them accessible and available for every child.[279]

However, and unlike its Article 13 ICESCR counterpart, Article 28 also imposes additional obligations on States, including notably a specific obligation to encourage regular school attendance and reduce dropout rates.[280]

Uniquely, the UNCRC also expands considerably upon the aims of education through an additional provision, Article 29, which focuses on the *content* of education, as well as the process and approach through which the right is to be realised. Among other things, education should be directed to:

1. The development of the child's personality, talents and mental and physical abilities to their fullest potential;
2. The development of respect for human rights;
3. The development of respect for his or her own cultural identity, language and values;
4. Preparation for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin; and
5. The development of respect for the natural environment.

In their first General Comment on the right to education, the Committee on the Rights of the Child states that education should be 'child-centred, child-friendly and empowering'.[281]

The ECHR and the right to education

The right to education is also protected by Article 2 of Protocol 1 to the ECHR, which states that:

> *'No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.'*

In this respect, the primary right here is the right to education, and the ancillary right is to be educated in accordance with convictions of parents.[282] While in early cases concerning education and discrimination the ECtHR tended to analyse issues from the perspective of the rights of parents,[283] more recent cases demonstrate the willingness of the Court to take an increasingly child-centred analysis.[284]

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[279] UNCRC, art 28 (1)(b).
[280] UNCRC, art 28 (1)(e).
[281] Committee on the Rights of the Child, 'General Comment No. 1: The Aims of Education' (17 April 2001) UN Doc CRC/GC/2001/1 para 2.
[282] see e.g. *Campbell and Cosans v the United Kingdom* (1982) 4 EHRR 293, para 40.
[283] See e.g. *Case Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium' v Belgium (The Belgium Linguistic Case)* (1968) 1 EHRR 252.
[284] See e.g. *DH v Czech Republic* App No 57325/00 (ECtHR, 13 November 2007).

Unlike the ICESCR and the UNCRC, Article 2 Protocol No. 1 does not elaborate upon the process or approach to be taken to realising the right to education. Notwithstanding, the right to education under the ECHR encompasses a positive obligation upon States to secure education to *all* children.[285] Indeed, in its interpretation of the right the ECtHR has in some cases examined the substantive content of education.[286]

The right to education under the ECHR is not absolute; it can be subject to limitations, provided that such limitations do not undermine the substance of the right: the limitations must be foreseeable for those concerned, in pursuit of a legitimate aim, and proportionate to that aim.[287]

The ECtHR has considered several cases concerning the education of children from communities with nomadic traditions, notably European Roma. In these cases, the Court has recognised the need for special protection in the sphere of education owing to their status as a particularly disadvantaged and vulnerable minority group. Some of the following principles, which have been established in cases concerning children from European Roma backgrounds, are relevant to SGT children.

- The ECtHR has emphasised the importance of recognising the particular needs of minorities and the obligation to protect their security, their identity and their way of life; not only to protect the interests of minorities themselves but also to preserve cultural diversity which benefits all of society as a whole.[288]
- In certain circumstances, a failure to treat a particular group of vulnerable children differently to correct "factual inequalities" may, in the absence of an objective and reasonable justification, violate Article 14 ECHR (prohibition on discrimination).[289]
- States should facilitate the school registration of children of Romani origin, even in the case where some of the required administrative documents are missing.[290]
- Schooling arrangements for Roma children must be attended by safeguards that ensure that the State

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285 *The Belgium Linguistic Case* (n 268).

286 See for example the case of *Cyprus v Turkey* App No 25781/94 (ECtHR, 10 May 2001) about the positive right of Greek-Cypriot children to receive secondary school education in Greek language in the northern (Turkish) part of Cyprus.

287 *Ali v UK* (2011) 52 EHRR 10. In this case, the European Court of Human Rights held that a pupil could be excluded from a secondary school for a lengthy period pending a criminal investigation into an incident in the school without this amounting to a denial of the right to education, provided the proportionality principle was upheld. The applicant was only excluded until the termination of the criminal investigation. Moreover, the applicant was offered alternative education during the period of exclusion, and although the alternative did not cover the full national curriculum, it was adequate in view of the fact that the period of exclusion was at all times considered temporary pending the outcome of the criminal investigation.

288 *Chapman v the United Kingdom* [2001] 33 EHRR 399, paras 93 and 94.

289 Thlimmenos v Greece (2001) 31 EHRR 411, para 44.

290 Sampanis and Others v Greece (2008) 47 EHRR 1023 (Ch) para 85

takes into account their special needs. [291]

- Any decision must be transparent and based on clearly defined criteria, not only ethnic origin. [292]
- A measure cannot be regarded as reasonable and proportionate where they result in an education which compounds the difficulties of Roma children and compromises their subsequent personal development instead of tackling their real problems or helping them to integrate into the ordinary schools and develop the skills that would facilitate life among the majority population. [293]

Towards a rights-based, child-centred education system

None of the substance of the right to education, including the basic obligations, aims and content of the right, is particularly controversial. The challenge, as with many other human rights, lies in how it is realised; in other words - its practical implementation. This is reflected in our findings below in relation to the experiences of SGT children, where our analysis focuses on the processes and manner in which key education stakeholders discharge their obligations under education law.

In approaching this analysis, we adopt as a starting point the 4-A framework, developed by former UN Special Rapporteur for Education Katarina Tomasveski, and which outlines four key dimensions of a rights-based education system, namely that it should be: Available, Accessible, Acceptable, and Adaptable.[294] This conceptual framework (see Figure 2 below) has been adopted by the Committee on Economic, Social and Cultural Rights in its General Comment 13 on the right to education.[295]

[291] D.H. (n 269) para 207; Ibid para 103.
[292] Ibid para 89; Oršuš and Others v Croatia App No 15766/03 (ECtHR, 16 March 2010) para 182.
[293] D.H. (n 269) para 207.
[294] Katarina Tomasevski, *Human Rights Obligations in Education: The 4-A Scheme* (Wolf Legal Publishers 2006).
[295] UN Human Rights Committee, 'Preliminary Report of the Special Rapporteur on the Right to Education, Ms Katarina Tomaševski, submitted in accordance with Commission on Human Rights Resolution 1998/33' (13 January 1999) UN Doc E/CN.4/1999/49 para 50.

Right to Education	AVAILABILITY	Sufficient human, budgetary, and material resources, including trained teachers, schools, teaching materials, and other necessary facilities, to fulfil the educational needs of every right-holder.
	ACCESSIBILITY	Education should be open to all, especially to the most marginalised and vulnerable groups, having regard to the principle of non-discrimination. Education must also be physical accessibility, i.e. within safe physical reach either by actual attendance or via modern technology.
Rights in Education	ACCEPTABILITY	The form and substance of education, including curricula and teaching methods, have to be acceptable (e.g. relevant, culturally appropriate and of good quality) to students and, in appropriate cases, parents.
	ADAPTABILITY	Education has to be flexible so it can adapt to the needs of changing societies and respond to the needs of students, especially to those suffering disadvantages, within their diverse social and cultural settings.

Figure 2: 4-A Framework - Mapping the right to education

While this framework provides a helpful structure for identifying and analysing the rights issues experienced by Scottish Gypsy/Traveller children in education, we acknowledge its limitations. In particular, the focus on State obligations, substantive content of education, and material conditions, does not account for the relational aspects that shape how children experience education in practice.

As we discuss above under the heading of 'discrimination', the structural nature of racism and discrimination facing Scottish Gypsy/Travellers has a significant negative impact on the relationships between communities and key duty bearers. We consider that prejudice and stereotyping, whether explicit or implicit, also influences how key education stakeholders perceive and engage with SGT children and their families.

In this regard, we found the work of Lundy and Brown particularly helpful, especially in their focus on relationships as one of the three interlinked 'R's they identify as key to the implementation of children's right to education (the others being resources and redress).[296] Their work draws attention not only to the vertical relationships in education—such as between teachers and pupils, or between schools and families—but also to the horizontal relationships that bear significantly on a child's experience of education: relationships between and among children and young people, and between children and adults in the wider community.

They argue that children must be educated in a way that respects the inherent dignity of the child and enables them to fully participate in school life. This life-long process begins with rights values in the daily lives and lived experiences of children. Ultimately, the core principles of both children's rights and educational relationships call for respect and shared responsibility—a partnership, and one that accounts for the accounts for the multi-dimensional nature of educational relationships.

In the following sections, we will analyse the experiences of Scottish Gypsy/Traveller children in education against the standards explored above and consider whether the domestic legal framework on education is fully compatible with the ECHR and UNCRC. In particular, we will consider the extent to which law, policy and practice in relation to SGT children embraces a child-centred approach.

The Right to Education in Scotland

Education law in Scotland comprises a complex interplay of duties and powers, responsibilities and rights.

The key role is however still held by the parent. Under the Education (Scotland) Act 1980, it is the duty of the parent of every child of school age to provide efficient education for the child suitable to his or her age ability and aptitude, either by causing the child to attend a public school regularly or by other means.[297] Legislation does not define what is meant by 'efficient' or 'suitable', leaving open parents to send a child to a public school or educating by other means, for example through home education.

If a parent chooses to educate the child by sending him or her to a public school, then practical responsibility for the child's education passes to the education authority.[298] The legislative framework confers a number of powers and duties upon education authorities, which should be exercised with regard to the general principle that children should be educated in line with the wishes of parents.[299]

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[296] Laura Lundy and Amy Hanna, 'Revisiting the Three "R" s in Order to Realize Children's Educational Rights: Relationships, Resources, and Redress' in J Todres and S M King (eds), *The Oxford Handbook of Children's Rights Law* (OUP 2020) 386–404.

[297] Education (Scotland) Act 1980, s 30(1).

[298] A local council is generally referred to as an 'education authority' for the purposes of discharging statutory functions in relation to education, and as a 'local authority' for other purposes. Both terms refer to the same body.

[299] Education (Scotland) Act 1980, s 30(2). See also in this regard Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 20 March 1952, entered into force 18 May 1954) ETS No 009 (Protocol No. 1 to the ECHR) art 2.

These duties extend to all children residing in a local authority area, whether permanently or temporarily, and therefore apply, for example, to SGT children living on an unauthorised site on a temporary basis.

Among the considerations for an education authority is the duty to secure that the education they provide is directed to the development of the personality, talents and mental and physical abilities of the child to their fullest potential.[300] This overarching statutory duty, set out in the Standards in Scotland's Schools etc. Act 2000 mirrors the language of Article 29 (1)(a) UNCRC. In discharging this key statutory duty, the education authority must, where reasonably practicable, have due regard to the views of the child in decisions which significantly affect them, taking account the child's age and maturity.[301] This duty is consistent with Article 12 UNCRC (the right to be heard).[302]

Sections 3A and 3B of the 2000 Act further require the Scottish Government and education authorities, when exercising their functions, to have due regard to the need to reduce inequalities of outcome for children arising from socio-economic disadvantage or other causes. For decisions of a 'strategic nature', education authorities are also required to consult listed stakeholders, including parents and, where appropriate, pupils.[303]

However, the 2000 Act does not fully reflect the holistic aims of education set out in Article 29 UNCRC, particularly the requirement that education should also be directed to developing respect for human rights and a child's own cultural identity, language and values.[304]

Education and Scottish Gypsy/Traveller Children

It is widely recognised that children from Gypsy/Traveller backgrounds experience profound inequalities in education in Scotland.

In particular, children from Gypsy/Traveller backgrounds have the worst educational outcomes in relation to pupil attainment and positive school leaver destinations. A two year average from the 2014/15 and 2015/16 leavers' data showed that 23.9% of leavers recorded as 'White - Gypsy/Traveller' left school with no qualifications at SCQF level 3 or higher, compared to 2.1% for all publicly funded secondary school leavers.[305] According to the 2011 census, only 50% of Gypsy/Travellers over the age of 16 have an educational

300 Standards in Scotland's Schools etc. Act 2000, s 2(1).
301 Standards in Scotland's Schools etc. Act 2000, s 2(2).
302 UNCRC, art 12: '*States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child*'.
303 Standards in Scotland's Schools etc. Act 2000, s 3B (4).
304 UNCRC, art 29(1)(b) and (c).
305 Scottish Government, *Improving Educational Outcomes for Children and Young People from Travelling Cultures: Guidance* (2018) <https://www.gov.scot/publications/improving-educational-outcomes-children-young-people-travelling-cultures/pages/2/> accessed 30 July 2025.

qualification of some sort, compared with 73% of the wider Scottish population.[306]

Moreover, and as we set out in further detail below, children from Gypsy/Traveller backgrounds have the lowest attendance rates and face high rates of exclusion when compared with pupils from other ethnic groups. Gypsy/Traveller children are also disproportionately more likely to be identified in certain categories of Additional Support Needs (ASN) which carry a degree of social stigma (e.g. social emotional and behavioural difficulties, and family issues).

Given these grossly unequal outcomes, it is evident that Scottish Gypsy/Traveller children's right to receive an education on equal terms with others (Article 28 UNCRC) is not being respected. However, and crucially, education statistics only monitor quantitative data relating to the experiences of children from SGT backgrounds who are *enrolled* in public school.

The Scottish Government has acknowledged that some Traveller children and young people's educational outcomes are among the worst in Scotland.[307] In the case of SGTs, this is largely attributable to the widespread discrimination and marginalisation experienced. Official statistics suggest a high drop-out rate between primary and secondary school, and that the decrease in cohort size between S3 and S5/6 is much bigger for Gypsy/Traveller pupils than for all pupils.[308] The reasons for this are multi-faceted and complex but are likely to include a perceived lack of cultural suitability of the mainstream curriculum (which does not value Gypsy/Traveller traditions, including the development of life and artistic skills) and endemic discrimination, bullying and harassment.

Underpinning all of this, however, was a general perception that there is an engrained culture, based on racialised stereotyping, that children from Gypsy/Traveller backgrounds cannot or are unlikely to achieve and thrive in education in the same way as children from other ethnic groups. This creates a culture of low expectation, reflected in an acceptance by key education stakeholders that SGT children will be withdrawn from school-based education at some stage. We have seen evidence of this stigmatisation throughout our research.

In this regard, we draw attention to the Scottish Government's report on Improving Education Outcomes for Children and Young People from Travelling Backgrounds, which sets out policy and practice for education authorities. In discussing the cultural identity of Gypsy/Traveller people, the report states:

> *'… a choice many families make to withdraw children from school at an early age, or not engaging with formal education at all, were and are ways of maintaining their cultures and lifestyles as different from non-Traveller settled communities.'*

[306] Ibid.
[307] Scottish Government (n 290).
[308] Ibid.

The report goes on to draw attention to data on transitions which points to a high dropout rate between primary and secondary school, while acknowledging the absence of data on the number of Gypsy/Traveller children who do not attend school, either because they have been withdrawn to be home educated or because they have always been home-educated. The report goes on to highlight practice insights to manage and improve transitions.

As Riddell has noted, the report places significant emphasis on the 'choice' of parents to withdraw children as an expression of cultural self-determination, rather than a consequence of stigmatisation and exclusion.[309] In this regard, we note that the report fails to fully acknowledge the role that historic and contemporary forms of racialised discriminatory practice has undermined relationships between Gypsy/Traveller families and key education stakeholders, and continue to influence attitudes towards school-based education.

We have formed the view that the Scottish Government's report, which guides education authorities on policy development and decision making in relation to education for SGT children, does not align with international standards relating to the rights to education for children from minoritised backgrounds.

In this regard, both the report and the framing of the primary duty set out in the Education (Scotland) Act 1980 (the duty of the parent to provide efficient education for the child) reflect a failure to take a children's-rights-centred approach to law, policy, and practice in education. Indeed, both are at odds with the holistic and child-centred conception of the right to education as set out above under Article 29 UNCRC, read in conjunction with other key pillars of the UNCRC, notably the best interests of the child (Article 3), prohibition on discrimination (Article 2), and the active participation of children in decisions that affect them (Article 12). They are also at odds with Council of Europe policy on education for Roma and Traveller Children, which emphasises the need to remove barriers to education, and among other things, calls on States to facilitate access of Roma and Traveller children to compulsory education on an equal basis, with particular emphasis on *transitions* (pre-school to primary, primary to secondary), alongside measures to *prevent drop-out* and support return to school.[310]

We see further evidence of a failure to take a child-centred approach in relation to education authority practice around meeting the education needs of children who have been withdrawn from school by parents. We note in this regard that the Scottish Government report encourages education authorities to make use of digital distance-

[309] Sheila Riddell, 'The Rights of Children from Gypsy/Traveller and Roma Backgrounds in Scotland' (2021) *Hungarian Educational Research Journal*.
[310] Committee of Ministers, 'Recommendation of the Committee of Ministers to Member States on the Education of Roma and Travellers in Europe' (1061st meeting of the Ministers' Deputies, 17 June 2009).

learning resources, including the Scottish Government-funded STEP programme (Scottish Traveller Education Programme). According to publicly available material, it does this through providing digital connectivity through 4G, a phone application, and online learning resources.[311]

We note that the effectiveness of digital-distance learning for Gypsy/Traveller children has not been the subject of any comprehensive research. A 2016 exploratory report by STEP examined the opportunities of using digital learning to support mobile children and young people from nomadic communities and made several recommendations around how it can be further developed to support educational outcomes for Gypsy/Traveller children.[312] There is, however, little empirical study into the effectiveness of digital learning material in improving education outcomes, or any barriers to engaging with online learning, for Scottish Gypsy/Traveller children.

In any case, we heard very mixed feelings about the use of online learning resources, ranging from the practical issues of lack of internet coverage on Sites (which are often rural) and during travel, to more fundamental concerns that STEP does not address the systemic barriers to realising the right to education, particularly engrained attitudes about what Scottish Gypsy/Traveller children can achieve in education.

In this respect, we are concerned that STEP is used less as a complement to mainstream education and more as a substitute, in circumstances where its effectiveness is not evidenced, in order for education authorities to discharge their duties to SGT children. This is particularly problematic where we heard of resourcing cuts to previous initiatives to aid transitions and build a positive culture of education (for example, on-site education hubs and Gypsy/Traveller liaison officers).

While there is a lack of evidence around the effectiveness of digital learning for improving educational outcomes for SGT children, there is evidence on how the use of digital learning during the COVID-19 pandemic impacted the educational experience of children and young people.[313] Drawing from this body of evidence, we observe that one of the key determinants of whether online or blended education provision is effective is pupils' independent learning skills. Where these skills are not already developed, evidence suggests that during the pandemic, digital learning resulted in poorer engagement, required 'intensive parental

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[311] STEP, 'Families and Digital Resources' <https://www.step.education.ed.ac.uk/families/digital/> accessed 8 December 2025.

[312] STEP, 'Mobile Children, Young People and Technology Project: An Exploratory Study of Mobile Cultures' Use of Digital Technology and New Media for Living and Learning' (2016) <http://www.step.education.ed.ac.uk/wp-content/uploads/2015/08/YPTech-Report-.pdf> accessed 30 July 2025.

[313] Gillean McCluskey and others, 'The Delivery of Education and Certification, Impact on Children and Young People: The impact on children and young people in relation to learning and academic progress in general, known benefits and disadvantages of online learning, and digital poverty and inequality and effects of this on access and outcomes' (Scottish COVID-19 Inquiry 2023).

scaffolding' which ultimately contributed to widening educational inequalities.[314]

We acknowledge that in some circumstances digital learning can be as effective, and even better than traditional classroom learning in terms of achieving learning objectives or educational outcomes.[315] However in the context of learning for Scottish Gypsy/Traveller children, we consider that online packs and digital materials should be used primarily as a *complement* to education, for example during periods of travelling. We are concerned that over-reliance on digital learning resources, for example STEP, particularly where it is used as a substitute for a physical learning environment, risks entrenching the education inequalities experienced by Scottish Gypsy/Traveller children. In this regard, and in line with the holistic aims of education set out in Article 29 of the UNCRC, we acknowledge the critical role that physical learning environments play in children and young people's social and emotional development, beyond basic cognitive skills and achieving academic outcomes.[316]

Taken together with the concrete barriers discussed below around enrolment, ASN and bullying, we consider these experiences to evidence a culture of *substantive segregation* whereby the provision of an inferior education experience for Gypsy/Traveller children is, in practice, accepted by key education stakeholders. In this respect, we highlight the body of case law from the ECtHR on discrimination and education concerning Roma children, where the Court has found that policies and measures around placement of Roma children in 'special schools' without any pedagogical justification, and driven instead by stereotyping and stigma, constitute unlawful discrimination under Article 14 of the ECHR (prohibition on discrimination) when read in conjunction with Article 2 of Protocol No. 1 (the right to education). While the context for Scottish Gypsy/Traveller children is different, we draw from these cases the principle that education pathways that separate minority children into inferior or reduced provision (including long-term, distance-only learning) is incompatible with international standards on education, and risks compounding the structural disadvantage that children from Gypsy/Traveller backgrounds already face, into adulthood.

A child-centred approach to education treats Scottish Gypsy/Traveller children as rights-holders whose best interests and views are central. It places the primary onus on the

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314 Ibid. See also David Lundie and Jeremy Law, 'Teachers' Responses and Expectations in the COVID-19 School Shutdown Period in the UK' (May 2020) 11 <https://eprints.gla.ac.uk/221329/1/221329.pdf> accessed 30 July 2025.

315 Keith J. Topping and others, 'Effectiveness of Online and Blended Learning from Schools: A Systematic Review' (May 2022).

316 The International Commission on the Futures of Education, UNESCO, *Reimagining Our Futures Together: A New Social Contract for Education*, (2021) <https://unesdoc.unesco.org/ark:/48223/pf0000379707.locale=en> accessed 8 December 2025.

State and education authorities, and not on parents, to remove barriers, provide adaptations within mainstream education, and take all reasonable measures to facilitate full participation and integration (not segregation) in education. Where distance learning is used, it should be short-term, tailored and accompanied by clear reintegration plans.

Taking into account all of the above, and in light of the incorporation of the UNCRC into Scots Law, we consider that the approach taken to meeting the education rights of children and young people from Gypsy/Traveller backgrounds requires recalibration, in order to put them at the centre of policy making, the development of practice, and decision-making. As we have highlighted, current law, policy, practice is framed around parental choice, based on their perceived cultural preferences, and not the views and needs of children.

In addition to respecting the educational rights of Scottish Gypsy/Traveller children (Articles 28 and 29 UNCRC) and their rights to participate in all matters that affect them (Article 12 UNCRC), a child-centred approach must take account of their overlapping and intersecting social positions as both Scottish Gypsy/Traveller people and as children. As members of a minoritised group, they are subject to the same systematic discriminatory practices and policies, as discussed in this report, which are not limited to the field of education. But at the same time, as children their agency is rarely respected, their voices are not heard and their human rights are overlooked in favour of parental choice, as evidenced in both guidance and the framing of parental duty in the Education (Scotland) Act 1980.

We form the view that the approach to improving educational outcomes for Scottish Gypsy/Traveller children must place greater emphasis on *integration*. In this regard, education stakeholders must be mindful of historical practices that have amounted to forced cultural assimilation of Gypsy/Traveller children with the ‘settled’ population. *Integration*, rather should be focused on promoting mutual adaptation, intercultural dialogue, interaction, mutual understanding, and cooperation; which respects minority groups individual human rights, and preservation and promotion of their cultural identity.[317]

In order to be child-centred, integration policies must be conceived of as a ‘two-way process’, whereby Scottish Gypsy/Traveller children have meaningful input into contributing towards policy development and outcome indicators. While we acknowledge the challenges involved here, not least the historical and contemporary structures of discrimination and power imbalances, we believe that in order to respect children as rights-holders as agents of change (not passive recipients of education), greater focus must be placed on developing effective

[317] European Commission, ‘Child-Centred Approach Across Disciplines’ (2019) <https://ec.europa.eu/research/participants/documents/downloadPublic?documentIds=080166e5c7dd0909&appId=PPGMS> accessed 14 August 2025.

participation strategies at all levels of education policy formulation.[318]

Ultimately, we consider that the failure to take an intersectional, child-centred approach—one that values children's agency and voice in the design of curriculum, and in the development of policy and practice around schooling—is at the root of the subordination of their right to education and of poor outcomes. Children must be seen as rights-holders, with their best interests a primary consideration (Article 3(1) UNCRC) and their views given due weight (Article 12 UNCRC). In this respect, every effort has to be made to ensure full participation in education.

In the following sections, we discuss the barriers that negatively impact upon the ability of Scottish Gypsy/Traveller children to achieve and thrive in education in Scotland. In our analysis and recommendations, we have adopted an intersectional, child-centred approach, informed by international standards under the UNCRC, and emerging approaches to child-centred practice in education. We were unable to locate any research on educational experiences and attainment which reflected the specific views of children and young people. We therefore highlight the urgent need for children and young people from Gypsy/Traveller backgrounds to be involved at all stages of decision making in education, having regard to their evolving capacity.

Recommendation 9: As an overarching recommendation, we call upon the Scottish Government to undertake a review of existing law, policy and practice relating to Gypsy/Traveller children. In particular, the Government should work in partnership with children and young people and organisations that represent their interests to understand the distinct barriers they face in education; the effectiveness of existing approaches to learning; and to co-develop guidance for education authorities around meeting the educational rights of Gypsy/Traveller children. More generally, a review is needed of the compatibility of the Education (Scotland) Act 1980 with the UNCRC and with contemporary, child-centred approaches to the right to education.

Content of curriculum

Recent empirical research suggests that, as well as the high levels of bullying experienced by SGT children and young people, particularly in secondary education, curricular content is not sufficiently adapted to the needs, interests, and cultural traditions of Gypsy/Traveller children, in part because

[318] Tobia Fattore, Jan Mason, and Elizabeth Watson, 'When Children are Asked About Their Well-being: Towards a Framework for Guiding Policy' (2008) 2 Child Indicators Research 57.

teachers often have very low levels of awareness and or knowledge of SGT culture.[319] This created cultural and social barriers to education and feelings of exclusion for SGTs. Secondary schools were not viewed as safe or useful places resulting in the continuance of the cultural practice of severing links with the education system at age 11 for many SGT children.[320]

With reference to the 4-A conceptual framework (see Figure 3 above), these concerns relate directly to two aspects of the right to education: *acceptability* and *adaptability*.

Acceptability

In order to meet the requirement of *acceptability*, the form and substance of education should be relevant and culturally appropriate for children from minority groups. In this regard, we draw attention again to the holistic aims of education set out in Article 29, and in particular, that education must also develop respect for human rights and a child's own cultural identity, values and language.

Taking this into account, and having regard to education authorities' obligations under the Public Sector Equality Duty,[321] we consider there is a need for a broader dialogue about how education in Scotland can embed not only human rights education, which is already largely supported through initiatives such as UNICEF's Rights Respecting Schools Award, but also education on Gypsy/Traveller history, culture and practices.

In the context of the 4-A framework, the element of quality highlights education's role in a child's 'creative and emotional development, in supporting objectives of peace, citizenship and security, in promoting equality and in passing global and local cultural values down to future generations'.[322] In this respect, human rights education is more than simply learning about one's own rights; it should also cultivate respect for others by teaching that every person has inherent dignity, that commands not only respect, but the ability to assert this right on behalf of oneself and on behalf of others.[323]

We note here the clear need to improve understanding and knowledge of Gypsy/Traveller culture among *all* pupils if the holistic aims of Article 29 are to be realised, and educational outcomes for Scottish Gypsy/Traveller pupils improved.

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319 Maureen Finn, 'The Educational Experiences of Children and Adults from the Gypsy/Traveller Communities in Scotland' (STEP 2024) <https://www.step.education.ed.ac.uk/wp-content/uploads/2025/06/STEP_EducationalExperiencesReport_S.pdf> accessed 30 July 2025.
320 Ibid 37.
321 EqA 2010, s 149.
322 EFA Global Monitoring Report Team, UNESCO, *Education for All: The Quality Imperative* (2005) 29.
323 Laura Lundy, Karen Orr and Harry Shier, 'Children's Education Rights: Global Perspectives' in Martin Ruck, Michele Petersen-Badali and Michael Freeman (eds), *Handbook of Children's Rights: Global and Multidisciplinary Perspectives* (Routledge 2016) 364–380.

Recommendation 10: We acknowledge and endorse the recommendation of the independent archival research report calling on the Scottish Government to develop child-centred policies that include the history, culture and contributions of Gypsy/Travellers in Scotland, using community-informed resources, within the national curriculum.

Adaptability

Education must also be capable of adapting to the needs and interests of Scottish Gypsy/Traveller children, having regard to their social and cultural contexts. This requires moving beyond a narrow conception of education focused solely on academic attainment or employability, towards serious engagement with education's broader purposes: connecting the cognitive with problem-solving, innovation and creativity, and incorporating social and emotional learning and learning about oneself.[324]

Communities told us that mainstream education often overlooks skills that are valued locally, especially creative and life skills. This is reflected in research in Scotland, which found that schools failed to value the learning of skills and values that Gypsy/Traveller children gain in their families and communities, and the central importance of this learning within the communities.[325]

Article 28 UNCRC stresses the development of different forms of secondary education; while vocational pathways are one option, the Convention is not prescriptive on form. What is required is a relational approach in which teachers and schools work with Scottish Gypsy/Traveller children to co-design pedagogies and curricula that reflect diverse learning styles and ambitions, and that hold high expectations without forcing uniform pathways.

Scottish Gypsy/Traveller children are not a homogenous group: some will pursue academic routes into further and higher education; others will prioritise vocational, creative or community-based pathways. Adaptability is about making those options real and respected within the mainstream and about resisting a drift to 'education otherwise' or distance-only packages which, over time, separate children from peers and teachers and undermine the broader purposes of education.

Enrolment

The Scottish Government acknowledges that there is no official record of the number and proportion of Scottish children from Gypsy/Traveller backgrounds with regard to school enrolment.[326] In any case, Gypsy/Traveller children who are enrolled in

[324] International Commission on the Futures of Education (n 301).
[325] Elizabeth Jordan, 'Exclusion of Travellers in State Schools' (2001a) 43 Educational Research 117. Elizabeth Jordan, 'From Interdependence to Dependence and Independence: Home and School Learning for Traveller Children' (2001b) 8 Childhood 57.
[326] Scottish Government (n 290).

school have the lowest attendance rate of any ethnic group (73.5% compared with 90.1% for White/Scottish children).[327]

Both the Special Rapporteur[328] and the ESCR Committee have underscored the need that States collect adequate data, as a means to ensure that the measures adopted to achieve the right to education are effective.[329] In the context of the 4-A framework, systemic data collection is a precondition for *accessibility*. This is particularly vital for monitoring disparities faced by marginalised ethnic groups; and in this regard, the ESCR Committee emphasises the need for data to be disaggregated by the prohibited grounds of discrimination.[330]

In practice, the acute education inequalities encountered by Scottish Gypsy/Traveller children are often attributed to a combination of historical, social and cultural factors, which make it more difficult for children to attend full time education. It is also the case that SGTs can experience certain challenges around enrolment, including overly complex enrolment procedures and application forms. We turn our focus to these structural barriers below.

<u>Education authority allocation practices</u>

Education authorities are obliged to secure that there is adequate and efficient provision of school education in their area.[331] Education authorities determine how children should be allocated between schools, though this is subject to the right of parents to choose a school. Where a written request is made by a parent to place his or her child in a particular school (known as a placing request), education authorities are bound to place a child in the school of the parent's choice, unless there is a ground not to do so.[332] In exercising this duty, education authorities must have regard to any guidance published by the Scottish Ministers.

In practice, education authorities make their own arrangements for placing children and dealing with placing request, and must publish, or otherwise make available, such arrangements.[333] Practice varies from education authority to education authority. This variability has *accessibility* implications where criteria adopted by education authorities operate inflexibly to create barriers to the enrolment of Scottish Gypsy/Traveller children.

[327] Scottish Government, 'School Attendance and Absence Statistics for 2023/24' <https://www.gov.scot/publications/school-attendance-and-absence-statistics/> accessed 11 August 2025.
[328] UN Human Rights Committee, 'Preliminary Report of the Special Rapporteur on the Right to Education, Ms Katarina Tomaševski, submitted in accordance with Commission on Human Rights Resolution 1998/33' (13 January 1999) UN Doc E/CN.4/1999/49 paras 25–31.
[329] ESCR Committee, 'General Comment No 1: Reporting by State Parties' (1 Jan 1989) UN Doc E/1989/22, annex III, 87 ('ESCR GC 1') para 7
[330] UN Committee on Economic, Social and Cultural Rights, 'General Comment No 13: The Right to Education' (8 December 1999) UN Doc E/C/12/1999/10 ('ESCR GC 13') para 37.
[331] Education (Scotland) Act 1980, s 1(1).
[332] A list of grounds for refusing a placing request is set out in the Education (Scotland) Act 1980, s 28A (3).
[333] Education (Scotland) Act 1980, s 28B(1)(a)(i).

For example, Perth and Kinross Council's policy on admission gives priority to children normally resident within the catchment area of the specified school. Where that school is oversubscribed, then priority will be determined as follows:

1. Within all denominational schools, places will be allocated first to children who have been baptised in the appropriate faith;
2. Children having a brother or sister (or relative permanently living at the same address as part of an extended family) in attendance at the school;
3. Within all secondary schools, places will be allocated first to children who are in attendance at an associated primary school (i.e. a 'feeder' school); and
4. Thereafter places will be allocated according to the single criterion of distance from the specified school, with priority being given to those whose normal place of residence is closest to the school.[334]

In exercising their discretion, education authorities are constrained by Part 6 of the Equality Act 2010. In this respect, an education authority's public sector equality duties and their duty to avoid discrimination in individual cases may have an impact on school admissions. Specifically, it is unlawful for an education authority to discriminate against or victimise a person:

- In the arrangements it makes for deciding who is offered admission as a pupil;
- As to the terms on which it offers to admit the person as a pupil;
- By not admitting the person as a pupil.[335]

An education authority may override parental choice and refuse to place a child at a requested school. Specific grounds are set out in section 28A of the Education (Scotland) Act 1980, and these grounds can be broadly grouped under two headings: the effect on the child of such a placement (for example, there is a serious mismatch between the attributes of the child and provision made at the specified school); and the effect of the child upon the management of the school (for example, placing a child in a specified school would compromise the efficient provision of education in that school).[336]

Education authorities have an implied power to reserve spaces for pupils moving into an area, having regard to section 28A(3C) which defines this as 'such number

[334] Perth and Kinross Council, 'Revised School Admission Policy, 2025–2026' <https://www.pkc.gov.uk/media/49373/Revised-School-Admissions-Policy/pdf/SchoolAdmissionPolicy.pdf?m=1647531523557> accessed 30 July 2025.
[335] EqA 2010, s 85(1) and (4).
[336] For example, where placing the child at the specified school would result in the capacity of the school being exceeded in terms of pupil numbers, even though it would not be necessary to employ an additional teacher, nor to incur significant expenditure on extending or altering accommodation or facilities (Education (Scotland) Act 1980, s 28A(3)(a)(vii)).

of places…as are in the opinion of the education authority reasonably required to accommodate pupils likely to become resident in the catchment area of the school…'.

The Scottish Government's Improving educational outcomes for children and young people from travelling cultures guidance anticipates the possibility of reserving places for children and young people from Gypsy/Traveller backgrounds. According to the guidance, education authorities are encouraged to work together at a strategic level on sharing intelligence on Traveller mobility patterns to better plan for pupil moves, for example by allocating reserved places in advance where appropriate.[337]

It is possible that some admission procedures may disadvantage Scottish Gypsy/Traveller children, having regard to the wide discretion education authorities have for determining priority for school places. For example, the Perth and Kinross Council admission policy giving priority to children whose older brothers and sisters have already attended the school could unfairly disadvantage (and risk indirect discrimination against) Scottish Gypsy/Traveller families who have recently moved into the catchment area. Similarly, the disadvantage of not coming from a 'feeder' school is inconsistent with the need for *adaptability*, particularly for those in vulnerable situations; and relying on the criterion of 'proximity' to the specified school may unfairly disadvantage Scottish Gypsy/Traveller families living on sites in rural areas. In this sense, a distance-based priority, might be considered inconsistent with the prohibition on indirect discrimination, and with the right of minority children to maintain their cultural identity, which includes mobility and non-fixed residency.

The Equality and Human Rights Commission technical guidance for Schools in Scotland offers another example of how inflexible admission policy can constitute unlawful discrimination:

> *'A school requires the applicant's family to have lived in the catchment area for at least three years. Unless the policy can be 'objectively justified', this could be indirect discrimination against children from a Gypsy Traveller family because they are less likely to have lived in the same area for a period of three years. The school could operate some flexibility in relation to this requirement to ensure that such discrimination does not occur.'* [338]

Having regard to the education inequalities faced by Scottish Gypsy/Traveller children, the need for education authorities to work strategically with key education stakeholders (head teachers, Education Scotland, COSLA, GTLOs) and SGT families to develop consistent guidance on admission is pressing.

[337] Scottish Government (n 290) 18. The guidance gives an example of an unnamed local authority with a large number of European Roma families which has developed a local procedure to ensure school placement does not pose a barrier to families enrolling their children in school.

[338] Equality and Human Rights Commission, 'Technical Guidance for Schools in Scotland' (updated September 2023) 26.

The diverging approaches taken by education authorities in relation to admission policy, and more generally how it meets the educational needs of SGT children, expose the consequences of a lack of a joined up, coordinated approach.

It may be that education authorities reserving spaces for Scottish Gypsy/Traveller children could mitigate some barriers to families enrolling children in public schools. This could be regarded as 'positive action', which the Equality Act 2010 permits to address disadvantage connected to protected characteristics.[339] 'Positive action' therefore allows schools to undertake measures to counter the effects of past or present discrimination against groups of pupils who share a protected characteristic, to meet the particular needs of pupils in such groups, or to facilitate their participation in activities in which participation by members of their group is disproportionately low. This would cover, for example, measures to address education inequalities faced by Gypsy and Traveller families, including barriers to admission to public schools.

The ECHR's technical guidance offers an example of 'positive action' to address inequalities faced by Gypsy and Traveller children:

> *'When deciding on what action to take under the public sector equality duty, an education authority analyses its data on attainment at Primary, and finds that Gypsy Traveller pupils are underachieving compared to other pupils when previous attainment is taken into account.*
>
> *The education authority sets an objective under the duty to tackle the underachievement of Gypsy Traveller pupils. In order to achieve this, it plans to offer a range of activities, including study skills support, mentoring and additional classes. These activities act as positive action measures and also contribute to meeting the duty to advance equality of opportunity.'* [340]

Recommendation 11: We encourage education authorities to review their admission policies and consider whether to exercise their powers under Education (Scotland) Act 1980 to reserve places for Scottish Gypsy/Traveller pupils, having regard to their obligations under, among other things, obligations under the Public Sector Equality Duty; and to publish an annual Equality Impact Assessment on admissions

Challenging a placing request refusal

When a placing request has been refused, the parent who made the request may refer the decision to an education appeal committee.[341] The terms of the legislation restrict the right to appeal to the parent who

[339] EqA 2010, s 158.
[340] Equality and Human Rights Commission (n 323) 113.
[341] Education (Scotland) Act 1980, s 28C (1).

originally made the placing request. Children of school age do not have the right to appeal. Young people however have the right to appeal in place of the parent, just as they have the right to make a placing request. [342]

Appeal committees are established by a local authority under section 28D of the 1980 Act. Schedule A1 makes further provision in respect of appeal committees. This includes provisions on membership. In practice, appeal committees usually consist of elected councillors and local persons, often parent representatives, with a strong interest/experience in the education sector.

The majority of appeals relate to school admission placing requests and a smaller number to exclusions from school (see further below). Over the years, there have been criticism of appeal committees relating their fairness, transparency of decisions and procedures, and their independence.[343] In 2023, the Scottish Government consulted on whether to transfer the functions of appeal committees to the Health and Education Chamber of the First-tier Tribunal for Scotland. A majority of responses (67%) did not agree that appeal committees should transfer to the Scottish Tribunals.[344]

One particular criticism of the operation of education appeal committees is that children's rights, and in particular the views of the child, are not 'baked in' to the appeal committee in the same way as the Tribunal. This is a point which is highlighted in the My Rights My Say response to the Scottish Government's 2023 consultation.[345] In this regard, appeal committees are not required to have regard to the views of children. More generally, the legislation relating to placing requests, other than for children with additional support needs, gives no express rights to children of school age themselves. It is difficult to see how this position is compatible with the UN Convention on the Rights of the Child, and in particular Article 12 of that Convention. However, the legislation relating to placing requests (the Education (Scotland) Act 1980) does not fall within the scope of the UNCRC (Scotland) Act 2024, meaning that it is not challengeable for this reason.

A parent who has made a reference to the appeal committee may appeal to the sheriff who has jurisdiction where the school specified in the placing request is situated.[346] The right to appeal is conferred on a parent, and where a child is over school age, the

[342] Education (Scotland) Act 1980, s 28G.
[343] Department for Education and Skills, *Redacted Guidance Document* <https://dera.ioe.ac.uk/6357/7/0041389Redacted.pdf> accessed 8 December 2025.
[344] Scottish Government, *Transfer of Functions: Education Appeal Committees – Scottish Tribunals Consultation Analysis* (n.d.) <https://www.gov.scot/publications/transfer-functions-education-appeal-committees-scottish-tribunals-consultation-analysis/pages/1/> accessed 30 July 2025.
[345] Iain Nisbet, 'Education Appeal Committees – The End?' (2023) <https://additionalsupportneeds.co.uk/2023/02/21/education-appeal-committees-the-end/#more-10851> accessed 8 December 2025.
[346] Education (Scotland) Act 1980, s 28F (1).

young person concerned.[347] Appeal is made by way of summary application, which must be lodged within 28 days of the date of the decision of the Committee.[348]

There are few reported cases from the Sheriff Court concerning children from Gypsy/Traveller backgrounds and placing requests.

As can be seen from above, how an education authority determines allocation of spaces is often guided by reference to guidelines developed by individual education authorities. The can, and often does, lead to differences in approach. Education authorities however have a statutory duty to consult where it proposes to vary admissions arrangements for a school (including to alter the catchment area).[349]

Notwithstanding that general position, it is often not clear from a review of the case law what is a matter of policy for the education authority, and what is a valid decision for the court. Indeed, the cases often concern placing request refusals based on grounds relating to education authority policy (for example, around capacity).

What is clear, however, is that the courts have tended to examine the circumstances of the child. In *M v City of Edinburgh Council*, a mother (M) of six children appealed against a decision of an education authority to refuse a placing request in respect of her fifth child (X). The father of the children was a Gypsy Traveller of Scottish origin and the children had been bullied locally. M submitted a request to enrol X at a primary school where two of her older children were currently educated, stating that it would be impossible for her to take her children to two different primary schools and her oldest child to a high school each morning. In allowing the appeal, the Sheriff held that the only fair and viable option was to require the education authority to give effect to the placing request despite the necessity of the authority to take on an additional teacher. Where X was shy and introverted, attending school there would provide him with the best start to his education; moreover, alternative schools were not appealing to M and deferring for a year at nursery was unlikely to be financially viable or beneficial to X.

For SGT families, a practical approach would be to focus any challenge on whether an education authority has properly established their case for refusing a placing request, since the onus of proof rests on them to demonstrate that one of the statutory grounds for refusal is well made out. For example, if an education authority refuses a placement request on the grounds that a child

[347] See *S v Scottish Legal Aid Board* [2007] CSOH 116, 2007 SLT 711. This case resolved the issue of the correct party to an appeal to the Sheriff Court where placing requests are concerned. The party to the appeal is the parent, and the parent is not to be regarded as appealing on behalf of the child. This position is consistent with the statutory scheme established by the Education (Scotland) Act 1980, and in particular, the position that it is the parent who holds the duty to provide education for the child. Again, the lack of appeal right conferred on the child himself/herself is not consistent with the State’s obligations under the UN Convention on the Rights of the Child.

[348] Act of Sederunt (Summary applications, statutory applications and appeals etc. rules) 1999, ch 2.

[349] Schools (Consultation) (Scotland) Act 2010, Sch 1, para 4(a).

is not within a catchment area and to admit a child would have a negative impact on resources and educational wellbeing of other pupils, parents will want to lead their own evidence to challenge that assessment, or which focuses on the individual needs of a child e.g. around additional support needs provision in a specified school.

Against this backdrop there are practical and cultural barriers that might face SGT families when seeking to enrol children in schools. One barrier relates to the administrative burden and documentation typically required by education authorities to enrol a child. Education authorities typically ask for proof of address, birth certificates and other paperwork upon registration, and applications are often made online. For SGT communities who are highly mobile or who travel during summer months, providing a fixed address or immediately producing documents could be challenging. Access to suitable placements is another issue. SGT pupils may require mid-term admissions or frequent transfers as families move.

The law does allow flexible registration – for example, children can be dual-registered at a "base school" and a temporary school when travelling. In theory this ensures continuity, but we have observed that practical implementation of this policy is uneven. Some local authorities have adopted such practices, using the "base school" system to keep track of progress and attendance even during travel.[350] Others lack dedicated Traveller education staff and may let children fall through the cracks when they move.

Recommendation 12: The Scottish Government, with Education Scotland and COSLA, should establish a simple national protocol on dual registration (a base school plus a host school while travelling) for Gypsy/Traveller pupils. Education authorities should adopt and publish a local procedure aligned to that protocol, train school staff to implement it without delay, and monitor/report outcomes. This would deliver the accessibility and adaptability required by the 4-A framework and reduce avoidable breaks in education.

Attendance

As set out above, Scottish Gypsy/Traveller children have the lowest school attendance rate of any ethnic minority group.

Education law in Scotland places the primary duty for ensuring children's education on parents.[351] If a child has attended a public school on one or more occasion, then a parent will be liable to prosecution if they fail without reasonable excuse to attend regularly.[352]

[350] Aberdeenshire Council, 'Supporting Children and Young People from Gypsy/Traveller Communities Guidance' (2024) <https://asn-aberdeenshire.org/wp-content/uploads/2025/03/Aberdeenshire-Supporting-Children-and-Young-People-from-Gypsy-Traveller-Communities-Guidance-for-Schools.pdf> accessed 8 December 2025.
[351] Education (Scotland) Act 1980, s 30(1).
[352] Education (Scotland) Act 1980, s 35(1).

The Education (Scotland) Act 1980 sets out a list for what constitutes a 'reasonable excuse' failing to ensure a child attends a public school regularly.[353] These are:

- There is no school within walking distance which are prepared to receive the child and where no arrangements have been made by the education authority with respect to education or transport.
- The child is prevented by sickness from attending public school.
- There are "other circumstances" which in the opinion of the education authority or the court afford a reasonable excuse.

A person found guilty of an offence in relation to a child's failure to attend school is liable to a fine not exceeding level 3 on the standard scale or to imprisonment for a term not exceeding one month or to both a fine and imprisonment. [354]

There are no reported cases of prosecutions against Scottish Gypsy/Traveller parents under these provisions, and we have not been made aware anecdotally of any such prosecutions in the course of our research. That said, we are concerned that the mere availability of criminal sanctions, set against the historical use of law to compel attendance from Scottish Gypsy/Traveller children and broader policies of forced assimilation, can itself operate as a barrier. We consider the availability of such an offence risks stigmatising Scottish Gypsy/Traveller parents and may deter engagement with schools and education authorities, thereby undermining the aim of improving attendance.

We have reflected on whether these provisions are consistent with the holistic aims of education in Article 29 UNCRC; whether they align with the *accessibility* limb of the 4-A framework; and whether a punitive model may, in practice, amount to indirect discrimination against Scottish Gypsy/Traveller families absent objective justification. In our view, improving attendance requires a holistic and participatory approach (e.g. dual registration, flexible provision, co-designed attendance plans), not the threat of prosecution.

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[353] Education (Scotland) Act 1980, s 42.

[354] Education (Scotland) Act 1980, s 43. Difficulties in relation to school attendance and provision of education generally may be addressed through Scotland's system for the care and justice of children – the Children's Hearings. The hearing may make a compulsory supervision order in relation to the child if this is necessary for the child's protection, guidance, treatment, or control (Children's Hearings (Scotland) Act 2011, s 119). Such an order may contain conditions relating to a child's attendance at school.

Recommendation 13: The Scottish Government should commission research on the operation and impact of the attendance offence in the Education (Scotland) Act 1980 (including any chilling effect on enrolment/engagement for Gypsy/Traveller families), consult on whether repeal or reform is required, and report publicly. In the interim, the Lord Advocate, in line with her obligations under the Equality Act 2010, should consider issuing guidance confirming that prosecution in these circumstances is a last resort, and should not be considered unless the education authority evidences meaningful engagement with families and that they have considered their obligations under the Equality Act 2010.

Identification with ASN (Additional Support Needs)

The Education (Additional Support for Learning) (Scotland) Act 2004, as amended by the Education (Additional support for Learning) (Scotland) Act 2009, sets out the statutory regime for regulating additional support needs provision for children.

Additional support is broadly defined as any provision which is additional to, or otherwise different from, school education generally provided for children and young people of the same age in schools (other than special schools) under the management of the education authority.[355] The definition applies to all pupils for whom an education authority are obliged to provide school education, including Scottish Gypsy/Traveller children.

A child or young person has additional support needs where, for whatever reason, he or she is, or is likely to be, unable to benefit from school education without the provision of additional support.[356] The definition is wide enough to encompass a wide variety of needs.

Based on current Scottish Government statistics, there are 24 categories of ASN, as the table (Figure 4) below illustrates.

Data from 2017 indicates that Gypsy/Traveller children are significantly overrepresented in certain categories of ASN. For example, while the category ‘interrupted learning’ is attached to a relatively small number of pupils (about 20 per 1000 pupils based on the 2024 statistics), the number of Gypsy/Traveller children with this category is significantly higher (about 242 per 1000 pupils based on 2017 statistics). Children from Gypsy/Traveller backgrounds are over-represented in other categories, such as social emotional and behavioural difficulties and family issues.

[355] Education (Additional Support for Learning) (Scotland) Act 2004, s 1(3)(a).
[356] Education (Additional Support for Learning) (Scotland) Act 2004, s 1(1).

Reason for support	Total
Learning disability	17.0
Dyslexia	50.2
Other specific learning difficulty (e.g. numeric)	41.4
Other moderate learning difficulty	45.4
Visual impairment	7.8
Hearing impairment	5.9
Deafblind	0.1
Physical or motor impairment	12.0
Language or speech disorder	29.0
Autistic spectrum disorder	52.4
Social, emotional and behavioural difficulty	101.1
Physical health problem	28.2
Mental health problem	18.1
Interrupted learning	19.5
English as an additional language	83.1
Looked after	14.6
More able pupil	4.1
Communication Support Needs	24.0
Young Carer	12.2
Bereavement	9.4
Substance Misuse	1.0
Family Issues	42.3
Risk of Exclusion	3.2
Other	36.4

Figure 3: Reasons for support for pupils with Additional Support Needs, Rate per 1,000 pupils 2024

As Riddell has noted, this demonstrates strong evidence that categories which carry a degree of social stigma, and which often result in greater risk of exclusion, are disproportionately applied to Gypsy/Traveller children.[357]

We do not consider that this is consistent with the aims and objectives of ASN legislation and policy.[358] We also consider that there is a risk that this practice could constitute unlawful discrimination for the purposes of the EqA 2010 (on the grounds of 'race') and for the purposes of anti-discrimination provisions under the ECHR[359] and UNCRC[360].

Recommendation 14: We call upon the Scottish Government to review and monitor how ASN labels, particularly 'interrupted learning' are applied to Scottish Gypsy/Traveller children.

Exclusion

Scottish Gypsy/Traveller children are disproportionately more likely to be excluded from school than other minority ethnic groups. Repeated or extended exclusions have a severe impact on learning and progression and carry long-term consequences into adulthood. More generally, exclusion represents a serious interference with a child's enjoyment of their statutory right to education and with rights under Article 2 of Protocol No. 1 ECHR and Articles 28–29 UNCRC.

The latest available statistics indicate 49 cases of exclusion where the child was recorded as 'White – Gypsy/Traveller' in 2022/23. This equates to 21.7 exclusions per 1,000 pupils. By contrast the rates for other groups were 12.0 ('White – Scottish'), 4.9 ('Asian – Pakistani'), 7.2 ('Caribbean/Black') and 7.4 ('African'). Over the longer term, overall exclusions in Scotland fell from 30,211 (2009/10) to 11,676 (2022/23). Notwithstanding this general decline, exclusions affecting Gypsy/Traveller children have remained broadly similar (44 in 2009/10; 49 in 2022/23), indicating persistent disproportionality.

Scottish Government guidance on exclusions emphasises prevention, early intervention and staged supports, and asks schools to consider contributing factors, including protected characteristics, when decisions about exclusion are made.[361] The legislative scheme underpinning exclusions sits in secondary legislation that currently falls outside the scope of the UNCRC

[357] Sheila Riddell, 'The Rights of Children from Gypsy/Traveller and Roma Backgrounds in Scotland' (2021) *Hungarian Educational Research Journal.*

[358] See Scottish Government, *Supporting Children's Learning: Statutory Guidance on the Education (Additional Support for Learning) (Scotland) Act 2004 (as amended) (Code of Practice, Third Edition)* (2017).

[359] ECHR, art 14.

[360] UNCRC, art 2.

[361] Scottish Government, *Included, Engaged and Involved Part 2: A positive approach to preventing and managing school exclusions* (2017)

(Incorporation) (Scotland) Act 2024.[362] There have been repeated calls for consolidation and reform so that key duties and powers relating to exclusion are brought within the 2024 Act's scope, enabling children and young people to rely directly on UNCRC rights when challenging exclusions (see discussion at 3.1 regarding incorporation).[363]

There are only two circumstances in which a pupil may be excluded. First, where the education authority is of the opinion that the parent refuses or fails to comply, or to allow the pupil to comply, with the rules, regulations or disciplinary requirements of the school.[364] Excluding a child on the basis of parental conduct sits uneasily with a child-centred conception of the right to education. Secondly, a pupil may be excluded where, in all the circumstances, allowing continued attendance would be likely to be seriously detrimental to order and discipline in the school or to the educational well-being of pupils there.[365] The legislative scheme does not draw a formal distinction between "temporary" and "permanent" exclusions.

A decision by an education authority to exclude a child will engage other statutory functions and duties. In particular, the EqA 2010 prohibits discrimination in exclusions on grounds of protected characteristics.[366] For Scottish Gypsy/Traveller pupils the relevant characteristics are likely to include race and, where applicable, disability. Where a child has additional support needs, authorities must make adequate and efficient provision for the support required.[367]

The legislative framework prescribes the procedure that education authorities must follow where a decision has been made to exclude a child.[368] If there is no allegation of unlawful discrimination, the usual route of challenge is by reference to an education appeal committee.[369] A child with capacity may make a reference in their own right. Following a committee decision, the pupil or parent may appeal to the sheriff with jurisdiction where the school is situated, and civil legal aid is available for such appeals.[370] Where the challenge is based on disability discrimination under EqA 2010, jurisdiction lies with the Health and Education Chamber of the First-tier Tribunal for Scotland (Additional Support Needs), and many exclusion challenges in that forum proceed on disability discrimination grounds (including failure to make reasonable adjustments).[371]

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[362] Schools General (Scotland) Regulations 1975, as amended, SSI 1975/1135; and Schools General (Scotland) Amendment (No. 2) Regulations 1982, SI 1982/1735.
[363] See e.g. Together, 'Letter to the Cabinet Secretary for Social Justice' (27 October 2023) <https://togetherscotland.org.uk/media/3520/letter_cabinetsecretary_27-10-23_final_members.pdf> accessed 22 August 2025.
[364] Schools General (Scotland) Regulations 1975, Reg 4(b).
[365] Ibid.
[366] EqA 2010, s 85(2).
[367] Education (Additional Support for Learning) (Scotland) Act 2004, ASP 2004/4, s 4.
[368] Schools General (Scotland) Regulations 1975, Reg 4A.
[369] Education (Scotland) Act 1980, s 28H.
[370] Education (Scotland) Act 1980, s.28H(6) and (7).
[371] EqA 2010, s 117 and Pt 3 of Sch 17.

Claims based on other protected characteristics (e.g. race) proceed in the sheriff court.[372]

Any exclusion, whether permanent or temporary, has a profound impact on a child's access to education, and in this respect, both Article 28 UNCRC and Article 2 of Protocol No. 2 ECHR are engaged.

A review of Scottish Government and local authority policy demonstrates a welfare-based approach focused on prevention and intervention, and a welcome recognition that challenging pupil behaviour often results from unmet needs.[373] Notwithstanding, we draw attention to the absence of a sustained focus on how structural discrimination, particularly in the form of racialised stereotyping and bullying, influences decision making in the context of exclusion. In this respect, we note the extensive research and reviews which have been undertaken, primarily in England and Wales, seeking to understand disproportionate rates of school exclusions experienced by children and young people from ethnically minoritised backgrounds, particularly black children.[374]

Given the sustained high rate of exclusion of Scottish Gyspy/Traveller children, borne out in quantitative evidence published by the Scottish Government, we consider there is a need for qualitative research seeking to understand the multi-faceted factors (including racial bias) that may be at the root of the disproportionately high rates of exclusions. This research should examine the experiences of Scottish Gypsy/Traveller children; as well as professionals in education, particularly their understanding of the role that systemic racism may play in the circumstances leading to exclusion.

Recommendation 15: In line with their obligations under the EqA 2010, and specifically the Public Sector Equality Duty, we call on the Scottish Government to commission and fund qualitative research seeking to explore and understand the disproportional rates of school exclusions experienced by children and young people from Gypsy/Traveller backgrounds.

From an access to justice perspective, we have drawn attention to the fact that the legislative framework underpinning exclusion decisions and mechanisms for challenge falls outside the scope of the UNCRC (Incorporation) (Scotland) Act 2024. There is

[372] EqA 2010, s 114(1)(c).
[373] Ted Cole and others, 'Factors Associated with High and Low Levels of School Exclusions: Comparing the English and Wider UK Experience' (2019) 24(4) Emotional & Behavioural Difficulties 374-390.
[374] Claire Stewart-Hall, Lorraine Langham, and Paul Miller, 'Preventing School Exclusions of Black Children in England – A Critical Review of Prevention Strategies and Interventions' (2023) 2(3) Equity in Education & Society 225-242; Edward Timpson, *Timpson Review of School Exclusion* (2019) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/807862/Timpson_review.pdf> accessed 30 July 2025; Listen Up, 'Professional Perspectives: School Exclusions, Disproportionality, and Criminal Exploitation' (2022) <https://yjresourcehub.uk/wp-content/uploads/media/School_Exclusion_Disproportionality_Criminal_Exploitation_Report_Norfolk_County_Lines_Pathfinder_January_2022.pdf> accessed 30 July 2025.

now an urgent need to review and bring this legislation within scope, by re-enacting the provisions in a stand-alone Act of the Scottish Parliament, and to design processes and mechanisms for challenge that are child-centred. We note the absence of case law concerning challenges to the exclusion of Scottish Gypsy/Traveller children, despite disproportionately high exclusion rates in recent years, and consider that this may be explained by the complexity of the framework.

Bullying, Harassment and Discrimination

Bullying and harassment has been consistently recognised as one of the principal barriers to the full realisation of the right to education for Scottish Gypsy/Traveller children. In a report published in 2009, the Equality and Human Rights Commission found that 'racist harassment and bullying', together with 'the inadequacy of many schools' responses' was 'the most prominent theme' in analyses of the low levels of educational participation and attainment.[375] Jordan has drawn attention to the persistent name-calling experienced by Scottish Gypsy/Traveller children as one example of the manifestation of racialised bullying.[376]

In their most recent monitoring report, the Advisory Committee on the Framework Convention expressed concern at the 'shocking levels' of racist bullying against Gypsy/Traveller children in the UK. Drawing on evidence submitted by representatives of Gypsy/Traveller communities, the Committee found that persistent bullying and a lack of action from schools to adequately deal with it is a significant driver of lower rates of attendance in schools. In relation to reporting and monitoring, the Committee noted that a lack of awareness of antigypsyism contributed to a lack of action on the part of schools to tackling racist bullying. The Advisory Committee called on public authorities to take the following actions:

- Take priority measures to tackle racist bullying in schools, in particular against Gypsies, Roma and Travellers, including through making recording instances of racist bullying mandatory in schools in Great Britain, strengthening mechanisms and remedies in cases of racist bullying.
- Introduce training for teachers on Gypsy, Roma and Traveller cultures, their way of life and dealing with instances of antigypsyism in schools.

The evidence above is consistent with the general findings of this report that racism against Scottish Gypsy/Travellers is structural and endemic.

We are mindful of the challenges that schools and education authorities face in eradicating bullying and harassment in schools. Notwithstanding, we draw attention to the fact that failures to address racist bullying and harassment, through development of policies and practices in

[375] Equality and Human Rights Commission, 'Inequalities Experienced by Gypsy and Traveller Communities: A Review' (2009).
[376] Elizabeth Jordan (n310).

relation to reporting and monitoring, engage education authorities' obligations under the EqA 2010, as well as positive obligations under the right to education under the ECHR and UNCRC. In relation to the UNCRC, the Committee on the rights of the Child has emphasised that school culture and school environment must reflect the freedom and the spirit of understanding called for in Article 29, and in this respect, '[a] school which allows bullying…or other violent and exclusionary practices to occur is not one which meets the requirements of article 29 (1)'.[377]

We note that Scottish Government guidance calls upon schools to develop their own anti-bullying policy and guidance, in consultation with children and young people and their parent(s) and teachers and coaches.[378]

In the course of our research, we have reviewed publicly available anti-bullying guidance and strategy published by education authorities. Indeed, Perth and Kinross Counsel bullying strategy makes explicit reference to the experiences of Gypsy/Traveller children:

> *'Children and young people who are Gypsy/Travellers may be at greater risk of bullying directly and indirectly. Some bullying behaviour against these groups may be of a racist nature which, given that race is a protected characteristic, can contravene equality legislation and have hate crime implications. Perceived risks about bullying and given that race is a protected characteristic parents' own experiences of discriminatory behaviour may lead to low levels of enrolment and poor attendance for Gypsy/Traveller children and young people as well as early exit from formal education.'*[379]

The acknowledgment in this guidance that conduct may contravene equality law and have hate-crime implications, and connecting this to lower enrolment, poor attendance and early exit, is welcome. At the same time, we note that the strategies we have reviewed do not address the root causes of bullying and harassment of Scottish Gypsy/Traveller children, which as we have discussed is bound up in racism and stereotyping. Nor do the strategies provide guidance on developing culturally sensitive responses to tackling racist bullying and harassment, and how procedures and mechanism for reporting will be made credible to children who have experienced such discrimination.

Given the entrenched and systemic discrimination that Gypsy/Travellers in Scotland face in all aspects of life, there is no

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377 UN Committee on the Rights of the Child, 'General Comment No.1: The Aims of Education (17 April 2001) UN Doc CRC/GC/2001/1.

378 Scottish Government, *Respect for All: The National Approach to Anti-Bullying for Scotland's Children and Young People* (2017) <https://www.gov.scot/publications/respect-national-approach-anti-bullying-scotlands-children-young-people/> accessed 25 August 2025.

379 Perth and Kinross Council, *Anti-Bullying Strategy Operational Guidance: Part 2* <https://www.pkc.gov.uk/media/53414/Perth-and-Kinross-Council-Anti-Bullying-Operational-Guidance/pdf/Anti-bullying_Operational_Guidance.pdf?m=1730464284710> accessed 25 August 2025.

'silver bullet' that will eradicate bullying and harassment in schools. However, and in line with their obligations under domestic equality and human rights law, we make the following recommendations to ensure that children and young people from Gypsy/Traveller backgrounds are able to fully participate in education in Scotland:

Recommendation 16: We call on education authorities to work with Scottish Gypsy/Traveller children and families to develop strategies for combatting racist bullying and harassment in schools, which should address the design of accessible, transparent and culturally-sensitive reporting mechanisms. In this regard, education authorities should consider funding a designated community liaison officer with cultural competence who can advocate for the child in reporting processes.

Recommendation 17: We call on education authorities to introduce systematic training for all teaching professionals on racist bullying and its legal implications under the EqA 2010

Recommendation 18: In line with the recommendations of the Advisory Committee, we call on the Scottish Government to publish routine data on bullying and harassment in schools, disaggregated by ethnic group.

Recommendation 19: Anti-bullying work should connect to the wider curriculum changes discussed above, including increasing visibility of Gypsy/Traveller histories and cultures in the mainstream curriculum.

3.6 Hate Crime

Context

In the course of our research, we came across anecdotal accounts of harassment perpetrated against SGT individuals and communities by members of the wider public and, in some instances, by duty bearers. Such behaviour is rooted in prejudicial attitudes related to the nomadic lifestyle and other cultural practices of SGTs and linked to wider discriminatory beliefs about SGT communities, many of which are embedded in and have been endorsed by the systemic historical practices exercised by Scotland's public institutions.[380]

Given SGT's status as a distinct racial group under equality law[381] and as a protected minority under International human rights law,[382] such behaviour can be said to be racially motivated. Where an offender's actions are driven by hatred towards a particular group, the behaviour may be interpreted as constituting a hate crime. Although legal sanctions related to hate crime have existed since 1986,[383] Scotland has recently introduced specific legislation which is intended to provide greater protections for those who are targeted by criminal behaviour which is rooted in prejudice.

The Hate Crime and Public Order (Scotland) Act 2021[384] defines a hate crime as any criminal offence where, at the time of committing the offence, or immediately before or after doing so, the offender demonstrates malice and ill-will towards the victim or towards a group of persons which is based on the individual victim's or group's membership or presumed membership of a defined characteristic group.[385]

The characteristic groups are: age, disability, race, colour, nationality (including citizenship), or ethnic or national origins, religion or, in the case of a social or cultural group, perceived religious affiliation, sexual orientation, transgender identity, variations in sex characteristics.[386] To fit this definition the behaviour must be perceived by the victim or anyone else to be motivated by hostility or prejudice. Evidence from a single source is sufficient to prove that an offence is aggravated by prejudice.[387] Criminal offences that could be categorised as hate crimes include assault, harassment and verbal and online abuse.

Racially aggravated harassment is specifically provided for under the Act[388] and will arise where the offender demonstrates malice and ill-will towards an individual victim or group which is based on the victim's or

[380] Watson (n 5).
[381] *McClellan* (n 15). See Section 3.2 above.
[382] See Section 3.1 above.
[383] Under the Public Order Act 1986 which is a UK-wide statute with some provisions applying in Scotland.
[384] The Act was passed by the Scottish Parliament in 2021 and implemented on 1 April 2024.
[385] Hate Crime and Public Order (Scotland) Act 2021, 2021 asp 14, s 1(1).
[386] Hate Crime and Public Order (Scotland) Act 2021, s 1(2).
[387] Hate Crime and Public Order (Scotland) Act 2021, s 1(4).
[388] Hate Crime and Public Order (Scotland) Act 2021, s 3.

group's presumed race, colour, nationality (including citizenship), or ethnic or national origins. To amount to harassment, the conduct, which includes speech, must have occurred on at least two occasions.

Whereas most of the new Act's provisions maintain and consolidate pre-existing protections in law against offences aggravated by prejudice,[389] it also introduces a new offence of 'stirring up hatred'. This criminalises threatening or abusive behaviour and the communication of threatening or abusive material which is intended to stir up hatred against a group of people who possess, or appear to possess, a defined characteristic.[390] This new offence adopts a high threshold for categorising behaviour as criminal as the behaviour must be shown to be both threatening or abusive ***and*** intended to stir up hatred. This is in contrast to the pre-existing and continuing offence of stirring up racial hatred,[391] which includes insulting behaviour as part of the relevant threshold, and which takes a wider approach to the types of behaviour likely to stir up hatred whether or not that is the perpetrator's intention.[392]

In the context of online hate crime, the UK-wide Online Safety Act 2023 (OSA) is also relevant. Although online communications are covered by the Hate Crime and Public Disorder (Scotland) Act 2021, additional protections have been introduced by the OSA which places new duties on social media companies, search engines and those running platforms such as messaging, gaming and dating apps.[393] From OSA's implementation in April 2025, new criminal offences include: encouraging or assisting serious self-harm; threatening communications; sending false information intended to cause non-trivial harm; intimate image abuse, and cyberflashing.[394]

Legal Framing of a Hate Crime: Criminal not Civil Law

The legal framing and relevant definition of a hate crime adopted by the Hate Crime and Public Order (Scotland) Act 2021 is distinct from harassment as a form of racial discrimination which is provided for under the Equality Act 2010 (see Section 3.2 above). The anti-discrimination provisions of the Equality Act are situated within the civil justice framework where relevant legal action will be by way of party-party litigation pursued by an individual in the civil courts and/or tribunals which, if successful, will give rise to a range of

[389] I.e. in the contexts of disability, race, religion, sexual orientation and transgender identity which are the same characteristics across the UK for hate crime. The Act adds age as a new characteristic.
[390] Hate Crime and Public Order (Scotland) Act 2021, s 4.
[391] See Public Order Act 1986, S.I. 1987/198, s 18-23.
[392] Equality, Inclusion and Human Rights Directorate, 'Hate Crime and Public Order (Scotland) Act Factsheet' (Scottish Government 2024) <https://www.gov.scot/publications/hate-crime-and-public-order-scotland-act-factsheet/> accessed 8 December 2025.
[393] See Ofcom, 'Time for Tech Firms to Act: UK Online Safety Regulation Comes into Force' (2024). Time for tech firms to act: UK online safety regulation comes into force.
[394] For a detailed guidance on online hate crime in Scotland, see Coalition for Racial Equality and Rights, 'Tackling Online Hate and Extremism' (2025).

individual remedies including financial compensation. Hate crime, by contrast, is part of Scotland's criminal law and legal action will depend on prosecution of an individual or individuals by the Crown Office and Procurator Fiscal Service on behalf of the state.

This distinction is important because, as well as the need to fulfil the relevant legal definitions pertaining to each Act, a complaint which meets the legal standard required in a civil case may not meet the standard required in order to bring a criminal prosecution. The crossover between the civil and criminal definitions relating to harassment and harassing behaviour can be explored through a consideration of some of the existing research related to harassment and related behaviours perpetrated against Gypsy, Traveller and Roma communities and against SGTs specifically.

Gypsy, Traveller and Roma Communities as the Victims of Hate Crime: UK-wide Evidence

Research published in 2020 on the psychological effects of hate crime on Gypsy, Traveller and Roma (GTR) communities across the UK[395] found that such behaviour was experienced almost daily: 78% of survey respondents reported that incidents of hate speech/crime happened 'very often' and was, according to one survey respondent, "as regular as rain". Whilst not by any means diminishing or undermining the serious impacts of such behaviour on the mental health and wellbeing of its recipients, a closer look at the types of conduct cited as examples of hate crime by the research participants reveals a misalignment with the relevant legal definition in some cases. Certain types of the behaviours cited appear to conform more closely with the definition of racial discrimination actionable under the Equality Act rather than complying with the legal definition of a hate crime. For example, the exclusion and discrimination from and within services such as health and education, experienced by 94% of respondents, although undoubtedly rooted in prejudice, is unlikely to meet the definition for criminal behaviour required under the Hate Crime and Public Order (Scotland) Act 2021 or to comply with the harassment provisions of the Public Order Act 1986. The reinforcement of negative stereotypes experienced by 89% of respondents might also, depending on the context and nature of the conduct experienced, fall more clearly within the civil law framework provided under the Equality Act. Social media abuse, experienced by 87% of respondents could, depending on the specific types of conduct, fit the criminal law (hate crime) categorisation, likewise media incitement to racial hatred, which was experienced by 82% of respondents - although again the specific types of conduct would have to be carefully considered to provide a conclusive assessment.

[395] Margaret Greenfields and Carol Rogers, 'Hate: "As Regular as Rain" A Pilot Research Project into the Psychological Effects of Hate Crime on Gypsy, Traveller and Roma (GTR) Communities' (2020) <https://gateherts.org.uk/wp-content/uploads/2020/12/Rain-Report-201211.pdf> accessed 30 July 2025.

The crossover in the categorisation of different types of conduct makes it difficult to assess the extent and nature of what would be legally defined as hate crimes committed against Gypsy, Traveller and Roma communities. As further studies show, this difficulty is exacerbated by the underreporting of relevant incidents and the treatment of such reports by the relevant authorities. Research which explored the experiences of Gypsies and Travellers in England[396] noted the chronic underreporting of hate crime to the authorities by those within these communities. Although individuals were willing to submit anonymous reports of such conduct to a Report Racism GRT reporting website, 'Recognise, Report, Resolve',[397] the majority of those using the site were reluctant to report these crimes to the police, due in most cases to a lack of confidence that the police would act.[398] This was attributed to 'decades long over-policing' of community members which had resulted in mistrust of the police and the wider criminal justice system.[399]

The full extent of hate crimes committed against Gypsy, Traveller and Roma people across the UK remains unknown, a situation that is likely to be compounded in the context of official reporting as 'many police forces do not record the ethnicity of victims in line with the Census 2021 categories.'[400] Freedom of Information Requests made by Friends, Families and Travellers revealed that, whilst many police forces in England said they recorded ethnicity data for victims, this was not done in any standardised way and was not subjected to systematic reporting or analysis.[401] Furthermore, there is some evidence to suggest that different police forces employ variable approaches when investigating race hate against Gypsies, Travellers and Roma. Detailed scrutiny of the approach of the Crown Prosecution Service (CPS) (which prosecutes criminal cases in England and Wales), has highlighted issues with both 'appropriate levels of investigations into race hate against Gypsy, Roma and Traveller people, as well as inconsistences in approaches in investigations and referral rates to the CPS'.[402]

SGTs and Hate Crime

In the Scottish context, despite Scottish Government's acknowledgement of the links between racial prejudice and poor mental

[396] Friends, Families and Travellers, 'Race Hate and Prejudice Faced by Gypsies and Travellers in England' (2023) <https://www.gypsy-traveller.org/wp-content/uploads/2025/03/Race_hate_and_prejudice_faced_by_Gypsies_and_Travellers_in_England_Briefing-2.pdf> accessed 30 July 2025.
[397] Naomi Thompson and David Woodger, 'Recognise Report Resolve' (2021) <https://gateherts.org.uk/wp-content/uploads/2021/10/Recognise-Report-Resolve.pdf> accessed 30 July 2025.
[398] For a detailed analysis of online hate speech reported to third party reporting website Report Racism GRT, see Naomi Thompson and David Woodger (2020) '"I hope the river floods": Online hate Speech Towards Gypsy, Roman and Traveller Communities', British Journal of Community Justice 16(1), 41–63.
[399] Friends, Families and Travellers (n 381), 5.
[400] Ibid.
[401] Ibid.
[402] Ibid.

health, lower educational attainment and mistrust of public services, it appears that there is still work to be done in terms of gathering, analysing and disseminating reliable data on the nature and extent of hate crime experienced by SGTs. In its most recent action plan on Improving the Lives of Scotland's Gypsy/Travellers[403] the Scottish Government notes that 'progress in Dialogue's 'Long Shadow of Hate Crime' project, supported by Scottish Government funding, has contributed to increased engagement and awareness raising on hate crime within Gypsy/Traveller communities'.[404]

The unsatisfactory handling of reported hate crime noted in the research relating to England and Wales, also appears to be a feature of Scottish institutions although it is difficult to pin down the nature and extent of this as there is little available information beyond anecdotal media accounts, several of which focus largely on one apparently egregious case which was not pursued by the Crown Office.[405] Drawing on its own engagement with SGT communities, Making Rights Real has noted 'significant concerns from Gypsy Traveller communities in Perth and Kinross, that Police Scotland are failing to record hate crime against them and that the Crown Office and Procurator Fiscal Service (COPFS) are not following the law correctly.'[406]

As has been noted elsewhere in this report, pervasive and continuing prejudice linked to SGT's status as an ethnic group perpetrated at both individual and community-levels has remained a constant feature of life in Scotland which substantially increases the likelihood of hate crimes being committed. Research conducted alongside the archival research commissioned by the Scottish Government which considered twentieth-century policies and legislation that have negatively affected and continue to affect SGTs, presented a range of lived experience testimonies.[407] On the life-long impacts of such policies and legislation, these testimonies make for difficult reading. Blatant racism, often in the form of hateful language, have been a common experience for many SGTs from their earliest school days and throughout the life course with severe negative impacts on the ability of many to live their lives without fear of persecution.[408] One

[403] Improving the Lives of Scotland's Gypsy/Travellers 2 Action Plan 2024-2026 (n 12).
[404] Improving the Lives of Scotland's Gypsy/Travellers 2 Action Plan 2024-2026 (n 12). For more information and to listen to a first-hand account of the discrimination experienced by one your SGT, See Progress in Dialogue, 'The Long Shadow of Hate Crime' (2023) <https://progressindialogue.org.uk/portfolio/long-shadow-of-hate-crime/> accessed 30 July 2025.
[405] See e.g. Jennie Kermode, 'When Hate Crime Legislation Is Not Enough' (Bylines Scotland, 20 October 2023) <https://bylines.scot/society/when-hate-crime-legislation-is-not-enough/> accessed 30 July 2025; Colin Turbett, 'Is the Gypsy Traveller community's ethnic minority status under threat?' *The National* (25 March 2024) <https://www.thenational.scot/politics/24207302.gypsy-traveller-communitys-ethnic-minority-status-threat/> accessed 30 July 2025.
[406] Making Rights Real, 'Report to the Committee on the Elimination of Racial Discrimination (CERD) Contribution' (2024) 9 <https://makingrightsreal.org.uk/wp-content/uploads/2024/07/MRR-CERD-contribution-2024.pdf> accessed 30 July 2025.
[407] Fell (n 6).
[408] Ibid 17-21.

possible effect of this is that such treatment may become normalised for recipients and, whilst undoubtedly traumatic, is not recognised as actionable. Alongside issues of distrust and faith in the criminal justice system, this is likely to impact on the reporting of hate crime by SGTs.

Reporting and Prosecution of Hate Crimes in Scotland

BEMIS[409] has reported that, in the 8 years to 2020 (where data is available), 33,087 race-related hate crime charges were progressed by the Crown Office and Procurator Fiscal Service.[410] However, as BEMIS's analysis reveals, although 'racially aggravated hate crime remains Scotland's dominant issue of prejudiced criminal behaviour' the statistical information required to identify the nature and extent of such conduct perpetrated against different racial and ethnic groups is simply not available.[411] This is largely attributable to the amalgamation of Police Scotland in 2013 when the eight pre-existing regional police forces in Scotland were merged with no harmonisation of computer systems making it difficult to extrapolate and disaggregate race hate crime data.[412]

Statistics released by the Crown Office and Procurator Fiscal Service in 2024 relating to charges brought in respect of hate crime between 2012-13 to 2021-22,[413] (prior to the introduction of the Hate Crime and Public Order (Scotland) Act 2021)[414] revealed that the total number of charges reported which contained 'at least one element of hate crime' in 2021-22 was 5,640, compared with 5,654 in the previous year. Race was consistently the characteristic which was the focus of most reported hate crime. A total of 3,107 charges relating to race were reported in 2021-22, which was down 7% compared to 2020-21. Although the numbers of charges have fluctuated over recent years, they were 32% lower in 2021-22 than their peak of 4,547 in 2011-12. This data, although helpful in setting out the general context in which the Hate Crime and Public Order (Scotland) Act 2021 was introduced, are limited in what they can tell us about the nature of hate crime charges relating to race as they are not disaggregated in terms of different categories of race or ethnicity.

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[409] The national Ethnic Minorities-led umbrella body supporting the voluntary sector in Scotland.
[410] BEMIS, 'Hate Crime and Public Order (Scotland) Bill: BEMIS Scotland Response' (2020) <https://bemis.org.uk/wp/wp-content/uploads/2020/07/Hate-Crime-and-Public-Order-Scotland-Bill-BEMIS-July-2020.pdf> accessed 30 July 2025.
[411] BEMIS (n 396) 4.
[412] Ibid.
[413] Crown Office and Procurator Fiscal Service, 'Hate Crime in Scotland, 2021–22' (2022).
[414] These statistics are thus based on the prior definitions of hate crime contained in section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995 or Section 18, 19 or section 23(1)a of the Public Order Act 1986 or any substantive charge that was racially aggravated in terms of Section 96 of the Crime and Disorder Act 1998.

Likewise, police data on the number of hate crimes recorded during 2023-24 alongside time series analysis going back to 2014-15[415] does not provide a detailed breakdown of reported incidents by the racial or ethnic identity of victims / recipients. As with the Crown Office statistics on charges, this data relates to the period prior to the implementation of the Hate Crime and Public Order (Scotland) Act 2021 in April 2024. Data relating to 2020-21[416] was analysed to provide some information on the characteristics of hate crime based on a random sample of cases recorded by the police. This analysis revealed that in 2021-22, around three-fifths (62%) of hate crimes included a race aggravator and that, where information was available on the ethnicity of victims, almost two-thirds (or 64%) of race aggravated hate crimes had a victim from a visible minority ethnic (non-white) group. This compares to 4% of Scotland's population at the time of the last census in 2011. Although 'Gypsy / Traveller' was included as a category in the analysis of data relating to the ethnicity of victims, the corresponding number of reports was so small that it was deemed to be statistically insignificant.

In 2023-24, race continued to be the most common target characteristic with 63% of hate crimes including a race aggravator. However, the broader time series data showed a decrease since 2014-15 in the number of recorded hate crimes that included a race aggravator (down 25% from 5,178 crimes to 3,907 crimes by 2023-24), with the number of hate crimes including a religious aggravator also down over the same period (by 35%). The characteristics for which recorded hate crimes had increased during the period were those recording: a sexual orientation aggravator (up 34%); a disability aggravator which had more than doubled; and a transgender identity aggravator which had more than tripled.

The reasons for the changes in the numbers of different types of recorded hate crimes are not explored in the analysis although the report does note the issue of under-reporting of hate crime, and acknowledges that 'different groups in society may be more or less likely to report to the police that they have been the victim of a hate crime.'[417] By way of context, the Scottish Crime and Justice Survey (SCJS) estimated that 29% of all crimes (as defined by the SCJS) were reported to the police in 2021-22.[418]

Following the introduction of the Hate Crime and Public Order (Scotland) Act in April 2024, media reports indicated a sharp rise in reporting which was up by 63% in the first six months, with most reported incidents related

[415] Scottish Government, *Hate Crimes Recorded by the Police in Scotland, 2023–24* (2025) <https://www.gov.scot/publications/updated-study-characteristics-police-recorded-hate-crime-scotland/> accessed 30 July 2025.
[416] Ibid.
[417] Ibid 5.
[418] Ibid 10.

to race and age.[419] The Crown Office confirmed that 468 of the charges from April to September had progressed to "some form of prosecutorial action" and, in September 2024, a total 42 cases had resulted in a conviction, with more than 80% of the cases still working their way through the courts.[420] How many of the cases linked to race were reported by or on behalf of SGTs is currently unknown, and statistics for the first full year following the Act's introduction (2024-25) were not available at the time of writing.

It is hoped that the lack of disaggregated data and meaningful analysis of the reporting and police handling of hate crime in Scotland will be addressed by the introduction of the new Act, specifically section 15 which provides for the publication of future reports on hate crime recorded by the police in Scotland, including on offences aggravated by prejudice within the meaning of section 1. This new reporting regime should also provide details of the extent to which this information has been recorded by the police, and on the age, sex and ethnic or national origins of any person recorded as being the victim, perpetrator or suspected perpetrator of the reported offence. Furthermore, reporting must include, where recorded, information on the specific prejudice being shown by the perpetrator across the different aggravators.

Conclusions and recommendations

The lack of reliable, good quality disaggregated data and detailed empirical research into the nature and extent of hate crimes committed against SGTs has served as a barrier to understanding the nature and extent of related conduct and identification of the actions required to effectively respond to it. Recent developments, not least the Scottish Government's own acknowledgment of the institutional prejudice that has reinforced wider public attitudes towards SGT communities, has the potential to mark a sea change in this respect. However, such change will not happen without greater efforts at improved data gathering and analysis and a focused programme of public awareness-raising through education and other means. An appropriate legal framework for such action already exists by way of the Public Sector Equality Duty[421] (see section 3.2 above) which, as part of a general duty imposed on public authorities, requires them when exercising their functions to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct;
- Advance equality of opportunity between people who share a relevant protected characteristic and those who do not; and

[419] 'Recorded hate crimes in Scotland soar by 63% after law introduced' *BBC News* (Edinburgh, 4 October 2024) https://www.bbc.co.uk/news/articles/c70w98pd128o accessed 22 August 2025.
[420] Ibid.
[421] EqA 2010, s 149.

- Foster good relations between people who share a protected characteristic and those who do not.

Recommendation 20: We call on the Scottish Government:

- To ensure that the provisions of the Hate Crime and Public Order (Scotland) Act 2021 (section 15) are implemented effectively by Police Scotland and other duty bearers within all relevant public authorities so as to ensure the gathering, collation and disaggregation of reliable data relating to the recording of racially aggravated hate crimes reported by or on behalf of SGTs.
- To invest the necessary resources in targeted research into the nature and extent of hate crime, as defined in law, perpetrated against SGTs.
- To provide culturally appropriate and accessible guidance and information for rights holders on the nature of hate crime and the differences between civil and criminal law in relation to prejudice, discrimination and harassment and support for reporting and pursuing legal action where necessary. Support should include free legal advice and representation for all those reporting hate crime.

Although specific Scottish legislation intended to provide greater protection for those who experience hate crime in Scotland, including on the grounds of race or ethnicity, is relatively new, hate crime has been recognised within Scotland's legal framework since 1986.

Given the high number of anecdotal accounts of and third- party data relating to hate crime perpetrated against SGTs over many years, the lack of reported cases and successful prosecutions seems anomalous. This is due to a number of interrelated factors including a lack of faith in the criminal justice system due to long-standing distrust of the relevant authorities and/or poor relations between SGT communities and the police as well as the normalisation and acceptance of such conduct for those who are its recipients. Furthermore, existing anecdotal evidence suggests that, even where hate crime is reported, such reports are not always treated with the seriousness that they merit by the police and/or the Crown Office and Procurator Fiscal Service.

Recommendation 21: We call on Police Scotland to ensure the provision of culturally sensitive training for all those involved in the handling of hate crime complaints including against media outlets.

Recommendation 22: We call on the Crown Office and Procurator Fiscal Service to provide improved statistical data on the breakdown of racially aggravated hate crime, relevant offences and prosecution rates for each racial or ethnic group in line with Scottish census classifications.

Recommendation 23: We call on Scotland's Local Authorities and Other Relevant Listed Public Authorities to fully implement the Public Sector Equality Duty, with particular regard to the duty to foster good relations in respect of SGTs, for example by way of focused equality impact assessments recording the positive steps taken to discharge this duty and assessments of their effectiveness informed by SGT community participation and engagement.

4. CONCLUSION

4.1. Findings

In this report, we have sought to identify and understand the challenges experienced by Scottish Gypsy/Travellers and the impact on their ability to participate fully in political and social life. Taking a thematic approach, we have sought to identify the key domestic rights, powers and obligations on duty-bearers, and to map these against relevant international human rights standards and approaches. We have made findings and recommendations directed at public authorities at the national and local level.

There are two general findings which are important to state at the outset.

First, some of the issues highlighted in this report concern violations of economic, social and cultural rights that have limited justiciability in Scotland—meaning that an individual cannot rely upon the right to directly challenge a public authority for any breaches. As we have drawn attention to in Section 3.1, while civil and political rights receive extensive protection in law through the incorporation of the ECHR via the Human Rights Act 1998, the UK has not incorporated a range of international human rights treaties which deal with key economic, social and cultural rights, including in particular ICESCR.

This is particularly relevant in the context of the discussion about the acute health inequalities experienced by Scottish Gypsy/Travellers (see Section 3.4), where the lack of justiciability in respect of the right to health in Scotland makes it difficult to assess whether and to what extent this right is realised and implemented with regard to Scottish Gypsy/Travellers.

In Scotland, the incorporation of the UNCRC into domestic Scots law represents a welcome shift towards the protection and realisation of children's economic, social and cultural rights. Against the backdrop of our findings on the experiences of Scottish Gypsy/Travellers, it is vital that the full range of these rights is legally enforceable through justiciable routes. We therefore call upon the Scottish Government to take the necessary steps to incorporate ICESCR through a compliance duty, subject to the constraints of devolution.

Where we have identified rights issues experienced by Scottish Gypsy/Travellers which are enforceable through domestic legal routes, we have found barriers to accessing remedies in practice. While we discuss specific legal frameworks in depth under thematic sections, we draw attention to one overarching barrier to access to justice: access to timely, culturally competent legal advice to enable Scottish Gypsy/Travellers to understand their rights under domestic law and to challenge breaches.

At the heart of this is the availability of legal representation. In the course of our research, and particularly through our partnership with making Rights Real, we have been made aware of the difficulties experienced by SGTs in attempting to secure advice and representation across a range of legal problems. It is possible that this can be explained by one or a combination of the following factors: a lack of experience or expertise in a given area of law, particularly where human rights and equality issues arise; the complexity of the issue(s), notably in the context of housing protections in relation to Gypsy/Traveller Sites (see Section 3.3); the availability of solicitors who undertake civil legal aid work; the rural location of the Sites where some communities live; and/or perceived conflicts of interest. However, in the context of our findings on the structural nature of the discrimination faced by Scottish Gypsy/Travellers (see Section 3.2 and below), we do not discount the possible role that racial bias and stereotyping have played in influencing decisions around client onboarding. In this respect, we draw attention to publications from respected law firms in Scotland which, in our view, risk reinforcing damaging negative stereotypes of Scottish Gypsy/Travellers.

Having drawn attention to these important overarching findings, we now turn to specific findings under thematic sections.

Under the heading of Discrimination (Section 3.2), we have found that the prevalence of discriminatory outcomes faced by Scottish Gypsy/Travellers, and explored in this report, points to and supports the conclusion that racism against SGTs is structural in nature. In other words, racist consequences are embedded in the social, economic, cultural and political forces which define and govern the relationships between SGTs as a minority group and members of the majority population.

While the Equality Act 2010 provides extensive protection against discrimination across a range of protected characteristics, including race, we have found that a lack of clear understanding and consistency around who is protected under the Equality Act 2010 creates a barrier in practice to public authorities discharging their duties toward Scottish Gypsy/Travellers. In the context of redevelopment works funded by the Scottish Government's Gypsy/Traveller Accommodation Fund, we have highlighted the need for local authorities to comply with their obligations under the Equality Act 2010, notably the Public Sector Equality Duty and associated specific duties. Finally, while the enforcement framework under the Equality Act 2010 creates remedies for individuals to challenge unlawful discrimination across areas such as housing, education and service provision, there is in Scotland little evidence of Scottish Gypsy/Travellers using the legislation. In this regard, equality law is complex and requires legal representation. In any case, the ability of the legal framework to address the structural racism experienced by SGTs depends not only on individual litigation but may also require the Equality and Human Rights Commission to use its powers of inquiry and investigation.

Under the heading of Housing (Section 3.3), we have found that important aspects of Scotland's law, policy, and practice in relation to housing protections for Scottish Gypsy/Travellers are incompatible with the key tenets of the right to adequate housing set out in Article 11 ICESCR, specifically legal security of tenure, habitability and cultural adequacy.

One of the key issues that has emerged from our research is a lack of clarity regarding security of tenure, and specifically, what rights and protections residents living on sites and in accommodation provided by local authorities have in relation to failures by local authority landlords. We have found that this stems from two issues.

First, we have found that local authorities adopt a restrictive interpretation of the Housing (Scotland) Act 2001 which excludes Scottish Gypsy/Travellers living in chalet-style accommodation on public sites from the scope of the Scottish Secure Tenancy framework. Mobile homes and similar structures are not excluded from the scope of the Scottish Secure Tenancy regime. However, the absence of any express reference to such accommodation, or of formal guidance addressing the legal status of residents on local authority sites, risks creating disparities in legal protection based not on principle, but on differing local authority interpretations of whether accommodation on local authority-managed Sites fall within the scope of the 2001 Act. Even where written agreements between residents and the local authority reflect the Scottish Government's Model Tenancy Agreement for Scottish Secure Tenancies, we consider that clarity as to the statutory regime underpinning those agreements is key. In this regard, we see no reason as a matter of principle, why Scottish Gypsy/Travellers living on local authority-managed Sites should not be regarded as Scottish Secure Tenants. For this reason, we have recommended that the Scottish Government consult urgently on amending the Housing (Scotland) Act 2001 to explicitly cover the situation of Scottish Gypsy/Travellers living on local authority or RSL sites.

Second, based on Scottish Government policy documentation and correspondence which we have seen between residents of specific sites and local authorities, we have noted a widely adopted position that Scottish Gypsy Travellers fall within the scope of the Mobile Homes Act 1983, and therefore benefit from the security of tenure and protections afforded by the legal framework governing mobile homes/caravans. We take the view that this position—at least insofar as the residents of *all* SGT sites in Scotland are concerned—is likely to be incorrect in law.

We have set out in Section 3.3 our detailed analysis of the scope and applicability of mobile homes/caravan legislation. The law in this regard is complex, and the legislative scheme is fragmented and requires detailed cross-referencing between provisions. This makes it challenging for any resident living on a public or private caravan site—and indeed any adviser or legal representative—to understand the extent to which mobile home/caravan legislation governs the terms of their agreement with the landlord. This represents a significant barrier to access to justice.

We note, with concern, that the measurements of the replacement chalets at Double Dykes, based on publicly available planning documentation, appear to be exceed the maximum size dimensions for a caravan/mobile home set out in the legislative framework.[422] This goes beyond a technical matter and has a significant legal implications. This is because tenants in chalets which fall outside the scope of the mobile home/caravan legislative scheme will not benefit from the security of tenure, rights and protections afforded under any of the varying enactments discussed in Section 3.3, including the Mobile Homes Act 1983.

In any case, we have formed the view that the Mobile Homes Act 1983 is concerned with providing additional statutory protections to those occupiers who own their mobile home and rent a pitch from an owner of a protected site. This interpretation is supported by a review of the legislative history of the Act. It follows that renters of mobile homes are excluded from the definition, and therefore important statutory protections relating to, among other things, the provision of a written agreement, pitch fee uplifting, and repair and maintenance of sites.

We understand, for example, that residents at Double Dykes, Tarvit Mill[423], and Bobbin Mill rent their chalet accommodation from the local authority and pay 'social rent' and council tax. If this is the correct position, then we believe that these residents would fall outside scope of the Mobile Homes Act 1983, and the rights and protections set out in the implied terms in Schedule 1 of the Act.

If residents are also excluded from the statutory scheme for Scottish Secure Tenancies under the Housing (Scotland) Act 2001, then the result is that residents in these circumstances, many of whom have longstanding ties to the land, must rely on the terms of their agreements with the local authority. There is no legal obligation for these agreements to reflect the rights and protections contained in Part 2 of the Housing (Scotland) Act 2001 or the implied terms set out in Schedule 1 of the Mobile Homes Act 1983. In this respect, we believe that Scottish Gypsy/Travellers tenants who rent their homes from a local authority are in a more vulnerable position as regards security of tenure compared with 'social tenants' who are in settled accommodation provided by a local authority or RSL, who generally hold Scottish Secure Tenancies and fall within the scope of the Housing (Scotland) Act 2001.

Our analysis demonstrates that some groups of Scottish Gypsy/Travellers living on both public and private sites fall outside the scope of the statutory frameworks governing security of tenure—namely, mobile homes and caravan legislation, and the Housing (Scotland) Act 2001. As a result, these groups are treated differently from social and private tenants living in settled accommodation. We consider there to be an arguable case that this differential treatment constitutes unlawful discrimination within the meaning of Article 8, read in conjunction with Article 14 of the ECHR. It also appears inconsistent with

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[422] Caravan Sites Act 1968 (Amendment of Definition of Caravan) Order 2019, SSI 2019/295, s 13.

[423] Fife Council, 'Gypsy Traveller Site' <https://www.fife.gov.uk/facilities/Gypsy-Travellers-Sites/gypsy-travellers-sites> accessed 8 December 2025.

Article 2 (non-discrimination) of the UNCRC and Article 27, which affirms the right of every child to an adequate standard of living.

As regards standards of accommodation, we have drawn attention to—and welcomed—the findings of the Scottish Housing Regulator in relation to the aforementioned Sites, which identify systemic issues in repair and maintenance and general site conditions. It is important to note that, while the Scottish Housing Charter and the Minimum Site Standards, against which the Regulator has assessed, set out meaningful expectations for the treatment of Gypsy/Traveller residents on local authority-managed sites, these frameworks are not justiciable. In other words, unlike rights and protections under, for example, the Housing (Scotland) Act 2001, they do not give rise to direct legal remedies. This absence of enforceability creates an accountability gap, particularly problematic where serious and prolonged failings persist. We have identified private-law remedies that may in theory be available to individual residents in relation to issues like dampness and mould under a common law claim for damages or under the law of nuisance in Scotland.

Given the repeated failures identified across multiple local authority-managed sites, we consider there is a strong case for more routine and proactive inspection and monitoring by the Scottish Housing Regulator. In relation to private sites, while the framework appears robust—arguably more so than the system for public sites—there is currently no data available on how local authorities have exercised their powers of enforcement under mobile homes/caravan legislation. This reflects a broader lack of robust qualitative and quantitative data on the experiences of Scottish Gypsy/Travellers communities living on private sites.

Finally, in relation to unauthorised encampments, we have found little available research or publicly accessible data on the frequency with which local authorities or private landowners make use of court processes to remove Scottish Gypsy/Travellers families from land. This remains an area of limited regulation and/or oversight, and we are concerned by the absence of any clear procedural rules that must be followed when proceedings are raised to recover possession of land from SGT communities. In the course of our research, we identified two articles published by prominent Scottish law firms which set out what appear to be differing processes for removing Gypsy/Travellers from private land. Based on this, and on the experiences shared with us by communities, we believe there is a practice of courts granting short notice periods to SGTs to defend eviction actions which, combined with the limited opportunity to seek legal advice, apply for legal aid, or raise relevant human rights arguments, poses a significant barrier to access to justice.

Under the heading of Health (see Section 3.4), we have drawn attention to research which indicates that Scottish Gypsy/Travellers are a group with lived-experience testimonies and measurable health outcomes evidencing high levels of inequality resulting in profound impacts on the physical and mental health and wellbeing of individuals. We recognise, and welcome, steps taken by the Scottish Government towards the adoption of a human rights-based approach to health and related service provision which, if fully implemented with proper account taken of specific cultural needs, has the potential to be transformative for Scottish Gypsy Travellers' health outcomes. However, good healthcare policy provision is not the same as a legally enforceable, justiciable route to the right to health provided by international law. Unless, and until the right to health is incorporated and implemented and fully accessible to Scottish Gypsy Travellers, there is little of substance beyond a series of good practice recommendations for healthcare providers in the place of a legal compliance duty which recognises their role as duty-bearers. Full implementation would require integration of the right to health with other rights to non-discrimination, adequate housing and education, supported by direct enforcement in respect of breaches through the Scottish courts and tribunals with available and appropriate remedies.

Under the heading of Education (Section 3.5), statistics published by the Scottish Government evidence that children from Gypsy/Traveller backgrounds continue to experience profound inequalities in relation to attainment and positive school leaver destinations, attendance rates, and rates of exclusion. In addition, children from Gypsy/Traveller backgrounds are disproportionately identified in certain categories of Additional Support Needs which carry a degree of social stigma (e.g. social, emotional and behavioural difficulties, and family issues). In our analysis of domestic education law, policy and practice, we have made a number of findings which we consider constitute a barrier to the full realisation of Scottish Gypsy/Traveller children's right to education under the UNCRC and the ECHR, including in relation to enrolment, attendance, exclusion, identification and support for ASN, and bullying and harassment.

Overall, however, we are concerned that the historic systemic discrimination perpetrated against SGTs by the State and notable public institutions has resulted in an engrained culture, based on racialised stereotyping, that Scottish Gypsy/Traveller children cannot or are unlikely to achieve and thrive in education in the same way as children from other ethnic groups. This creates a culture of low expectation, reflected in an acceptance by key education stakeholders that Scottish Gypsy/Traveller children will be withdrawn from school-based education at some stage. We have seen evidence of this stigmatisation throughout our research.

In this regard, we have found that aspects of education law framework and the Scottish Government guidance to education authorities on policy development and decision making in relation to education for Scottish Gypsy/Traveller children, fail to take a children's-rights-centred approach to law, policy, and practice in education, and are at odds with the holistic and child-centred conception of the right to education as set out above under Article 29 UNCRC, read in conjunction with other key pillars of the

UNCRC, notably the best interests of the child (Article 3), prohibition on discrimination (Article 2), and the active participation of children in decisions that affect them (Article 12).

In particular, we have seen evidence of a failure to take a child-centred approach in relation to education authority practice around meeting the education needs of children who have been withdrawn from school by parents. Taken together with the concrete barriers around enrolment, ASN and bullying, we consider these experiences to evidence a culture of *substantive segregation* whereby the provision of an inferior education experience for Scottish Gypsy/Traveller children is, in practice, accepted by key education stakeholders. This risks compounding the structural disadvantage that children from Gypsy/Traveller backgrounds already face, into adulthood.

We therefore consider that the failure to take an intersectional, child-centred approach—one that values children's agency and voice in the design of curriculum, and in the development of policy and practice around schooling—is at the root of the subordination of their right to education and of poor outcomes. Scottish Gypsy/Traveller children must be seen as rights-holders, with their best interests a primary consideration (Article 3(1) UNCRC) and their views given due weight (Article 12 UNCRC). In this respect, every effort has to be made to ensure full participation in education.

Under the heading of Hate Crime (section 3.6) we found that the lack of reliable, good quality disaggregated data and focused empirical research into the nature and extent of hate crimes committed against SGTs has served as a barrier to understanding the nature and extent of related conduct and identification of the action required to effectively respond to it. Although recent changes to the legal framework should go some way to addressing this issue, greater efforts at improved data gathering and analysis and a focused programme of public awareness-raising through education and other means is required to ensure the necessary changes to public perceptions of SGTs. Full and effective implementation of the Public Sector Equality Duty would assist in this endeavour, as would a greater focus on culturally sensitive training and education for all of those involved in the receipt and handling of reports of hate crime by SGTs.

Free legal advice and representation should be made available to those reporting hate crimes if the currently low reporting and prosecution rates are to be improved.

We conclude with the recognition that the scope and complexity of the issues examined in this report, above all the structural nature of the racial discrimination experienced by Scottish Gypsy/Travellers, cannot be remedied by law reform alone. We highlight the importance of addressing the wider access to justice issues which prevent Scottish Gypsy/Travellers from using legal mechanisms to resolve problems in housing, discrimination, education and beyond.

In this regard, we are acutely conscious of the historical and continuing role that law, through legislation and practice, has played in creating and maintaining structures of oppression and discrimination, and how this might shape and influence attitudes towards the law. We commend recent archival research into twentieth-century policies affecting Gypsy/Traveller communities in Scotland and note that the apology from the First Minister was overdue but welcome.

While access to justice goes beyond the mere existence and availability of legal remedies, we conclude by emphasising the need for a multi-sector approach to actioning the recommendations set out in this report. Where appropriate, we have recommended further research to understand the full extent of the issues—particularly where there is little quantitative or qualitative data about Gypsy/Traveller experiences—and we have stressed the importance of co-production with communities.

A central element of addressing access to justice is the availability of culturally competent advice and representation. **We therefore call upon the Scottish Government, in line with its obligations under human rights and equality law, to support the creation of a national network of legal advice for Scottish Gypsy/Traveller communities. This should include: (i) the development of public legal education materials and resources, including accessible guidance on rights and routes to remedy produced with communities; and (ii) the establishment of a national panel or network of solicitors and counsel, knowledgeable and familiar with Gypsy/Traveller communities, to provide early triage, advice and representation across the justiciable issues identified in this report. The Scottish Government should resource this network through sustainable funding.**

Finally, we are grateful to the communities at Double Dykes, Bobbin Mill and Tarvit Mill for their expertise in sense-checking certain aspects of this research, and to Making Rights Real for partnering with us throughout this project.

4.2. Consolidated Recommendations

Discrimination

Scottish Government:

- Undertake an urgent, time-limited review of the rollout of the Scottish Gypsy/Traveller Accommodation Fund and associated pilot projects, with a specific focus on compliance with the PSED and the Scottish specific equality duties. The review should include independent input from communities, publish findings and required corrective actions, and make continued funding contingent on demonstrable compliance.

Equality and Human Rights Commission:

- Consider initiating an inquiry or investigation into how Scottish local authorities are meeting their obligations under the Equality Act 2010, and specifically the PSED, to Gypsy and Traveller communities in relation to site redevelopment and housing allocation.

Housing

Scottish Government:

- Consult on amending the Housing (Scotland) Act 2001 to explicitly cover the situation of Scottish Gypsy/Traveller tenants living on local authority or RSL sites.
- Liaise with the UK Government on whether there is a need to amend the Mobile Homes Act 1983 to ensure that private renters on Gypsy/Traveller sites enjoy the same rights and protections available to private renters in settled accommodation.
- Undertake or commission research to assess how local authorities have used their enforcement powers under Part 1A of the Caravan Sites and Control of Development Act 1960 and to examine conditions on private Gypsy/Traveller sites across Scotland more generally.
- Undertake or commission research to better understand the prevalence and nature of eviction proceedings from unauthorised encampments, and where necessary, consult on the introduction of legislation to provide for a longer minimum notice period before legal action can be taken.

Scottish Civil Justice Council:

- Review the relevant procedural rules governing eviction from land, particularly in cases involving Gypsy/Traveller communities.

Health

Scottish Government:

- Take the necessary steps to incorporate the International Covenant on Economic Social and Cultural Rights through a compliance duty, subject to the current constraints of devolution.
- Fully implement a human rights-based approach to public service delivery by way an integrated set of improved,

strengthened and enforceable positive duties which align the existing public sector duties contained in the Equality Act 2010 (PSED and FSD) with a range of human rights duties intended to give legal effect to the right to health contained within Article 2 ICESCR and in line with the provisions of CEDAW, ICERD and the UNCRPD at the point of service delivery.

Education

Scottish Government:

- Undertake a review of existing education law, policy and practice relating to Scottish Gypsy/Traveller children. In particular, the Government should work in partnership with children and young people and organisations that represent their interests to understand the distinct barriers they face in education; the effectiveness of existing approaches to learning; and to co-develop guidance for education authorities around meeting the educational rights of Scottish Gypsy/Traveller children. More generally, a review is needed of the compatibility of the Education (Scotland) Act 1980 with the UNCRC and with contemporary, child-centred approaches to the right to education.
- Develop child-centred policies that include the history, culture and contributions of Gypsy/Travellers in Scotland, using community-informed resources, within the national curriculum.
- Review and monitor how ASN labels, particularly ‘interrupted learning’ are applied to Gypsy/Traveller children.
- In line with obligations under the EqA 2010, and specifically the Public Sector Equality Duty, commission and fund qualitative research seeking to explore and understand the disproportional rates of school exclusions experienced by children and young people from Gypsy/Traveller backgrounds.
- In line with the recommendations of the Advisory Committee, publish routine data on bullying and harassment in schools, disaggregated by ethnic group.

Scottish Government and Lord Advocate:

- Commission research on the operation and impact of the attendance offence in the Education (Scotland) Act 1980 (including any chilling effect on enrolment/engagement for Gypsy/Traveller families), consult on whether repeal or reform is required, and report publicly. In the interim, the Lord Advocate, in line with her obligations under the Equality Act 2010, should consider issuing guidance confirming that prosecution in these circumstances is a last resort, and should not be considered unless the education authority evidences meaningful engagement with families and that they have considered their obligations under the Equality Act 2010.

Education authorities:

- Review admission policies and consider whether to exercise powers under Education (Scotland) Act 1980 to reserve places for Scottish Gypsy/Traveller pupils, having regard to obligations under, among other things, the Public Sector Equality Duty; and to publish an annual Equality Impact Assessment on admissions
- Work with Scottish Gypsy/Traveller children and families to develop strategies for combatting racist bullying and harassment in schools, which should address the design of accessible, transparent and culturally-sensitive reporting mechanisms. In this regard, education authorities should consider funding a designated community liaison officer with cultural competence who can advocate for the child in reporting processes.
- Introduce training for all teaching professionals on racist bullying and its legal implications under the EqA 2010

Scottish Government, Education Scotland, and COSLA:

- We recommend that the Scottish Government, with Education Scotland and COSLA, establish a simple national protocol on dual registration (a base school plus a host school while travelling) for Scottish Gypsy/Traveller pupils. Education authorities should adopt and publish a local procedure aligned to that protocol, train school staff to implement it without delay, and monitor/report outcomes. This would deliver the accessibility and adaptability required by the 4-A framework and reduce avoidable breaks in education.

Hate Crime

Scottish Government:

- Ensure that the provisions of the Hate Crime and Public Order (Scotland) Act 2021 (section 15) are implemented effectively by Police Scotland and other duty bearers within all relevant public authorities so as to ensure the gathering and collation of reliable disaggregated data relating to the recording of racially aggravated hate crimes reported by or on behalf of SGTs.
- Invest the necessary resources in targeted research into the nature and extent of hate crime, as defined in law, perpetrated against SGTs.
- Provide culturally appropriate and accessible guidance and information for rights holders on the nature of hate crime and the differences between civil and criminal law in relation to prejudice, discrimination and harassment and support for reporting and pursuing legal action where necessary. Support should include free legal advice and representation for all those reporting hate crime.

Police Scotland:

- Ensure the provision of culturally sensitive training for all those involved in the handling of hate crime complaints including against media outlets.

The Crown Office and Procurator Fiscal Service:

- Provide improved statistical data on the breakdown of racially aggravated hate crime, relevant offences and prosecution rates for each racial or ethnic group in line with Scottish census classifications.

Scottish Local Authorities**:**

- Fully implement the Public Sector Equality Duty, with particular regard to the duty to foster good relations in respect of SGTs, for example by way of focused equality impact assessments recording the positive steps taken to discharge this duty and assessments of their effectiveness informed by SGT community participation and engagement.

Access to Justice

Overarching recommendation to Scottish Government:

- In line with obligations under human rights and equality law, to support the creation of a national network of legal advice for Scottish Gypsy/Traveller communities. This should include: (i) the development of public legal education materials and resources, including accessible guidance on rights and routes to remedy produced with communities; and (ii) the establishment of a national panel or network of solicitors and counsel, knowledgeable and familiar with Scottish Gypsy/Traveller communities, to provide early triage, advice and representation across the justiciable issues identified in this report. The Scottish Government should resource this network through sustainable funding.

GLOSSARY

- **SGT (Scottish Gypsy Travellers)**: A recognised ethnic minority in Scotland with distinct cultural practices, including nomadism and the use of the Cant language.
- **ICCPR (International Covenant on Civil and Political Rights)**: A UN treaty ensuring civil and political rights, including freedom of movement, privacy, and protection against discrimination.
- **ICESCR (International Covenant on Economic, Social and Cultural Rights)**: A UN treaty securing rights to housing, health, education, and an adequate standard of living.
- **ECHR (European Convention on Human Rights)**: A regional treaty that guarantees fundamental rights and freedoms in Europe, enforceable through the European Court of Human Rights.
- **ECtHR (European Court of Human Rights)**
- **CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women)**: UN treaty focused on gender equality and protections for women.
- **CRC (Convention on the Rights of the Child)**: International treaty protecting children's civil, political, economic, social, health, and cultural rights.
- **FCNM (Framework Convention for the Protection of National Minorities)**: A Council of Europe treaty ensuring the rights of national minorities to participate in public affairs.
- **ICERD (International Convention on the Elimination of All Forms of Racial Discrimination)**: UN treaty obliging states to eliminate racial discrimination and promote understanding among all races.
- **Nomadism**: A form of cultural and spatial identity marked by mobility; central to SGT identity, often in tension with legal and housing systems designed for settled populations.
- **Right to Adequate Housing**: Encompasses legal security of tenure, availability of services, affordability, habitability, and cultural adequacy.
- **Participation Paradox**: Describes how marginalised groups are excluded from decision-making due to their minority status, yet cannot change that exclusion without being included.
- **Equality Impact Assessment (EqIA)**: A legal and policy tool used by public authorities to identify the potential impact of decisions on individuals with protected characteristics.

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APPENDIX: SECURITY OF TENURE DIAGRAM

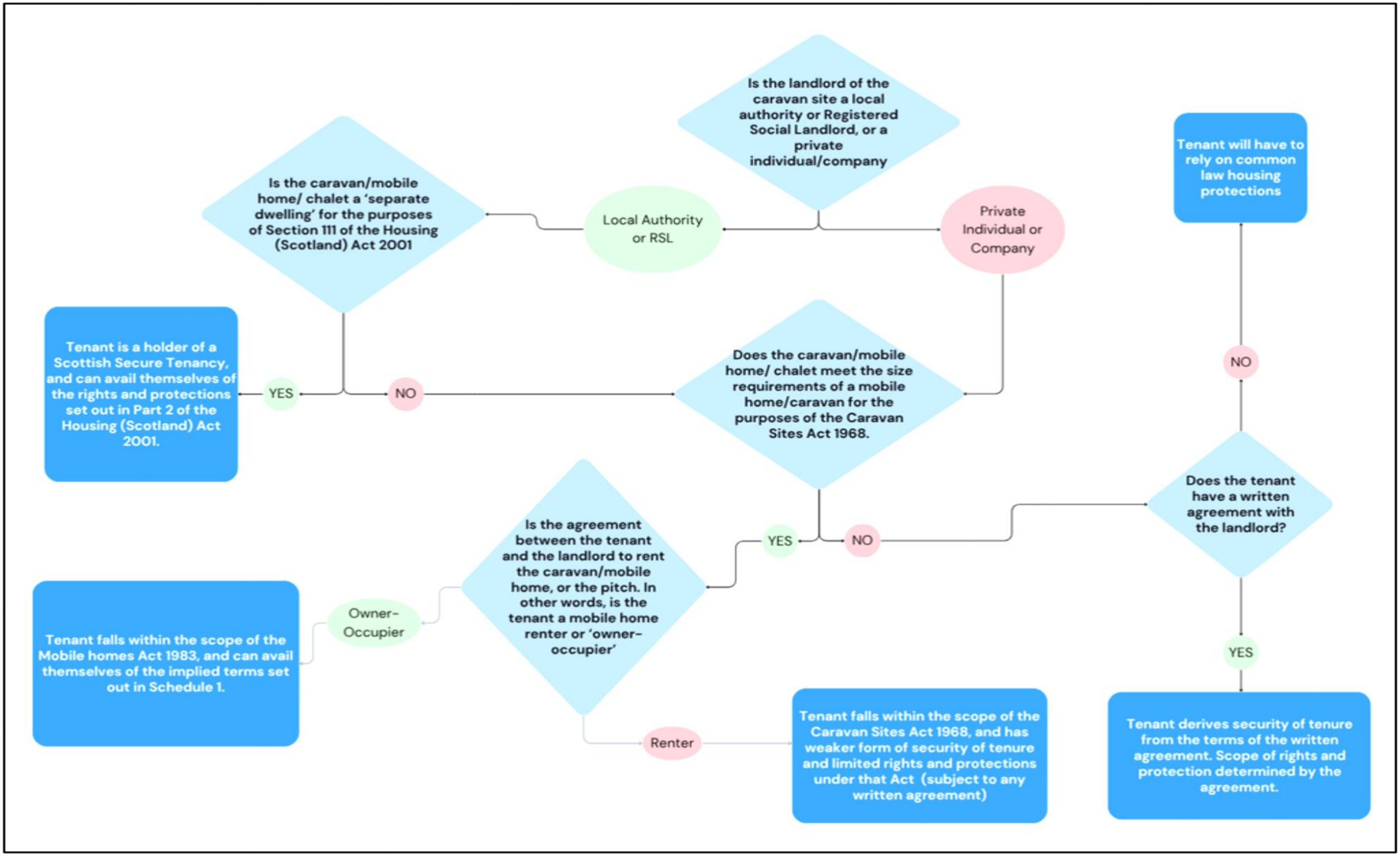

Diagram - Housing status of gypsy/travellers living on public and private caravan sites

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The University of Glasgow charity number SC004401